

COMPETITION COMMISSION REPORT ON THE PROPOSED ACQUISITION BY H+ H CELCON LIMITED OF MARLEY BUILDING MATERIALS LIMITED

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY PURSUANT TO SECTION 88(2) OF THE FAIR TRADING ACT 1973 BY H+ H INTERNATIONAL A/S

H+ H International A/S hereby gives to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973 the following undertakings for the purpose of remedying or preventing the adverse effects specified in the report of the Competition Commission entitled *H+H Celcon Limited and Marley Building Materials Limited – A report on the proposed merger* (Cm 5540, 26 June 2002).

Prohibition of Acquisition of Marley Building Materials Limited

- 1.1 Except with the prior written consent of the relevant authority, H+ H shall not acquire directly or indirectly
 - (i) any interest in any company or undertaking carrying on or having control of the Marley business;
 - (ii) other than in the ordinary course of business, any of the assets of the Marley business.
- 1.2 H+ H:
 - (i) shall procure that none of its employees or directors holds any directorship or managerial position in any company or undertaking carrying on or having control of the Marley business; and
 - (ii) shall not nominate any person to any such directorship or managerial position.
- 1.3 H+ H shall not participate in the formulation or making of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any person carrying on or having control of the Marley business.
- 1.4 Except with the prior written consent of the relevant authority, H+ H shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result, or will result, in any Associated Person, directly or indirectly, doing any of the things listed in paragraphs 1, 2 or 3 above.
- 1.5 Nothing in paragraphs 1.1 – 1.4 above shall prevent H+ H acquiring one of the Marley factories provided that any arrangements to effect such an acquisition which fall within the scope of UK merger control legislation are not implemented in advance of a decision by the Secretary of State or, as the case may be, the Director General, the OFT or the Competition

Commission, to clear such acquisition either conditionally or unconditionally or otherwise take no action under the relevant UK merger control legislation.

Provision of Information

- 2.1 H+H shall provide promptly to the Director General such information as he may reasonably require for the purpose of performing any of his functions under section 88 of the Act.

Compliance

- 3.1 H+H shall comply with such written directions as the Director General may from time to time give to take such steps within its competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Subsidiaries

- 4.1 H+H shall procure that each of its subsidiaries complies with these undertakings as if it had given them.

Interpretation

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

- 5.2 For the purposes of these undertakings:

“**the Act**” means the Fair Trading Act 1973;

“**Associated Person**” means a person or persons associated with H+H or any of its subsidiaries within the meaning of section 77(4) of the Act and includes any subsidiary of such a person or persons construed in accordance with section 75(4K) of the Act;

“**business**” has the meaning given by section 137(2) of the Act;

“**control**” shall be construed in accordance with section 65 of the Act and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“the Director General” means the Director General of Fair Trading;

“H+H” means H+H International A/S;

“interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to control the exercise of any such right;

“Marley” means Marley Building Materials Limited and its subsidiaries;

“the Marley business” means the business as carried on by Marley at 26 June 2002 and developed since that date;

“the Marley factories” means the aircrete production factories operated by the Marley business and located at Newbury, Purfleet and Sutton Coldfield;

“OFT” means the Office of Fair Trading;

“relevant authority” means the authority which has the power to supercede, vary or release these undertakings under UK merger control legislation at the time the relevant consent is sought under paragraph 1.1 or 1.4;

“Secretary of State” means the Secretary of State for Trade and Industry;

“subsidiary”, unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended); and

“UK merger control legislation” means the Act and, once it comes into force, the Enterprise Act 2002.

FOR AND ON BEHALF OF H+H INTERNATIONAL A/S

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