

MERGER REMEDY REVIEWS

CMA consultation on which of the 38 merger remedies put in place before 1 January 2006 it should review in its 2016 programme of work

Introduction

1. In its 2015/16 Annual Plan, the CMA committed to commence a programme of work to review its existing remedies systematically to seek to remove measures that are no longer necessary. As part of this, in April 2015, the CMA launched reviews of 71 structural merger remedies that had been put in place before 2005. These reviews resulted in 51 remedies subsequently being removed.
2. In its 2016/17 Annual Plan, the CMA noted that it will build on this work in the coming year, launching further reviews of existing mergers or market remedies. This will include consideration of a further tranche of 38 merger remedies that we have identified as being more than 10 years old. The CMA is now launching an invitation to comment, seeking views from relevant stakeholders on which of these 38 remedies it should seek to review as part of this programme of work.

Jurisdiction

3. The CMA has a statutory duty to keep under review undertakings made under the Fair Trading Act 1973 as well as those under the Enterprise Act 2002. For Fair Trading Act 1973 undertakings, the CMA will advise the Secretary of State for Business, Innovation and Skills regarding retaining, varying or releasing undertakings, while for Enterprise Act 2002 undertakings, the CMA can reach the decisions itself. The 38 merger remedies being considered in this invitation to comment include both Fair Trading Act and Enterprise Act cases.

Merger remedies from before 2006

4. The table below shows the number of different types of remedies within the 38 that are being considered in this invitation to comment. As can be seen, the

majority of the remedies are behavioural in nature, which is that they require certain behaviours of those that agreed to the undertakings. This is in contrast to structural remedies, where the restriction is concerned with preventing the acquisition of a business or particular assets of a business.

Table 1: Merger remedy types

<i>Type of remedy</i>	<i>Fair Trading Act cases</i>	<i>Enterprise Act cases</i>
Behavioural	4	22
Structural	0	6
Behavioural and structural	4	2

Old merger remedies not being considered for review

5. The CMA has excluded a number of existing merger remedies created before 2006 from this list of 38 where:

- (a) reviews of the remedy were carried out recently or are ongoing at present. These cases include reviews of the [First Bus / SBH Holding undertakings](#) and [Centrica / Dynegy undertakings](#) as well as the [Carlton / Granada undertakings](#). In addition, it also excludes the merger remedies reviewed and retained during this programme of work in 2015/16 (see Annex 2 for details); or
- (b) the CMA is already giving detailed consideration to a well-developed submission to review a specific remedy. The CMA notes that BAE Systems plc has requested a review of [the undertakings](#) it gave following its acquisition of the Marconi Electronic Systems Business of the General Electric Company plc in 2000. The CMA will consider the review of this remedy separately to this programme of work.

Views and evidence sought by the CMA in this consultation

- 6. Details of the 38 merger remedies on which the CMA is consulting are listed in Annex 1, while Annex 2 lists the structural merger remedies reviewed and retained in 2015/16 in this programme of work.
- 7. The purpose of this invitation to comment is to seek views and evidence from stakeholders concerning which of these 38 remedies it should review as part of this programme of work in 2016. The CMA is keen to receive responses from stakeholders including the parties and third parties to the original transactions, as well as advisers and other stakeholders with industry-specific expertise relevant to these remedies.

8. The CMA will consider the following matters in relation to whether to launch a review of a particular merger remedy and is therefore keen to receive views and evidence concerning:
 - (a) the likelihood and extent of any potential change of circumstances and its relevance to the merger remedy;
 - (b) the extent to which the remedy review meets the CMA's published [prioritisation principles](#);
 - (c) whether the remedy is well suited to review as part of the programme of work, including:
 - (i) the likely availability of evidence on the market; and
 - (ii) the degree of complexity of the remedy and the market concerned; and
 - (d) whether there are other reasons for seeking to include or exclude a particular merger remedy from those to be reviewed in this programme of work in 2016.
9. Remedies not selected for review by this programme may still be subject to review individually in line with the CMA's published [prioritisation principles](#).

Responding to the invitation to comment

10. Stakeholders responding to this invitation to comment should provide their views, supported with relevant evidence where possible, in writing to the CMA either by email or by post as set out below:

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

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

11. Responses should be received by the CMA by 5pm on **20 May 2016**.
12. Following the end of the invitation to comment, the CMA will consider all responses received together with its own analysis before reaching a decision on the programme of remedy reviews to be launched in summer 2016.

Merger remedies being considered for review

Fair Trading Act 1973 cases

Following reviews of these cases, the CMA would advise the Secretary of State for Business, Innovation and Skills on whether to vary, supersede, retain or release the undertakings, and the Secretary of State makes the decision.

<i>Acquirer / name of companies giving undertakings</i>	<i>Target</i>	<i>Date of undertakings</i>
Charter Consolidated plc	Anderson Strathclyde plc	21/12/82
European Aeronautic Defence and Space Company N.V.	Astrium N.V.	02/09/03
Finmeccanica SpA	Strategic communications business of Marconi plc	28/11/02*
General Electric Company Inc	Plessey-Siemens	02/08/89
Hartley Industrial Trust Ltd	Alan J Lewis and Jarman and Son Ltd	07/07/92
Peninsular and Oriental Steam Navigation Company Ltd	Stena Line AB	27/02/98
Serco Group Ltd (Nimbus)	National Air Traffic Services	05/03/01
Service Corporation International	Plantsbrook Group Limited	18/12/96

*Estimate.

Enterprise Act 2002 cases

As part of formal reviews of these cases, the CMA has jurisdiction to decide whether to vary, supersede, retain or release the undertakings.

<i>Acquirer / name of companies giving undertakings</i>	<i>Target</i>	<i>Date of undertakings</i>
Alanod Aluminium- Veredlung GmbH	Metalloxyd Ano-Coil Ltd	1999*
Allied Domecq plc	Carlsberg A/S	27/11/92
Arriva plc	Lutonian Buses	07/02/00
Arriva plc	Wales and Border Rail franchise	09/07/04
Badgerline Holdings Ltd (Firstbus plc)	Midland Red West Holdings Ltd	03/10/89
Blackstone LR Associates (Cayman) IV Limited and Cineworld UK Ltd	UGC Cinema Holdings Ltd	21/06/05
BSkyB	British Interactive Broadcasting Ltd	08/05/01
Coloplast A/S, Coloplast Ltd and 4C Health Ltd	SSL international plc	15/08/02
Co-operative Wholesale Society Ltd	Funeral business of House of Fraser Ltd	07/12/87
Drager and Draeger Medical UK Ltd	Air-Shields business of Hill-Rom	21/06/04
Emap plc	ABI Building Data	03/03/05
Finmeccanica SpA, Westland Helicopters Ltd	Agustawestland NV	10/11/04
Finmeccanica SpA, BAE Systems Avionics Ltd	Avionics business of BAE Systems Avionics Ltd	20/04/05
General Utilities plc	Mid Kent Water Company	15/05/98
Hoverspeed UK Ltd	Hoverlloyd Ltd	24/08/81
IMS Health	Pharmaceutical Marketing Services Ltd	29/10/99
Inntrepreneur	Fosters-Scottish and Newcastle-Courage	14/08/95
Ivax International GmbH	3M Company's distribution business for certain asthma products	09/01/04
Knauf Insulation Ltd	Superglass Insulation Ltd	11/03/05
Lockheed Martin UK Holdings Ltd	Insys Group Ltd	17/10/05
Lyonnaise Europe plc	Northumbrian Water Group plc	23/04/96
National Express Group plc	Midland Main Line Ltd	16/12/97

<i>Acquirer / name of companies giving undertakings</i>	<i>Target</i>	<i>Date of undertakings</i>
National Express Group plc	Prism Rail plc	17/01/01
Nutricia Holdings Ltd	Valio International UK Ltd	07/04/97
Robert Wiseman Dairies Ltd	Scottish Pride Holdings plc	28/02/97
Selenia Communications Ltd (owned by Finmeccanica SpA)	Communications business of BAE Systems plc	20/04/05
Terra Firma Investment (GP) 2 Ltd	United Cinemas International Ltd	09/05/05
Thomas Cook Group Ltd	Interpayment Services Ltd	29/03/96
Southern Water Capital Ltd	First Aqua (JVCO) Ltd	28/04/03
Wessex Water plc	South West Water plc	19/02/98

*Estimate.

Structural merger remedies reviewed in 2015/16 and retained

<i>Acquirer / name of companies giving undertakings</i>	<i>Target</i>	<i>Date of undertakings</i>
Belfast International Airport Ltd	Belfast City Airport Ltd	30/04/96
British Sky Broadcasting Group plc	Manchester United plc	02/08/01
Coats Viyella plc	Tootal Group plc	03/08/90
Enterprise Inns plc	Laurel Pub Group Limited	23/09/02
Greene King plc	Laurel Pub Holdings Limited	06/10/04 and 23/06/06 Order
GWR Group plc	Scottish Radio Holdings plc, Galaxy Radio Wales and the West Ltd	22/07/03
Hanson plc	Pioneer plc	04/05/00
H+H Celcon Ltd, part of H+H International A/S	Marley Building Materials Ltd	14/01/03
Hilton Group plc	Coral betting business of Ladbroke Group plc	27/10/99
iSOFT Group plc	Torex plc	29/04/04
Lloyds TSB Group plc	Abbey National plc	24/01/02
Michelin Tyre plc	National Tyre Service Ltd	01/03/91
National Power plc	Assets of Midlands Electricity plc	01/09/99
National Power plc	Southern Electric plc	24/02/97
Rockwool Ltd	Owens-Corning Building Products (UK) Ltd	11/10/99
Schlumberger plc	The Raytheon Company	19/11/92
SCR Sibelco SA	Fife Silica Sands	31/10/01
Severn Trent Water plc	South West Water plc	19/12/97
Stena AB, Stena Line (UK) Ltd	P&O's Liverpool to Dublin route	15/05/04
Sunlight Service Group Ltd	Johnson Group Cleaners plc	23/12/83