

**COMPLETED ACQUISITION BY IMERYS MINERALS LIMITED OF
THE KAOLIN BUSINESS OF GOONVEAN LIMITED**

**Notice of proposal to accept Final Undertakings pursuant to section 82 of and
Schedule 10 to the Enterprise Act 2002 and public consultation on the
proposed undertakings**

On 3 April 2013, the Office of Fair Trading made a reference to the Competition Commission (CC) under section 22(1) of the Enterprise Act (the Act) concerning the completed acquisition by Imerys Minerals Limited (Imerys Minerals), a subsidiary of Imerys S.A. and Imerys UK Limited (Imerys UK) (together, Imerys), of the kaolin business of Goonvean Limited (Goonvean).

In its report, *Imerys Minerals Limited and Goonvean Limited: A report on the completed acquisition by Imerys Minerals Limited of the kaolin business of Goonvean Limited* (the Report) dated 10 October 2013, the CC concluded that:

- (i) the completed acquisition by Imerys Minerals of the kaolin business of Goonvean had resulted in the creation of a relevant merger situation;
- (ii) the creation of that situation had resulted in a substantial lessening of competition (SLC) in relation to the market for the supply of kaolin for performance-mineral applications in the UK;
- (iii) the CC should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (iv) undertakings should be given to the CC to give effect to the remedy identified by the CC in Section 9 and Appendix N of the Report.

The CC has reached agreement with Imerys as to the terms of the draft Final Undertakings to remedy the SLC and any resulting adverse effects, and the proposed Final Undertakings are annexed to this notice.

The CC now gives notice that it proposes to accept the attached draft Final Undertakings and invites written representations on them from any interested person or persons. Representations should reach the CC by 5pm on 4 December 2013 and should be addressed to:

Nirav Shah
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD
or by email to: nirav.shah@cc.gsi.gov.uk

The CC will have regard to any representations made in response to this Notice and may make modifications to the proposed Undertakings as a result. In the absence of any written representations, or in the event that the CC decides on consideration of representations made, not to amend the Undertakings, the CC proposes to accept the Undertakings in their present form pursuant to section 82 of the Act. If the CC considers that any representation necessitates any material change to the proposed Undertakings the CC will give notice of the proposed modifications.

The Undertakings may be varied, superseded or released by the CC under section 82(2) of the Act.

This Notice and a non-confidential version of the proposed Undertakings will be published on the CC website. The CC has excluded from the non-confidential version of the Undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

(signed) SIMON POLITO
Group Chairman and Deputy Chairman
19 November 2013

COMPLETED ACQUISITION BY IMERYS MINERALS LIMITED OF THE KAOLIN BUSINESS OF GOONVEAN LIMITED

Proposed undertakings to be given to the Competition Commission by Imerys S.A., Imerys UK Limited and Imerys Minerals Limited

Background

On 3 April 2013, the Office of Fair Trading (OFT) made a reference (the reference) to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Imerys Minerals Limited (Imerys Minerals), a subsidiary of Imerys S.A. and Imerys UK Limited (Imerys UK) (together, Imerys), of Goonvean Limited (Goonvean) (the Acquisition).

On 8 April 2013, the CC adopted the Undertakings accepted by the OFT on 14 December 2012 and the associated consents pursuant to section 80(3) of the Act for the purpose of ensuring that no action was taken pending the determination of the reference which might prejudice the reference or impeded the taking of any action by the CC under Part 3 of the Act (the Interim Undertakings).

The Interim Undertakings cease to be in force on the date of acceptance by the CC of the Final Undertakings pursuant to section 82 of the Act.

The CC published its report entitled Imerys Minerals Limited and Goonvean Limited, a report on the completed acquisition by Imerys Minerals Limited of the kaolin business of Goonvean Limited on 10 October 2013 (the Report).

In the Report, the CC concluded that:

- (i) the completed acquisition by Imerys Minerals of the kaolin business of Goonvean had resulted in the creation of a relevant merger situation;
- (ii) the creation of that situation had resulted in a substantial lessening of competition (SLC) in relation to the market for the supply of kaolin for performance-mineral applications in the UK;
- (iii) the CC should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (iv) undertakings should be given to the CC to give effect to the remedy identified by the CC in Section 9 and Appendix N of the Report.

Now therefore, each of Imerys S.A., Imerys UK and Imerys Minerals propose to give the following Undertakings pursuant to section 82 of the Act for the purpose of remedying the SLC identified in the Report and any adverse effects which flow from it.

1. Interpretation

- 1.1 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 1.2 The appendices form part of these Undertakings.
- 1.3 The purpose of these Undertakings is to give effect to the Report and they shall be construed accordingly.

- 1.4 Any word or expression used in these Undertakings or the recitals to these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.
- 1.5 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 1.6 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 1.7 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.8 References to recitals, paragraphs, subparagraphs and appendices are references to the recitals to, paragraphs and subparagraphs of, and appendices to, these Undertakings.
- 1.9 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons include corporations.

1.10 Further, in these Undertakings:

'Act' means the Enterprise Act 2002;

'Appendix' means an appendix to the Undertakings;

'Base Fuel Price' means the fuel price agreed between Imerys and its third party haulier before taking account of any variations in accordance with the Fuel Variation Clause;

'CC' means the Competition Commission, provided that, after 1 April 2014, references to the CC in these Undertakings shall be taken as references to the CMA unless otherwise expressly provided;

'CMA' means the Competition and Markets Authority which was established on 1 October 2013 under the Enterprise and Regulatory Reform Act 2013 and to which certain functions of the OFT and the CC will transfer on 1 April 2014 and all references to the CC and the OFT, shall, after 1 April 2014, be construed as meaning references to the CMA;

'Compliance Director' means the person appointed pursuant to paragraph 9.6 of these Undertakings;

'Commencement Date' means the date on which these Undertakings are accepted by the CC;

'Customer' means the customer of each Price Controlled Product as set out in the relevant column of Appendix 1 and Appendix 2;

'Customer Site' means the location to which each Price Controlled Product that is not supplied on an ex-works basis is delivered as set out in the relevant column of Appendix 1 and Appendix 2;

'Delivered Price' means the Ex-Works Price plus any applicable Delivery Cost of each Price Controlled Product;

'Delivery Cost' means the third party costs per unit tonne of delivering each Price Controlled Product as set out in the relevant column of Appendix 1 and Appendix 2 (in respect of deliveries of Price Controlled Products made in 2013) and as determined in accordance with paragraphs 4.1 to 4.10 as appropriate for deliveries in 2014 to 2018 inclusive;

'Dispatched' means Imerys sending the Price Controlled Product to the Customer and the Dispatch Date is the day on which the Price Controlled Product leaves Imerys's property for onward delivery to the Customer;

'Dispute' has the meaning given in paragraph 6.2 and each Dispute shall be resolved in accordance with the Dispute Resolution Scheme;

'Dispute Notice' has the meaning given in paragraph 6.3 and the form of Dispute Notice is set out in Annex A to the Dispute Resolution Scheme;

'Dispute Resolution Scheme' means the scheme set out in Appendix 6, as may be amended from time to time in accordance with paragraph 6.4;

'Ex-Works Price' means the ex-works price per unit tonne (exclusive of VAT) for each Price Controlled Product as set out in the relevant column of Appendix 1 and Appendix 2 and as varied in accordance with these Undertakings;

'Fuel Variance Clause' means a clause in a contract Imerys has with a third party haulier in which haulage costs may vary where fuel prices diverge by more than a certain percentage from a Base Fuel Price specified in that contract;

'Goonvean' means Goonvean Limited (Company no. 258625);

'Identified Alternative Grade' has the meaning given in paragraph 5.8;

'Imerys Minerals' means Imerys Minerals Limited (Company no. 269255), registered office Par Moor Centre, Par Moor Road, Par, Cornwall, PL24 2SQ;

'Imerys' means each of Imerys S.A., Imerys UK and Imerys Minerals, and any other Subsidiary of Imerys S.A. for the time being and shall also be known as the **'Imerys Group'**;

'Imerys UK' means Imerys UK Limited (Company no. 03674799);

'Incoterm' means the rules set out in the Incoterms 2010, as published by the International Chamber of Commerce, as amended from time to time;

'Independent Expert' means, in relation to each Dispute, the persons appointed in accordance with paragraphs 13 to 18 of the Dispute Resolution Scheme;

'Initial Grade' means the following Imerys and Goonvean grades, which conform to the product specification sheets set out in Appendix 9:

- Imerys's Speswhite, Polwhite B, Polwhite E, Devolite and Polsperser 50; and
- Goonvean's Crystal Sheen, Opal Alpha, Opal Beta, Opal Gamma, Opal Epsilon and Opal Rho;

'Initial Terms and Conditions' means:

- for each Imerys Price Controlled Product, the Imerys Minerals terms and conditions set out at Appendix 3; and
- for each Goonvean Price Controlled Product, the Goonvean terms and conditions set out at Appendix 4;

in each case subject to any alternative or supplementary terms and conditions agreed between Imerys or Goonvean and a Customer as at the Commencement Date and where the Initial Terms and Conditions are amended to reflect the terms of these Undertakings;

'Instructions' has the meaning given in paragraphs 9 and 11 of Appendix 6;

'Maximum Annual Volume' means in relation to each Price Controlled Product, the maximum volume in tonnes set out in the relevant column of Appendix 1 and Appendix 2, which represents the highest annual UK purchase volume of that Price Controlled Product in 2009/10, 2010/11 and 2011/12 plus 10 per cent, as varied in accordance with these Undertakings;

'Non-Standard Materials' has the meaning given in paragraph 5.5;

'OFT' means the Office of Fair Trading, provided that, after 1 April 2014, references to the OFT in these undertakings shall be taken as references to the CMA unless otherwise expressly provided;

'Packaging' means the packaging in which each Price Controlled Product is supplied as set out in the relevant column of Appendix 1 and Appendix 2;

'Party' means, in relation to a Dispute, each of Imerys and the Customer;

'Payload' means the volume in tonnes of each Price Controlled Product that is supplied in a single delivery as set out in the relevant column of Appendix 1 and Appendix 2;

'Performance-Mineral Application' means the market in which the CC found an SLC in accordance with paragraph 7.128 of the Report;

'Price Cap' has the meaning given in paragraph 3.3;

'Price Controlled Product' means each combination of Grade, Customer, Customer Site, Packaging, and Payload set out in the relevant columns of Appendix 1 (each an **'Imerys Price Controlled Product'**) and Appendix 2 (each a **'Goonvean Price Controlled Product'**) and as varied in accordance with these Undertakings.

'Price Negotiations' mean the negotiations Imerys has with the Customer in advance of concluding a supply agreement for a Price Controlled Product;

'Quotation' has the meaning given in paragraph 12 of Appendix 6;

'Reformulation Work' has the meaning given in paragraph 5.3;

'Report' means the report of the CC entitled *Imerys Minerals Limited and Goonvean Limited*, issued on 10 October 2013;

'RPI Index' means the All Items Retail Prices Index published by the Office for National Statistics (or equivalent index published by any successor organization);

'SLC' means a substantial lessening of competition pursuant to section 22 of the Act;

'Subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'Suitability Notice' has the meaning given in paragraph 5.8;

'Suitable Alternative Grade' means, in relation to each Price Controlled Product, an alternative kaolin grade which is a suitable alternative to the Initial Grade forming part of that Price Controlled Product for the relevant application in which it is used by the Customer, and which is supplied in accordance with paragraph 5.10;

'Surcharge' means any energy or other charge added to the sale price of a Price Controlled Product as referred to in paragraph 3.4;

'Termination Date' means in relation to each Price Controlled Product, 31 December 2018 or any earlier date in accordance with paragraph 12.1;

'Transition Date' has the meaning given in paragraph 5.1;

'Transition Notice' has the meaning given in paragraph 5.1 and the form of Transition Notice is set out in Appendix 5;

'Undertakings' means these Undertakings and the appendices (each as amended from time to time);

'Working Day' means a day other than a Saturday or Sunday or a public holiday in England and Wales, and any reference in these Undertakings to 'days' means calendar days.

2. Commencement

- 2.1 The obligations in these Undertakings will come into force on the Commencement Date.

Obligations on Imerys

3. Supply of kaolin

- 3.1 Imerys undertakes to supply each Price Controlled Product from the Commencement Date up to and including the Termination Date in accordance with these Undertakings.
- 3.2 Subject to paragraph 3.5 below the Ex-Works Price of each Price Controlled Product shall not exceed:
- (a) for Price Controlled Products dispatched by Imerys on or prior to 31 December 2015, the relevant Ex-Works Price set out in the relevant column of Appendix 1 or Appendix 2 (the Initial Ex-Works Price);
 - (b) for Price Controlled Products dispatched by Imerys on or after 1 January 2016 but on or before 31 December 2016, the Initial Ex-Works Price plus the percentage increase in the RPI Index over the 12-month period to July 2015 minus 0.5 per cent;

- (c) for Price Controlled Products dispatched by Imerys on or after 1 January 2017 but on or before 31 December 2017, the Ex-Works Price applicable as at 31 December 2016 plus the percentage increase in the RPI Index over the 12-month period to July 2016 minus 0.5 per cent; and
- (d) for Price Controlled Products dispatched by Imerys on or after 1 January 2018 but on or before 31 December 2018, the Ex-Works Price applicable as at 31 December 2017 plus the percentage increase in the RPI Index over the 12-month period to July 2017 minus 0.5 per cent.
- 3.3 The maximum Ex-Works Price of each Price Controlled Product as calculated in accordance with paragraph 3.2 above shall be known as the Price Cap.
- 3.4 Subject to paragraphs 3.5 and 4.1 to 4.11 below, Imerys shall not at any time apply any Surcharge to sales of a Price Controlled Product. Nothing in these Undertakings shall require Imerys to supply any Price Controlled Product in volumes exceeding:
- (a) for Price Controlled Products dispatched by Imerys between the Commencement Date and 31 December 2013, the pro rata Maximum Annual Volume for that Price Controlled Product; and
- (b) for Price Controlled Products dispatched by Imerys in each of 2014, 2015, 2016, 2017 and 2018, the Maximum Annual Volume for that Price Controlled Product,
- and for the avoidance of doubt, these Undertakings shall not apply to the supply of any Price Controlled Product in excess of the above volumes.
- 3.5 Where a Customer requests changes to the type of pallet, type of bag or pallet configuration in which a Price Controlled Product is supplied, and Imerys agrees to such changes, Imerys shall be entitled to increase the Ex-Works Price by passing on without mark-up any increased third party costs it incurs as a result of the change. Imerys shall provide invoices evidencing such increased third party costs to the Customer on request, subject to redaction of any information relating to Imerys's arrangements with its other customers.
- 3.6 Unless otherwise agreed with the Customer, Imerys shall supply each Price Controlled Product on the Initial Terms and Conditions. In the event of any conflict between the Initial Terms and Conditions and these Undertakings, then these Undertakings shall prevail.
- 3.7 Before any Price Negotiations with a Customer take place, Imerys shall notify that Customer of the Price Cap that will apply in the following calendar year, calculated according to paragraph 3.2.

4. Calculation of delivery costs

- 4.1 Imerys shall arrange for delivery to Customers who wish to purchase a Price Controlled Product on a delivered basis, in accordance with the provisions of paragraphs 4.2 to 4.13 below.
- 4.2 Paragraphs 4.3 to 4.13 apply where a Customer informs Imerys prior to 1 November each year of its intention to purchase a Price Controlled Product on a delivered basis for the following calendar year and provides to Imerys such information as Imerys may reasonably require to obtain a quote for the required freight services from a third party haulier covering the following calendar year, including the Customer Site, Incoterm, Payload, packaging type and pallet configuration.

- 4.3 Following receipt of the information specified in paragraph 4.2 above, Imerys shall include the required freight services in its UK-wide freight tender for the following calendar year, involving at least three third party hauliers, and inform the Customer in writing of Imerys's preferred quote as a price per tonne (the Delivery Cost) within 7 days of concluding its UK-wide freight tender.
- 4.4 Where the Customer informs Imerys in writing within 14 working days of receiving the preferred quote specified in paragraph 4.3 above that it accepts the Delivery Cost, Imerys shall (subject to paragraphs 4.5 to 4.7) supply the Price Controlled Product at the Delivered Price for the duration of the following calendar year.
- 4.5 Paragraphs 4.6 and 4.7 apply where, notwithstanding paragraphs 4.2 to 4.4, a Customer informs Imerys:
- (a) after 1 November in any year of its intention to purchase a Price Controlled Product on a delivered basis for the following calendar year;
 - (b) on or after 1 January in any year of its intention to purchase a Price Controlled Product on a delivered basis for the remainder of that calendar year; or
 - (c) on or after 1 January in any year of its intention to purchase a Price Controlled Product on a delivered basis for the remainder of that calendar year but on the basis of a change to the existing delivery arrangements, including a change to the Customer Site, Incoterm, Payload, packaging type or pallet configuration;
- and provides to Imerys such information as Imerys may reasonably require to obtain a quote for the required freight services from a third party haulier for the relevant period, including the Customer Site, Incoterm, Payload, packaging type or pallet configuration.
- 4.6 Within 14 days of receiving the information specified in paragraph 4.5 above, Imerys shall commence a tender process for the required freight services for the following relevant period involving at least three third party hauliers, and inform the Customer in writing of Imerys's preferred quote as a price per tonne (the Delivery Cost) within 7 days of concluding the tender process.
- 4.7 Where the Customer informs Imerys in writing within 14 days of receiving the preferred quote specified in paragraph 4.6 above that it accepts the Delivery Cost, Imerys shall commence supply of the Price Controlled Product at the Delivered Price as soon as practicable and subsequently for the remainder of the relevant calendar year.
- 4.8 Imerys shall not at any time apply any mark-up to the Delivery Cost. Subject to paragraph 4.10 below, any changes in third party freight costs shall be absorbed by Imerys (for freight cost increases) or retained by Imerys (for freight cost decreases).
- 4.9 Paragraph 4.10 applies where Imerys's contract with a third party haulier for the delivery of a Price Controlled Product includes a Fuel Variance Clause.
- 4.10 Where Imerys's third party freight costs associated with supplying a Price Controlled Product increase due to the application of a Fuel Variance Clause caused by fuel costs increasing by more than 5 per cent from the Base Fuel Price, Imerys shall be entitled to increase the Delivery Cost by the incremental increase above 5 per cent of the fuel element of these costs. Where Imerys's third party freight costs associated with supplying a Price Controlled Product decrease due to the application of a Fuel Variance Clause caused by fuel costs decreasing by more than 5 per cent from the

Base Fuel Price, Imerys shall decrease the Delivery Cost by an amount equal or greater than the incremental reduction beyond 5 per cent of the fuel element of these costs.

- 4.11 Nothing in paragraphs 4.1 to 4.10 shall require Imerys to maintain a Delivery Cost where there is a change to the Customer Site, Incoterm, Payload, packaging type or pallet configuration provided by the Customer under paragraph 4.2 or 4.5, which results in a change to the cost of third party freight services. In such circumstances, paragraphs 4.6 and 4.7 apply.
- 4.12 Nothing in paragraphs 4.1 to 4.10 shall prevent Imerys from invoicing a Customer for any increase in third party freight costs resulting from the Customer's own conduct, including but not limited to increased third party freight costs arising from:
- (a) third party haulier waiting time at a Customer Site beyond the period agreed for unloading; and
 - (b) use of an alternative haulier as a result of a Customer request for a change in its normal delivery arrangements, such as short notice deliveries or a change in the type of delivery vehicle.
- 4.13 Nothing in paragraphs 4.1 to 4.10 shall prevent a Customer from purchasing a Price Controlled Product from Imerys at any time on an Ex-Works basis at the Ex-Works Price, provided that the Customer and its third party hauliers comply with the requirements generally applied by Imerys to third party hauliers operating at its facilities, as set out in Appendix 10.
- 4.14 Within 14 days of receiving a request from a Customer, Imerys undertakes to provide that Customer with any quote obtained under paragraphs 4.3 and 4.6 and any subsequent third party invoices for freight services subject to the redaction of any information relating to Imerys's arrangements with its other customers.

5. Transition to supply of suitable alternative grades

Transition Notice

- 5.1 Where Imerys intends to supply an alternative grade to the Initial Grade forming part of a Price Controlled Product from a specified date (the Transition Date), it must provide at least 12 months' prior written notice to the relevant Customer in the form set out in Appendix 5 (a Transition Notice).
- 5.2 Imerys shall not specify a Transition Date prior to 1 January 2016. For the avoidance of doubt, this means that Imerys shall not, without the agreement of the Customer, cease supplying a Customer with a Price Controlled Product that contains an Initial Grade before 1 January 2016.

Reformulation Work

- 5.3 Where Imerys intends to supply an alternative grade to the Initial Grade, Imerys shall work with the Customer in good faith to identify a grade from its existing portfolio of grades or develop an alternative grade that meets the Customer's pre-existing requirements or other requirements as agreed between Imerys and the Customer for which the Initial Grade is used (Reformulation Work). The nature of the Reformulation Work shall be determined by Imerys, acting reasonably and in consultation with the Customer, and will typically involve the following steps:

- (a) theoretical analysis of the Customer's requirements of the Initial Grade (and corresponding requirements of any alternative grade to the Initial Grade) on the basis of the physical and chemical properties of the Initial Grade and alternative grades and information provided by the Customer on the Performance-Mineral Application to be served;
 - (b) production and laboratory testing of an alternative grade to the Initial Grade in a formulation provided by the Customer, where Imerys has the facilities and methodology to carry out such tests;
 - (c) following agreement between Imerys and the Customer that laboratory testing has been successful, and where appropriate, conducting pilot plant trials to produce industrial quantities of a proposed alternative grade to the Initial Grade for industrial trials by the customer; and
 - (d) if requested by the Customer, and where appropriate, providing technical assistance in trials of an alternative grade to the Initial Grade conducted by the Customer at its own sites.
- 5.4 Imerys shall not charge the Customer for any Reformulation Work carried out by Imerys's employees or in Imerys's facilities.
- 5.5 To comply with paragraph 5.3 above, Imerys may request from the Customer free of charge relevant information including, but not limited to, details of the Customer's existing formulation, critical parameters including historical/acceptable variations of these and preparation methods and test methods. All requests for such information by Imerys shall be reasonable. Imerys may also request that the Customer supplies it free of charge with any materials used in that Customer's formulations which cannot be obtained by Imerys on the open market (Non-Standard Materials) in sufficient quantities that are reasonably required to enable Imerys to carry out laboratory testing.
- 5.6 Imerys shall not be required to carry out the Reformulation Work specified in paragraph 5.3 where a Customer unreasonably refuses to provide Imerys with, or unduly delays without valid reasons to provide Imerys with, free of charge, the information and/or Non-Standard Materials requested by Imerys under paragraph 5.5 above.
- 5.7 Imerys shall supply the Customer with up to five tonnes of alternative grade free of charge to enable it to test the identified or developed alternative grade and shall supply such additional volumes of alternative grade as the Customer may reasonably request for testing at a price not exceeding the Ex-Works Price or Delivered Price for the Initial Grade, as appropriate.

Suitability Notice

- 5.8 Where, following the conclusion of the Reformulation Work Imerys considers that it has identified or developed an alternative grade that meets the Customer's pre-existing or agreed requirements for the Performance-Mineral Application in which the Initial Grade is used (an Identified Alternative Grade), Imerys shall provide notice to the Customer in the form set out in Appendix 7 (a Suitability Notice) that it considers the Identified Alternative Grade is a Suitable Alternative Grade.
- 5.9 The Suitability Notice shall:

- (a) specify that Imerys must continue to supply the Initial Grade until the later of (i) the Transition Date; and (ii) 30 calendar days following the date of the Suitability Notice; unless the Customer consents in writing to being supplied with the Identified Alternative Grade from an earlier date;
- (b) specify that the Customer may initiate a Dispute if it considers that the Identified Alternative Grade is not a suitable replacement for the Initial Grade, and that Imerys must continue to supply the Initial Grade until at least 90 calendar days have elapsed following an Independent Expert's determination pursuant to paragraph 38 of the Dispute Resolution Scheme that the Identified Alternative Grade is a Suitable Alternative Grade;
- (c) specify that that the Undertakings will apply to the supply of the Identified Alternative Grade in the same way as they apply to the Initial Grade; and
- (d) contain a product specification sheet for the Identified Alternative Grade.

Supply of alternative grade

- 5.10 Imerys shall be entitled to supply the Identified Alternative Grade instead of the Initial Grade:
- (a) at any time after service of a Suitability Notice and where Imerys has received the written consent of the Customer to do so, and this may be before the Transition Date; or
 - (b) at any time on or after the Transition Date where:
 - (i) the Customer has not initiated a Dispute in relation to the Suitability Notice provided that at least 30 calendar days have elapsed since the Suitability Notice was served on the Customer; or
 - (ii) at least 90 calendar days have elapsed following an Independent Expert's determination pursuant to paragraph 38 of the Dispute Resolution Scheme that the Identified Alternative Grade is a Suitable Alternative Grade.
- 5.11 The Suitable Alternative Grade shall be supplied by Imerys in accordance with these Undertakings and the Price Cap shall apply to the Price Controlled Product that contains the Suitable Alternative Grade in the same manner as it applies to the Price Controlled Product containing the Initial Grade in accordance with paragraph 3.2. Imerys shall provide the OFT with a copy of the product specification sheet relating to the Suitable Alternative Grade prior to supplying the Suitable Alternative Grade and this product specification sheet shall form part of Appendix 9 of these Undertakings.
- 5.12 For the avoidance of doubt, where Imerys supplies a Suitable Alternative Grade in accordance with paragraph 5.10 these Undertakings shall not subsequently require Imerys to supply the Initial Grade as part of that Price Controlled Product.

6. Dispute Resolution Scheme

- 6.1 Imerys undertakes to comply with and fulfil any obligations placed upon it under the Dispute Resolution Scheme as set out in Appendix 6.
- 6.2 Imerys shall at all times maintain an offer for any disputes with a Customer as to whether an Identified Alternative Grade is a Suitable Alternative Grade (Dispute) to

be referred to an Independent Expert for determination in accordance with the Dispute Resolution Scheme.

6.3 Imerys shall participate in the Dispute Resolution Scheme where any Customer accepts the offer set out in paragraph 6.2 above and initiates a Dispute by serving a Dispute Notice and each of Imerys and the Customer agree in writing to be bound by the Dispute Resolution Scheme.

6.4 If at any stage during the lifetime of these Undertakings the OFT considers that a change to the Dispute Resolution Scheme is necessary to ensure the effective operation of these Undertakings and/or for the effective discharge of the Independent Experts' functions the OFT having regard to any representations made to it by an Independent Expert or by Imerys or by any Customer:

(a) shall advise Imerys in writing of the proposed change to the Dispute Resolution Scheme;

(b) shall allow Imerys 14 days to raise objections to the change proposed; and

(c) shall take account of any objections raised by Imerys before directing any change to the Dispute Resolution Scheme,

and Imerys undertakes that it shall then make such changes to the Dispute Resolution Scheme as the OFT shall direct.

6.5 These Undertakings, including the Dispute Resolution Scheme, shall operate without prejudice to the statutory rights of any person under the Act, the Competition Act 1998 and the Enterprise and Regulatory Reform Act 2013, each as amended from time to time.

7. Notification of these Undertakings to customers

7.1 Within 14 days of the Commencement Date, Imerys shall notify each Customer of these Undertakings in the form set out in Appendix 8 (an Initial Notice). The Initial Notice shall be sent by registered post to the registered address of that Customer.

8. Variations to these Undertakings

8.1 The terms of these Undertakings may be varied with the prior written consent of the CC.

8.2 The consent of the CC to any variation of these Undertakings shall not be unreasonably withheld.

8.3 Imerys shall not without the prior written consent of the OFT transfer any activities that are or may be material in relation to these Undertakings to a person that is not a member of the Imerys Group unless such person has confirmed to the OFT in writing his willingness to comply with these Undertakings insofar as they apply to the transferred activities.

8.4 Imerys shall not without the prior written consent of the OFT transfer control of a company that is a member of the Imerys Group carrying on activities that are or may be material in relation to these Undertakings to a person that is not a member of the Imerys Group unless such person has confirmed to the OFT in writing his willingness to comply with these Undertakings insofar as they apply to the transferred company.

8.5 Where a request for consent is sought pursuant to paragraphs 8.3 or 8.4, the OFT will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.

8.6 The consent of the OFT shall not be unreasonably withheld.

9. Compliance

9.1 Imerys S.A. shall procure that each subsidiary of Imerys shall comply with these Undertakings in so far as relevant as if such subsidiaries had given them.

9.2 Imerys shall deliver an annual report to the OFT by 28 February during each year in which these Undertakings remain in force, with the first annual report to be delivered by 28 February 2014. Each such report shall have been approved by the Imerys Minerals board of directors and shall include a detailed and accurate account of:

(a) the prices charged and volumes supplied by Imerys to the Customer of each Price Controlled Product in the preceding calendar year, in the form set out in Appendix 11;

(b) steps taken during the preceding calendar year to ensure compliance with the Undertakings;

(c) instances in the preceding calendar year where a breach or potential breach of the Undertakings has been identified and the steps taken to rectify it; and

(d) how the report was compiled.

9.3 Imerys shall promptly provide to the OFT such information as it may reasonably require for the purpose of monitoring or enforcing compliance with the Undertakings.

9.4 Imerys shall comply promptly with such written directions as the OFT 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 refrain from doing.

9.5 In the event of a conflict between directions, instructions or decisions issued by the OFT pursuant to paragraph 9.4 and the Independent Expert pursuant to the Dispute Resolution Scheme, then Imerys's obligations under paragraph 9.4 shall prevail.

9.6 Imerys shall appoint a Compliance Director who will have primary responsibility for:

(a) monitoring compliance with these Undertakings and preparing reports pursuant to paragraph 9.2;

(b) facilitating and responding to any requests for information from the OFT and any Independent Expert pursuant to paragraph 9.3;

(c) monitoring the implementation of measures to respond to any non-compliance with these Undertakings and any decisions, directions and guidance issued pursuant to these Undertakings;

- (d) maintaining staff awareness within Imerys Minerals of the requirements of these Undertakings, including developing and overseeing an ongoing internal education program directed towards ensuring compliance with these Undertakings.
- 9.7 Imerys undertakes that should it at any time become aware of any breach of any provision of these Undertakings it shall inform the OFT of the breach and the circumstances in which it arose in writing within seven (7) Working Days following the date on which it became aware of the breach.
- 9.8 Imerys undertakes that should it at any time become aware that it has received any payment from a Customer in respect of a Price Controlled Product in excess of the amount it is entitled to charge under these Undertakings it shall refund the excess to the Customer within seven (7) Working Days and provide the Customer with a written explanation of the reason for the refund.
- 9.9 Any communication from Imerys to the OFT under these Undertakings shall be addressed to:
- (a) until 31 March 2014: Director of Mergers, OFT, Fleetbank House, 2–6 Salisbury Square, London EC4Y 8JY or such other address as the OFT may direct in writing; and
- (b) from 1 April 2014: Director of Mergers, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other address as the CMA may direct in writing.
- 9.10 Without prejudice to any additional form of communication and/or address agreed between them, any communication from Imerys to a Customer under these Undertakings shall be deemed to have been validly served on that Customer if it is served on that Customer at its registered office.

10. Acceptance of service

- 10.1 Imerys hereby authorizes Imerys Minerals to accept on behalf of Imerys service at Imerys Minerals' registered office of all documents, orders, requests, notifications or other communications connected with the Undertakings (including any such document which falls to be served on or sent to Imerys in connection with any proceedings in courts in the United Kingdom).
- 10.2 Any document, order, request, notification or other communication connected with the Undertakings shall be deemed to have been validly served on Imerys if it is served on Imerys Minerals at its registered office (Reference: CC Final Undertakings, attention:[✂]), and service or receipt shall be deemed to be acknowledged by such Imerys company if it is acknowledged by Imerys Minerals.
- 10.3 Paragraph 10.2 has effect irrespective of whether, as between Imerys Minerals and Imerys, Imerys Minerals has or continues to have any authority to accept and acknowledge service on behalf of Imerys, and no failure or mistake by Imerys Minerals (including a failure to notify Imerys of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of the Undertakings, including any proceeding or judgment pursuant to the Undertakings.

11. Governing law

- 11.1 These Undertakings shall be governed by and construed in all respects in accordance with English Law.
- 11.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

12. Termination

- 12.1 These Undertakings shall be in force until 31 December 2018 or until such time as they are varied, released or superseded under the Act (the Termination Date).
- 12.2 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

FOR AND ON BEHALF OF IMERYYS S.A.

(signed) [NAME]

Director
[Date]

FOR AND ON BEHALF OF IMERYYS UK LIMITED

(signed) [NAME]

Director
[Date]

FOR AND ON BEHALF OF IMERYYS MINERALS LIMITED

(signed) [NAME]

Director
[Date]