

## **Notice of intention to vary undertakings given by National House Building Council pursuant to section 88 of the Fair Trading Act 1973**

1. In 1995, the Secretary of State accepted undertakings from the National House Building Council (NHBC) following an investigation by the Monopolies and Mergers Commission (MMC) which had concluded that a monopoly position existed in favour of NHBC and that aspects of its rules for house builders operated against the public interest, in particular by preventing registered builders from dual sourcing or switching to other warranties without financial penalty.<sup>1</sup>
2. The Competition and Markets Authority (CMA) has a statutory duty to keep under review undertakings given under the Fair Trading Act 1973.<sup>2</sup> On 21 March 2017, the CMA announced its intention to review the undertakings given by NHBC.
3. On 29 June 2017, the CMA published its report entitled NHBC Structural Warranties Undertakings Review – Provisional decision. For the reasons given in that report, the CMA has provisionally concluded that the Undertakings given by NHBC should be varied.
4. The CMA now gives notice of its intention to seek a variation to the NHBC's Undertakings.
5. Based on its analysis of the change of circumstances the CMA has provisionally found that the concerns articulated by the MMC in its report no longer apply in full. As a result, the Undertakings are no longer appropriate as currently worded. Whilst the CMA's provisional view is that it would not be appropriate to release the Undertakings completely, it intends that the Undertakings not be retained in their current form.
6. The CMA would expect varied Undertakings to have the following effect:

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<sup>1</sup> The MMC recommendations can be found from paragraphs 8.90 to 8.102 of [A report on the existence or possible existence of a monopoly situation in relation to the supply within the United Kingdom of structural warranty services in relation to new homes](#).

<sup>2</sup> Section 88(4) of the Fair Trading Act 1973 (as preserved in Schedule 24 to the Enterprise Act 2002).

- (a) to remove NHBC's role as a quasi-regulator of structural warranties, in that NHBC would no longer be expected to ensure that its registered builders only use other warranties that comply with a definition set by NHBC of 'Other Home Warranty Schemes';
  - (b) they should continue to ensure that NHBC's rules should not have the object or the effect of discouraging its registered builders from dual sourcing from, or switching to, other providers of structural warranties.
- 7. As part of the variation the CMA is also minded to change its role in relation to the Undertakings. At present, NHBC is required to submit rule changes to the CMA for prior approval. The CMA's preference, in line with its general approach to remedy monitoring and enforcement, would be for it to oversee the implementation of the NHBC's initial proposed changes to its rules. Thereafter, it would not require NHBC to notify it of any future rule changes prior to their introduction but would require them to notify us of any such changes.
- 8. Any representation in relation to the proposed variation of the Undertakings should be made by 20 July 2017 and sent to:

Praful Depala  
Structural Warranties Review  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London WC1B 4AD

Email: [structural.warranties@cma.gsi.gov.uk](mailto:structural.warranties@cma.gsi.gov.uk)

**Simon Polito**  
**Group Chairman**  
**29 June 2017**