

**PROPOSED ACQUISITION BY WIENERBERGER FINANCE SERVICE BV OF
BAGGERIDGE BRICK PLC**

STATEMENT OF ISSUES

1. The inquiry group (the Group) is considering the proposed acquisition by Wienerberger Finance Service BV (a wholly-owned subsidiary of Wienerberger AG) of Baggeridge Brick Plc (Baggeridge). Another subsidiary of Wienerberger AG, Wienerberger Ltd (Wienerberger), and Baggeridge both manufacture clay bricks in the UK.
2. The issues that the Group intends to focus on are set out below.

Market definition

3. The Group will wish to identify the relevant economic markets affected by the merger (the 'relevant markets'). In terms of the product market it will explore:
 - (a) the extent to which clay bricks manufactured by different production processes constitute separate relevant markets or are parts of a single relevant market;
 - (b) the extent to which clay bricks used for different construction purposes constitute separate relevant markets or are parts of a single relevant market;
 - (c) whether other types of bricks, eg concrete bricks, form part of the same relevant market as clay bricks; and
 - (d) the extent to which other cladding and building materials form part of the same relevant market as bricks.
4. In terms of the geographic market, the Group will consider whether the scope of any of the relevant markets extends beyond Great Britain, and/or whether there are separate identifiable regional markets within Great Britain in respect of any of the product markets affected by the merger.

Assessment of the competitive effects of the merger

5. In the light of the findings of the pre-reference investigation of the OFT to the effect that there is 'a realistic prospect that the merger would increase the possibility of coordinated pricing behaviour by the three main suppliers, especially for larger volume contracts'¹ the Group will wish to consider the extent to which the merger is likely to make coordination more sustainable or more effective (if it existed prior to the merger) or increase the likelihood of coordination (if it did not exist prior to the merger).
6. The Group will, however, also consider whether either increased market power and/or fewer competitive constraints potentially resulting from the merger might allow the merged parties to increase prices, lower output, reduce standards of quality or service, or reduce the range of products offered on a unilateral basis ('unilateral effects'). Based on the evidence received so far, the Group is currently of the view

¹OFT Press Notice 174/06, 11 December 2006.

that if the relevant geographic market (see paragraph 4) is Great Britain or wider, then the merger may be unlikely to give rise to adverse unilateral effects, though it will also want to explore whether unilateral effects might arise in relation to particular types of brick manufactured by the parties or in relation to certain types of customer.

7. The Group will consider all relevant information on the characteristics of the market that may facilitate, or may in other ways impinge upon coordinated and/or potential unilateral competitive effects of the merger. This may include the following:

Market characteristics

- (a) the current and anticipated concentration in the relevant markets, including the stability of market shares over time, the roles played by the large brick producers Ibstock Brick Ltd and Hanson Building Products, and the size of, and the role played by, the 'competitive fringe' of smaller brick producers;
- (b) the degree of symmetry of the larger brick producers generally, ie the extent to which they are similar in respect of size, cost structures, business strategies and incentives and attitudes to risk, as well as market share and, if a degree of asymmetry is present in the relevant markets, whether there are mechanisms that would facilitate the redistribution of the benefits of coordination between the merging parties and their principal competitors;
- (c) the degree of homogeneity of products between different brick producers;
- (d) the extent to which output, capacity, excess capacity and stocks of bricks of individual producers are known to other market participants;
- (e) the current and likely future demand for bricks (including exports, which are currently mainly to the Republic of Ireland, and the factors that determine the demand for bricks as against other forms of cladding) and the extent to which there is over- or under-capacity in the relevant product markets, including unused stocks held by the brick producers, stocks held by customers and whether the position might change as a result of the merger and/or recently-announced closures of brick-making facilities;
- (f) the nature of current capacity for brick-making, how quickly and easily it can be expanded, switched to making alternative types of brick, 'moth-balled' or closed down;
- (g) whether there are any discernible market, technological or other trends which might have an impact on competition in the relevant markets in the foreseeable future and what that impact might be;
- (h) the characteristics of different types of purchasers of bricks, eg builders' merchants, brick factors and end-users such as contractors and developers, including the role played in the relevant markets by buyer-groups;
- (i) whether some purchasers require the supply of bricks on a nationwide basis, whether this restricts the number of firms that can supply the needs of those purchasers, whether this might be affected by the merger and, if so, how;
- (j) how prices are set in the relevant markets, including in particular: price transparency and the role of price lists; price leadership; the frequency with which prices are adjusted and the speed with which they can be changed; the role of price negotiation; the role of discounts and rebates; the degree of price

discrimination; regional pricing and the factors that determine regional prices; and the effect these factors have on competition in the relevant markets;

- (k) the relative importance of price and non-price factors to competition in the relevant markets and the factors that determine the demand for individual types of brick, eg functionality, appearance, price and requirements by architects and planning authorities;
- (l) the contractual framework in which bricks are ordered and purchased, including the frequency of contact between producers and customers, the nature and extent of contracts, their duration, their provisions in relation to price and volumes ordered, and sanctions for breach; and how this framework differs between different purchasers and its effects on competition in the relevant markets;
- (m) whether there are significant barriers to purchasers switching between one brick producer and another and whether this might vary between different types of purchaser, different types of brick and the numbers of bricks purchased;

Assessing the effects of the merger

- (n) the extent to which Wienerberger currently competes with Baggeridge in the supply of products and services in the relevant markets, or is a potential competitor;
- (o) the extent to which any interdependence between the merging parties and their principal competitors currently enables them to coordinate their activities;
- (p) whether, and to what extent, the merger is likely to lead to a rise in prices or a greater resistance to price cuts, a reduction in output, reduced standards of service or quality or reduced choice for some or all customers, or a reduction in innovation in the relevant markets;
- (q) the extent to which the merger alters either the incentives or the ability of the merging parties and their principal competitors to coordinate their activities;
- (r) whether the merger is likely to give rise to efficiency gains and, if so, whether these will increase competition in the relevant markets or have other benefits; and, in particular, whether the merger, by creating a strong national player to rival the current market leaders (Ibstock Brick Ltd and Hanson Building Products), might increase competition in the relevant markets;

Constraints on market power

- (s) whether there are significant barriers to entry and expansion in the relevant markets and the likelihood of future entry and expansion;
- (t) the scope for imports of bricks to act as a competitive constraint on the relevant markets;
- (u) the extent to which the 'competitive fringe' of smaller brick producers exercise a constraint on the relevant markets; and
- (v) the extent to which any potential lessening of competition as a result of the merger might be offset by the buying power or multi-sourcing behaviour of some purchasers, including purchasers acting together; how widespread any such

buyer power is and whether there are some customers that do not possess buyer power and would not be protected by the buyer power of others.

The counterfactual

8. The Group will consider what might happen if the merger does not go ahead (the counterfactual), and in particular:
 - (a) the likely UK strategies of both Wienerberger and Baggeridge in the absence of the merger;
 - (b) whether some parts or all of Baggeridge might be acquired by an alternative purchaser; and
 - (c) whether Baggeridge would continue as an independent producer of bricks in the absence of an acquisition by Wienerberger AG or another purchaser.

Remedies

9. Should the Group consider that the acquisition may be expected to result in a substantial lessening of competition in a relevant market, it will consider whether and, if so, what remedies might be appropriate, and will issue a further statement at a later date.

Relevant customer benefits

10. Should it be necessary to consider the question of appropriate remedies, the Group may have regard to any relevant customer benefits resulting from the merger. These are defined as: lower prices, higher quality or choice of goods or services in any relevant market or greater innovation in relation to such goods and services. The Group therefore wishes to explore what those benefits are likely to be, which customers they will benefit and the significance of those benefits.