



DETERMINATION OF MERGER NOTIFICATION M/07/033 – Oldcastle Precast/Carson

Section 21 of the Competition Act 2002

Proposed acquisition by Oldcastle Precast, Inc. of Carson Industries LLC.

Dated 11/07/2007

Introduction

1. On 18 June 2007 the Competition Authority (the "Authority"), in accordance with Section 18(1)(a) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of a proposed acquisition by Oldcastle Precast, Inc ("Oldcastle Precast") of the entire issued share capital of Carson Industries LLC ("Carson").
2. The proposed transaction involves an acquisition of sole control of Carson by Oldcastle Precast.

The Undertakings Involved

The Acquirer

3. Oldcastle Precast is a wholly-owned US subsidiary of CRH plc ("CRH") and is one of five US divisions of CRH. Oldcastle Precast's core activities are precast concrete products, concrete pipe, pre-stressed plank and structure elements. CRH is the ultimate parent company of the CRH group, which is an international group, headquartered in Ireland, whose operations focus on three core businesses: primary building materials, value added building products and specialist building materials distribution.
4. CRH does not carry on all of these activities in the State. In the State, CRH's activities are limited to the production of the following materials, which are mainly primary building materials: cement, high quality seaweed magnesia, burnt and hydrated lime, aggregates, readymixed concrete, concrete blocks and pipes, asphalt, agricultural and chemical limestone, contracted surfacing, clay brick, mortar, coated macadam, rooftiles, pre-cast concrete walls and EPS insulation and packaging.

The Target

5. Carson, which is headquartered in Glendora, California, is a manufacturer of grade-level (i.e. ground level) enclosures that protect and secure municipal water, irrigation, telecommunications, electrical and other utility equipment and infrastructure. Carson's product range includes enclosures, drainage products, equipment pads and accessories, material handling bins and custom moulded plastic products. These products are produced from structural foam, injection and rotationally molded plastic and polymer concrete.

6. Carson operates four manufacturing facilities in the USA and one manufacturing facility in Roscommon, Ireland, through which it serves the European and Middle East markets. Carson is active in the USA, Canada, France, the UK, Ireland, other European countries, the Middle East and other countries around the world.
7. Carson sells the following products in the State:
 - grade-level enclosures: including vaults and boxes, which are used to protect utilities equipment in the utilities sector and used for irrigation and turf functions in the civil sector (e.g. on golf courses and in gardens), and linear cable troughs and ducts, which are used to protect cables; and,
 - enclosure accessories (which are sold ancillary to enclosures): these are used to improve product performance and reduce product installation time (they include plastic covers for smaller irrigation/turf enclosures (these cannot be used for utilities enclosures due to lack of durability), duct termination, special hardware, racking, brackets, unistruts, polling eyes and swing arms).
8. Carson does not sell the other products in the Carson range in the State, namely, equipment pads and accessories, custom moulding, material handling bins or drainage products.

Analysis

9. CRH does not produce or sell in the State any grade-level enclosures or enclosure accessories which could be considered as products competing with the products sold by Carson in the State. Therefore, there is no horizontal overlap between the activities of Oldcastle Precast and Carson. However, CRH, through Salmor Industries Limited ("Salmor"), does produce covers for grade-level enclosures. Thus, there is a vertical overlap between the parties. This vertical relationship is discussed below.
10. In June 2006, CRH purchased Salmor which is based in Lurgan, County Armagh. Salmor is a manufacturer and supplier of access covers and frames, preformed modular access chambers, manhole security covers, cable management systems and associated products for the utility markets. Salmor is focused on the UK market and, in particular, sales of its concrete infill covers, which are the preferred form of cover for grade-level enclosures in the utilities sector in the UK.
11. In the utilities sector in the State, the predominant form of cover is ductile iron covers. Salmor does not produce this form of cover. There are minimal sales of concrete infill covers in the State and this form of cover is being progressively phased out in the State. As far as the parties are aware, the only utilities customer in the State that continues to use concrete infill covers is BT Ireland. The parties suggest that this may be because concrete infill covers continue to be the cover of choice for BT in the UK.
12. Salmor makes some limited sales in the State of concrete infill covers for grade-level enclosures, metal frames for covers, water covers, recessed covers and metalwork. None of these products compete with the products that Carson sells in the State. However, some of these

products are complementary products to Carson's enclosure products. In particular, some of the cover and frame products that Salmor sells in the State can be used with grade-level enclosures for customers.

13. In addition, Salmor made some negligible sales of covers directly to Carson in 2006.¹ Carson combines these covers with its enclosure products and resells the package to distributors for onward sale to customers of the distributors in the State. Therefore, there is a vertical relationship between the parties as a result of these minimal direct sales from Salmor to Carson.

Non-horizontal mergers

14. In analysing a non-horizontal merger, the key question is whether or not either of the undertakings involved has market power in any of the vertically related markets in which they operate. Such market power is a necessary but not a sufficient "pre-requisite for competitive harm from foreclosure."²
15. An anticompetitive effect of the transaction is only present if the merged entity has the ability and incentive to foreclose a product/service from its competitors and if this results in demonstrable harm to consumers. Two separate types of foreclosure are examined below: input foreclosure and customer foreclosure. The conditions for input and customer foreclosure were discussed at length in the Authority's recent Determination in relation to M/07/012 - *Bord na Mona/AES*.

Input Foreclosure

16. In the instant case, the issue is whether post-acquisition, the combined entity has (a) the incentive and (b) the ability to foreclose access, to competitors of Carson, to Salmor's concrete infill covers. If the combined entity could engage in this type of foreclosure then it would be possible to discriminate against rival providers of grade-level enclosures for the utilities sector in the State and in doing so possibly raise the price faced by consumers of these products.
17. The combined entity does not have the ability or incentive to foreclose access to Salmor's concrete infill covers for the following reasons:
 - Salmor has a small presence in the State where it has an estimated share of approximately [...] % of total sales of covers that are combined with enclosures for the utilities sector in Ireland. Salmor would therefore appear not to have market power in this sector; and,
 - As noted in paragraph 11 above, while historically covers for utilities enclosures were predominantly concrete infill covers, Irish utilities customers (with the notable exception of BT Ireland) have phased out the use of concrete infill covers and now use ductile iron covers. Salmor does not manufacture or sell ductile iron covers in the State. As such, demand for

¹ Salmor made sales of approximately GBP [...] to Carson in 2006. However, only approximately GBP [...] went direct to a customer of Carson in the State.

² Economic Advisory Group for Competition Policy, 2006, *Non-Horizontal Mergers Guidelines: Ten Principles*, Brussels: the Commission, p.4. This may be accessed at www.ec.europa.eu/dgs/competition/eagcp.htm

Salmor's product in the State has shrunk materially, and is likely to continue to do so, so that it will represent a declining portion of the market.

18. Thus, the combined entity post-acquisition will not have the ability or incentive to foreclose access to Salmor's concrete infill covers as rival providers of grade-level enclosures in the utilities sector will switch to suppliers of ductile iron covers.³

Customer Foreclosure

19. The issue of customer foreclosure relates to the possible anticompetitive activities of the merged entity in the downstream market. The Authority's investigation has revealed that there are "sufficient economic alternatives in the downstream market for the upstream rivals"⁴ which prevent the issue of customer foreclosure arising in this case. More specifically, Carson estimates that it has a share of approximately [...] % of total sales of enclosures for the utilities sector in Ireland.⁵ There are many competitors in this sector in the State such as the Grafton Group, Kingspan Group plc, and Lagan Holdings Ltd. Carson therefore does not appear to have any market power in this sector in the State that would enable it to foreclose access to a sufficient customer base to Salmor's competitors in the upstream market.
20. In sum, the merged entity has neither the incentive nor ability to foreclose in either of the instances considered above. The Authority therefore considers that the proposed transaction does not raise competition concerns in the State.

³ Market inquiries confirmed that providers of grade-level enclosures in the utilities sector consider ductile iron covers as substitutable for concrete infill covers.

⁴ See paragraph 60 of the European Commission, 2007, *Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings*. Draft Commission Notice. This may be accessed at http://ec.europa.eu/comm/competition/mergers/legislation/draft_nonhorizontal_mergers.pdf

⁵ Enclosures can be made from pre-formed plastic, like Carson's products, or from bricks and mortar or pre-cast concrete. In the State, enclosures are predominantly made from bricks and mortar or pre-cast concrete (approximately 93% of all utilities enclosures). However, there is a trend towards increasing use of pre-formed plastic enclosures. There is a growing preference by utilities companies and builders for pre-formed plastic enclosures because of the speed of installation and consistent quality. The parties state that all materials for enclosures are close substitutes with each other.

Determination

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Oldcastle Precast, Inc of the entire issued share capital of Carson Industries LLC., will not be to 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. Paul Gorecki
Member of the Competition Authority