

Date 16 September 2004  
Our ref 346/A0.16  
Your ref  
Partner Simon Holmes  
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By Email

Dear Mr Roberts

**Application of Divestiture Remedies in Merger Inquiries: Competition Commission Guidelines - Consultation Document**

I refer to the invitation from the Competition Commission for SJ Berwin to comment on the above Consultation Document.

We have reviewed the Document and consider that the Competition Commission's guidance on its proposed approach to applying divestiture remedies is helpful. The approach accords with the European Commission's approach under the Merger Regulation as set out in the European Commission's Notice on Remedies<sup>1</sup> and in its Best Practice Guidelines for divestiture commitments in merger cases<sup>2</sup>. We consider that the European Commission's approach has generally operated well and that therefore the Competition Commission's approach is to be welcomed.

We note that the Competition Commission's guidance will be revised to reflect changes in best practice and experience gained from inquiries. Further, the Competition Commission will apply the guidance "flexibly". We welcome this approach given the rapidly-developing experience in the area of remedies in particular in the US and in the EU.

We also note that the European Commission is in the process of conducting a study on remedies and this study may further influence best practice in the area. Therefore we consider that, whilst the Competition Commission's Guidance is welcome to assist companies in their evaluation of acceptable remedies in merger cases, the Competition Commission's flexible and evolving approach is key to ensure that the UK can benefit from experience in the application of remedies, both at the UK level but also from other jurisdictions where relevant.

The Competition Commission might also wish to consider publishing a draft standard divestment undertaking and a draft standard trustee mandate in the same way that the European Commission has published such drafts which have proven of assistance in merger cases.

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<sup>1</sup> Commission Notice on remedies acceptable under Council Regulation (EEC) no 4064/89 and under Commission Regulation (EC) No 447/98.

<sup>2</sup> Best Practice Guidelines: The Commission's Model Texts for Divestiture Commitments and the Trustee Mandate under the EC Merger Regulation ; Standard Commitments Text and Standard Trustee Mandate Text published on 2 May 2003.

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Please let me or my colleague Sarah Turnbull know if you would like to discuss this. We are happy for our brief comments to be published.

With kind regards

Yours sincerely

Simon Holmes

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