

## **REVIEW OF NHBC UNDERTAKINGS**

### **Notice of acceptance of Superseding Undertakings pursuant to paragraph 16 of Schedule 24 to the Act**

1. On 7 December 1995, the Secretary of State for Trade and Industry accepted the 1995 Undertakings, following a MMC investigation, which had concluded that a monopoly position existed in favour of NHBC and that certain aspects of its Rules of Membership for Registered Builders operated against the public interest, in particular by preventing NHBC's Registered Builders from dual sourcing or switching to Alternative Providers without financial penalty.
2. In July 2015, the Competition and Markets Authority (CMA) published an invitation to comment on its proposal to conduct reviews on whether some or all of 13 sets of monopoly remedies put in place before 1 January 2015, which included the 1995 Undertakings, had experienced a change of circumstances relevant to the remedy in place and whether these remedies may no longer be appropriate and need to be varied, superseded or removed.
3. In response to this consultation, NHBC requested a review of the 1995 Undertakings and on 21 March 2017, the CMA commenced this review.
4. On 18 October 2017, the CMA published its Remedies Review Report concluding that the 1995 Undertakings were no longer appropriate and should be superseded. Alongside the Remedies Review Report, the CMA published proposed Superseding Undertakings for consultation.
5. The CMA has considered the representations received and has concluded that no amendments are required to the proposed Superseding Undertakings. The CMA has decided to accept the Superseding Undertakings attached to this Notice. A summary of the representations received will be published on the CMA website.

*(signed)* by authority of the CMA

Simon Polito  
*Group Chair*  
5 December 2017

# **Undertakings given by NHBC to the Competition and Markets Authority pursuant to paragraph 16 of schedule 24 to the Enterprise Act 2002**

## **1. Background**

- 1.1. On 7 December 1995, the Secretary of State for Trade and Industry accepted the 1995 Undertakings, following a MMC investigation, which had concluded that a monopoly position existed in favour of NHBC and that certain aspects of its Rules of Membership for Registered Builders operated against the public interest, in particular by preventing NHBC's Registered Builders from dual sourcing or switching to Alternative Providers without financial penalty.
- 1.2. In July 2015, the Competition and Markets Authority (CMA) published an invitation to comment on its proposal to conduct reviews on whether some or all of 13 sets of monopoly remedies put in place before 1 January 2015, which included the 1995 Undertakings, had experienced a change of circumstances relevant to the remedy in place and whether these remedies may no longer be appropriate and need to be varied, superseded or removed.
- 1.3. In response to this consultation, NHBC requested a review of the 1995 Undertakings and on 21 March 2017, the CMA commenced this review.
- 1.4. On 18 October 2017, the CMA published its Remedies Review Report concluding that the 1995 Undertakings were no longer appropriate and should be superseded.
- 1.5. Now NHBC hereby gives to the CMA the following Undertakings pursuant to paragraph 16 of Schedule 24 to the Act, which shall supersede the 1995 Undertakings.

## **2. Interpretation**

- 2.1. The purpose of these Undertakings is to give effect to the CMA's Remedies Review Report and they shall be construed accordingly.
- 2.2. Any word or expression used in these Undertakings or the recitals to these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Remedies Review Report (as appropriate).
- 2.3. In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or

phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

- 2.4. The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.5. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 2.6. References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to, these Undertakings unless otherwise stated.
- 2.7. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 2.8. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 2.9. Further, in these Undertakings:

**'the 1995 Undertakings'** means the undertakings given by NHBC under section 88 of the Fair Trading Act 1973 to the Secretary of State for Trade and Industry following the MMC Report;

**'the Act'** means the Enterprise Act 2002;

**'Alternative Providers'** means any company providing a Structural Warranty product for new homes other than NHBC;

**'the CMA'** means the Competition and Markets Authority;

**'Commencement Date'** means the date on which these Undertakings are accepted by the CMA in accordance with paragraph 16 of Schedule 24 to the Act;

**'MMC'** means the Monopolies and Mergers Commission;

**'MMC Report'** means the report of the MMC dated 14 December 1990 entitled *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*

**'NHBC'** means the National House Building Council;

**‘Registered Builders’** means builders or developers of new homes listed on NHBC’s register;

**‘Remedies Review Report’**, means the CMA’s report dated 18 October 2017 entitled *NHBC structural warranties undertakings review: Final decision*;

**‘the Rules of Membership’** means the rules as laid down from time to time by NHBC for builders and developers of new homes registered with the NHBC;

**‘Structural Warranty’** means insurance cover for the buyer of a newly built home, covering major faults in design or construction such as, but not limited to, subsidence, drainage or rain penetration;

**‘Termination Date’** means the day that is 15 years from the Commencement

Date and which corresponds to the same day of the month as the Commencement Date.

**‘Undertakings’** means these undertakings as given by NHBC and accepted by the CMA;

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

### **3. Commencement**

- 3.1. These Undertakings will come into force on the Commencement Date.
- 3.2. The 1995 Undertakings will cease to have effect from the Commencement Date.

### **4. Undertakings**

- 4.1. NHBC undertakes that it shall not make any amendments or additions to the Rules of Membership which have the object or effect of preventing or discouraging Registered Builders from dual sourcing from or switching to Structural Warranties provided by Alternative Providers.
- 4.2. NHBC undertakes to notify the CMA of any amendments or additions to the Rules of Membership at the same time as notification of such amendments or additions is made to Registered Builders.

- 4.3. NHBC undertakes that it shall within 10 Working Days starting from the first Working Day after the Commencement Date, place an announcement on NHBC's website confirming that all Registered Builders are entirely free to dual source from or switch to Alternative Providers.

## **5. Procedure for notification**

- 5.1. NHBC undertakes that any notification by it shall make full disclosure of every material fact and matter that it reasonably believes is relevant to the CMA's assessment of whether the notified amendment or addition complies with these Undertakings.
- 5.2. In the event that NHBC discovers that a notification has been made without full disclosure to the CMA in accordance with paragraph 5.1, NHBC undertakes to:
  - 5.2.1. inform the CMA in writing identifying the information that it omitted to include in the notification within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
  - 5.2.2. at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 5.2.1 above, provide to the CMA a notification that includes the missing information.

## **6. General obligation to provide information to the CMA**

- 6.1. NHBC undertakes that it shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing its functions under the Undertakings or under the Act.
- 6.2. NHBC undertakes that should it at any time be in breach of any provision of the Undertakings, it will notify the CMA within two Working Days starting with the date it becomes aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.

## **7. Acceptance of Service**

- 7.1. NHBC hereby authorises the NHBC Company Secretary to accept on its behalf service of all documents, orders, requests, notifications or other communications connected with the Undertakings (including any such document which falls to be served on or sent to NHBC in connection with proceedings in court in the United Kingdom).

7.2. Unless NHBC informs the CMA that the NHBC Company Secretary has ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, order, request, notification or other communication connected with the Undertakings shall be deemed to have been validly served on NHBC if it is served on the NHBC Company Secretary, and service or receipt shall be deemed to be acknowledged by NHBC if it is acknowledged by email from the NHBC Company Secretary to the CMA.

**8. Effect of invalidity**

8.1. NHBC undertakes that should any provision of the Undertakings be contrary to law or invalid for any reason, NHBC shall continue to observe the remaining provisions.

**9. Governing law**

9.1. These Undertakings shall be governed by and construed in all respects in accordance with English law.

9.2. Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

**10. Termination and release**

10.1. The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

10.2. The Undertakings shall cease to have effect at 17.00 on the Termination Date.

FOR AND ON BEHALF OF NHBC

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date