Provisional decisions on reviews of 27 Enterprise Act 2002 merger remedies

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Introduction

1. The Competition and Markets Authority's (CMA) annual plan for 2015/16[1] noted the start of a systematic review of existing merger, market and monopoly remedies, which may lead to the removal of measures that are no longer necessary and/or may be restricting or distorting competition.

2. The CMA announced on 26 March 2015 that it had launched a review of all structural merger remedies put in place before 1 January 2005 and to which the mergers provisions of either the Fair Trading Act 1973 or the Enterprise Act 2002 apply.

3. This notice concerns 27 structural merger remedies under the Enterprise Act 2002.

Jurisdiction

4. The CMA has a statutory duty to keep under review undertakings and orders. From time to time, the CMA must consider whether, by reason of a change in circumstances:

   (a) undertakings are no longer appropriate and need to be varied, superseded or released; or

   (b) an order is no longer appropriate and needs to be varied or revoked.

5. Responsibility for deciding on variation or termination of the undertakings lies with the CMA.

Undertakings that have lapsed

6. This review has found that five merger remedies have lapsed. The CMA will remove these cases from its register of undertakings and orders. These cases are:

   (a) International Marine Holdings Inc/Benjamin Priest Group plc (1991).

   (b) MAI plc/London and Continental Advertising Holdings plc (1987).

   (c) Scottish Milk Marketing Board/Co-operative Wholesale Society Ltd (1992).

   (d) Grand Metropolitan plc/William Hill Group Ltd (Brent Walker plc) (1989).

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[1] See CMA annual plan 2015/16, paragraphs 4.12 and 4.17.

(e) Scottish and Newcastle plc/Greenalls Group plc (1999).

Reviews that do not meet the CMA's prioritisation criteria

7. There are a small number of reviews of merger remedies in relation to which the CMA does not propose to reach a provisional decision at this time and will be closed on administrative prioritisation grounds. This is due to the CMA considering that completing reviews of these remedies at this time is not in accordance with the CMA's published prioritisation principles. These cases and the reasons for reaching such administrative decisions are set out below:

   (a) British Sky Broadcasting Group plc/Manchester United plc (1999) – Ofcom is currently investigating an 'alleged abuse of a dominant position by British Sky Broadcasting regarding the wholesale supply of Sky Sports 1 and 2' under the Competition Act 1998.[2] Given this ongoing investigation, the CMA does not consider it appropriate[3] to reach a conclusion on its review of undertakings given by British Sky Broadcasting Group plc at this time.

   (b) Lloyds TSB/Abbey National plc (2001) – The supply of personal current accounts and banking services to small and medium-sized enterprises are currently the subject of a market investigation by the CMA. The CMA considers that it would not be appropriate[4] to reach a conclusions on its review of undertakings given by Lloyds TSB at this time.

8. The CMA will, as part of the ongoing systematic work of reviewing remedies set out in its annual plan, keep under consideration whether to launch reviews of these undertakings at a future date.

Provisional decisions

9. The CMA's provisional decisions in relation to each of the 20 merger remedies are set out in the annexes described in Table 1 below. In ten cases, our provisional decision is that the parties can be released from the remedies, while in the other ten cases our provisional decision is to retain the remedies.

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[2] See Competition Act 1998 cases in the regulated sectors: guidance.
[3] In particular Ofcom is well placed to act and the CMA does not consider it appropriate or proportionate to commit resources to a review while the investigation is ongoing.
[4] The CMA considers the Group conducting the retail banking market investigation, which has recently published provisional findings, is best placed to reach conclusions on the current state of the relevant market.

Table 1: Undertakings on which the CMA has reached provisional decisions

Purchaser	*Target business*	*Decision*	*Annex*
Belfast International Airports Ltd	Short Brothers plc (Belfast City Airport)	Retain	1
Coats Viyella plc	Tootal Group plc	Retain	2
Federal Mogul Corporation	T&N plc	Release	3
Hanson plc	Pioneer International Ltd	Retain	4
Hillsdown Holdings plc	Pittard Garnar plc	Release	5
Interbrew SA	Assets of Bass plc	Release	6
iSoft Group plc	Torex plc	Retain	7
London Clubs International Ltd	Capital Corporation plc	Release	8
Michelin Tyre plc	National Tyre Service Ltd	Retain	9
The Rank Organisation plc	Mecca Leisure Group plc	Release	10
Redland plc	Steetley plc	Release	11
Rockwool Ltd	Owens-Corning Building Products (UK) Ltd	Retain	12
Sara Lee Corporation	Reckitt and Coleman plc	Release	13
Schlumberger plc	The Raytheon Company	Retain	14
Severn Trent Water Ltd	South West Water plc	Retain	15
Stagecoach Holdings plc	Portsmouth Citybus Ltd	Release	16
Stena AB	Peninsular and Oriental Steam Navigation Company Ltd	Retain	17
Sunlight Services Group Ltd	Johnson Group Cleaners plc	Retain	18
Sylvan International Ltd	Locker Group plc	Release	19
Trafalgar House plc	The Davy Corporation plc	Release	20

Consultation on the CMA's provisional decisions

10. The CMA is consulting on its provisional decisions in each of the 20 cases set out above and in the relevant annexes below.

11. This consultation will close on **8 December 2015**. If you wish to respond to this consultation, please contact the CMA as follows:

    Bob MacDowall
    7th Floor North
    Competition and Markets Authority
    Victoria House
    37 Southampton Row
    London WC1B 4AD

    Email: remedies.reviews@cma.gsi.gov.uk

12. Following this consultation, the CMA will consider the responses received and the evidence and views presented and will assess the impact of these responses on its provisional decisions before reaching its final decision in each case.

Annex 1 – Belfast International Airports Ltd/Short Brothers plc (Belfast City Airport)

Undertakings given by

1. Belfast International Airport Limited (BIA).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2181/2004).

Details of the transaction

3. BIA made an unsolicited conditional offer to acquire Belfast City Airport (BCA) on 2 May 1995 from its owners, Short Brothers plc (in turn owned by Bombardier Inc, a Canadian company).

Monopolies and Mergers Commission (MMC) report published

4. 9 January 1996.

The market concerned

5. The MMC found that the merger would have increased BIA's share of airport services in Northern Ireland from about 63% to 89%.

6. The overlap between the BIA and BCA was, and still is, almost wholly on domestic scheduled flights, which accounted for about 80% of Northern Ireland airport passenger services. Six domestic routes were served by both airports. Of these routes, three (Manchester, Birmingham and Glasgow) had substantial volumes of traffic from each of the two Belfast airports.

7. Today there are three commercial airports in Northern Ireland, as there were at the time of the merger: BIA, BCA and Derry. Current market shares based on passenger numbers for the year of July 2014 to June 2015[5] were:

   (a) BIA: 4.1 million passengers (a share of supply of 58%).

   (b) BCA: 2.6 million passengers (a share of supply of 37%).

   (c) Derry: 326,000 passengers (a share of supply of 5%).

[5] Source: CAA terminal passenger numbers July 2014 to June 2015.

8. BIA's and BCA's combined market share therefore has increased slightly, from 89% at the time of the MMC's report to around 95%.

Theory of harm

9. The MMC concluded that the Belfast airports had sought to compete vigorously under separate ownership and that the airlines were influenced in their choice of airport by that competition, and that competing airports encouraged competition between airlines. It was not expected that competition between the airports would have continued under joint ownership. Choice of airport might have remained but much would depend on how BIA acted in practice as regards BCA.

10. The MMC believed that the loss of competition between the airports would result in higher airport charges than would apply in the absence of the contemplated merger; a reduction in competition between airlines; and arising from these the likelihood of a reduction in routes and services offered by airlines and/or an increase in air fares.

11. BIA was, in the MMC's view, unlikely to encourage the airlines to expand services from BCA beyond its existing capacity while there remains significant spare capacity at BIA. The MMC said that as a result airlines and passengers would over time have probably enjoyed less choice with the Belfast airports under common control than they would if BCA remained independent: an independent owner would have a greater incentive to develop BCA's airport to its full potential.

12. The MMC considered that the detriments to competition were not outweighed by the potential benefits arising from the contemplated merger.

Description of the undertakings

13. The undertakings (given on 30 April 1996) required BIA (i) not to acquire any shares or interest in BCA; and (ii) not to acquire the whole or any part of any undertaking or assets of BCA or any interest in the Sydenham site.

History of the companies since the undertakings were given

14. BIA (company number NI027630) and BCA (company number NI016363) are still in operation.

Change of circumstances

15. The CMA has neither identified a change, nor received evidence of a change of circumstances. Both airports are still in operation. There has been no new entry that has caused the combined market share of the airports to fall to such

an extent that this would give rise to a change of circumstances. Indeed the airports' combined market share has increased.

Provisional decision

16. Based on the information available, the CMA's provisional decision is to retain the undertakings.

Annex 2 – Coats Viyella plc/Tootal Group plc

Undertakings given by

1. Coats Viyella plc (Coats).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/355).

Details of the transaction

3. On 12 May 1989 Coats acquired 25.1% of the equity of the Tootal Group plc (Tootal), a purchase which took Coats' total holding to 29.9%. On the same date Coats and Tootal announced an agreed bid by which Coats would acquire all the issued share capital of Tootal.

Monopolies and Mergers Commission (MMC) report published

4. 26 October 1989.

The market(s) concerned

1989

5. The merged group would have been the world's largest producer of industrial sewing thread with over 40% of the UK market but the MMC made no adverse finding in relation to this sector. However, the combined group would also have had well over 50% of the UK market for the sale of domestic thread.

6. In the market for domestic thread there were at the time of the MMC report only three major competitors in the UK. Tootal, the market leader, had 37% of the market. Gütermann, a Swiss/German group, had 20%, and Coats had 18%. Branded thread was often sold through merchandising units and the three major competitors were significant providers in that market.

2015

7. Coats is still a leading global supplier of apparel and industrial thread. In addition to clothing thread, the company manufactures specialty thread (with applications for footwear, camping equipment, bedding, furniture, and automotive), zip fasteners and trim, and craft thread. It claims to own almost

20% of the world's sewing thread manufacturing.[6] Coats serves customers in more than 100 countries through its 70 manufacturing facilities around the world. The company's thread division accounts for more than two-thirds of its total sales each year. Coats is a wholly owned subsidiary of London-based investment firm Guinness Peat Group.[7]

8. There are a number of suppliers of sewing threads that did not have a significant presence in 1989 but appear more significant now – insofar as they have an internet presence, including Empress Mills,[8] and Somac Threads.[9]

Theory of harm

9. The MMC decided that, if the merger were allowed, there would have been a reduction of competition to the extent that the public interest in maintaining choice and supply of domestic thread at reasonable prices would have been adversely affected.

Description of the undertakings

10. The undertakings (given on 3 August 1990) required Coats:

(a) to sell its own domestic sewing threads business to Amann & Sohne GmbH and not to reacquire an interest in this business or any interest in any company controlling this business (Coats' shares in Tootal were not to exceed 9.9% until this undertaking was complied with);

(b) following its disposal of all its shares in Gütermann and Company and Interfina AG, not to reacquire an interest in these companies or any interest in any company controlling these businesses.[10]

History of the companies since the undertakings were given[11]

11. Coats (company number 00104998) was renamed Coats plc on 24 May 2001, Coats Limited on 3 November 2003 and Coats Holdings Limited on 1 July 2004. It is still active. It is not recorded as having any interest in Gütermann or Interfina.[12]

12. Tootal Group plc was purchased by Coats.

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[6] See www.coats.com.
[7] Source: Google Finance: Coats Holdings Ltd.
[8] See www.empressmills.co.uk.
[9] See www.somac.co.uk.
[10] At the time of the transaction, Coats owned 20% of the share capital of Gütermann, had a seat on the supervisory board and a pre-emptive right over the remaining shares.
[11] Information sourced from Companies House unless otherwise stated.
[12] See Fame – company report of Coats Holdings Ltd – ownership structure section.

13. Gütermann and Company is still active.[13]

14. Interfina AG was renamed Gütermann and Co AG and is still active.[14]

15. Amann & Sohne GmbH is still active and has production facilities in Manchester.[15]

Change of circumstances

16. The CMA has neither received nor found evidence on UK market shares in the area of overlap today or on any changes in the boundaries of the product or geographic market, and has no evidence to support a change in the competitive position in this market. Consequently, the CMA has not identified a material change of circumstances in this case.

Provisional decision

17. Based on the information available, the CMA's provisional decision is to retain the undertakings.

[13] See www.guetermann.com.
[14] See www.moneyhouse.ch.
[15] See www.amann.com.

Annex 3 – Federal Mogul Corporation/T & N plc

Undertakings given by

1. Federal Mogul Corporation (FMC) and T & N plc.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/354).

Details of the transaction

3. FMC acquired T & N plc.

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of reference were instead given on 2 July 1998.

The market(s) concerned

5. Thinwall bearings used in applications where space for the installation of bearings is limited.

Theory of harm

6. There were concerns about the level of concentration in the supply of thinwall bearings to original equipment manufacturers.

Description of the undertakings in lieu of reference

7. The undertakings (given on 2 July 1998) required FMC and T & N to divest all of T & N's European thinwall bearings business and not to reacquire it without the prior written consent of the Secretary of State.

History of the companies since the undertakings were given

8. FMC filed for bankruptcy in 2001 but emerged from this to continue trading.

9. On 18 December 1998, FMC completed the sale of T & N's thinwall bearings business to Dana Corporation. Dana Corporation filed for bankruptcy in 2006 and sold its engine bearings business to Mahler Group GmbH.

10. There is no record of a T & N plc in existence at the time of the signing of the undertakings. We consider that the undertakings refer to T & N Limited (company number 00163992) which was renamed Federal-Mogul Limited on 7 April 2009. This company is active in the sale of parts for motor vehicles.

Change of circumstances

11. We do not consider that the business required by the undertakings to be sold is identifiable now. This is because it was on-sold by the purchaser to another company as part of a wider business nine years ago which will have integrated the purchased business into its own business. For this reason, the CMA considers that it would not be practical to seek to enforce the remaining reacquisition element of these undertakings, and consequently considers these changes of ownership to represent a change of circumstances relevant to these undertakings, and that the undertakings are no longer appropriate.

Provisional decision

12. The CMA's provisional decision is that the parties can be released from the undertakings.

Annex 4 – Hanson plc/Pioneer International Ltd

Undertakings given by

1. Hanson plc.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/0354).

Details of the transaction

3. Hanson proposed to acquire Pioneer International Limited (Pioneer).

Competition Commission (CC) report published

4. Undertakings in lieu of reference were instead given on 4 May 2000.

The market(s) concerned

5. The supply of aggregates, asphalt, and ready-mixed concrete.

Theory of harm

6. Reduction of competition in local markets for the supply of aggregates, asphalt, and ready-mixed concrete.

Description of the undertakings in lieu of reference

7. The undertakings (given on 4 May 2000) required Hanson to sell the 'Nominated Assets' (listed below) by 2 November 2000 and not to reacquire any interest in them.

   (a) Aggregates plants Durnford and Grove.

   (b) Asphalt plants Durnford, Forest Wood and Burley Hill.

   (c) Ready-mixed concrete plants listed below:

   Andover (Pioneer)
   Ashford (Pioneer)
   Banbury (Pioneer)
   Barford (Hanson)
   Bedford (Pioneer)
   Bristol (Pioneer)
   Chichester (Pioneer)

Corby (Hanson)
Dawley (Pioneer)
Eastbourne (Hanson)
Exeter (Hanson)
Fairford (Pioneer)
Filey (Hanson)
Gloucester (Pioneer)
Great Billing (Hanson)
Havant (Pioneer)
Heathfield (Pioneer)
Newhaven (Hanson
Newport (Pioneer)
Plymouth (Pioneer)
Portsmouth (Pioneer)
Risca (Hanson)
Rushden (Pioneer)
Swansea (Hanson)
Shoreham (Pioneer)

8. The undertakings required Hanson to divest such assets, sites and quarries as would reduce their market share:

(a) in respect of aggregates and asphalt to 33% or less in all production areas within a 30 mile radius of a Hanson or Pioneer quarry; and

(b) in respect of ready mixed concrete to 40% or less in all production areas within a 10 mile radius of a Hanson or Pioneer ready-mixed concrete plant (50% or less in those areas where there are at least four other competitors present, at least one of which is not a national player).[16]

History of the companies since the undertakings were given[17]

9. Hanson (company number 00488067) was renamed Hanson Building Materials Limited on 14 October 2003. It is still active.

10. There is no reference to a UK company with the name Pioneer International that was in business at the time of the signing of the undertakings. The CMA considers that the Pioneer International concerned was an Australian company of that name.[18] It is not clear whether this company is still active.

[16] See the Department of Trade & Industry's press release at www.investegate.co.uk.
[17] All information in this section is sourced from Companies House unless otherwise stated.
[18] See www.delisted.com.au.

Change of circumstances

11. In its public consultation earlier in 2015, the CMA received no responses from either Hanson or third parties relevant to this original transaction. Moreover, the CMA has not received, or otherwise obtained, sufficient information relevant to the extent of competition around each of these sites to enable it to identify any relevant changes of circumstances in relation to these sites at present.

Provisional decision

12. Based on the information available, the CMA's provisional decision is to retain the undertakings.

Annex 5 – Hillsdown Holdings plc/Pittard Garnar plc

Undertakings given by

1. Hillsdown Holdings plc (Hillsdown).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/3095).

Details of the transactions

3. Contemplated rival acquisitions by Hillsdown and Strong & Fisher (Holdings) plc of Pittard Garnar plc. Strong & Fisher (Holdings) plc was later acquired by Hillsdown.

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of a reference to the CC were instead given on 19 November 1990.

The market(s) concerned

5. Hillsdown was an industrial holding company that owned a number of distinct businesses. They included abattoirs, hide and skin markets and fellmongeries.

6. Pittard Garnar owned hide and skin markets, fellmongeries and tanneries. It produced gloving leather, other ovine leather for clothing, diaries and bookbinding and other uses, and chamois, as well as bovine leather for shoe manufacture and other purposes.

7. The two companies' activities overlapped in the:

   (a) purchase of raw lamb and sheep skins;

   (b) salting of raw skins; and

   (c) removal in fellmongeries of wool from skins and the preservation of pelts by pickling.

Theory of harm

8. None arising from the individual contemplated acquisitions of Pittard Garnar by either Hillsdown or Strong & Fisher. Both mergers were found by the Office of Fair Trading (OFT) not to operate against the public interest. However, the

OFT considered that the combination of all three companies would have led to a more significant loss of competition.

Description of the undertakings in lieu of reference

9. The undertakings (given on 19 November 1990) required Hillsdown:

   (a) Following its acquisition of more than 50% of the shares of Strong & Fisher (Holdings) plc:

      (i) not to hold or have an interest in more than 27.5% of the shares in Pittard Garnar;

      (ii) not to participate in the formulation of the policy of Pittard Garnar;

      (iii) to procure that none of its employees or directors holds or is nominated to any directorship or managerial position in Pittard Garnar; and

      (iv) not to exercise more than 9.99% of voting rights of Pittard Garnar to the extent that such exercise could reasonably be expected to influence its policy.

   (b) Within 18 months to reduce its holding in Pittard Garnar to below 9.99%.

History of the companies since the undertakings were given[19]

10. The CMA considers that the undertakings refer to Hillsdown Holdings Limited (company number 00971448). This company changed its name to Premier Holdings Limited on 15 April 2002 and again to Premier Foods (Holdings) Limited on 23 September 2002. The company is still active. Premier Foods (Holdings) Limited is not recorded as owning either Strong & Fisher or Pittards.[20]

11. The CMA considers that the undertakings refer to Strong & Fisher (Holdings) Limited (company number 00266901). This company changed its name to Argent By-Products Group Limited on 8 October 1999. It is an active company but is dormant. Argent By-Products Group Limited is 100% owned by a Mr David John Gray.

12. Pittard Garnar plc (company number 00102384) changed its name to Pittards plc on 19 May 1993. It is still active.

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[19] All information in this section is sourced from Companies House unless otherwise stated.
[20] Fame reports on these companies.

Change of circumstances

13. The undertakings contemplated an acquisition that did not occur in practice, which was Hillsdown purchasing a share in Strong & Fisher. However, as shown above, these companies remain independently owned. As a consequence, we have concluded that the contemplated mergers that gave rise to the undertakings no longer exist and that this constitutes a change in circumstances relevant to the undertakings, such that the undertakings are no longer appropriate.

Provisional decision

14. The CMA's provisional decision is that Premier Foods (Holdings) Limited can be released from the undertakings.

Annex 6 – Interbrew SA/Assets of Bass plc

Undertakings given by

1. Interbrew SA (Interbrew), Interbrew UK Holdings Limited and Interbrew UK Limited.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2004/2181).

Details of the transaction

3. The acquisition by Interbrew of the brewing interests of Bass plc (Bass).

Competition Commission (CC) report published

4. 3 January 2001.

The market concerned

5. There were three main levels of activity in the vertical supply chain in the beer industry:

   (a) the brewing of beer and supply to wholesalers;

   (b) wholesaling and distribution; and

   (c) retailing of beer to the public.

6. Both Interbrew and Bass were involved both in the brewing and wholesaling and distribution services throughout Great Britain.

Theory of harm

2001

7. The CC concluded that the merger would have increased Interbrew's market share in brewing within Great Britain to between 33% and 38% as well as enhancing its portfolio of leading brands, which would have given it control of leading brands in all beer segments except stout. The CC viewed this as significant since it found there was increasing importance of the leading brands in terms of market share.

8. The CC concluded that a portfolio of leading brands is generally required if a brewer is to meet the full range of customers' requirements. The merger

would have strengthened Interbrew's position through enhancing the range of brands it could offer.

9. The CC had found that after the merger, Interbrew and Scottish and Newcastle plc (S&N) would control the majority of the leading brands in all segments except stout. The CC concluded that the merger would lead to the creation of a duopoly between Interbrew and S&N and that the market conditions at the time would have enabled the duopoly to persist.

10. While some competing brewers may have had access to centralised wholesaling and distribution arrangements, the CC concluded that this would not have enabled entrants or smaller brewers to access either pub companies that did not offer such services or the independent free trade. It believed that for those customers, Interbrew and S&N would have effectively controlled the route to market with a combined market share of approximately 59%.

2015

11. AB InBev (the successor to Interbrew – see below) reported that it had a 16.3% market share in the supply of beer in the UK in 2014.[21] However, an IBIS World market report from September 2015 gave a lower figure of 11.7% for the UK supply of beer by value. That report indicated that S&N, now owned by Heineken, had a market share of 15.8%, Carlsberg had 10.5% and Molson Coors Brewing Company had 15.2%. Interbrew's and S&N's combined market share has now therefore declined from 59% (see above) to under 28%.

Description of the undertakings

12. The undertakings (given on 23 January 2002) required Interbrew to divest, by 28 February 2002, either:

    (a) all of Bass's business to a single purchaser; or

    (b) Bass's Carling brewing business.

13. Interbrew chose option (b) above (see below). After the divestment, Interbrew and Interbrew UK Limited were not permitted to acquire any:

    (a) interest in divested parts of the Carling Brewing business;

[21] Source: www.ab-inbev.com.

(b) interest in any company or undertaking that had control of the divested parts of the Carling brewing business; or

(c) assets used by the divested parts of the Carling brewing business.

History of the companies since the undertakings were given

14. In 2001, Interbrew sold the former Bass-owned Carling brewing operations to Adolph Coors.[22]

15. In 2004, Interbrew merged with Brazilian brewer AmBev to form InBev, which at the time became the largest brewer in the world by volume, with a 13% global market share.[23] In 2008, InBev further merged with American brewer Anheuser-Busch to form Anheuser-Busch InBev (AB InBev).[24] AB InBev is active in the UK market through its subsidiary company,[25] AB InBev Limited (company number 03982132).[26]

16. Interbrew UK Holdings Limited (company number 03984542) is still active.[27]

17. Interbrew UK Limited (company number 05221515) was dissolved on 20 January 2009.[28]

18. Bass plc (company number 00913450) was renamed and split into two separate companies, Mitchells and Butlers plc and Six Continents Limited.[29]

Change of circumstances

19. Since the undertakings were signed there has been a large decline in Interbrew's market share in the supply of beer in the UK. For this reason the CMA considers that these undertakings are no longer appropriate.

Provisional decision

20. The CMA's provisional decision is that Interbrew UK Holdings Limited and AB InBev can be released from the undertakings.

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[22] Source: BBC News: 'Carling sold to US brewer'.
[23] Source: www.beveragedaily.com.
[24] Source: The New York Times: 'Anheuser-Busch Agrees to Be Sold to InBev'.
[25] See www.ab-inbev.co.uk.
[26] Source: Companies House.
[27] Source: Companies House.
[28] Source: Companies House.
[29] Source: InterContinental Hotels Group website.

Annex 7 – iSOFT Group plc/Torex plc

Undertakings given by

1. iSOFT Group plc (iSOFT).

Jurisdiction

2. Enterprise Act 2002.

Details of the transaction

3. iSOFT acquired Torex plc on 23 December 2003.

Competition Commission (CC) report published

4. Undertakings in lieu of a reference were instead given on 29 April 2004.

The market(s) concerned

5. iSOFT provided software and systems to healthcare provider organisations including the NHS. The company was founded within KPMG in 1994 as a specialist in innovative healthcare technology and bought out by its management team in 1998. In the year ended 30 April 2003, iSOFT's worldwide turnover was £91.5 million with sales of £74 million in the EU. iSOFT divested its retail business on 10 February 2004.

6. Torex plc provided healthcare technology software and systems for healthcare providers to GPs, laboratories, hospitals and community care. It also provided the hardware, installation and support that customers require. The retail business was divested on 10 February 2004. Torex plc entered the primary (GP) healthcare sector in 1997 and had acquired a number of other companies active in this sector. It entered the secondary (or hospital) healthcare sector in 2000 by acquiring Shared Medical Systems, going on to acquire a number of other companies active in this sector.

7. During 2003, Torex plc increased its portfolio of products by acquiring InHealth Group (see below), Protos (maternity department systems), Civica (operating theatre systems) and HASS (accident and emergency, and operating theatres). In the year ended 30 December 2002, Torex plc achieved a worldwide turnover of £161.8 million, with UK sales of £107 million.

8. In February and March 2003, Torex plc acquired the primary and secondary healthcare business of InHealth Group; as part of this transaction it also acquired the exclusive distribution rights to sell certain IBA Health Ltd (IBA) software products in the UK. IBA is an Australian company supplying

secondary healthcare IT solutions to, among others, a number of NHS hospitals. IBA had worldwide sales of Aus $25.0 million (approximately £10.6 million) in the year to 30 June 2003 of which Aus $600,000 (approximately £250,000) were in the UK. Torex's acquisition of InHealth was a qualifying merger, considered by the Office of Fair Trading (OFT) and cleared by the Secretary of State on 19 June 2003. That transaction led only to minor increments in Torex plc's UK market shares of various primary and secondary healthcare systems.[30]

Theory of harm

9. The OFT considered that the most appropriate frame of reference for consideration of the competitive effects of the merger was the supply of secondary healthcare software in the UK to NHS hospitals, in particular the supply of Patient Administration Systems and Laboratory Information Management Systems (LIMS) to NHS hospitals.

10. The OFT considered there to be a realistic prospect of a substantial lessening of competition arising from the merger. This was because, absent the merger, Torex plc could have represented a substantial competitive constraint on iSOFT in respect of the supply of LIMS to NHS hospitals, and that other suppliers might not have exerted sufficient competitive pressure post-merger to offset the loss of that constraint.

Description of the undertakings in lieu of reference

11. iSOFT undertook, on 29 April 2004:

(a) to divest Torex plc's LIMS businesses, including employees, intellectual property rights, and legacy contracts;

(b) either to amend the IBA distribution agreement so it is no longer exclusive or terminate it; and/or

(c) not to hold any continuing interest in or influence over Torex plc's LIMS business.

History of the companies since the undertakings were given

12. iSOFT (company number 03716736) was acquired on 1 April 2011 by Computer Sciences Corporation (CSC), a US IT contractor.[31] On 1 September 2011 iSOFT Group PLC was renamed iSOFT Group (UK) Limited. It remains

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[30] Source: iSOFT Group plc/Torex plc – OFT closed case.
[31] Source: CSC news release: 'CSC enters into agreement to acquire iSOFT's global operations'.

active in IT consultancy activities.[32] CSC appears to be active in the supply of computer systems for businesses.[33]

13. Torex plc (company number 01007428) was renamed Torex Limited on 14 September 2004. On 29 April 2009 Torex Limited was renamed iSOFT Europe Limited: it was dissolved on 26 August 2014.[34]

14. Pursuant to the undertakings, in March 2005, Torex sold LabCentre, its LIMS business,[35] to Clinisys Solutions Limited.[36] This company is a leading UK provider of diagnostic and specialist clinical software solutions.[37] Clinisys Solutions Limited is still active and views itself as a leading provider of LIMS.[38]

Change of circumstances

15. Based on the information available to the CMA, it has been unable to identify any change in circumstances that would justify release of the undertakings. The business sold appears to remain a going concern and CSC, the company that bought iSOFT, appears to still be in the market for providing computer systems to healthcare provider organisations.

Provisional decision

16. Based on the information available, the CMA's provisional decision is to retain the undertakings.

[32] Source: Companies House.
[33] See CSC's Annual report 2015, which can be downloaded from the CSC website.
[34] Source: Companies House.
[35] Which was run by Torex Laboratory Systems Limited.
[36] The OFT found that this merger would not be expected to result in a substantial lessening of competition.
[37] Source: http://felthamassociates.co.uk.
[38] Source: www.clinisysgroup.com.

Annex 8 – London Clubs International Ltd/Capital Corporation plc

Undertakings given by

1. London Clubs International Limited (LCI).

Jurisdiction

Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2004/2181).

Details of the transaction

2. Proposed acquisition by LCI of Capital Corporation plc (Capital).

Monopolies and Mergers Commission (MMC) report published

3. 5 August 1997.

The market concerned

4. The MMC regarded this as comprising five of LCI's seven London casinos, both of Capital's casinos and three casinos owned by third parties: the MMC referred to these casinos together as the 'upper segment'. On this definition, LCI's share of the market in 1996/97, calculated by reference to drop (value of money gambled rather than won), was 48% and Capital's was 31%.

5. The Gambling Commission provided the following information on the London casino market on 20 August 2015.

6. There are now 27 casinos in London, compared to 21 in 1998. Caesars Entertainment UK (formerly LCI) owns four of the 27 (15%), compared with seven out of 21 in 1998 (33%).

7. The group of casinos that would be considered 'high end' has changed only minimally since 1998: the Gambling Commission did not include the Park Tower or the Barracuda in this group, but the Park Lane casino, which opened at the Park Lane Hilton in November 2014, is considered as operating in this market.

8. The big change has been in ownership of this group of casinos. Caesars Entertainment UK now owns only one of the ten high-end casinos rather than five. The four that have been sold are all in different ownership. Les Ambassadeurs and the Ritz Club are independently owned, and the Park Tower and the Palm Beach are each owned by large chains.

9. Capital Corporation plc is no longer operating casinos, and the two that LCI sought to buy in 1998 are now both owned by Genting UK, which also bought out the Stanley chain of casinos.

Theory of harm

10. The MMC said that the merger would increase LCI's share of the relevant market from 48% to 79%. As entry barriers were already high, any effect of the merger on entry would necessarily be at the margin. Nevertheless, the MMC believed it would increase entry barriers by making it easier for an enlarged LCI both to absorb small increases in demand and to ensure that there are no gaps in the market, thus reducing opportunities for new entrants and existing operators with casinos in other segments, and by discouraging new entrants who would perceive this to be the case.

11. The MMC said that the merger would substantially reduce competition by removing LCI's largest competitor from the relevant market. As international competition affected only the relatively small number of internationally mobile players, it would not offset the loss of domestic competition for London-based players.

Description of the undertakings

12. The undertakings (given on 14 December 1998) required LCI not to acquire Capital or cooperate with it unless it relates to the formulation of policy of the British Casino Association, gives effect to decisions, guidelines or recommendations of the Gaming Board, any government department or public authority or any such cooperation as is common industry practice and does not restrict competition between the two parties.

History of the companies since the undertakings were given

13. LCI (company number 02862479) is recorded in Companies House records as being London Clubs International plc at the time the undertakings were signed. LCI changed its name on 21 March 2007 to London Clubs International Limited and to Caesars Entertainment UK Limited on 9 March 2015. The company is still active.

14. Capital (company number 01533947) is listed as Capital Corporation Limited in Companies House records and is shown as active but a non-trading company.

Change of circumstances

15. The CMA considers that, based on information from the Gambling Commission, there has been a change in circumstances arising from the significant changes in casino ownership in London since the undertakings were agreed. This includes the consideration that LCI is no longer the major player in the high-end London market, and Capital Corporation plc is no longer in the casino business. On this basis, the CMA considers that the undertakings are no longer appropriate.

Provisional decision

16. The CMA's provisional decision is that Caesars Entertainment UK Limited can be released from the undertakings.

Annex 9 – Michelin Tyre plc/National Tyre Service Ltd

Undertakings given by

1. Michelin Tyre plc (Michelin).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/355).

Details of the transaction

3. Michelin acquired the whole of the share capital of National Tyre Service Limited (NTS) from BTR plc on 23 June 1989.

Monopolies and Mergers Commission (MMC) report published

4. 30 January 1990.

The market concerned

5. The supply of truck tyres in the UK.

6. Michelin had a share of 35% of the market by value and 26% by volume for the manufacture of truck tyres.[39]

7. NTS had a share of 13% in the distribution of truck tyres.[40]

Theory of harm

8. The MMC believed that the merger would reduce competition in the distributors of replacement truck tyres in the UK. The MMC also believed that the vertical integration would strengthen Michelin's position further which would have enabled it to reduce competition both between distributors and between manufacturers.

Description of the undertakings

9. The undertakings (given on 1 March 1991) required:

   (a) Michelin to sell all of the NTS outlets by 31 March 1991;

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[39] Source: MMC (1990), Michelin Tyre PLC and National Tyre Service Ltd: A report on the merger situation, Table 3.3.
[40] Source: MMC (1990), Michelin Tyre PLC and National Tyre Service Ltd: A report on the merger situation, Table 3.7.

(b) Michelin and its subsidiaries would not acquire or reacquire any interests or assets carried out by NTS or hold any shares or other interests in NTS for truck tyres; and

(c) Michelin to notify the Office of Fair Trading if it wanted to acquire other parts of NTS for truck tyres.

History of the companies since the undertakings were given

10. Michelin (company number 00084559) is still active.[41]

11. NTS (company number 00986754) is still active.[42]

Change of circumstances

12. In 1988 Michelin sold 232,000 units of re-tread truck tyres, representing a share of supply of 23.3%.[43] According to the IBIS World Industry Report on Tyre Manufacturing in the UK dated June 2015, Michelin has a share of supply of 37.1%.[44]

13. The CMA has neither received nor found evidence to suggest that there have been material changes in this sector that would be relevant to the undertakings.

Provisional decision

14. Based on the information available, the CMA's provisional decision is to retain the undertakings.

[41] Source – Companies House data.
[42] Source – Companies House data.
[43] Source: MMC (1990), Michelin Tyre PLC and National Tyre Service Ltd: A report on the merger situation, paragraph 3.21.
[44] Source: IBIS World Industry Report on Tyre Manufacturing in the UK dated June 2015.

Annex 10 – The Rank Organisation plc/Mecca Leisure Group plc

Undertakings given by

1. The Rank Organisation plc (Rank).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/0354).

Details of the transaction

3. Rank acquired Mecca Leisure Group plc (Mecca).

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of reference to the MMC were instead given on 14 September 1990.

The market concerned

5. Bingo clubs in London.

Theory of harm

6. Removal of competition between bingo clubs in London.

Description of the undertakings in lieu of reference

7. The undertakings (given on 14 September 1990 and amended on 15 March 1991) required Rank:

   (a) to dispose by 30 June 1993 of its interests in the ten Greater London bingo clubs ('the Business');

   (b) following such disposals:

      (i) not to hold any interest in the Business; or any shares or interest in shares in any company carrying on or having control of the Business; or any other interest carrying an entitlement to vote at meetings of any such company;

      (ii) not to acquire, other than in the ordinary course of business, any assets of the Business;

      (iii) to procure that none of its employees or executive directors will hold or be nominated to any directorship or managerial position in any

company or other undertaking carrying on or having control of the Business;

(c) not to participate in the formulation of any policy concerning the Business.

History of the companies since the undertakings were given

8. The purchase of Mecca was completed in 1990 by Rank.[45]

9. Rank does not appear in Companies House records. There is a record for The Rank Organisation Limited (company number 00324504) being in existence at the time of the undertakings. This company changed its name to XRO Limited on 23 July 1997. It is recorded as dormant; ie non-trading. However, the company's shares were acquired by The Rank Group plc in 1996.[46] This company was first registered in 1995 – then named Megastorm Public Limited Company – company number 03140769.

Change of circumstances

10. Rank, the company that signed the undertakings is dormant, and the shares of the organisation have passed to an organisation not bound by the undertakings. The CMA considers that these represent changes of circumstances relevant to the undertakings, such that they are no longer appropriate.

Provisional decision

11. The CMA's provisional decision is that XRO Limited can be released from the undertakings.

[45] See: www.rank.com.
[46] See VCI Entertainment website: A Brief History of The Rank Organisation.

Annex 11 – Redland plc/Steetley plc

Undertakings given by

1. Redland plc.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/354).

Details of the transaction

3. Redland succeeded in a £613 million hostile bid for Steetley.[47]

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of a reference to the MMC were instead given on 3 March 1992.

The markets concerned

5. Areas of overlap and of concern were clay roofing tile and brick manufacturing.

6. In relation to clay roofing tiles, the CMA's research shows that Redland still makes and supplies these in the UK. The CMA does not have information on the market shares of Redland and Steetley at the time of the consideration of the merger in 1992.

7. According to an Independent newspaper article dated 5 January 1993,[48] Redland sold Steetley's clay tiles business to the Belgian group SA Eternit for £19 million.

8. Suppliers of clay roofing tiles currently in the UK market include:

   (a) Braas-Monier Group (owners of Redland – see below). In 2013, this company's turnover in pitched roof products, including clay and concrete roofing tiles and roofing components) was €115 million.[49]

   (b) Heritage Clay Tiles Ltd, which claims to be 'the UK's leading supplier of high quality handmade and handcrafted clay roof tiles, peg tiles and machine made tiles' and is owned by ET Clay Products Limited. This

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[47] See: www.cnplus.co.uk.
[48] See www.independent.co.uk.
[49] See: www.monier.co.uk.

company has a turnover in excess of £20 million and operates out of five locations in the South East and Midlands areas.[50]

(c) Tudor Roof Tile Co Limited (started in business in 1986).

(d) Kent Clay Tiles.

(e) Marley Eternit – which is part of the worldwide Etex Group and claims to be 'the leading provider of roofing and cladding solutions to the construction industry'.[51] According to pages 22 and 23 of Etex Group's 2014 annual reports and accounts,[52] Etex owns both Marley Eternit and SA Eternit, the company which acquired Steetley's clay tiles business.

9. With reference to the undertakings in lieu of reference described below, Redland sold the Tilmanstone brick manufacturing plant to a Belgian industrial group, Desimpel[53] and the company created to run the business appears now to be dormant.[54] The Cranleigh plant referred to below is now derelict.[55] The CMA's research indicates that the brick manufacturing part of the Businesses defined below no longer exists.[56]

Theory of harm

10. Reduction of competition in the brick manufacturing and clay roofing tiles markets.

Description of the undertakings in lieu of reference

11. The undertakings (given on 3 March 1992) required Redland plc to dispose within 18 months of its acquisition of 50% or more of the issued share capital of Steetley, and of all interests in the following businesses ('the Businesses'):

(a) Steetley's UK clay roofing tile manufacturing business together with, if the purchaser wishes to acquire them, the clay reserves currently available to Steetley at the Keele and Knutton sites and the Walleys clay pit near Newcastle-under-Lyme in Staffordshire.

(b) Steetley's brick manufacturing business carried on at Cranleigh in Surrey and Tilmanstone in Kent, including clay and colliery shale reserves at

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[50] See www.heritagetiles.co.uk and www.theetgroup.co.uk.
[51] See: www.marleyeternit.co.uk.
[52] See www.etexgroup.com.
[53] See www.independent.co.uk.
[54] Source: Companies House and www.endole.co.uk.
[55] See www.28dayslater.co.uk.
[56] The CMA has found no indication of the existence of the brick manufacturing part of the business.

those sites. Such disposal is to be to a person approved by the Director General.

12. Following such disposal, Redland plc was required:

(a) not to hold any interest in the Businesses; or any shares or interest in shares in any company carrying on or having control of the Businesses; or any other interest carrying an entitlement to vote at meetings of any such company;

(b) not to acquire, other than in the ordinary course of business, any assets of the Businesses;

(c) to procure that none of its employees or directors will hold or be nominated to any directorship or managerial position in any company or other undertaking carrying on or having control of the Businesses; and

(d) not to participate in the formulation of any policy concerning the Businesses.

13. Redland was also required not to take steps that might impede the disposal of the Businesses or its ability to operate viably as a going concern following the disposal and, in particular, to procure that:

(a) other than in the ordinary course of business no assets, or interest in any assets, used in the Businesses are transferred;

(b) other than in the ordinary course of business the nature, standard and extent of the activities of the Businesses are maintained; and

(c) no steps are taken which might lead to the integration of the Businesses with any other business.

History of the companies since the undertakings were given

14. Redland plc (company number 00137294) changed its name on 5 October 2006 to Redland Limited. It is still active in the same markets as it was in 1992, in particular clay roofing tiles. The company was acquired by Lafarge in 1997. In 2003, the Redland brand was renamed ‘Lafarge Roofing’. In 2007, Lafarge sold Lafarge Roofing to PAI Partners, maintaining a 35% stake in the business. In 2008, Lafarge Roofing was renamed Monier Ltd and the Redland brand was re-introduced in the UK. In 2014, the Monier Group was renamed The Braas-Monier Building Group.

15. Steetley plc (company number 00246750) changed its name to Steetley Limited on 10 June 1982. We consider that the undertakings refer to Steetley Limited. It is in liquidation and no longer exists as a trading entity.

Change of circumstances

16. Since the undertakings refer to the Business as defined above rather than by name and are designed to survive transfers to different ownership, Steetley's liquidation is not relevant to the question of whether there has been a change of circumstances.

17. In relation to the supply of clay roof tiles, the Steetley business that was sold to SA Eternit in 1992 will have been merged with Eternit Marley's clay roofing tile business, and given the amount of time since the transaction, the CMA considers that it would be difficult to identify and separate the different elements of the business by this time. Indeed there is no Steetley roofing tile brand in existence now. Consequently, the CMA considers that it is no longer practical for it to seek to enforce the part of the undertakings relating to clay roofing tiles, and the CMA considers this to represent a relevant change of circumstances.

18. In relation to brick manufacturing, the CMA has determined the Businesses as defined in the undertakings no longer exists.

19. On this basis, the CMA considers that the undertakings are no longer appropriate.

Provisional decision

20. The CMA's provisional decision is that Redland can be released from the undertakings.

Annex 12 – Rockwool Ltd/Owens-Corning Building Products (UK) Ltd

Undertakings given by

1. Rockwool Limited (Rockwool).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2004/2181).

Details of the transaction

3. Rockwool made a bid for Owens-Corning Building Products (UK) Limited (Owens).

Competition Commission (CC) report published

4. 7 May 1999.

The market concerned

5. The CC found that Rockwool had a 78% market share and Owens 18% in the supply of stone wool used in insulation products.

Theory of harm

6. The CC indicated in its report that internal evidence from Rockwool lent support to its view that Rockwool may be expected to raise prices in some areas as a result of the merger. In addition, the CC believed that some Owens customers would face less favourable terms from Rockwool and would either incur higher costs or pay higher prices because they would have to buy through distributors. These effects, and the loss of customers' ability to choose between two UK producers of stone wool, would, in the CC's view, have impaired competition in the distribution and fabrication sectors.

Description of the undertakings

7. The undertakings (given on 11 October 1999) required Rockwool not to acquire control of Owens or any of its assets and not to influence its policy.

History of the companies since the undertakings were given[57]

8. Rockwool (company number 00972252) is still active in the manufacture in the UK of stone wool.[58]

9. Owens (company number 01926842) was renamed Owens Corning Alcopor UK Limited on 29 June 2000, then renamed Knaufalcopor Limited on 20 March 2002 and then renamed Knauf Insulation Limited on 18 December 2002. It is still active in the supply of stone wool insulation.[59]

Change of circumstances

10. The CMA has not found, nor received, evidence of a change of circumstances relevant to these undertakings. Both companies are active in the supply of stone wool in the UK and the CMA has not received evidence of significant changes in competitive conditions relevant to these products.

Provisional decision

11. Based on the information available, the CMA's provisional decision is to retain the undertakings.

[57] Source: Companies House data, unless otherwise stated.
[58] See www.rockwool.co.uk.
[59] See www.knaufinsulation.co.uk.

Annex 13 – Sara Lee Corporation/Reckitt and Coleman plc

Undertakings given by

1. Sara Lee Corporation (Sara Lee).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/355).

Details of the transaction

3. On 4 October 1991 a subsidiary of Sara Lee acquired part of the shoe care business of Reckitt & Colman plc, including the Cherry Blossom and Meltonian brands. Sara Lee already owned the Kiwi brand, among others.

Monopolies and Mergers Commission (MMC) report published

4. 13 August 1992.

The market concerned

5. Shoe polish products were regarded by the MMC as a small but complex market, worth about £13.5 million a year at manufacturers' prices or double that figure at retail prices. Demand was static or declining. As a result of the merger Sara Lee's market share increased from 24 to 53%. The next largest supplier, Punch Sales Ltd (Punch), a subsidiary of an Irish company, had 26%; and there were a few other suppliers, each with a share of under 6%.

6. The market was found to comprise a number of different products: pastes, liquids, creams, sponges and others; and was divided into two sectors: the special trades, comprising shoe retailers, shoe repairers and the wholesalers who serve them, and self-selection, in which the well-known supermarket chains were prominent. About 57% of sales were through the special trades and about 43% through the self-selection sector.

7. In the special trades, where retail prices are higher, Sara Lee was relatively weak before the merger and competition was chiefly between Reckitt & Colman and Punch. Following the merger, Sara Lee's share of this sector was 37%. Punch had 38%, another supplier 10% and each of five others 5% or less. In this sector of the market there was found to be effective competition among the existing suppliers, and entry was relatively easy.

8. In the self-selection sector, Sara Lee's share had risen as a result of the merger from 44 to 74%. The only other suppliers were Punch, Carr & Day & Martin Ltd and S C Johnson & Co Ltd (S C Johnson), each with under 10%.

Theory of harm

9. The main issue in the MMC's inquiry was the effect of the merger on competition in the self-selection sector of the market. There were no formal barriers to entry, but an important practical barrier was the strength of the long-established and widely familiar brand names, especially Kiwi and Cherry Blossom. Having considered the prospects of expansion by the existing suppliers, and of entry to the UK market by continental European producers, the MMC concluded that the only realistic possibility of competition was from own-label sales, at present confined (among the leading grocery supermarkets) to J Sainsbury plc.

10. Shoe polish products were found to be low-value items, infrequently purchased, and demand was largely insensitive to price. Sales volumes were low. In these circumstances, and given the strength of the Kiwi and Cherry Blossom brands, there was believed to be limited countervailing power on the part of the supermarkets, nor did they have much incentive to constrain price increases by introducing own-label products or otherwise.

11. The MMC believed therefore that there was scope, following the merger and the loss of competition between the two dominant brands in this sector, for a substantial increase in prices before Sara Lee's high market share was put at risk.

Description of the undertakings

12. The undertakings required Sara Lee Corporation to dispose within 12 months to a person approved by the Director General of all interests in the Cherry and Cherry Blossom trademarks as a going concern and not to hold any interest in these trademarks or participate in the formulation of policy regarding them.

History of the companies since the undertakings were given

13. Sara Lee is a US corporation. It has been renamed 'The Hillshire Brands Company' and is still active.[60]

[60] See http://www.ilsos.gov/corporatellc/CorporateLlcController

14. Hillshire Brands was acquired in 2014 by Tyson Foods and became a subsidiary of this company.[61]

15. Sara Lee sold the Cherry Blossom brand which is now owned by Grangers International Limited which claims to be the only remaining UK manufacturer of shoe polish.[62]

16. Sara Lee sold its Kiwi shoe polish business to Wisconsin-based S C Johnson and Son in 2011.[63] S C Johnson's website shows it as owning the Kiwi brand.[64]

17. S C Johnson is privately-owned and therefore has no ownership links to Hillshire Brands or Tyson Foods.[65]

18. Hillshire Brands therefore has no involvement with either the Kiwi or Cherry Blossom shoe-cleaning brands.

Change of circumstances

19. On the grounds that Hillshire Brands (formerly Sara Lee) has no involvement in the supply of either the Kiwi or Cherry Blossom brands, the CMA considers that the undertakings are no longer appropriate.

Provisional decision

20. The CMA's provisional decision is that Hillshire Brands can be released from the undertakings.

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[61] See www.hillshirebrands.com.
[62] See https://cherryblossom.co.uk.
[63] http://scjohnson.com.
[64] See www.scjohnson.com.
[65] See www.scjohnson.com.

Annex 14 – Schlumberger plc/The Raytheon Company

Undertakings given by

1. Schlumberger plc.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/354).

Details of the transaction

3. Schlumberger plc acquired Seismograph Service Ltd (SSL) from the Raytheon Company (Raytheon).

Competition Commission (CC) report published

4. Undertakings in lieu of reference were instead given on 19 November 1992.

The market(s) concerned

5. Borehole seismic services are employed to detect seismic activity. A major part of the search for oil and gas is the search for suitable geological features in which hydrocarbons may be trapped. Seismic surveys are acquired by the generation of seismic waves and the recording of the reflection waves interacting from sub-surface geologic horizons. Surveys allow the mapping of sub-surface distribution of different types of rocks and the fluids they contain. In borehole seismic services, the source and receivers of the seismic waves are located at both the surface and in the well/borehole being examined.[66]

6. Schlumberger is still active in this market. Other providers include Baker Hughes,[67] Weatherford,[68] Avalon Sciences,[69] and EPI Group.[70] There appear to be a number of other companies that offer borehole seismic services.[71]

7. Spending on seismic services tends to mirror oil companies' spending on exploration and production.[72] Until 2008, the global seismic equipment market was growing due to the increasing capacities of oilfield service companies, driven, at least in part by the desire of exploration and production companies

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[66] Source: Schlumberger (2010), *Fundamentals of Borehole Seismic Technology*.
[67] See www.bakerhughes.com.
[68] Whose website says, 'Wireline borehole seismic services are an essential and growing part of reservoir evaluation, especially for horizontal drilling and hydraulic fracturing'.
[69] See www.avalonsciences.com.
[70] See EPI Group website.
[71] See www.rigzone.com.
[72] See www.aapg.org.

to increase the number of surveys they were conducting. Crises that took place in 2008 led to a decrease in the volume of exploration works by exploration and production companies, which led to a decrease in real volumes in the seismic equipment market. The oilfield service providing companies were also said to have underused the production capacities, leading to a reduction in demand for seismic equipment.[73]

Theory of harm

8. A reduction in competition in the supply of borehole seismic services.

Description of the undertakings in lieu of reference

9. The undertakings required Schlumberger:

(a) Within 15 months from the date on which it acquires a controlling interest in SSL to dispose of SSL's business in the supply of borehole seismic services ('the Business') to a person and on terms, approved by the Director General.

(b) Following such disposal:

(i) not to hold: any interest in the Business; or any shares or interest in shares in any company carrying on or having control of the Business; or any other interest carrying an entitlement to vote at meetings of any such company;

(ii) not to acquire, other than in the ordinary course of business, any assets of the Business;

(iii) to procure that none of its employees or directors will hold or be nominated to any directorship or managerial position in any company or other undertaking carrying on or having control of the Business; and

(iv) not to participate in the formulation of any policy concerning the Business.

(c) Not to take any steps which might impede the disposal of the Business.

[73] Source: www.transparencymarketresearch.com.

History of the companies since the undertakings were given[74]

10. Schlumberger plc (company number 01332348) is still active.

11. The Raytheon Company is a US business which is still active.

12. SSL (company number 00409888) is listed as active but is recorded as a non-trading company. The CMA considers it to have been acquired by Schlumberger.[75]

Change of circumstances

13. During its review of the undertakings, the CMA has neither received nor found evidence of any significant changes in this sector. We have not found indications of market shares of existing providers and the parties to the original transaction, and we have no relevant information that can be used, reliably, to assess any changes in the competitive conditions in the supply of borehole seismic services. Consequently, the CMA has not found evidence of a change in circumstances relevant to the undertakings in this case.

Provisional decision

14. Based on the information available, the CMA's provisional decision is to retain the undertakings.

[74] Source: Companies House data unless otherwise specified.
[75] See www.seismograph.co.uk.

Annex 15 – Severn Trent Water Ltd/South West Water plc

Undertakings given by

1. Severn Trent plc (ST).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/355).

Details of the transaction

3. On 21 March 1996 ST announced its intention to make a bid for South West Water plc (SWW). ST and SWW owned regulated water and sewerage businesses, respectively Severn Trent Water Limited (STW) and South West Water Services Ltd (SWWS).

Monopolies and Mergers Commission (MMC) report published

4. 25 October 1996.

The market concerned

5. STW was, and is still, one of the largest of the ten water and sewerage companies (WaSCs) in terms both of turnover and area covered. It provides water and sewerage services in an extensive region of central England and Wales. At the time of the merger, 8.3 million customers obtained their sewerage services from the company, while water services were provided to 7.2 million customers, a water-only company supplied the remaining 1.1 million. SWWS supplies water and sewerage services to around 1.5 million customers, principally in Devon and Cornwall.

Special legal considerations which applied to water mergers

6. The MMC was required to decide whether arrangements were in progress which if carried into effect would result in the creation of a merger of two or more water enterprises which was required by section 32 of the Water Industry Act 1991 (WIA) to be the subject of a reference. It was satisfied that arrangements for such a merger are in progress.

7. Sections 32 to 34 of the WIA made special provisions for references to the MMC of such mergers. Section 34(3)(a) provided that in determining whether such a merger operates against the public interest the MMC ‘shall have regard to the desirability of giving effect to the principle that the Director's [Director General of Water Services-DGWS's] ability, in carrying out his

functions ..., to make comparisons between different water enterprises should not be prejudiced'. The system of comparative competition by which the water industry is regulated depends upon the DGWS's ability to make such comparisons.

8. The availability of a wide range of comparative information about companies' costs and levels of service was regarded as important to the DGWS in enabling him both to set prices at each Periodic Review and, between reviews, to secure higher standards of performance and customer service. The uses which the DGWS made of comparisons between companies had been developing as the industry has evolved since privatisation.

Theory of harm

9. The MMC considered that this proposed merger, involving as it would for the first time the loss to the comparator system of one of the ten WaSCs, was of a different order to any that had previously taken place in the industry. The MMC considered that SWWS was of substantial value to the DGWS for comparative purposes. This was particularly the case on the sewerage side, where the DGWS already had difficulties in making robust comparisons of operating efficiency with only ten comparators. The loss of SWWS as a comparator would have weakened the comparative system across the range of uses to which comparisons were put.

10. The MMC's conclusion under section 34(3)(a) of the WIA was that the loss of SWWS as a comparator would seriously prejudice the DGWS's ability to make comparisons between different water enterprises.

Description of the undertakings

11. The undertakings (given on 19 December 1997) required ST 'not to be party, or give effect, to any arrangements with respect to South West Water plc which would give rise to a compulsory reference to the MMC under sections 32-35 of the Water Industry Act 1991, or any successor statute to similar effect, unless the prior written consent of the Secretary of State has been obtained.'

History of the companies since the undertakings were given[76]

12. ST (company number 02366619) and STW (company number 02366686) are still active.

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[76] Source: Companies House data.

13. SWW (company number 02366640) was renamed Pennon Group plc on 1 August 1998. It is still active and still owns South West Water Services Limited (company number 02366665) – which was renamed South West Water Limited on 1 August 1998 and is itself still active.

Change of circumstances

14. The CMA has not identified, nor received evidence of, a change of circumstances which might justify removal of the undertakings. If the merger were to proceed, England and Wales would be left with only nine WaSCs. In forming this view the CMA has liaised with Ofwat, the sector regulator, as envisioned in paragraph 3.16 of *Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders* (CMA11).

Provisional decision

15. Based on the information available, the CMA's provisional decision is to retain the undertakings.

Annex 16 – Stagecoach Holdings plc/Portsmouth Citybus Ltd

Undertakings given by

1. Stagecoach Holdings plc (Stagecoach), formerly Stagecoach (Holdings) Limited.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/355).

Details of the transaction

3. Stagecoach acquired Portsmouth Citybus Limited (PCL).

Monopolies and Mergers Commission (MMC) report published

4. 12 July 1990.

The market concerned

5. The bus market in the Portsmouth and Havant area.

6. As at August 2015, out of 22 bus routes that operate in Portsmouth, six were operated by Stagecoach in Portsmouth and 16 were operated by First Hampshire and Dorset.[77]

7. Travel information for the Havant area[78] indicates that there are three bus operators in the Havant area, namely:

   (a) Stagecoach;

   (b) First Hampshire and Dorset Limited; and

   (c) Emsworth and District Motor Services Limited.

8. In the Portsmouth and Havant areas combined, Stagecoach operates 11 routes (four routes cover both Portsmouth and Havant), First Hampshire and Dorset Limited operates 20 routes (four routes cover both Portsmouth and Havant) and Emsworth and District Motor Services operates three routes.

9. The CMA is aware that at least some routes have changed over the 25 years since the merger was examined by the MMC. Stagecoach remains a

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[77] Source: Public transport information map.
[78] See www.havant.gov.uk.

significant provider of bus services in the area, although another national bus company, First Group plc, which owns First Hampshire and Dorset Limited, is also present in the area.

Theory of harm

10. Following the merger, competition and potential competition in the Portsmouth and Havant area was reduced, and competition eliminated on a number of routes within Portsmouth and Havant. At the time of the merger, the two companies together accounted for 88% of commercial bus miles in the Portsmouth and Havant area.[79]

Description of the undertakings

11. The undertakings (given on 10 January 1991) required Stagecoach to sell as a going concern before 28 February 1991 a business roughly corresponding with that of PCL before the merger ('the Business') and following such disposal:

    (a) not to acquire or hold: (1) any interest in the Business; (2) any shares or interest in shares in any company carrying on or having control of the Business; (3) any other interest carrying on entitlement to vote at meetings of any such company; or (4) other than in the ordinary course of business, any assets of the Business;

    (b) none of its directors or employees will hold or be nominated to any directorship or managerial position in any company or undertaking carrying on or having control of the Business; and

    (c) not to participate in the formulation of the policy of any person carrying on or having control of the Business.

History of the companies since the undertakings were given[80]

12. Stagecoach (company number SC100764) changed its name on 31 August 2001 to Stagecoach Group plc: it is still active.

13. In compliance with the undertakings Stagecoach sold part of its Portsmouth bus services business on 20 January 1991 to Transit Holdings Limited. The new owner replaced the entire fleet with minibuses. In April 1996 Transit Holdings' Portsmouth operation was sold to First Group. In May 1996 it was merged with People's Provincial, which First Group also owned, and a new

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[79] Source: paragraph 7.41 of MMC report of the merger inquiry of 12 July 1990 into Stagecoach (Holdings) Ltd and Portsmouth Citybus Ltd.
[80] All information in this section is sourced from Companies House unless otherwise stated.

livery of red and cream was introduced to the enlarged company. Larger vehicles replaced minibuses on most routes. In 2003 Provincial was merged with Southampton Citybus and the eastern part of Southern National, both earlier acquired by First Group, to form First Hampshire & Dorset Limited.[81]

14. FirstBus plc, which was renamed FirstGroup in 1998, was formed in 1995 following the merger of Badgerline Group (which originated from the management buyout of the Avon-based company from the NBC in 1986) and GRT Bus Group (a former Municipal Operator based in Aberdeen which in 1989 was itself subject to a management buyout). The group expanded its UK bus operations through a series of acquisitions between 1995 and 1999. Expansion continued with a number of further acquisitions from 1999 onwards.[82]

15. PCL (company number 01961491) changed its name on 30 April 1991 to Southdown Buses Limited, again on 2 April 1992 to Southdown Motor Services Limited and again on 16 July 2003 to West Sussex Buses Limited. This company has been dormant since 30 April 2014.

Change of circumstances

16. In this case, nearly 25 years after the original transaction, the CMA considers that it would not be practicable to identify the relevant assets that formed the Business as described in the undertakings and divested to Transit Holdings Ltd. This is because in the intervening years:

    (a) the divested buses have been replaced on more than one occasion;

    (b) the divested business has been subject to at least two further merger transactions, and so it would be difficult to identify original staff, maintenance functions and other assets of the business and to be able to separate those from the assets of more recent owners' bus businesses; and

    (c) it is likely that the exact bus routes operated by the Business will have changed at least to some extent in the intervening years, and this may have affected the competitive position in the market.

17. Consequently, the CMA considers that it is no longer practical for it to enforce these undertakings, given the changes in ownership and changes in the assets of the Business over time. The CMA considers these to be changes of

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[81] Sources: www.independent.co.uk, https://en.wikipedia.org, www.regent8.co.uk, www.transportpostcards.co.uk, and www.freewebs.com.
[82] Source: CC (2011), local bus services market investigation final report, Chapter 3.

circumstance relevant to the undertakings, and as such considers the undertakings to no longer be appropriate.

Provisional decision

18. The CMA's provisional decision is that Stagecoach can be released from these undertakings.

Annex 17 – Stena AB/Peninsular and Oriental Steam Navigation Company Ltd

Undertakings given by

1. Stena AB, Stena Line (UK) Limited (Stena).

Jurisdiction

2. Enterprise Act 2002.

Details of the transaction

3. Proposed acquisition by Stena of certain assets relating to the Peninsular and Oriental Steam Navigation Company Limited's (P&O) ferry operations on the Irish Sea between Liverpool and Dublin and between Fleetwood and Larne; and a second transaction concerning the establishment of a joint venture for port operations at Cairnryan in Scotland. The possible closure of P&O's Mostyn to Dublin route was announced by P&O in its press release issued on the same day.

Competition Commission (CC) report published

4. 5 February 2004.

The market concerned

5. The CC defined the relevant markets affected by the proposed merger to be the markets for transporting roll-on/roll-off and lift-on/lift-off freight between Great Britain and both the Republic of Ireland and Northern Ireland, first in the northern corridor (in relation to P&O's Fleetwood – Larne route) and second in the central corridor (in relation to P&O's Liverpool – Dublin route). Only the central corridor was of concern. On the central corridor, market shares were as follows:

Table 1: Market shares on the central corridor

Ferry operator	*Market shares*	
P&O	33	50 combined
Stena	17	
Norse Merchant Ferries	25	
Irish Ferries	20	
Total	100	

Source: Competition Commission (2004).

6. In 2002 the freight transported on P&O's Liverpool to Dublin route made up around 20% of central corridor traffic.

7. The 2011 Stena – DFDS merger report[83] provided the following more up to date views on the market.

8. In the central corridor, Stena faces competition from Irish Ferries, and P&O also operates the longer Liverpool to Dublin route. Within this corridor, Stena had a share of [20–30]%. Stena told the CC that the relatively low barriers to entry and exit historically meant that there had consistently been dynamic competition between operators. It gave the following examples of entry or expansion on the Irish Sea.

   (a) P&O added a new third vessel on Liverpool–Dublin in May 2008 and a larger roll-on/roll-off passenger ship/ferry (the *European Endeavour*) in place of the smaller roll-on/roll-off *Norcape* on the Liverpool–Dublin service in February 2011.

   (b) Norfolkline introduced the *Maersk Exporter* and *Maersk Importer*, both with 1,694 lane metres, to the Heysham to Belfast route in 2009, together with a new sailing schedule and an additional Monday morning sailing.

   (c) Seatruck added a third vessel on Heysham to Warrenpoint in 2006. It expanded tonnage on the Heysham to Warrenpoint route with two brand new, significantly larger vessels (*Clipper Point* and *Clipper Panorama*) in 2008. It expanded capacity on Liverpool to Dublin by replacing vessels with two brand new, significantly larger vessels (*Clipper Pace* and *Clipper Pennant*) between 2008 and 2009. It entered on Heysham to Larne in May 2010 and expanded to a two-vessel service from October 2010. Following DFDS's announcement on 13 January 2011 regarding the closure of its Liverpool to Dublin and Heysham to Dublin routes from 31 January 2011, Seatruck on 14 February 2011 commenced a new roll-on/roll-off service between Heysham and Dublin.

   (d) Fastnet Line commenced a new route between Swansea and Cork in March 2010.

   (e) Stena replaced the *Stena Seatrader* with a larger-capacity and faster *Stena Nordica* on the Holyhead to Dublin route on 12 November 2008 and added a further round trip sailing with the *Stena Nordica* on Holyhead to Dublin from March 2009.

[83] Stena AB/DFDS Seaways Irish Sea Ferries Ltd merger inquiry (CC).

9. The CC noted that three established players (Stena, P&O and Seatruck) accounted for the majority of these entry or expansion cases. There had been expansion in accompanied, unaccompanied and passenger markets.

Theory of harm

10. The CC said that there would be scope for Stena post-merger to exercise market power by increasing prices to certain customers. It noted that price discrimination would be possible given the lack of pricing transparency in the market, and the knowledge gained over time of individual customer preferences through close working relationships and the regular bargaining process. It was considered that Stena would be able to focus price increases on certain customers and may also be able to increase prices to other customers, albeit to a lesser extent.

11. The CC expected Stena to focus price increases, post-merger, on its Liverpool to Dublin route. In addition, there would be less incentive for Stena to reduce prices at Holyhead to attract additional traffic to fill some of its spare capacity, since Stena's Holyhead to Dublin route would capture some of the displaced traffic from Mostyn and Liverpool. The CC thought it unlikely that either Norse Merchant Ferries or Irish Ferries would seek to increase capacity on the central corridor to deter Stena from exercising its market power, and that the most likely independent reaction of the two main competitors would be to view any price increase by Stena as an opportunity to raise prices themselves, albeit possibly by less.

12. The CC therefore concluded that entry or the threat of entry within the next two to three years would not offset the possible substantial lessening of competition in the central corridor.

Description of the undertakings

13. The undertakings prohibited Stena from acquiring P&O's Liverpool to Dublin ferry business.

History of the companies since the undertakings were given[84]

14. Stena (company number 02454575) and P&O (company number ZC000073) are still active in the relevant market.[85]

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[84] Source – Companies House data.
[85] See www.freightferries.co.uk, www.poferriesfreight.com and www.stena.com.

Change of circumstances

15. In response to the CMA's announcement of 26 March 2015 about the decision to review certain old structural merger undertakings, Stena has also identified that, since 2004, passenger and freight volumes have increased, there has been exit by Norse Merchant Ferries and entry by Seatruck, changes in the vessels used and numbers of sailings of various operators. In this context, it considers that the undertakings should be revoked.[86] While Stena identified changes which had taken place in the market, it did not identify how these changes were relevant to the undertakings and meant that they were no longer appropriate.

16. The entry and competitive activity between providers of Irish Sea ferry services has mostly taken place between three established players – Stena, P&O and Seatruck. This suggests that allowing Stena to purchase P&O's Liverpool to Dublin routes might still be expected to have a detrimental effect on competition in the manner set out by the CC in 2004. The CMA has neither received nor found evidence of a material change in the relevant markets relevant to the undertakings in the course of this review.

Provisional decision

17. Based on the information available to the CMA and in the absence of a clear case for the release of the undertakings, the CMA proposes to retain the undertakings.

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[86] Stena further submitted that the CMA's current merger remedy guidelines identify that the CMA's present approach is for undertakings of this nature to be released by a sunset clause after a period of ten years *(Merger Remedies: Competition Commission Guidelines* (CC8), paragraph 3.8), and that in light of the CMA's current approach to sunsetting, Stena should be released from the 2004 undertakings. It further submitted it was more proportionate that any possible future transaction should be assessed on its own merits and so requested the undertaking be released.
The CMA has considered this submission, but concluded it is obliged to consider and apply the statutory test set out in section 88 of the Fair Trading Act 1973 and in doing so identify whether there has been change of circumstances, and whether by reason of the change the undertaking is no longer appropriate. The CMA notes that any possible future transaction would be considered on its own merits, and a request for consent under the undertaking can be made before a proposed transaction.

Annex 18 – Sunlight Services Group Ltd/Johnson Group Cleaners plc

Undertakings given by

1. Sunlight Service Group Limited (Sunlight).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/3095).

Details of the transaction

3. Contemplated acquisition by either Initial or Sunlight of Johnson Group Cleaners plc (Johnson): that is both companies made a bid for Johnson Group Cleaners plc.

Monopolies and Mergers Commission (MMC) report published

4. 5 May 1983.

The markets concerned

5. The merger would have impacted various aspects of the UK cleaning services sector, which was worth £480 million a year. Shares of supply were as described in the table below.

Table 1: Shares of supply

Sector	*Johnson*	*Sunlight*	*Johnson + Sunlight*
Cleaning services overall	9	5	14
Laundry	2	13	15
All linen rental	6	25	31
London linen rental	Not known	Not known	60 (70-hotels above 10 beds)
Workwear rental	5	4	9
Cabinet towel rental	5	2	7

Source: MMC report Cmnd 8868, 5 May 1983.

Theory of harm

6. The MMC expected that the following adverse effects might arise from the merger:

   (a) In the linen rental market, the acquisition of Johnson by Sunlight would result in a significant reduction of competition in the London area because it would increase Sunlight's dominance by eliminating its principal competitor.

(b) In the workwear rental market, since both Johnson and Sunlight aimed to increase their share of this market, the acquisition of Johnson by Sunlight would have reduced the number of potentially strong competitors by one and would have been be likely to lead to the industry becoming more concentrated.

(c) There would have been increased concentration and a likelihood of reduced competition in the textile maintenance market as a whole.

Description of the undertakings

7. The undertakings were given on 9 December 1983 and required Sunlight:

(a) not to acquire, hold, or have an interest in more than 10% of the equity share capital of Johnson;

(b) except in the ordinary course of business, not to acquire the whole or part of any undertaking or assets of Johnson; and

(c) not to do anything which would result in Initial and Johnson becoming interconnected bodies corporate.

History of the companies since the undertakings were given[87]

8. Sunlight (company number 00228604) changed its name to Berendsen UK Limited on 5 July 2013. It is still active. Its website indicates that it is still in the cleaning services and related markets.

9. Johnson (company number 00523335) changed its name to Johnson Group Cleaners Limited on 20 May 1998. It is still active. Its website indicates that it is still in the cleaning services and related markets. In particular it claims to be the UK's leading supplier of work wear rental.

Change of circumstances

10. The CMA has not found, nor received, evidence of a change of circumstances relevant to the undertakings.

Provisional decision

11. Based on the information available, the CMA's provisional decision is to retain the undertakings.

[87] Source: Companies House data unless otherwise specified.

Annex 19 – Sylvan International Ltd/Locker Group plc

Undertakings given by

1. Sylvan International Limited (Sylvan) and Locker Group plc (Locker).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2181/2004).

Details of the transaction

3. This involved the creation of a joint venture called Pentre Askern Group Limited (Pentre Askern), formed by combining the drum and other businesses previously owned by Askern Group Limited (Askern), a subsidiary of Sylvan, and by Pentre (Holdings) Limited (Pentre), a subsidiary of Locker. A subsidiary of Locker owned 51% of the joint venture and a subsidiary of Askern owned the remaining 49%.

Competition Commission (CC) report published

4. 2 November 2000.

The market(s) concerned

5. Drums are supplied to manufacturers and distributors for the packaging and transport of electrical and telecommunications cable and wire. The CC decided that drums for this purpose were in separate markets from drums for manufacturing purposes and from other forms of packaging. They focused on steel, timber, plywood and cardboard drums as they were all manufactured by both Pentre and Askern.

Table 1: Market shares

UK markets and market shares at the time of the CC report(%)	*Askern (Sylvan)*	*Pentre (Locker)*	*Combined*
Steel, timber, plywood and cardboard drums	52	28	80
Timber drum management services.	21	18	39

Source: CC report.

Theory of harm

6. In the five areas referred to in Table 1 above, Pentre and Askern had competed effectively with each other prior to the merger. The CC believed that, had the merger not occurred, both Pentre and Askern would have

continued to compete in all five markets, although there is some doubt as to whether Askern would have remained in the market for small steel drums.

7. The combined enterprise (Pentre Askern) was not the largest supplier in the market for timber drum management services and the CC said that barriers to entry in this market were particularly low. The CC did not expect the merger to have an adverse effect on competition in this market.

8. Pentre Askern had a high share in the four UK product markets – small steel, timber, plywood and cardboard drums – said by the CC to range from 84 to 93%.[88] In considering whether its position would be constrained by competitive pressure, the CC examined the desire of customers for dual sourcing, the degree of buyer power that some may be able to exercise, the scope for imports, and the scope for new entry or expansion by smaller UK suppliers, noting that technical barriers to entry are very low.

9. Two members concluded that the merger may not be expected to have adverse effects on competition in the market for small steel drums, where imports had begun. The other member disagreed. All members concluded that in the markets for timber, plywood and cardboard drums the merger was expected to have an adverse effect on competition.

10. The adverse effects on competition arose from the inability of smaller UK suppliers to survive if Pentre Askern made selective low price offers to the main customers of those suppliers; and from the possibility that small customers may not have the information to make informed choices between Pentre Askern and alternative suppliers and may, as a result, pay higher prices to Pentre Askern than they otherwise would have done. The lack of price transparency in the market was a contributory factor.

Description of the undertakings

11. The undertakings required the parties to return the business of the joint venture to the separate ownership of Sylvan and Locker and not to acquire an interest in those businesses or in any company having control of them without the consent of the Secretary of State.

[88] Although the figures in that range are inconsistent with the 80% figure given for the market share in all four products in Table 1.

History of the companies since the undertakings were given[89]

12. Sylvan (company number 03524920) went through a series of name changes and is now called Montague 342 Limited.

13. Locker Group plc (company number 00431900) was renamed Rekcol Realisations Group plc on 6 March 2006. The company was dissolved on 11 November 2011 and therefore no longer exists.

14. The undertakings therefore continue to apply only to Montague 342 Limited.

15. Askern UK Limited (00564890) appears to be still active in the market – see its website. It is wholly owned by Askern Holdings Limited which is in turn owned 65% by Duncan Murray and 35% by Ian Murray.

16. Pentre Group Limited (02514415) is also still active – see its website. It is wholly owned by Pentre Holdings Limited which is in turn owned as follows: Michael Seymour 46%; Jean Seymour 41%; Monarch Assurance plc 13%.

17. The joint venture company formed by Sylvan and Locker, Pentre Askern Group Limited (company number 03912367), was dissolved on 15 December 2005.

18. Montague 342 Limited is wholly owned by Meyer Timber Group Limited which is in turn wholly owned by Meade Family Office Limited, a company registered in Nassau. There is no information available on this company's shareholders.

19. Askern UK Limited confirmed on 17 June 2015 that it has no links or association with Montague 342 Limited.

Change of circumstances

20. The CMA considers that there has been a change of circumstances in this market, arising from the dissolution of Locker Group plc, as well as the consideration that Montague 342 has no association with either the Pentre or Askern businesses, which were the subject of the undertakings. On this basis, the CMA considers that the undertakings are no longer appropriate.

Provisional decision

21. The CMA's provisional decision is that Montague 342 can be released from the undertakings.

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[89] Source: Companies House data, unless otherwise specified.

Annex 20 – Trafalgar House plc/The Davy Corporation plc

Undertakings given by

1. Trafalgar House plc.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/0354).

Details of the transaction

3. On 25 June 1991, Trafalgar House offered to buy Davy for £114 million.[90] The Offer was declared wholly unconditional on 23 July 1991.[91]

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of reference were instead given on 9 August 1991.

The market(s) concerned

5. The parties overlapped in large diameter bored piling operations. Other providers were Stent, Bachy and Fairclough Piling.[92]

6. The top ten piling contractors in the UK as at 23 February 2012 were the following:

Table 1 – UK piling contractors

Rank by turnover	*Company*	*Latest turnover (£m)*
1	Balfour Beatty GE	62.0
2	Keller UK	50.4
3	Bachy Soletanche	42.7
4	Cementation Skanska	38.9
5	Van Elle*	30.0
6	Dawson Wam	17.0
7	Rock and Alluvium**	13.8
8	Miller Piling	10.9
9	Bauer Technologies	7.1
10	Aarsleff***	6.1
	Totals	**278.9**

Source: www.theconstructionindex.co.uk.

[90] See www.cnplus.co.uk.
[91] Source: www.thetakeoverpanel.org.uk.
[92] See www.cnplus.co.uk.

7. Neither Trafalgar House Global nor its subsidiaries, One Berkeley Street Limited and Trafalgar House Financial Services Limited,[93] are now involved in piling contracting, the area of overlap between the merging parties.[94]

Theory of harm

8. Loss of competition in large diameter bored piling operations.

Description of the undertakings in lieu of reference

9. The undertakings (given on 9 August 1991) required Trafalgar House:

(a) to dispose within 18 months of all interests in the large diameter bored piling business of The Expanded Piling Company Ltd ('the Business')[95] to a person approved by the Director General;

(b) following such disposal:

(i) not to hold: any interest in the Business or any shares or interest in shares in any company carrying on or having control of the Business; or any other interest carrying an entitlement to vote at meetings of any such company;

(ii) not to acquire, other than in the ordinary course of business, any assets of the Business;

(iii) to procure that none of its employees or directors will hold or be nominated to any directorship or managerial position in any company or other undertaking carrying on or having control of the Business; and

(iv) not to participate in the formulation of any policy concerning the Business;

(c) not to take any steps which might impede the disposal of the Business or its ability to operate viably as a going concern following the disposal and, in particular to procure that:

(i) other than in the ordinary course of business no assets, or interest in any assets used in the Business are transferred;

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[93] Listed in a Fame report on the company procured on 29 September 2015.
[94] See list of UK piling contractors at www.theconstructionindex.co.uk.
[95] Davy had entered the piling business in 1990 after paying £24.1 million for the Expanded Piling Group, according to a Construction News article.

(ii) other than in the ordinary course of business the nature, standard and extent of the activities of the Business are maintained; and

(iii) no steps are taken which might lead to the integration of the Business with any other business.

History of the companies since the undertakings were given[96]

10. Trafalgar House (company number 00867281) was renamed Kvaerner plc on 18 September 1996. It was renamed Aker Kvaerner plc on 17 September 2003, and was renamed Kvaerner plc again on 15 December 2004 and then renamed Trafalgar House Global plc on 20 March 2006. Finally, on 22 November 2007, it was renamed Trafalgar House Global Limited. It is still active in providing design and manufacturing engineering services in the UK, the USA, and Romania. It offers design and manufacturing engineering services to mining and metals, nuclear, hydropower, and general engineering industries.[97]

11. The Expanded Piling Company Limited (company number 00414814) changed its name to Expanded Piling Company Limited on 1 December 2005. It is still active in piling services[98] but is not one of the UK's top ten piling contractors (see Table 1 above).

12. Davy (company number 00006662) is in liquidation.

Change of circumstances

13. The CMA's research indicates that Trafalgar House Global is no longer involved in piling contracting, the area of overlap which was addressed by the undertakings. Accordingly, the CMA takes the view that the undertakings are no longer appropriate as there is no longer an overlap between Trafalgar House Global and the divested business of Expanded Piling Company Limited. On this basis, the CMA considers that these undertakings are no longer appropriate.

Provisional decision

14. The CMA's provisional decision is that Trafalgar House Global Limited can be released from the undertakings.

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[96] Source: Companies House data.
[97] Source: www.bloomberg.com.
[98] See www.theconstructionindex.co.uk.