



**TRAVERS
SMITH
BRAITHWAITE**
LONDON PARIS BERLIN

10 SNOW HILL, LONDON EC1A 2AL
TELEPHONE +44 (0) 20 7295 3000
FAX +44 (0) 20 7295 3500
DX 79 LONDON
WWW.TRAVERSSMITH.COM

F.A.O: Mr David Roberts
Director of Remedies
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

OUR REF SRA/DG1
DOC ID 2124049
DIRECT LINE 020 7295 3296

14 September 2004

Dear Sir

Consultation on draft guidelines on the application of divestiture remedies in merger inquiries

We welcome the opportunity to comment on the Competition Commission's proposed introduction of guidelines on this very important aspect of the Competition Commission's role in merger inquiries.

As a general comment, whilst we appreciate the importance of consistency and transparency in the Competition Commission's approach, we are pleased that the Competition Commission also recognises the need for flexibility in the application of the guidelines and the need for proportionality of remedies. In our view, it is important that, when deciding whether a remedy is appropriate, the CC adopts a flexible approach and is conscious of the need not to impose remedies which are unnecessarily burdensome on the party giving the commitments or disproportionate to the possible adverse effects of the relevant merger on competition.

We also have the following specific comments on the draft guidelines:

- **Paragraph 3.2** - in our view, any restriction on the merger parties from subsequently purchasing assets or shareholdings sold as part of a divestiture package or acquiring material influence over them should be limited in time and/or subject to the prior consent of the OFT to cater for possible changes to the market structure which render such restrictions unnecessary.

C C BELL
R L HARMAN
J W KINGSTON
O W A BARNES
J LESLIE
A J BARROW
R M B HOLMES
A F DOUGLAS
C J CARROLL

N A C MURRAY
D Y ADAMS
C G HALE
J L BASS
P A C STANNARD
R J STRATTON
S J PAGET-BROWN
M A MOORE
M CHAMBERLAIN

S BUCKINGHAM
A WILSON
D M HENDERSON
M R BARDELL
J S RICHARDS
J M WALSH
V L NICHOLL
C S J BARTER
K H PILNY

K S BORDELL
A A KING
A J W LILLEY
J TUCKLEY
A J ROBERTS
S R SUMMERFIELD
A J JUDGE
T E PURTON
M N R EVANS

D M PATIENT
D H INNES
S A RUTMAN
R N E SKELTON
P SANDERSON
N F WATSON
K A RUSS
P N ESAM
A J GREGSON

R E MARKE
R J A BARRY
R R SPEDDING
A J GILLEN
P A LYONS
S C KEALL

14 SEPTEMBER 2004

- **Paragraphs 3.3 and 3.4** - whilst we understand that the CC would prefer divestiture of an existing stand-alone business, rather than a collection of assets, there are various circumstances in which the divestiture of one or more assets would be an adequate remedy. For example, where the business to be divested is limited to the distribution of a third party's products, the novation of the relevant distribution agreement and related customer contracts to a purchaser with its own distribution network may be an adequate remedy. We welcome the CC's acknowledgement that the divestment of a collection of assets may be an adequate remedy.
- **Paragraph 3.6** - in our view, the composition of any "crown jewels" package should be proposed by the merger parties rather than the CC. The draft guidelines seem to suggest that the composition of any "crown jewels" package will be unilaterally imposed by the CC. We support the statement in the draft guidelines that "crown jewels" packages will generally only be considered by the CC in circumstances where other effective options are not available. In our view, it would almost always be preferable for the CC to impose less burdensome alternatives, such as appointing a divestment trustee or requiring an up-front buyer.
- **Paragraph 4.1** - we think that the guidelines should be clearer about what is meant by the purchaser being "independent" from and having "no significant connection" with the merger parties. Is this intended to mean that there should be no control-type relationship or does it go further than that? In our view, the fact that the merger parties have an existing contractual relationship with a proposed purchaser in an unrelated market where the merger parties do not have market power should not, of itself, preclude divestment to that proposed purchaser.
- **Paragraph 4.4** - we consider that it is somewhat unreasonable and disproportionate to prevent the merger parties from progressing, pending divestiture, the integration of businesses which are unrelated to the business which is to be divested, where such integration will not lead to a substantial lessening of competition.
- **Paragraph 5.5** - it would be helpful if the guidelines could give a rough indication of the time periods the CC anticipates it will impose for the completion of the disposal of the divestiture package.

Yours faithfully

Travers Smith Braithwaite

TRAVERS SMITH BRAITHWAITE