

DTI ACCEPTS UNDERTAKINGS ON COLOPLAST / SSL INTERNATIONAL

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DTI Minister Brian Wilson has accepted undertakings from Coloplast in relation to their completed acquisition of the continence care business of SSL International plc.

The undertakings require Coloplast to re-negotiate the terms of an agreement with the Mentor Corporation to act as exclusive distributor in the UK for the Clear Advantage brand of incontinence sheaths. Coloplast will negotiate to either divest the Clear Advantage brand or the brand and product.

This follows the Competition Commission report of 14 June 2002, which concluded that the acquisition would be against the public interest.

Brian Wilson said: "The Director General of Fair Trading has advised me to accept these undertakings. I believe that they satisfactorily reflect the recommendations in the Competition Commission's report on how to remedy the adverse effects of this merger."

The parties have already signed the undertakings.

Notes for Editors

1. The completed acquisition by Coloplast A/S of the continence care business of SSL International plc was referred to the Competition Commission (CC) on 14 January 2002 under the Fair Trading Act 1973 (DTI Press Notice P/2002/17). The CC report was published on 14 June 2002. It concluded that the merger was against the public interest and recommended that Coloplast should give an undertaking to use its best endeavours to re-negotiate an exclusive distribution agreement with the Mentor Corporation for the Clear Advantage brand of sheaths.

2. The Fair Trading Act 1973 empowers the Secretary of State to refer to the CC for investigation and report actual or proposed mergers which create or intensify a market share of over 25% of the supply in the UK, or a substantial part of the UK, of particular goods and services, or involve the take-over of assets exceeding £70 million.

3. Copies of the CC report (Cm 5522) are available from the Stationery Office, priced £16.00.

4. For non-media enquiries, please contact Trevor Kenney, Consumer and Competition Policy Directorate, DTI (telephone 020 7215 5759, fax 020 7215 6565, e-mail Trevor.Kenney@dti.gsi.gov.uk). Media copies are available from the DTI newsroom on 020 7215 2345. The advice of the Director General of Fair Trading on this case will be made available on the OFT website as soon as is practicable.

Press Enquiries: 020-7215 5964

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<http://www.dti.gov.uk>

ACQUISITION BY COLOPLAST A/S OF THE CONTINENCE CARE BUSINESS OF
SSL
INTERNATIONAL PLC

UNDERTAKINGS GIVEN BY COLOPLAST A/S, COLOPLAST LIMITED AND 4C
HEALTH LIMITED TO
THE SECRETARY OF STATE FOR TRADE AND INDUSTRY UNDER SECTION
88(2) FAIR TRADING
ACT 1973

WHEREAS on 29 September 2001 Coloplast A/S acquired the continence care
business
of SSL International plc;

WHEREAS on 14 January 2002 the Secretary of State referred the resulting merger
situation to the Competition Commission under sections 64 and 69(2) of the Act;

WHEREAS the Report presented to Parliament in June 2002 sets out such
conclusions as are mentioned in section 73(1) of the Act;

WHEREAS the Secretary of State requires the Companies to negotiate with Mentor
to secure either divestment of the 'Clear Advantage' brand (leaving the
Companies with the right to source silicon Sheaths from Mentor or any other
person but supply them under a different brand name) or divestment of the 'Clear
Advantage' brand and product;

WHEREAS the Secretary of State will seek further advice from the Director should
these negotiations fail;

WHEREAS pursuant to a request by the Secretary of State, the Director has
consulted with the Companies with a view to obtaining from them undertakings to
take action in accordance with section 88(1) of the Act;

NOW THEREFORE the Companies and 4C Health hereby give to the Secretary of
State
under section 88(2) of the Act the following undertakings to take action
requisite for the purpose of remedying or preventing the adverse effects
specified in the Report:

Termination of distribution arrangements for 'Clear Advantage' Sheaths

1.- Within the time specified in paragraph 2(1) and subject to paragraph 2(2)
below, the Companies, whether by variation or termination, shall not give effect
to, enforce or purport to enforce the distribution agreement with Mentor dated
29 September 2001 (and more particularly described in paragraphs 2.12-2.16 and
3.70-3.75 of the Report) at least to the extent that it:

(a) appoints the Companies as the exclusive distributor in the United Kingdom

for 'Clear Advantage' branded Sheaths;

(b) directly or indirectly results in the Companies directly or indirectly selling, distributing, handling, marketing, obtaining orders for or otherwise dealing in (whether as principal, agent or otherwise) in the United Kingdom 'Clear Advantage' branded Sheaths; or

(c) directly or indirectly prevents Mentor from selling Sheaths:

(i) directly or indirectly to anyone other than the Companies in the United Kingdom; or

(ii) for delivery by any person other than the Companies, directly or indirectly, into the United Kingdom.

2.- (1) The time specified in clause 1 above is:

(a) as soon as is reasonably practicable and, in any event, not later than 13 December 2002; or

(b) such other time as may be specified by the Director.

(2) Paragraph 1(b) above shall not prevent the Companies from retailing 'Clear Advantage' branded Sheaths but only to the extent that such retailing is through a DAC Owned by the Companies to individual patients in the Community Sector on prescription on the basis of a listing in the Drug Tariff.

Non supply of 'Clear Advantage' branded Sheaths

3.- Subject to clauses 4, 7 and 8 below, as soon as the Companies have given effect to clause 1 above, the Companies and 4C Health, or any one of them shall not:

(a) directly or indirectly sell, distribute, handle, market, obtain orders for or otherwise deal in (whether as principal, agent or otherwise) in the United Kingdom 'Clear Advantage' branded Sheaths;

(b) make any other Agreement (whether with Mentor or any other person) to the like effect as the agreement referred to in clause 1 above and to the extent described in paragraphs 1(a) to (c) above; or

(c) where an Agreement (whether with Mentor or any other person) to the like effect as the agreement referred to in clause 1 above and to the extent described in paragraphs 1(a) to (c) above has already been made, give effect to that Agreement or enforce or purport to enforce it.

4.- Paragraph 3(a) above shall not prevent the Companies or 4C Health from retailing 'Clear Advantage' branded Sheaths but only to the extent that such retailing is through a DAC Owned by the Companies to individual patients in the Community Sector on prescription on the basis of a listing in the Drug Tariff.

Furnishing of information to the Director

5.- The Companies shall furnish to the Director:

(a) on the second Working Day after these undertakings take effect; and

(b) on every second Friday thereafter until otherwise notified by the Director -

a report demonstrating to the Director's satisfaction that adequate progress has been made in negotiating with Mentor in order to give effect to clause 1 above.

6.- Each report referred to in clause 5 above shall:

(a) list the internal and external meetings attended and other contacts made by or on behalf of the Companies in order to give effect to clause 1 above;

(b) attach the latest draft of any agreement intended to be entered into by the Companies and Mentor in order to give effect to clause 1 above;

(c) contain an up-to-date timetable detailing the steps which the Companies envisage taking in order to complete their negotiations with Mentor and to give effect to clause 1 above; and

(d) contain such other information as may be specified by the Director.

7.- The Companies shall furnish to the Director:

(a) at least fifteen clear Working Days before its execution -

(i) a finalised draft of any agreement intended to be entered into by the Companies and Mentor in order to give effect to clause 1 above; and

(ii) any supporting information reasonably necessary to assess that draft agreement's suitability; and

(b) promptly such other information as he considers necessary to assess that draft agreement's suitability.

8.- The Companies shall not execute, give effect to, enforce or purport to enforce the finalised draft agreement referred to in clause 7 above until the Director has given his written approval.

9.- The Companies and 4C Health or any one of them shall furnish promptly to the Director such other information as he considers necessary to monitor these undertakings.

Directions and compliance

10.- The Companies and 4C Health or any one of them shall comply promptly with

such written directions as the Director may from time to time give:

(a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or

(b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.

11.- (1) The Companies and 4C Health or any one of them shall procure that any member of the same Group of Interconnected Bodies Corporate as them shall comply with these undertakings as if it had given them.

(2) Where any Affiliate of the Companies or 4C Health is not a member of the same Group of Interconnected Bodies Corporate as them, the Companies and 4C Health or any one of them shall use their best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Interpretation

12.- The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

13.- In these undertakings:

'4C Health' means 4C Health Limited, the company incorporated in Scotland with registration number SC120654 having as its registered address Unit 2, Oakbank Park Way, Mid Calder, Livingston, EH53 0TH;

'the Act' means the Fair Trading Act 1973;

an 'Affiliate' of a person is another person who satisfies the following condition, namely that any Enterprise that the first person carries on from time to time and any Enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 65 of the Act;

'Agreement' has the meaning given in section 137(2) of the Act and, includes a merger situation within the meaning of the Act;

'"Clear Advantage" branded Sheaths' includes enhancements to such branded Sheaths and all Sheaths that succeed or replace such branded Sheaths;

'Coloplast A/S' means the company incorporated in Denmark with registration number 69749917 having as its registered address Høltedam 1, DK-3050 Humlebæk;

'Coloplast Limited' means the company incorporated in England & Wales with registration number 1094405 having as its registered address Peterborough Business Park, Peterborough, Cambridgeshire PE12 6FX;

'Community Sector' for the avoidance of doubt, excludes National Health Service and other hospitals;

'the Companies' means Coloplast A/S and Coloplast Limited or any one of them;

'DAC' means dispensing appliance contractor being a person who is either:

(a) for supply in England or Wales:

(i) a retail supplier of appliances which are included in a list for the time being approved by the Secretary of State for Health or the National Assembly for Wales respectively for the purposes of section 41 of the NHS Act; and

(ii) who is included in the list of a Health Authority (being a body of that name established by the Secretary of State for Health or the National Assembly for Wales respectively under section 8(1) of the NHS Act) under section 42 of the NHS Act; or

(b) for supply in Scotland or Northern Ireland, an equivalent approved retail supplier of equivalent approved appliances under the equivalent enactment for Scotland or Northern Ireland respectively;

'a DAC Owned by the Companies' means a DAC who is:

(a) 4C Health, provided that the Companies retain at least the level of control held in 4C Health as they have at the time that these undertakings take effect; or

(b) any member of the same Group of Interconnected Bodies Corporate as the Companies.

'the Director' means the Director General of Fair Trading;

'the Drug Tariff' for supply in England or Wales has the meaning given to it in regulation 18 of the National Health Service (Pharmaceutical Services) Regulations 1992, SI 1992 No. 662, or, for supply in Scotland or Northern Ireland, the equivalent meaning given in the equivalent enactment for Scotland or Northern Ireland respectively;

'Enterprise' has the meaning given in section 63(2) of the Act;

'Group of Interconnected Bodies Corporate' has the meaning given in section 137(5) of the Act;

'Mentor' means Mentor Corporation, the company incorporated in the State of Minnesota, United States of America with registration number 0000064892 having as its principal offices 201 Mentor Drive, Santa Barbara CA 93111, United States of America;

'the NHS Act' means the National Health Service Act 1977;

'the Report' means the report of the Competition Commission entitled Coloplast A/S and SSL International plc - a report on the merger situation (Cm 5522, June 2002);

'the Secretary of State' means the Secretary of State for Trade and Industry;

'Sheath' means incontinence sheath;

a 'Working Day' means a day which is not Saturday, Sunday or any other day on which the Office of Fair Trading is closed for business.

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