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Anticipated acquisition by Barratt Developments plc of Wilson Bowden plc

The OFT's decision on reference under section 33(1) given on 13 April 2007. Full text of decision published 24 April 2007.

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**Please note that square brackets indicate text or figures which have been deleted or replaced with a range at the request of the parties and third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Barratt Developments plc** (Barratt), with 33 operating divisions, is one of the largest residential house building groups in the UK. It is also active - albeit to a minor extent - in the development of commercial property.
2. **Wilson Bowden plc** (Wilson Bowden) is also a major residential house building group. However, a significant proportion of Wilson Bowden's total operations is attributable to commercial property development. In the year ended 31 December 2005, Wilson Bowden's turnover in the UK amounted to approximately £1,231 million.

## **TRANSACTION**

3. Barratt is proposing to acquire the entire issued share capital of Wilson Bowden. The anticipated transaction was notified to the OFT on 1 March 2007. The administrative target date for the OFT's decision is 30 April 2007.

## **JURISDICTION**

4. As a result of the proposed transaction, Barratt and Wilson Bowden will cease to be distinct. Wilson Bowden's UK turnover exceeds £70 million,

and the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is consequently satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **FRAME OF REFERENCE**

### **Product scope**

5. The parties are active in (a) the construction of new residential housing and (b) the development of commercial property.

### **Construction of new residential housing**

6. On the basis of the available evidence, the OFT considers that older housing exerts some competitive price constraint on newly constructed housing on the demand side. This is consistent with the approach taken in two previous OFT cases in the housing construction sector.<sup>1</sup> Whilst a relatively small number of customers have a preference for either a newly constructed or for an older house, the vast majority are willing to switch between these two types of housing. However, given that the supply of older housing is to a large extent fixed, the OFT considers that there are some limitations to its scope for constraining the prices of newly constructed housing.
7. On the supply side, the available evidence from customers and competitors indicates that the majority of house builders are capable of meeting with most design specifications that impact on the size, structure and price of the finished house.
8. Since the OFT does not believe that concerns for any substantial lessening of competition will arise on any reasonable market categorisation, there is no need to conclude on the exact product scope. However, for the purpose of its analysis in this case, the OFT has taken a cautiously narrow view of the impact of the merger specifically on the supply of new residential housing.

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<sup>1</sup> Anticipated acquisition by Taylor Woodrow plc of Wilson Connolly Holdings plc - 2003  
Anticipated acquisition by Persimmon plc of Westbury plc - 2005

## **Commercial property development**

9. Commercial property is real estate developed for business purposes, including offices, retail outlets, industrial property etc. 'Development' includes both the construction of new commercial property and the conversion of housing or other brownfield plots into commercial property. In this case, as in a previous decision,<sup>2</sup> the OFT takes due account of the parties' submission that it is appropriate to distinguish between commercial property and residential housing - and that the relevant product scope for the present purposes is 'all commercial property', including both existing and newly developed commercial real estate.
10. On the basis that no competition concerns arise on any reasonable sub-category of commercial property, the OFT considers in this case – as it did in the above referenced earlier case - that there is no need to conclude on the exact product scope. However, for the purposes of the competition assessment in this decision, a cautious approach is taken and the impact of this transaction has been analysed narrowly in respect of the supply of commercial property development.

## **Geographic scope**

11. The parties submit that the relevant geographic scope for both the supply of new residential housing and commercial property development is national. In each case they point to:
  - (a) demand-side substitution on the part of buyers who do not confine their search for property to a specific region, and
  - (b) supply-side substitution on the part of major suppliers active over a number of regions who face very few barriers to entry or expansion into regions where they currently have no particular focus.
12. However, evidence before the OFT indicates that house-buyers, in general, have a strong preference for a particular geographic location and would not usually be prepared to switch locations on the basis of a 5 - 10 per cent

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<sup>2</sup> Anticipated acquisition by CWG Acquisition Ltd of Canary Wharf Group plc - 2004

price advantage. This is supported by the fact that there are substantial differentials in house prices across various parts of the UK.

13. In the commercial property development sector, third party comment points to Wilson Bowden being active at a national level. However, given that Barratt's activities in this area are substantially smaller and not as widely known to third parties, the available evidence on the precise geographic scope is not conclusive.
14. Since the OFT does not believe that any substantial lessening of competition concerns arise on any reasonable market categorisation, there is no need to draw any conclusions as to the exact geographic frame of reference. However, for the purpose of its analysis in this case, the OFT has taken a cautious view and the supply of both new residential housing and of commercial property development are considered in this analysis at both national and regional levels.

## **HORIZONTAL ISSUES**

### **Market shares**

#### **Construction of new residential housing**

15. There is no single body of reliable market information on the construction of new housing at the national level. The parties have therefore assembled a range of share of supply estimates on the basis of new house completions, the numbers for which are compiled within various independent sources.<sup>3</sup> These estimates indicate that the parties would have combined shares of between [5 and 15 per cent] (an increment of [less than five per cent] regardless of the data source. The merged entity would become the largest supplier of new residential housing in the UK.
16. However, post-merger, there will remain nine competitors with shares of supply of between 2 - 10 per cent. Further competitive constraint is posed by a very considerable number (the available evidence points to a figure in excess of 6000) of smaller operators in the housing construction sector.

17. At the regional level, the parties have also submitted estimates of market shares on the basis of new house completions – using actual numbers of completions by Barratt and Wilson Bowden set against the totals compiled by the Department for Communities and Local Government.<sup>4</sup> According to these estimates, the merged entity's share of total completions would not exceed 15 per cent in any of the regions considered.
18. Given the shares of supply at both regional and national levels, the fragmented nature of the market and the very substantial number of alternative house builders, the OFT does not consider that competition concerns arise in relation to the supply of new residential housing as a result of the merger.

### **Commercial property development**

19. Whereas Wilson Bowden's activities in the development of commercial property generate [less than 15 per cent] of its total revenue, commercial property accounts for [less than five per cent] of Barratt's total revenue. Barratt's operations in this area are limited to 'mixed use' property: blocks of real estate which are developed to have a mix of both residential and commercial units.
20. The parties were not able to provide reliable market data for the commercial property development sector at the national level. However, on the basis of their conservative estimate of the total value of the commercial property sector being [between £5 and £15 billion] per annum, the turnover of the merged entity would account for [less than a five per cent] share with an increment of [less than two per cent]. The OFT does not consider that competition concerns arise from such low shares of the overall supply at national level.
21. At the regional level, the parties overlap in only two localities: Northwich (Cheshire) and Southampton. However, given Barratt's lack of focus on commercial property development, the significant number of alternative property developers operating and capable of operating in these areas and

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<sup>3</sup> Housing Market Intelligence Report (October 2006); various tables from Department for Communities and Local Government data in 2005/2006; the National House Building Council and Fred Wellings' Private Housebuilding Annual 2006.

<sup>4</sup> The specific regions referred to are: North East, North West, Yorkshire & Humberside, East Midlands, East Anglia, West Midlands, South East, South West, Scotland, Wales and London.

the absence of customer concern, the OFT does not consider that the merger raises concerns for competition at any regional level.

## **VERTICAL ISSUES**

22. No vertical issues arise as a result of this merger.

## **COORDINATED EFFECTS**

23. No concerns with regard to coordination in the relevant sectors are raised as a result of this merger.

## **THIRD PARTY VIEWS**

24. The majority of third parties responded with no concerns. Only one respondent expressed concerns regarding the merger - however, the OFT does not consider that these concerns amounted to a body of evidence for the merger leading to a substantial lessening of competition.

## **ASSESSMENT**

25. The parties overlap in the construction of new residential housing and in the development of commercial property in the UK.

26. With regard to new housing construction, the available evidence indicates that some competitive constraint is exerted between new and older housing. However, there is no need to reach any conclusion as to the precise scope of the product and geographic market since, on the basis of a cautiously narrow frame of reference (the supply of new housing at the regional level) the OFT believes that the proposed merger raises no competition concerns. Shares of supply are moderate, constraint is posed by a considerable number of alternative suppliers, barriers to entry and expansion are low and third parties were generally unconcerned.

27. Similarly, in the commercial property development sector, the available evidence indicates that existing commercial property and newly developed commercial property exert some competitive constraint. However, there is no need to reach any conclusion on the exact scope of the product and geographic market since, on the basis of a cautiously narrow frame of

reference (the supply of commercial property development at the regional level) the OFT believes that the proposed merger raises no competition concerns. At the national level, combined shares of supply amount to [less than 5 per cent] on the basis of conservative estimates. Barratt has only very limited activities in commercial property and the increment in market share is [less than two per cent].

28. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
29. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.