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Mr D Roberts  
Director of Remedies  
Competition Commission  
Victoria House  
Southampton Row  
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16 July 2004

Dear Mr Roberts

**Consultation on Divestiture Remedies**

I write further to the letter of invitation from Professor Geroski of 21 June.

As Director General of Electricity Supply I had experience of encouraging the two main thermal generating companies to divest power stations, initially as an action in its own right, later as an implicit condition of mergers.

I agree that structural remedies such as divestment are likely to be preferable to behavioural remedies in many circumstances. In general I agree with the policy outlined and the accompanying discussion. But I am not sure that I see the basis for two of the presumptions in Part 3.

I agree that the CC will need to consider purchaser and composition risk. But I'm not sure that such considerations justify the presumption that divestiture of an existing business is to be preferred to divestiture of part of the business of a collection of assets. That was not the case with the power stations.

Similarly, I agree that the CC will need to consider whether a 'mix and match' collection of assets from different parties will function effectively. But I'm not sure that this justifies the presumption that it will normally be preferable for all the assets to be provided by one of the parties. In the case of the power stations, on the second occasion it would have been as easy to have taken them from both merging parties and sold either together or separately. On the first occasion, a single buyer did indeed take the stations from both parties. All this is not to disparage the underlying reasoning behind the present text, but simply suggesting that the text should not fetter the CC's discretion in working out and implementing the most appropriate remedy.

I cannot work out from the text what the 'crown jewels' discussion is all about.

The text does not discuss what turned out to be a significant issue in the power station disposal, namely, what if any continuing contractual links there should be between seller and buyer - or indeed, whether a long-term lease rather would be acceptable rather than a sale. It was argued to us that a) a continuing management contract would facilitate a new entrant buyer and reduce costs, b) that a contract to buy the power for some years would reduce risk for the buyer c) that a lease would reduce the upfront cost to the buyer and hence increase the pool of potential buyers d) that a continuing rental fee would ensure that the plant was used for peaking purposes, e) that a continuing link would reduce the risk of the seller running down the plant, f) that without continuing links of various kinds the price the sellers would get would be so much lower as to be inconsistent with their duty to shareholders, g) that certain links would speed up the disposal, and so on.

In general our preference was for a clean sale with no continuing links but for various reasons we accepted certain contractual links on the initial occasion. Later it became clear that clean sales were possible and preferable.

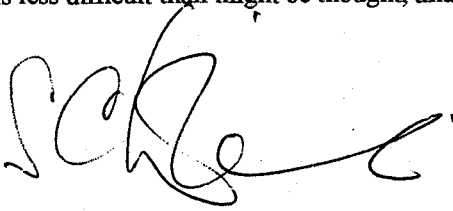
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I would argue that the CC too should start with the presumption that there should be a clean sale. and should not put anything in the text to encourage parties to think otherwise. But I simply note that the issue is likely to arise, and that the CC should not concede too lightly the possibility of continuing contractual links.

The final comment I would make is that the parties involved may present all kinds of arguments against disposal, including that it is difficult and costly and time-consuming. Experience in the power sector suggests that it is less difficult than might be thought, and that a strong line is likely to be worth pursuing.

Sincerely

A handwritten signature in black ink, appearing to read 'SCL', with a long horizontal flourish extending to the right.

Professor S C Littlechild