



**The Competition Authority**  
An tÚdarás Iomaíochta

## **MERGER DETERMINATION (No. M/04/051)**

**Competition Act 2002**

**Conditional Determination of The Competition Authority**

**Proposed Acquisition by Grafton Group plc of Heiton Group plc**

**17<sup>th</sup> February 2005 (published 7<sup>th</sup> March 2005)**

### **CONDITIONAL DETERMINATION**

Having completed its full investigation, the Competition Authority, in accordance with Section 22(3)(c) of the Competition Act 2002, has made a conditional determination, effective from today's date, that the result of the proposed acquisition will not be to substantially lessen competition in markets for goods or services in the State, if the following specified conditions are complied with:

- Condition 1:** For three years from the date on which the acquisition is put into effect, the Grafton Group and its successors will inform the Authority in advance of all proposed mergers or acquisitions in the builders' merchants sector in the State, in which it is involved, and will notify such proposed transactions in accordance with Section 18(3) of the Competition Act 2002 when requested to do so by the Authority.
- Condition 2:** Pursuant to Section 22(6) of the Competition Act 2002, the acquisition must be put into effect within 12 months after the making of the determination.

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**The Notification**

- 1.1 On 10 September 2004 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 Grafton Group plc ("Grafton") would acquire Heiton Group plc ("Heiton"). The notified transaction is hereinafter described as "the proposed acquisition".<sup>1</sup>
- 1.2 On 1 October 2004, the Authority made a formal request for further information from both Grafton and Heiton, pursuant to Section 20(2) of the Act. Both Grafton and Heiton complied with the request by letters dated 18 October 2004, with attached documents. Hence 18 October 2004 is the "appropriate date" for the purpose of making and publishing of a determination, under Section 19(6) of the Act.
- 1.3 On 8 November 2004, the Authority determined, in accordance with Section 21(2) of the Act, to carry out a full investigation of the proposed acquisition.
- 1.4 On 6 January 2005 the Authority, having completed its full investigation, made a conditional determination, in accordance with Section 22(3)(c) of the Act, that the proposed acquisition will not result in a substantial lessening of competition in any market for goods or services in the State, and that it may be put into effect, subject to Grafton complying with two conditions.

**The Proposed Acquisition**

- 1.5 The proposed acquisition would occur by Grafton purchasing the entire issued and to be issued ordinary and preference share capital of Heiton. On the date of notification, 10 September 2004, Grafton already owned approximately 29% of the issued share capital of Heiton.
- 1.6 The commercial rationale underpinning the proposed acquisition is set out in a "Report on Merger Synergies" (July 2004), prepared by PricewaterhouseCoopers on behalf of Heiton. The report estimates head office overhead savings of €[...], other overhead savings of €[...], purchasing savings of €[...], and the potential for the enlarged group to source direct from manufacturers in Asia, bypassing distributors. A briefing note from Arthur Cox, dated 13 September 2004, likewise stated that one *"of the main motivations for the proposed acquisition is seeking higher profits through rationalisation and purchasing economies. The parties understand arguments about pass through of costs savings can be overstated, but believe that, in the increasingly competitive environment in both sectors, a significant proportion of such savings will inevitably be passed on in the form of downward pressure on margins and prices ... There are efficiency gains ... that provide a compelling rationale for a profit enhancing transaction which would not have the result of increasing prices."*

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<sup>1</sup> Legal representatives for Grafton and Heiton were Arthur Cox and A&L Goodbody, respectively.

## **The Parties: Grafton Group plc - the acquirer**

1.7 Grafton is a public limited company, listed on the Irish and London stock exchanges, and operating in Ireland and the UK. Grafton's activities are the supply of building materials ("builders merchanting"), the retail supply of "do-it-yourself" ("DIY") products for general repair, maintenance and home improvement activities, and manufacturing. In the early 1990's Grafton's profits mainly came from its Irish builders merchanting business, at which point Grafton began to invest heavily in the UK. Grafton has since experienced rapid growth and now operates the fourth largest builders merchant chain in the UK, including 12 MacNaughton Blair outlets in Northern Ireland.

1.8 Grafton's worldwide turnover in 2003 was €1,496m, 74% of which was achieved in the UK. Grafton's turnover in the State in 2003 increased by 11.8% to €384.5m; its builders merchanting division increased turnover by 11.5% to €240m (2002: €215m) and its DIY retail division increased turnover by 12.4% to €110.3m (2002: 98.1m).

1.9 Grafton's principal businesses in the island of Ireland are:

Chadwicks	Builders merchant, 23 outlets in the State
Telfords	Builders merchant, 3 outlets in the State
Woodie's	DIY retailer, 18 outlets in the State
CPI	Manufacturer of mortar and concrete blocks
Plumb Centres	Plumbers merchant, 5 outlets in the State
Pulsar	Supplier of heating & plumbing products
Circle Syntalux	Manufacturer of paint
Macnaughton Blair	Builders merchants, 12 outlets in N. Ireland

## **The Parties: Heiton Group plc - the target**

1.10 Heiton is a public limited company, listed on the Irish and London stock exchanges, and operating in Ireland and the UK. Heiton's turnover for the financial year ended 30 April 2004 was €503m with turnover in the State of about €434.5m.<sup>2</sup> Heiton's Irish divisions are Heiton Trade Ireland and Heiton Retail Ireland. Heiton Trade accounted for 67% of the group's total turnover for its most recent financial year, with sales of €339.5m, and consists of the following businesses:

Builders Merchants – Heiton Buckley (21 outlets), Cork Builders Providers, Tullamore Hardware, Paddy Power Kilbarry, Eddies Hardware Drogheda, and Morgans Timber (supplier of specialist hardwoods, softwoods and sheet materials)

Sam Hire - plant and tool hire, 13 outlets (all part of the Heiton Buckley builders merchant outlets)

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<sup>2</sup> Heiton Group plc Annual Report 2004

Heiton Steel – supply of steel products for industrial applications, 3 outlets

Wrights Window Systems – manufacture and supply of windows, 1 outlet

1.11 Heiton Retail had sales of €94.9m in its most recent financial year and consists of Atlantic Homecare, a retail chain operating 17 “DIY superstores” in the State (including four “Panelling Centre” outlets).

### **Scope of Investigation**

1.12 In the course of its investigation the Authority met with representatives of Grafton and Heiton, and with their legal representatives and retained economic experts, on several occasions. The Authority considered the parties’ submissions and any evidence they provided. The Authority also considered evidence from the following sources:

- Third party submissions - customers, competitors (including representative organisations) and suppliers of the parties;
- Internal business documents of Grafton and Heiton, provided in response to the Authority’s request for further information;
- Site visits to a Chadwicks builders merchants, a Woodie’s DIY retail outlet, and a B&Q DIY retail outlet;
- Econometric analysis prepared by Moore McDowell, University College Dublin, on behalf of Grafton and for the express purpose of notifying the proposed acquisition (“the McDowell Report”);
- Econometric analysis and economic advice provided by Vincent Hogan, University College Dublin, who was retained by the Authority;
- The responses of a questionnaire submitted to 79 users of building merchants, including customers of the parties, and;
- A survey of Woodie’s and Atlantic Homecare customers, conducted by Lansdowne Market Research on behalf of the Authority. The survey was carried out in order to evaluate the shopping behaviour and the selective criteria of Woodie’s and Atlantic Homecare customers. Interviews were conducted over 3 days (9-11 December 2004) across 423 shoppers exiting either a Woodie’s or Atlantic Homecare store in the following locations: Swords, Naas Road, Sandyford, Cork City, and Galway City. The locations selected were those where a Woodie’s and an Atlantic Homecare were located nearby one another.

### **Overlap**

1.13 The parties overlap in two main sectors of product distribution: supply of building materials (“builders merchanting”) and retail supply of DIY products (“DIY”). The McDowell Report considers builders merchanting and DIY to be separate product markets because of their significant structural and strategic differences, in terms of customer profile, product offering, terms of trade, opening hours and methods of delivery, and business infrastructure (although the report does note that some overlap occurs).

The Authority concurs with this opinion, and would add “distinct pricing policies” to the list the factors that distinguish the two sectors.<sup>3</sup>

- 1.14 The other business divisions affected by the proposed acquisition (supply of steel, manufacture of windows and paint) are horizontally or vertically connected to the builders merchanting and DIY sectors, and are complementary to those sectors. But there is no overlap; Grafton’s acquisition of those businesses would constitute a bare transfer of market share and would not effect concentration, post-acquisition. Further, there is nothing to indicate that any portfolio effects would arise, which would enable Grafton to use its larger, broader product range to foreclose competitors in any market for goods or services.
- 1.15 The Authority therefore focused its investigation on the Heiton Buckley and Chadwicks chains, which are the largest and third largest single ownership competitors in the Irish builders merchanting sector, and on the Woodie’s and Atlantic Homecare chains, which are largest and second largest single ownership competitors in the Irish DIY retail sector. Each sector is dealt with separately herein, beginning with DIY retail.

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<sup>3</sup> The parties’ builders merchants businesses operate local pricing policies, where sale prices are often negotiated on a sale-by-sale basis. Their DIY retail businesses have fixed national pricing policies.

**Introduction**

- 2.1 Independent studies and reports indicate that the Irish DIY retail sector has grown steadily and substantially since about 1990. Sales of DIY products increased by approximately 113% between 1996 and 2001, and sales of gardening products increased by 55% between 1999 and 2002. In 2002 the sector was estimated to be worth €1.1 billion, which represented about 4.9% of the total Irish retail market. Further growth is forecast and this prediction is supported by recent new entry and the ongoing expansion activities of many businesses in the sector.
- 2.2 The rapid growth is attributed to a combination of factors: increased disposable income; high proportion of home ownership; increased media focus on DIY and related activities; the wider range of products made available; the increased number of DIY superstores; and the increased cost of employing professional tradesman to carry out home improvements.
- 2.3 Unlike the DIY sector in the UK, which has undergone considerable consolidation, the Irish sector is quite fragmented and comprised of a relatively high number of smaller outlets, such as traditional local hardware stores. The Mintel Report 2002 states that less than 20% of the Irish DIY sector is made up of larger 'shed' operators (like Woodie's) compared to the UK where the top three shed operators hold about 80% of the sector. The fragmented structure of the sector in Ireland reflects the low population densities outside Dublin and Cork, which restricts the potential for large 'out-of-town' stores to attract a sufficiently large customer base.

**Introduction**

- 3.1 This section examines the relevant market for the purpose of assessing the proposed acquisition. The Authority's Merger Guidelines state that market definition "... provides a basis for analysis in which existing competitors and consumers who are likely to provide the most immediate and timely competitive constraint are identified and distinguished from new entrants who may exercise a weaker or less immediate constraint."<sup>4</sup> The Merger Guidelines' approach to market definition "... is not mechanical, but rather a conceptual framework within which relevant information can be organised."<sup>5</sup> As such, establishing a market definition is not necessarily determinative in analysing whether a merger substantially lessens competition, but instead provides a useful framework and starting point for analysing the competitive effects of the merger.

**Product Market**

- 3.2 As provided in the Merger Guidelines, the first step in defining a market is to consider the products of the parties.<sup>6</sup> DIY superstores carry wide ranges of products, most of which are used for a variety of repair, maintenance and improvement ("RMI") activities in the home and garden. Woodie's and Atlantic Homecare each stock approximately 30,000 individual products, or stock-keeping units ("SKUs"). A DIY superstore's product offering can be reduced to five broad categories: building (bricks, cement, timber); DIY (tools, equipment); decorative (paint, wallpaper, tiles); housewares (furniture, kitchen utensils, soft furnishings); and gardening (plants, fertilisers, outdoor furniture).
- 3.3 DIY superstores such as Woodie's and Atlantic Homecare sell few products that a consumer could not obtain in other types of retail outlets. Independent hardware stores, garden centres, department stores, grocery supermarkets, houseware stores, and tile stores sell products that are sold in DIY superstores. On this basis, the parties submit that the relevant product market should include all outlets that stock a substantial number of RMI goods.<sup>7</sup>
- 3.4 The Authority does not accept the parties' submission as to the relevant product market. Factors other than the basic ability to supply a product can be relevant in market definition; one may reasonably look beyond what is being sold to consider how it is being sold, particularly as retail distribution is a service industry, where participants compete not only in the goods they carry, but in the service of conveying those goods from manufacturers to end users. DIY superstores have a unique set of characteristics and some distribution channels can offer a bundle of

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<sup>4</sup> Par. 2.1 of "Guidelines for Merger Analysis" ("The Merger Guidelines") [www.tca.ie](http://www.tca.ie).

<sup>5</sup> Par. 2.2 of The Merger Guidelines.

<sup>6</sup> Par. 2.4 of The Merger Guidelines.

<sup>7</sup> "At its most basic, DIY retailing is demand for products needed by private individuals for repairing, maintaining, improving and decorating their home and garden. DIY demand has evolved from repair and maintenance to home improvement and homecare ..." It continues: "the relevant product market is the sum total of retail outlets stocking a substantial number of products within the overall product range of these household related goods" (McDowell Report, p. 8).



services that are so unique as to make out a well-defined market.<sup>8</sup> DIY Superstore characteristics, consumer surveys, competitors' views and the parties' internal documents (discussed below) indicate that a DIY superstore market provides a useful point from which to analyse the proposed acquisition.

- 3.5 The DIY retail sector in Ireland has four nationwide chains - Woodie's, Atlantic Homecare, B&Q and Homebase. They all operate "DIY superstores" (also described as "sheds") which range in size from about 2,800-10,000m<sup>2</sup>. Kingfisher plc ("Kingfisher"), the parent company of B&Q, describes the main characteristics of a DIY superstore as "*size, range, price, service and location. They are generally sited out of town and provide a 'one-stop-shop' in a growing market place. They are also recognisable self-service stores...*" Grafton, through Woodie's, and Heiton, through Atlantic Homecare, between them operate 35 DIY superstores in the State.

### **Internal business documents**

- 3.6 The parties' own documents strongly indicate that the parties' perceive one another, and B&Q and Homebase, as their main competitors.<sup>9</sup> They refer to regular monitoring of rival DIY superstores' pricing and behaviour, [...], and the development of business plans that are heavily influenced by rival superstores. The documents indicate that minimal attention is given to other types of retail outlets, such as independent hardware stores and supermarkets.
- 3.7 The Authority agrees with the established principle that such internal documents, prepared by undertakings in their ordinary of business, provide a strong clear indication as to where an undertaking views itself in an industry, i.e. what its business is, who its customers are, and with whom it mainly competes. In *FTC v Cardinal Health*<sup>10</sup> and *FTC v. Staples*<sup>11</sup>, the U.S. District Court of Columbia considered it imperative to consider the commercial realities of the industry and in both cases the Court noted the contents of the respective parties' internal documents when defining the relevant market. The Court in *FTC v. Cardinal Health* expressed its opinion: "*[Determination] of the relevant market in the end is 'a matter of business reality - of how the market is perceived by those who strive for profit in it ... Moreover, it should be noted that internal documents presented at trial reveal that the Defendants themselves do not view the other forms of distribution to be viable competitors or substitutes.'*" Similarly, the European Commission has attached importance to internal

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<sup>8</sup> The US court in *FTC v Staples* ([www.ftc.gov/os/caselist/cn197cv00701](http://www.ftc.gov/os/caselist/cn197cv00701)) found that office supplies superstores were sufficiently distinct from other sellers of office supplies as to form a separate market: "*the unique combination of size, selection, depth and breadth of inventory offered by the superstores distinguishes them from other retailers*".

<sup>9</sup> The documents were provided to the Authority on foot of a request for further information, and include capital expenditure reports for proposed new stores, monthly sales and strategic reports, minutes of management meetings, narratives attached to annual budget reports, and a variety of internal reports and presentations to senior personnel.

<sup>10</sup> *Federal Trade Commission v Cardinal Health* ([www.ftc.gov/os/caselist/ca98595ddc](http://www.ftc.gov/os/caselist/ca98595ddc))

<sup>11</sup> *Federal Trade Commission v Staples, Inc.* ([www.ftc.gov/os/caselist/cn197cv00701](http://www.ftc.gov/os/caselist/cn197cv00701))

business documents that may provide insight as to how parties view the market in which they compete.<sup>12</sup>

### **Survey Evidence**

- 3.8 A 2003 Atlantic Homecare consumer study also highlights the importance consumers place on product range, location, price and customer service: *"When shopping for DIY items, product range is considered most important with convenient location and good prices considered second and third most important respectively."* A 3D survey in Spring 2004, co-sponsored by Woodie's, highlights price, wide product variety and location as being the three most influential variables in a consumer's decision to visit a "DIY, Decorating or Gardening" store.
- 3.9 The Authority retained Lansdowne Market Research to conduct a survey of DIY superstore customers, using a questionnaire. The survey was undertaken to gain an understanding of DIY superstore customers; it was not intended to represent the entire DIY market of the State. The methodology used is described in Par 1.12. The survey corroborates the parties' own internal, independent surveys in emphasising product range, price, location, parking facilities and customer service as the key determinants in a consumer's decision to shop at a DIY superstore. The survey shows that customers generally buy a number of different products across different category groups when visiting a DIY superstore.
- 3.10 The survey also reveals that both Woodie's and Atlantic Homecare customers consider competing DIY superstores (i.e. B&Q and Homebase) to be the closest substitutes. 65% of Woodie's customers had shopped in Atlantic, 50% in B&Q and 50% in Homebase in the previous year, with only 11% having shopped in a local hardware store in the same time period. 60% of the respondents had shopped in both Woodie's and Atlantic Homecare in the previous year.
- 3.11 Crucially, over 60% of respondents, when asked where they would have shopped if they had not found their products in Woodie's, stated they would have gone to Atlantic Homecare, with roughly the same proportion of Atlantic Homecare customers saying they would have gone to Woodie's. This was much higher than the proportion saying they would have gone to any other type of retail outlet, and provides support for DIY superstores being the closest substitutes to each other.

### **Third-party views of the product market**

- 3.12 Kingfisher representatives stated that B&Q's key competitors are Woodie's, Atlantic Homecare, Homebase and Argos. B&Q, to a limited extent, monitors the independent hardware market, which it considers to be stronger in Ireland than in other countries. However, before entering the Irish market in early 2002, B&Q [...] to gauge the competitive benchmark of their market, [...]
- 3.13 The three buying groups, whose members are independent DIY stores, provided information to the Authority. Amalgamated Hardware Ltd (tradename 'Topline') identifies its members' main competitors as B&Q,

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<sup>12</sup> See *Lagardère/Natexis/VUP* (Case COMP/M.2978, Commission decision of 7 January 2004) and *Coca-Cola Enterprises/Amalgamated Beverages GB* (Case COMP/M.794) and European Commission Market Definition Notice (OJ C 372 of 9 December 1997).

Woodie's and Atlantic Homecare, with other competitors including small to medium sized DIY/hardware stores belonging to one of the other two buying groups. Associated Hardware Ltd (tradenname 'Homevalue') states that its members compete against a wide spectrum of RMI retailers including superstores, independents, specialists and supermarkets. National Hardware Ltd (tradenname 'ARRO') states; *"DIY superstores compete mainly against Hardware stores, Homeware stores and Garden centres. They would only compete with grocery supermarkets in a small way ..."*

### **Conclusion on product market definition**

3.14 The Authority considers that the relevant product market for the analysis of the proposed acquisition is limited to DIY superstores only. This conclusion is based on consumer surveys, superstore characteristics, competitors' views and internal business documents. This market does not include independent hardware stores, tile stores and homeware stores because those outlets do not exert competitive pressure of the same type that DIY superstores exert against each other. However, such non-DIY superstore outlets do form a competitive fringe to the relevant market that should not be ignored. In particular, there are sufficient alternatives for customers in the gardening sector, which is one of the 5 main areas of business for DIY superstores. As garden centres do exert some competitive pressure, the Authority considers them in its competitive effects analysis. The analysis of the competitive effects of the proposed acquisition would not be affected by a broader market definition. Although a DIY superstore market provides a useful point from which to analyse the competitive effects of the proposed acquisition, the adoption of a narrow market definition is not determinative to the overall conclusion.

### **Geographic Market**

3.16 Both Woodie's and Atlantic Homecare operate national pricing policies, i.e. the price of every SKU is identical in every DIY superstore in the country (though individual store managers are occasionally permitted to run local once-off promotions). From a consumer demand perspective the market is characterised by local catchment areas. In the survey by Landsdowne for the Authority, 49% of customers had journeyed between 0-15 minutes to reach the store, while 85% had journeyed between 0-30 minutes. This is consistent with third party views, the parties' internal documents and Grafton's submission, all of which estimate that the catchment area of a typical DIY superstore is 4-5 miles for a large urban area, and 10-15 miles elsewhere.

3.17 In Kingfisher/Castorama<sup>13</sup> the Commission did not define any markets but noted that the relevant RMI retail sector displayed both national and regional characteristics. The Commission noted that retail prices and payment terms were influenced by national competition and advertising was extensively national, but the sector was regional from a consumer demand perspective. The Authority considers that the Commission's reasoning is applicable in this matter. Because a main concern is the ability of the merged Grafton/Heiton entity to raise prices, post-acquisition, the analysis largely focuses on national price effects. However, regardless as to whether the market is local or national, the Authority

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<sup>13</sup> Case No IV/M.1333 - concerned a concentration in the French sector for the retail supply of repair, maintenance and improvement ("RMI") products for the home,

conducted its competitive effects analysis so as to satisfy itself that there could not be an a substantial lessening of competition in either local or national markets.

## SECTION 4:

## DIY - MARKET STRUCTURE

- 4.1 A central dimension of market structure is the concentration of a market. A narrowly defined market, limited to DIY superstores,<sup>14</sup> can be described as quite dynamic, in the sense that it has experienced and continues to experience high levels of growth, in terms of increased sales, new entry, and expansion by incumbents. Therefore, the reliability of any snapshot of current or post-acquisition concentration within that market is limited, because the market is in a state of flux. On this basis, the Authority focused on the analysis of immediate competitive effects, rather than any measurements of changes in concentration.

### Market Structure

- 4.2 The DIY retail market has four DIY superstore chains operating nationwide - Woodie's, Atlantic Homecare, B&Q and Homebase. All four have opened new stores in recent years and have plans for future expansion.

#### Woodie's DIY

- 4.3 Grafton's Woodie's chain is the largest DIY retail chain in the State. Established in 1987, in recent years Woodie's has expanded rapidly, opening eleven new stores since 1999. It opened its newest, nineteenth store in Kilkenny in October 2004. Woodie's recent sales history is set out in the table below:

	2001	2002	2003	2004
<b>Sales</b>	€67,106,000	€98,117,000	€110,308,000	€132,370,000 <sup>15</sup>
<b>No. of stores</b>	12	14	16	18

#### Atlantic Homecare

- 4.4 Heiton's Atlantic Homecare chain is the second largest DIY retail chain in Ireland, having increased its number of stores from 7 to 16 since 1999. Atlantic's sales for the year ending April 2003 were €[...]. As well as its core DIY product offering, Atlantic Homecare is particularly focused on home office furniture, household accessories, lighting options and bedroom, dining room and living room furniture. This is largely a result of its pursued strategy of minimising direct competition with B&Q, a new player in Ireland, by diversifying into non-competing product categories.

#### B & Q

- 4.5 B&Q is owned by Kingfisher, the third largest home improvement retailer in the world. Kingfisher holds leading positions in the DIY retail sectors in the UK, France, Poland, Italy, China and Taiwan, and had worldwide sales

<sup>14</sup> As already noted, a variety of other retailers including independent hardware stores, specialist stores and garden centres, sell RMI products. In local catchment areas, these players will exert some competitive pressure on DIY superstores. However, market enquiries indicate that these fringe players (excepting garden centres) rarely have an effect on the national pricing policies of DIY superstores.

<sup>15</sup> This annual sales figure is an estimate, derived from adjusting the actual sales figures for the first 8 months of 2004.

of STG£7 billion in 2003.<sup>16</sup> B&Q entered Ireland in April 2002, with a “warehouse style” store in Liffey Valley that remains far bigger than any other DIY superstore in the State; the store has approximately 14,000 m<sup>2</sup> of floor space. From March 2005 B&Q will operate four outlets in the State, three in Dublin (Liffey Valley, Swords and Tallaght) and one in Cork.

#### Homebase

4.6 Homebase operates three stores in Dublin (Santry, Naas Road and Rathfarnham) and one in Limerick; its total turnover in Ireland in 2002 was [...]. Homebase is owned by GUS plc, which also owns the Argos chain (18 outlets in Ireland). Homebase has nearly 300 stores in the UK and its Irish stores follow the same layout and product offering as those UK stores. [...]

4.6 The locations of the four DIY superstore chains are set out in the table below:

	<b>Woodie's</b>	<b>Atlantic Homecare</b>	<b>B&amp;Q</b>	<b>Homebase</b>
<b>No. of stores</b>	19	16	4	4
<b>DUBLIN</b>	Swords	Swords	Swords	Santry
	Glasnevin	Liffey Valley	Liffey Valley	
	Coolock	Coolock		
	Lucan	Blanchardstown		
	Naas Road	Naas Road		Naas Road
	Tallaght		Tallaght	
	Sallynoggin			
	Sandyford	Stillorgan		Rathfarnham
<b>LEINSTER</b>	Newbridge	Newbridge		
	Athlone	Mullingar		
	Carlow	Dundalk		
	Clonmel	Limerick ('05)		Limerick
	Kilkenny	Tullamore		
	Bray	Wexford		
	Cavan			
<b>MUNSTER</b>	Cork	Cork (Pouladuff) Cork (Blackpool)	Cork (March '05)	
	Waterford			
	Tralee			
<b>CONNACHT &amp; ULSTER</b>	Galway	Galway		
		Letterkenny		

<sup>16</sup> B&Q responded in writing to the Authority. Senior management representatives of B&Q also met with the Mergers Division on 3 December 2004. Case officers visited, by invitation, the B&Q Liffey Valley outlet on 5 December 2004.

- 4.8 The estimated market shares of the four players, provided by the parties, are set out in the table below:

<b>Competitors</b>	<b>% Market Share</b>
Woodie's	42.4
Atlantic	27.2
B&Q	20.9
Homebase	9.5

- 4.9 On the basis of the above market shares, the merged entity would hold approximately 70% of national DIY superstore sales. However, these shares do not capture the dynamic growth and expansion that characterise this market. The competitive effects and dynamic nature of the superstore market are discussed in detail in Section Five. There is also a significant fringe of non-DIY superstore competitors. Shareholdings in individual local markets also vary significantly.

**Introduction**

- 5.1 This section is divided into two parts. First, the possibility of the proposed acquisition resulting in an increase in unilateral market power is examined; unilateral effects occur when the merged firm finds it profitable to raise price, irrespective of the reactions of its competitors or customers. Second, the likelihood of collusion among existing competitors as a result of the proposed acquisition - coordinated effects - is examined.

**Unilateral Effects**

- 5.2 Post-acquisition, the enlarged Grafton entity would own and control 35 DIY superstores. The next largest competitor, B&Q, will have 4 stores from March 2005, when it will open in Cork, and Homebase also has 4 stores. Therefore, at first glance and in terms of store network size, the proposed acquisition would appear to give the enlarged Grafton entity a very substantial share of the national DIY superstore market.
- 5.3 The Authority understands that Grafton [...]. Given this, the Authority considered whether Grafton could unilaterally increase prices across its Woodie's stores, in the knowledge that a sufficient portion of lost sales would accrue to nearby Atlantic Homecare stores, thus making the price increase profitable.
- 5.4 The likelihood of such a unilateral price rise was examined on the acceptance that pricing is national, and would continue to be national, post-acquisition.<sup>17</sup> The aim of the econometric work was to establish the presence of local price effects. This amounted to examining whether the price of a designated basket of Woodie's goods was constrained either by DIY superstores or independent RMI stores in local catchment areas. The econometric analysis was similar to that conducted in *FTC v Staples*. Its results indicate that there are no local price effects; in local catchment areas the number of DIY superstores or independent stores present does not affect Woodie's prices, i.e. Woodie's prices are independent of the amount of competition in a particular catchment area. This stems from the fact that Woodie's sets a national price for each and every SKU.
- 5.5 There are strong logistical, administrative and marketing reasons supporting the parties' submission that pricing would remain national after the merger. The parties both operate national pricing policies because of logistical difficulties in keeping control of prices for 30,000 SKUs across their network of stores. The parties also have national brands and conduct national (as well as local) advertising campaigns. Woodie's publishes a bi-annual catalogue setting out the prices for thousands of its leading products, which it distributes nationwide, and it is also developing its Internet on-line shopping facility. Such activities inhibit a retailer's ability to alter prices to suit local conditions.
- 5.6 Because pricing is national, the merged Grafton/Heiton entity could not raise prices in areas where it has local market power, without

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<sup>17</sup> Econometric work undertaken by Grafton's economists, and verified by the Authority, confirms that pricing is national. The parties also informed the Authority that they used national pricing policies.



simultaneously raising prices throughout the country. Consequently a unilateral effect would only occur if either the Woodie's or Atlantic Homecare chain could raise prices in all of its stores in such a way that, although it may lose some sales, there will be a net benefit to the merged entity as a whole, i.e. the merged entity's other DIY superstore chain would absorb enough of the lost sales. [...]. The Authority therefore considered whether Grafton could unilaterally increase prices across its Woodie's stores, in the knowledge that a sufficient portion of lost business would accrue to nearby Atlantic Homecare stores, thus making the price increase profitable.

- 5.7 The likelihood of this unilateral effect was examined on the basis that pricing is national, and would continue to be national, post-acquisition. Consequently, any price increase would be national. Therefore, if local monopolies resulted from the proposed acquisition, the enlarged Grafton could only raise prices in those monopoly areas if it also raised prices in areas where it did face competition, and so it would need to set off any increase in profit in the former areas against potential losses in the latter. The merged Grafton/Heiton would have to assess the profitability of a price rise having regard to its entire network of 35 stores, asking itself – would enough Woodie's lost sales go to Atlantic Homecare, or would too much of those lost sales go to B&Q and/or Homebase?
- 5.8 Whether the merged Grafton/Heiton would find it profitable to raise price as a result of the proposed acquisition depends on how the proposed acquisition affects competition on each local market, taking account of the fact that pricing is national rather than local. The Authority took three different types of local market, and then considered the effect of a national price increase across the Woodie's chain, post-acquisition:

**Type A:** Woodie's and Atlantic Homecare stores are in close proximity to one another, with no other DIY superstore present. There are four such catchment areas - Galway, Coolock, Sandyford and Newbridge. The proposed acquisition reduces the number of competitors in those catchment areas from 2 to 1; an important local competitive pressure would be removed. Those four catchment areas account for about 30% of Woodie's total revenue.

**Type B:** A Woodie's is present without any other DIY superstore. There are eight such catchment areas - Athlone, Bray, Carlow, Cavan, Clonmel, Kilkenny, Tralee and Waterford. The proposed acquisition will not change the number of competitors remaining in those local catchment areas. Those eight DIY superstores account for about 35% of Woodie's total revenues.<sup>18</sup>

**Type C:** Both Atlantic Homecare and Woodie's are present, with at least one other DIY superstore; in these catchment areas any incentive to increase price would be disciplined. There are seven such catchment areas. The Woodie's stores in Sallynoggin and Glasnevin face some competition from the Homebase superstores in Rathfarnham and Santry (though if prices were raised in those Woodie's stores, it is not apparent that large numbers of customers would be lost to those Homebase

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<sup>18</sup> This figure is an adjusted estimate, as no revenue data was available on the Kilkenny store, which opened in October 2004.

stores). Those two Woodie's stores account for about 13% of Woodie's total revenue. The five Woodie's stores in Cork, Swords, Lucan, Tallaght and Naas Road face substantial competition from B&Q and Homebase. If prices were raised in those Woodie's stores, it seems likely that large numbers of customers would be lost to those competitors. Those five stores account for about 32% of Woodie's total revenue.

- 5.9 In Type A, a price rise by Woodie's is likely to be profitable. In Type B, a price rise would be profitable to the extent that national pricing has suppressed prices in those markets. In Type C, a price rise would result in lost sales by the merged Grafton/Heiton. It is not clear whether the lost sales in Type C markets would be sufficient to outweigh the gains in Type A and B. But another factor, entry, removes the need to answer this question. New entry in a Type A or B market would any Woodie's store therein into the Type C market, thereby making any price rise less profitable.
- 5.10 The Authority, on foot of detailed information obtained from representatives of Kingfisher (B&Q) and Homebase, is satisfied that both of those competitors intend to open a significant number of new DIY superstores before the end of 2006. Homebase representatives stated that the company is possibly interested in developing as many as [...] sites in the State. In particular, they have identified [...] sites where they would like to open in 2005: [...]
- 5.11 When B&Q first opened, Kingfisher publicly stated its intent to open 10 outlets in Ireland by 2006. It opened its second outlet in Tallaght in October 2003 and its third outlet in Swords in December 2004. A fourth store opens in Cork in March 2005. Kingfisher representatives informed the Authority that the company is seeking [...] in the State. [...]
- 5.12 Many of those new openings would occur in Type A and B markets, and would have the effect of shifting any local Woodie's or Atlantic Homecare into the Type C market. The Authority is satisfied that this entry will be sufficiently timely and strong so as to make any price rise by the merged Grafton/Heiton unprofitable.<sup>19</sup> In addition to expansion by existing players, incumbents do not control any assets, advanced technologies or intellectual property rights that might limit a potential competitor's ability to enter the market, and switching costs for customers are practically nil.
- 5.13 Further to all of the above, two other points must be noted. First, there is a possible negative reputation effect on Woodie's raising its prices; being perceived as having higher prices than other DIY superstores could hurt the brand (as against that, there is already some variation in branded prices already across superstores; significant profits are made on non-branded goods, where there is less price transparency with other superstores).
- 5.14 Second, the above exercise is based on a market that excludes non-DIY superstore competitors, even though outside such competitors offer some limited competition and would likely gain some portion of Woodie's lost sales in the event of a price rise. The Irish Hardware and Builders Merchants Association represents about 600 independent hardware/DIY

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<sup>19</sup> B&Q's successful entry into the State in April 2002 had a significant impact on the DIY superstore market. Their store in Liffey Valley at 14,000m<sup>2</sup> is the largest in the state. [...]

firms, which between them operate about 800 outlets throughout Ireland. Many independent hardware/DIY stores are also members of one of three national buying groups; this allows them to benefit from greater economies of scale and to source a more complete range of products at a competitive price point.<sup>20</sup> DIY and related products are also obtainable from specialist retailers, who focus on specific areas of home improvement, repair and maintenance, such as flooring, kitchens, bathrooms, and paint and wallpaper products. Some specialist retailers operate relatively large chains. For example, Wigoders and Albany have 25 stores each, offering interior décor goods such as paint and wallpaper, and electrical products; Tilesavers', with 11 stores, and Tubs and Tiles/Allwood Floors, with 16 stores, supply tiles, bathroom furniture and accessories, and wood flooring. Further, Woodie's and Atlantic Homecare derive approximately one-third of their total sales from gardening products. The Garden Centre Association of Ireland estimates that the gardening retail sector was worth €431m in 2003 (plant sales accounting for €185 million and garden product sales accounting for €188 million). There are over 400 garden centres in Ireland, though there are no national chains other than those of the DIY superstore multiples. The results of the Authority's consumer survey indicate that consumers do view garden centres as strong substitutes for DIY superstores, for certain categories of products.

### **Coordinated effects**

- 5.15 Post-acquisition coordinated effects are not a concern in this investigation, as many of the key characteristics most closely associated with the ability to collude are absent from the relevant DIY superstore market. Co-ordinated effects require cost symmetry and price transparency between competitors.<sup>21</sup> There is price transparency in the DIY superstore sector, with each chain checking the other chains' prices (particularly prices of well-known, branded goods) regularly. This could facilitate co-ordinated effects.
- 5.16 However, other conditions that encourage coordination are not present: post-acquisition, there will be considerable cost and demand asymmetry in the size and locations of the main market players, which will make co-ordination difficult. Moreover, the general pattern of increasing demand and continuing expansion in the sector is likely to limit the ability of the three remaining DIY superstore chains to successfully co-ordinate their behaviour. Finally, [...]. Given this, any attempt to co-ordinate Irish prices is unlikely to succeed. The Authority thus concludes there is no evidence to suggest the likelihood of increased co-ordinated effects, post-acquisition.

### **Conclusion**

- 5.18 The Authority concludes that the proposed acquisition will not substantially lessen competition in the market for the retail supply of goods and services by DIY superstores, or in the wider DIY retail sector. There are no coordinated effects concerns. While the proposed acquisition will increase concentration in an already concentrated market, several factors indicate

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<sup>20</sup> National Hardware Ltd (tradenname 'ARRO') has 85 members who between them have 98 outlets. Amalgamated Hardware Ltd (tradenname 'Topline') has about 90 members in the State and another 10 in Northern Ireland. Associated Hardware Ltd (tradenname "Homevalue") is the third buyer group, whose members are also smaller builders merchants and DIY stores, spread nationwide.

<sup>21</sup> Merger Guidelines, Par 4.19

that the enlarged Grafton entity could not raise prices in either the Woodie's or Atlantic Homecare chains. The most important of these factors is the competitive constraint exerted by entry. Successful entry and expansion has occurred in recent years, and the fact that it is possible at current prices means that it would, if anything, be more likely if prices were raised. Any concern that entry might not be sufficiently timely is dissipated by the fact that the Authority's investigation discovered that competitors' entry plans are already at an advanced stage, with new entry already in the pipeline. Additional factors of less, but still significant, relevance are national pricing policies and a degree of competitive pressure from other types of retail smaller stores not in the market.

## **SECTION 6: BUILDERS MERCHANTS - OVERVIEW**

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### **Introduction**

- 6.1 Ireland has had the fastest growing economy of the EU since 1994, and has also had a fast growing population in recent decades. These and other factors have resulted in a decade of sustained rapid growth in commercial construction and house building. For the period 1994-1999, construction increased by 13% per annum on average. A record 68,819 new houses were built in 2003<sup>22</sup> and an estimated 30% of Irish people live in homes built since 1990, compared with around 10% of people in the UK. The builders merchants sector, as a distribution channel within the construction industry, has experienced comparable levels of growth in the past 10 years. There has also been considerable consolidation and acquisition activity within the sector.
- 6.2 A 2002 study by KPMG, on behalf of Heiton<sup>23</sup> ("the KPMG Report") found that the total Irish construction industry was worth approximately €20.1 billion. Of that figure, building materials accounted for about €6.4 billion, and €2.6 billion worth of materials were sourced from builders merchants. Grafton independently estimates that merchants' sales in the State in 2003 totalled approximately €2.7billion (excluding steel and farm materials, on the basis that those sectors have specific characteristics, in terms of product, processing and customer base).

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<sup>22</sup> Heiton Group plc Annual Report 2004

<sup>23</sup> "Review of Commercial Business – Steering Group Committee", 4 Nov 2002. The market values and share figures in the report are for 2001.

## **SECTION 7: BUILDERS MERCHANTS-MARKET DEFINITION**

### **Product Market**

- 7.1 The relevant product market, where the parties directly overlap, is the supply of building materials and fittings (broadly defined), predominantly to building and construction firms (including trade professionals such as joiners, plumbers, electricians and plasterers), but also to non-professionals. Building materials can be categorised as "lightside" (e.g. plumbing, heating and electrical products) and "heavyside" (e.g. concrete blocks, bricks, cement, roofing products and timber). The ranges of building materials that are typically supplied by builders merchants are roofing & insulation; bricks, blocks, clay & concrete; cement & plaster materials; boards & timber; plumbing and heating materials; decorating materials; kitchen equipment, wall & floor tiles; and assorted hardware, home and electrical products such as adhesives, ironmongery, fixings, doors, windows, power & hand tools, garden equipment, and agricultural equipment.
- 7.2 Many of the "lightside" products are available in other stores, including DIY superstores. However, builders merchants operate in a distinct manner from DIY retailers; their customers and method of sale are different from that of a DIY superstore. They are mainly wholesale operations that supply goods and services on an account and cash basis. Their method of distribution involves bulk warehousing and delivery of goods as well as on-site sales. A builders merchant can supply products by three methods:
- Collect: a customer can purchase a product from a merchant's premises and take it away
  - Delivered: a merchant can take an order and deliver to a customer
  - Direct: a merchant can arrange for direct delivery from a manufacturer to a customer.
- 7.3 Builders merchants' customers range in size from large building firms to small trade dealers, and occasionally, domestic consumers. Orders are generally large-scale, with the sale price dependent on factors such as the size of a purchase, whether it is collected or delivered, and the ability of a customer to negotiate a discount. Most customers are offered credit terms where they receive materials now, and pay their account later on. The provision of such credit is usually on a 30-day, 60-day or 90-day term. Customers expect and require their merchants to provide these credit facilities.
- 7.4 Due to the range of product offered by builders merchants and the nature of customer demand, traditional DIY stores are not close substitutes for builders merchants, even though they may stock some of the same products. In response to a 5% price rise, it seems clear that very few customers would switch to DIY superstores or other retail stores. Therefore they are not considered to be in the same market as builders merchants.
- 7.5 The parties submit that customers can often bypass a builders merchant and source direct from manufacturers. While this may be true for certain (mainly bulk) purchases, the majority of customers do source most of

their building materials from builders' materials. Customers indicated that it was generally not practical for them to purchase from manufacturers, adding that manufacturers were also reluctant to deal with end users. For that reason, in the event of a 5% price rise by a hypothetical monopolist in the builders merchanting sector, it is unlikely that a sufficient number of customers would switch to sourcing direct from manufacturers, so as to render the price rise unprofitable. Given the unanimity of customer responses, which emphasise the necessity of purchasing from a builders' merchant, the Authority does not consider that the market definition includes other methods of product distribution, such as direct purchase from manufacturer.

- 7.6 As the introductory section discussed, there are many independent builders merchants, in addition to those that are part of a national or regional chain. Stores that are part of a chain are usually larger in scale than independent merchants, and due to the parent company's buying power, they are often able to access a greater range of materials, and offer more generous credit terms, than independent suppliers. Nevertheless, the commonality of product range and conditions of supply are sufficiently similar as to imply that independent merchants are in the same market as merchants who are part of a chain. The competitive effects and entry conditions may be different, however, and this is considered in the next section.

### **Geographic Market**

- 7.7 Builders merchants operate in local catchment areas. Enquiries suggest that in the case of Dublin and Cork cities, the catchment area radius is about 5-10 miles, and that elsewhere the effective catchment area radius is about 20-25 miles.
- 7.8 Unlike the DIY retail sector, national pricing is not common in the builders' merchants sector. The parties state that the structure and nature of the sector is such that it would not be practicable to set national prices. Individual outlet managers are assessed on the basis on total sales over a time period, but are otherwise given considerable total autonomy to negotiate prices on individual sales.
- 7.9 The parties submit that the "*relatively large 'local' markets indicate a level of overlap that points strongly towards a national rather than locally segmented market.*" The Authority does not agree; there is clear customer preference to source locally and an absence of national pricing. These two factors indicate that the geographic scope of the market is local.

## **SECTION 8: BUILDERS MERCHANTS – EFFECT ON MARKET STRUCTURE**

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- 8.1 As described in Section 6, the Irish builders merchants industry has experienced very high levels of growth and expansion, and there has also been considerable consolidation and acquisition. Third parties informed the Authority that the larger builders merchants chains are all actively seeking to acquire the more lucrative independent operators. As is the case for the DIY sector, any snapshot of current or post-acquisition concentration within the relevant market is not going to be particularly reliable for assessing the effect of the proposed acquisition on competition in that market, because it is in a state of flux.
- 8.2 There are about 500-550 distributors of building materials in Ireland. About 300-350 can be described as builders merchants and the other 200 are specialist suppliers of heating, plumbing, roofing or timber products. The Irish sector is relatively fragmented compared with the UK and other Western European countries. Most merchants are independently owned and operated and are not part of a chain, and they cater mainly for customers in a local catchment area.
- 8.3 Many builders merchants are members of one of the same three national buying groups described in the section on DIY retail: National Hardware Ltd (“Arro”), which has 85 members; Amalgamated Hardware Ltd (“Topline”) which has about 90 members in the State and 10 in Northern Ireland; and Associated Hardware Ltd (“Homevalue”).
- 8.4 There are five nationwide builders merchants chains:
- Heiton Trade operates the largest builders’ merchants chain, with 23 Heiton Buckley outlets, Cork Builders Providers (1 outlet in Cork) and Morgans Timber (1 outlet in Dublin)
  - Grafton operates 27 builders merchant outlets nationwide (24 *Chadwicks* outlets and 3 *Telfords* outlets).
  - Brooks Thomas was recently acquired by the Wolseley Group, the largest building materials supplier in the World. It operates 16 builders merchants in the State and is a leading distributors of timber products
  - Dublin Providers is a family run business that supplies building materials and bathroom suites and accessories. Since 1999 it has expanded from 3 outlets sites and now has branches in Dundalk, Drogheda, Dun Laoghaire, Dublin, Wexford, Cork and Galway. Its turnover in 2002 was €66 million and it employs around 200 people.
  - The McMahon Group is a builders merchant and timber importer with branches in Limerick, Dublin, Portarlington, Drogheda, Dunmanway, Monard and Foynes. Its 2002 turnover was €115 million and it has about 490 employees.



8.5 Grafton provided its national market share estimates:

<b>Competitor</b>	<b>Market Share %</b>
Heiton Buckley (Heiton Group)	10.2
Wolseley	9.9
Chadwicks (Grafton Group)	8.8
McMahons	4.4
Dublin Providers	3.1
National Hardware	10.1
Amalgamated Hardware	10.8
Associated Hardware	9.9
Others	32.8

8.6 While these figures are broadly supported by several independent estimates from third parties, there is consensus that accurate data on market share do not exist. It is nevertheless clear that Grafton would control the largest network of builders merchants in the State, post-acquisition, having a total of 49 outlets while the next largest competitors, Brooks Group, has 16.

8.7 The Authority also estimated the market share of builders merchants belonging to national chains:

<b>Competitor</b>	<b>Market Share %</b>
Heiton Buckley	28.0
Wolseley	27.2
Chadwicks	24.2
McMahons	12.1
Dublin Providers	8.5

8.8 The combined market share of Grafton/Heiton is 19%, if the entire relevant market is considered, but over 50% when looking at the nationwide chains only. However, because the relevant market is local, Grafton/Heiton's combined national market share is not of great concern, particularly as the parties operate in a market where there is little brand awareness and they do not have exclusive distribution rights over any particular product or range of products. Grafton/Heiton combined would have substantial national market share but not substantial market power, in terms of its ability to unilaterally raise prices at a national level or foreclose competition.

## **SECTION 9: BUILDERS MERCHANTS – COMPETITIVE EFFECTS**

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- 9.1 The investigation focused on the likelihood of the merged entity being able to unilaterally rise prices, post-acquisition. The analysis is done at the level of local markets: there is no national price effect, so each local market where there is overlap is examined, and whether or not competition is likely to be lessened is considered. The locations of the parties' builders merchant outlets, and those of their larger, nationwide competitors, are set out in the table below:

	<b>Grafton</b>	<b>Heiton Buckley</b>	<b>Brooks Thomas</b>	<b>McMahon Group</b>	<b>Dublin Providers</b>
	26 outlets	21 outlets	15 outlets	9 outlets	8 outlets
<b>Carlow</b>		Carlow			
<b>Cork</b>	Cork City	Cork City	Cork x 2	Cork	Cork
	Mallow	Bishopstown		West Cork	
	Midleton				
<b>Donegal</b>		Letterkenny			
		Ballyshannon			
<b>Dublin</b>	Lucan	Ashfield	Naas Road	Dublin	Kilmainham
	Glasnevin	Robinhood Rd	North Wall x 2		Dun Laoghaire
	Sallynoggin	East Road			
	Sandyford	Santry	Sandyford		
	Stillorgan				
	Coolock		Finglas		
	Finglas				
	Thomas St				
	Walkinstown				
<b>Galway</b>		Wellpark	Galway	Galway	Galway
<b>Kerry</b>		Tralee	Tralee	Tralee	
<b>Kildare</b>	Naas				
	Athy				
<b>Kilkenny</b>	Kilkenny x 2	Callan			
<b>Laois</b>	Mountrath				
	Portlaoise				
<b>Limerick</b>	Limerick	Ballysimon	Ballysimon	Limerick	
		Dock Road			
<b>Louth</b>				Drogheda	Drogheda
					Dundalk
<b>Longford</b>			Longford		
<b>Mayo</b>	Castlebar	Castlebar	Ballina		
<b>Meath</b>	Navan				
<b>Monaghan</b>		Milltown			
<b>Offaly</b>		Tullamore	Tullamore	Portarlington	
<b>Sligo</b>		Sligo	Sligo		
<b>Tipperary</b>	Nenagh				
	Clonmel				
<b>Waterford</b>		Waterford	Waterford		Waterford
<b>Westmeath</b>	Athlone			Mullingar	
<b>Wexford</b>	Wexford	Gorey			Wexford
<b>Wicklow</b>	Bray	Bray			

- 9.2 Applying a local market definition, one can see that there are five areas where Chadwicks and Heiton Trade overlap to a significant extent – Castlebar, Cork, Dublin, Kilkenny and Limerick.
- 9.3 Due to a lack of sales data, the Authority was unable to perform the sort of econometric analysis that was carried out in its examination of the DIY sector. However, customers of builders' merchants are mostly professional tradespersons, hence the market's customer base is comparatively small compared to DIY retail. Further, those few customers are generally well informed on matters of price and quality of goods. For this reason, the investigation relied extensively on customer enquiries. The Authority contacted 79 customers of builders merchants, following up initial letters/emails with telephone calls. The overall level of response was not high, which may indicate a lack of concern amongst customers (though any lack of concern may result from customers' belief that any price increase could be passed on to end users). The Authority also received considerable information from many of the parties' top suppliers, who are manufacturers of building materials, and from the parties' main competitors.
- 9.4 Based on the information received, the Authority is satisfied that the proposed acquisition would not significantly reduce competition in the Cork, Dublin, or Limerick areas. There are a number of alternative suppliers operating in each area, so that customers would still have sufficient choice, post-acquisition. While a small number of customers in these areas did express concern at the reduced number of suppliers, most customers in these areas were unconcerned. The Castlebar and Kilkenny areas required closer investigation because of customer responses and the absence of sufficient local competition.

### **Kilkenny**

- 9.5 The Authority, on foot of responses received from customers in Kilkenny, is satisfied that Grafton has a very significant presence in that area. Grafton has 2 outlets in Kilkenny City, which trade as Chadwicks and Universal Providers, respectively. Heiton has an outlet in Callan, 9 miles distant, which it acquired in 2002. It is the smallest outlet in Heiton's national network and the least successful in terms of revenue; its annual revenue is approximately €3m, compared to approximately €[...] for Grafton's Kilkenny operation.
- 9.6 The parties identify a number of builders merchants who they claim compete in the Kilkenny region: SE Kennedy, Kilkenny; Heatmerchants, Kilkenny; Kilkenny Plumbing, Kilkenny; Doyles, Carlow; Michael Rowe, Castlecomer; Traceys, Thomastown; McMahon's, Portarlinton; Morris, Waterford; and Brooks Thomas, Waterford.
- 9.7 Market enquiries indicate that both SE Kennedy and Traceys of Thomastown are relatively small operations, competent at serving their core set of customers, but unlikely to expand their operations. While McMahons do deliver to Kilkenny from Portarlinton 2 or 3 times a week none of the respondents availed of this service. In general, customers felt that the other competitors mentioned by the parties are generally not viable alternatives to the local Grafton or Heiton outlets, being too specialised (Heatmerchants), too small, or too distant (Morris and Brooks in Waterford). Therefore, post-acquisition, it is possible that Grafton would have an incentive and the ability to implement a unilateral price rise.

## **Castlebar**

- 9.8 Each of Heiton and Grafton has one building merchants in Castlebar. The parties identify a number of builders merchants who they claim compete in the Castlebar region: Connacht-Gold, Castlebar, Heatmerchants, Castlebar, Sweeney, 2 miles from Castlebar, Hurst Heating & Plumbing, Castlebar, Brooks, Ballina; Archer, Ballina; Cumins, Ballinrobe; and PJ Kelly, Westport.
- 9.9 Market enquiries indicate that Connacht-Gold is an agricultural merchant with a limited range of products suitable for a typical builders merchant customer. Heatmerchants and Hurst Heating & Plumbing specialise in heating and plumbing products and as such only exert a limited competitive pressure on the parties. The Authority notes that there are two competitors located in Ballina, over 20 miles distant. Market inquiries initially gave mixed views as to whether Ballina-based merchants would constitute a competitive check on the ability of the merged Grafton/Heiton to raise price in Castlebar. However, a sufficient number of responses indicated that even if Castlebar based customers did not currently source from Ballina, they would do so in the event of a price rise, thus dispelling much of the concern.

**Introduction**

- 10.1 Entry barriers in the relevant market are low. A site is needed, but it does not have to be in the middle of a town. Apart from a site, there are set-up costs of establishing the business and the need to obtain reliable well-trained staff. There is also the requirement to have sufficient financial backing as to be able to offer credit terms to customers. Credit facilities are an essential component of a building merchants offering as it enables the customer to manage cashflows. As already mentioned, credit is usually on a 30-day, 60-day or 90-day term. Thus, those merchants with significant backing from financial institutions or a parent company, and who obtain favourable terms from suppliers, are often in a position to offer better credit terms to customers.
- 10.2 The industry has seen both chains and independent merchants enter local markets. Given that entry has occurred in the pre-acquisition market, a post-acquisition price rise would make entry even more likely. The likelihood of entry would be further boosted by the fact that customers like to spread their business among merchants in order to maximise their available credit.
- 10.3 Chains have generally entered new localities by acquiring existing players (e.g. Heiton in Callan), a trend that may continue. Independents have entered new local catchment areas (e.g. MD O'Shea in Ballincollig). Chains enjoy cost advantages in sourcing materials and financial economies of scale in offering credit. Third party submissions suggested that entry by an independent in a local area where there is already a significant chain presence is unlikely.
- 10.4 In the Kilkenny region the merged Grafton/Heiton might find it profitable to raise prices, post-acquisition. However, even if it could do so, clear evidence of sufficient and timely entry by competitors could remove any competition concerns in that region. The builders merchants sector is relatively fragmented, and is likely to undergo future consolidation. Both customers and suppliers agreed that there will be more expansion of chains and continued acquisition of independents.
- 10.5 The Authority considers that the three non-merging nationwide chains are best placed to enter Kilkenny in particular, and markets where the merged entity is present in general. Dublin Providers stated that since its business was not a plc there was a limit to how much money it could raise for expansion. Currently neither Brooks Thomas nor McMahon Group has new sites ready for development. However, both firms stated that they are intent on expanding and entering a number of regions throughout the State.
- 10.6 Wolseley Group acquired Brooks Group in August 2004. [...]
- 10.7 McMahon Group, [...]

**Conclusions**

- 10.8 Having considered these submissions, the Authority is of the view that entry in Kilkenny is likely to be timely, and of sufficient scale as to prevent

any substantial lessening of competition in that local market. In Castlebar, low barriers to entry, the lack of clear customer evidence, and the presence of two strong competitors in Ballina, indicate that there is unlikely to be a substantial lessening of competition in that local market.

- 10.9 The existing level of competition, low entry barriers and evidence of future expansion alleviate any concerns of a substantial lessening of competition in the builders merchants market. As such the Authority did not examine whether the proposed acquisition would lead to efficiency gains that could not be realised by any other means.
- 10.10 Finally, the pattern of acquisition in the relevant market is likely to continue as in other European countries. There may be fewer large-scale acquisitions, but several third party submissions referred to the likelihood of "creeping acquisitions", i.e. acquisitions where a large chain acquires a small firm and, because of the turnovers involved, the transaction is not notifiable to the Authority. This could result in an increase in market power in individual markets, as well as a gradual increase in market power nationally. The merged Grafton/Heiton will already have over half the revenue of chains nationally, and further increases could give cause for competitive concern. For that reason, the Authority, having given prior notice to the parties and having received no objection from them, places a condition on the clearance of the proposed acquisition: that for 3 years from the date on which the acquisition is put into effect, the Grafton Group and its successors will inform the Authority of all proposed mergers and acquisitions in the builders merchants sector in the state, in which it is involved.

