

Terms of reference and conduct of the inquiry

Terms of reference

1. On 11 December 2006, the OFT sent to the CC the following reference:
 1. Whereas in exercise of its duty under section 33(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the CC”) in relation to an anticipated merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—
 - (a) arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation in that:
 - (i) enterprises carried on by or under the control of Wienerberger AG will cease to be distinct from enterprises carried on by or under the control of Baggeridge Brick plc; and
 - (ii) as a result the condition specified in section 23(3) of the Act prevails or prevails to a greater extent with respect to the supply in the United Kingdom of soft mud bricks; and
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, including the supply in the United Kingdom of bricks.
 2. Now, therefore, the OFT, in exercise of its duty under section 33 of the Act hereby refers to the CC, for investigation and report within a period ending on 28 May 2007 the following questions in accordance with section 36 of the Act—
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
 3. In relation to the question whether a relevant merger situation will be created, the CC shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

(signed) **Vincent Smith**
Senior Director Competition
Office of Fair Trading
11 December 2006

Conduct of inquiry

2. Notices inviting interested parties to submit evidence to the CC were placed in *Building Magazine* and *Construction News*. We also placed an invitation to express views to us, together with an administrative timetable for the inquiry, on the CC website.¹
3. We sought and received evidence from competitors, developers, builders' merchants, brick factors and other customers of the main parties, together with other interested parties.
4. Non-sensitive submissions that we received from third parties can be found on the CC website, together with summaries of points made in oral evidence. We held hearings with 17 third parties, including some conducted by telephone conference.
5. We received written evidence from Wienerberger and Baggeridge. Non-sensitive versions of their main submissions can be found on our website. In addition, we held two hearings each with Wienerberger and Baggeridge. Members of the Group, accompanied by staff, visited Baggeridge plants at Hartlebury and Waresley and Wienerberger's Sandown plant near Aldridge, all in the West Midlands.
6. In the course of our inquiry we published a statement of issues on 19 January 2007, and sent to Wienerberger and Baggeridge a number of working papers and a Notice of Provisional Findings. A non-sensitive version of our provisional findings was placed on our website on 12 April 2007.
7. We should like to thank all those who have assisted in our inquiry, particularly Wienerberger and Baggeridge.

¹www.competition-commission.org.uk.