



Determination No. M/05/009 of the Competition Authority, 13th April 2005, under Section 21 of the Competition Act, 2002.

Notification No. M/05/009- Kingspan/Century Homes

Introduction

1. On the 14th of March 2005 the Competition Authority, in accordance with Section 18 (1) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of a proposal whereby Kingspan Group Limited ("Kingspan") would acquire Woodroe Limited, trading as Century Homes ("Century Homes").

The Parties

2. Kingspan, the acquirer, is a wholly owned subsidiary of Kingspan Group plc ("Kingspan Group"). Kingspan Group has five primary divisions:
 - i) Insulation: Supplying the industrial, commercial and housing market.
 - ii) Sandwich Panels: These products are used as roof and wall cladding solutions primarily on industrial, distribution, retail and leisure developments.
 - iii) Environmental containers.
 - iv) Raised access floors.
 - v) Building components: The Group's lightweight structural building component products are used substantially in steel frame, modular and refurb buildings.
3. Century Homes, the target, designs and manufactures timber frames used in the construction of buildings. The timber frames supplied by Century Homes include external and internal wall panels, roof trusses, plasterboard and insulation, felt and battens and other particulars. Various construction and development firms purchase and erect Century Homes' timber frames. Century Homes, via subcontractors, erects



approximately []% of the timber frames it supplies in the Island of Ireland.

Analysis

4. Kingspan manufactures products that are an integral part of a buildings' structure. However, these products are primarily for use in the non-residential sector. Unlike Century Homes, Kingspan is not active in the manufacture and supply of complete timber frame kits. As such, there is no horizontal overlap between the business activities of Kingspan and Century Homes.
5. The only commercial relationship between Kingspan and Century Homes is the purchase by Century of insulation for supply in its timber frame kits. The total amount of these purchases was less than EUR200,000 in the most recent financial year. The proposed acquisition will not foreclose any market for goods or services in the State nor raise the costs of Century Homes' rivals, as Kingspan does not have sufficient market power in the supply of insulation.
6. The minimal vertical relationship and the absence of horizontal overlap in the parties' activities indicates that the proposed acquisition would not substantially lessen competition in any market for goods or services in the State.

Deferred Payments and Ancillary Restrictions

7. According to the Share Purchase Agreement ("Agreement"), a significant part of the consideration payable to the Vendors is to be deferred and made payable during an "Earn-out Period" of nearly three years post closing. During the Earn-out Period, to end on 31 December 2007, the Vendors will continue to be actively involved in the management of Century Homes. The deferred payments will be calculated by reference to annual profits at the end of each of 2005, 2006 and 2007.



8. Clause 9 of the Agreement outlined the proposed non-compete and non-solicitation restrictions deemed by the parties to be directly or indirectly related and necessary to the implementation of the proposed transaction. Such restrictions were to be imposed for the "Restricted Period". As defined in Clause 1 of the Agreement: Restricted Period means two years from the end of the Earn-out Period. The Authority deemed that the Restricted Period was inflexible and did not account for contingencies.
9. The proposed restrictions relate only to the "Restricted Business Area". Restricted Business Area is defined in Clause 1 of the Agreement as "Ireland, the United Kingdom of Great Britain and Northern Ireland and Japan". The parties subsequently confirmed that the inclusion of Japan in the Restricted Business Area was not directly or indirectly related and necessary to the implementation of the proposed transaction (as referred to in Sections 4(8) and 5(3) of the Competition Act, 2002).

Proposal

10. The parties subsequently submitted a proposal to the Authority, in accordance with Section 20(3) of the Act, which provided that Clause 1 of the Agreement be revised so that:
" **"Restricted Business Area"** [...]"
" **"Restricted Period"**[...],
11. The Authority accepts the proposal, takes it into account in making this determination, and confirms that it forms part of the basis of this determination, pursuant to Section 20(3) of the Act. The proposal is deemed to take effect from 13th April 2005, the date of this determination.

Determination

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Kingspan Group Limited of Woodroe Limited will not be to



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substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr. John Fingleton
Chairperson of the Competition Authority

13 April 2005



The Competition Authority

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