

**TEMPLATE INTERIM UNDERTAKINGS
(COMPLETED MERGER)**

ACQUISITION BY X (ACQUIRER) OF Y (TARGET)

**Undertakings given by X to the Competition Commission pursuant to
section 80 of the Enterprise Act 2002**

On *[date]*, the Office of Fair Trading (OFT) made the reference to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by X of Y:

The CC wishes to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference:

The reference has not been finally determined in accordance with section 79(1) of the Act:

Now X hereby gives to the CC the following Undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action.

Management of the Y business until determination of proceedings

1. Except with the prior written consent of the CC, X undertakes that it will not during the specified period take any action which might prejudice the reference concerned or impede the taking of any action under the Act by the CC or other party which may be justified by the CC's decisions on the reference, including any action which might:
 - (a) lead to the integration of the Y business with the X business;
 - (b) transfer the ownership or control of Y or any of its subsidiaries; or
 - (c) otherwise impair the ability of Y to compete independently in any of the markets affected by the acquisition.
2. Further and without prejudice to the generality of paragraph 1, X will at all times during the specified period, procure that except with the prior written consent of the CC:
 - (a) the Y business is carried on separately from the X business and Y's separate sales or brand identity is maintained;
 - (b) the Y business is maintained as a going concern and sufficient resources are made available for the development of the Y business, on the basis of its pre-merger business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organizational structure of the Y business or to the management responsibilities within the Y business;
 - (d) the nature, description, range and quality of *[goods and/or services]* currently supplied in the United Kingdom by each of the two businesses are maintained and preserved;

- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) the assets of the Y business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Y business are disposed of; and
 - (iii) no interest in the assets of the Y business is created or disposed of;
- (f) there is no integration of the information technology of the two businesses, and the software and hardware platforms of the Y business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the [customer] [supplier] lists of the two businesses shall be operated and updated separately and any negotiations with Y's [customers] [suppliers] in relation to the Y business will be carried out by the Y business alone and for the avoidance of doubt X will not negotiate on behalf of the Y or enter into any joint agreements with the Y;
- (h) all existing contracts continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff or to the organizational structure of the Y business or to the management responsibilities within the Y business;
- (j) no key staff are transferred between the two businesses;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Y business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the two businesses, shall pass, directly or indirectly, from Y (or any of its employees, directors, agents or affiliates) to X (or any of its employees, directors, agents or affiliates), or *vice versa*, except where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed.

Compliance

3. X shall procure that each of its subsidiaries complies with these Undertakings as if it had given them.
4. X shall forthwith provide to the OFT and the CC such information or statement of compliance as either of them may from time to time require for the purposes of monitoring compliance by X and its subsidiaries with these Undertakings. In particular, on the [●] 200[●] and subsequently on the [●] of each month, (or, where the [●] does not fall on a working day, the first working day thereafter) the Chief Executive Officer of X shall provide a monthly statement to the CC on behalf of X confirming compliance with these Undertakings in the form set out in the Appendix to these Undertakings.
5. At all times, X will actively keep the CC informed of any material developments relating to the Y business which includes but is not limited to:

- (a) details of staff who leave or join the Y business;
 - (b) any Y business plant breakdowns which have halted production for more than 24 hours or changes in the Y business's production arrangements which have affected the working pattern of more than five Y business employees;
 - (c) all substantial customer volumes won or lost by the Y business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Y business contractual arrangements or relationships with key suppliers.
6. X shall comply in so far as it is able with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.

Interpretation

7. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
8. For the purposes of these Undertakings:

'the acquisition' means the acquisition by X of Y, completed on *[date]*;

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'the CC' means the Competition Commission;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these Undertakings 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 decisions' means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'the OFT' means the Office of Fair Trading;

'the ordinary course of business' means matters connected to the day-to-day supply of *[goods and/or services]* by Y and does not include matters involving significant changes to the organizational structure or related to the post-merger integration of Y;

'the specified period' means the period beginning on the date of these Undertakings and terminating when the reference is finally determined in accordance with sections 79(1) and (2) of the Act;

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

'the two businesses' means the X business and the Y business;

'X' means *[full registered name of acquirer]*;

'the X business' means the business of X and its subsidiaries carried on as at *[date of acquisition]*;

'Y' means *[full registered name of target]*;

'the Y business' means the business of Y and its subsidiaries carried on as at *[date of acquisition]*; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF X PLC

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

Compliance statement for X

I [insert name] confirm on behalf of X that:

- (a) X has complied with the Undertakings given by it and accepted by the CC on [date] ('the Undertakings') in the period from [insert date] to [insert date].
- (b) X's subsidiaries have also complied with the Undertakings in the period from [insert date] to [insert date].
- (c) No action has been taken by X in the period from [insert date] to [insert date] that will impede the taking of any action by the CC which may be justified by its decision on the reference.
- (d) X and its subsidiaries remain in full compliance with the Undertakings and will continue actively to keep the CC informed of any material developments relating to the Y business in accordance with paragraph 5 of the Undertakings.
- (e) The Y business has been maintained as a going concern and sufficient resources have been made available for the development of the Y business, on the basis of its pre-merger business plans.
- (f) The Y business's customer/supplier lists have been operated and updated purely for the purposes of the Y business without any involvement of X.
- (g) All customer/supplier negotiations for the Y business have been carried out independently of X.
- (h) There have been no substantive changes to the nature, description, range and quality of any goods and/or services currently supplied in the United Kingdom by the Y business.

Assets—including facilities and goodwill

- (i) Except in the ordinary course of business, none of the assets of the Y business have been disposed of.
- (j) Except in the ordinary course of business, no interest in the assets of the Y business has been created or disposed of.
- (k) Except in the ordinary course of business, all of the assets of the Y business have been maintained and preserved as they were before the merger.

Contracts

- (l) All existing contracts awarded to the Y business continue to be serviced by Y.

Information technology systems

- (m) There have been no changes to the software and hardware platforms of the Y business, beyond routine changes and maintenance.

Staff

(n) No changes have been made to or to the key staff or the organizational structure of the Y business or to the management responsibilities within the Y business.

Material developments

- (o) Except as listed in paragraph (p) below there have been no:
- (i) plant breakdowns at the Y business which have halted production for more than 24 hours or changes in the Y business’s production which have affected the working pattern of more than five employees of the Y business;
 - (ii) substantial customer volumes won or lost for the Y business and no substantial changes to the Y business’s customer contracts; or
 - (iii) substantial changes in the Y business contractual arrangements with key suppliers.
- (p) [list of material developments]

Confidential information

(q) No business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the two businesses, has passed, directly or indirectly, from Y (or any of its employees, directors, agents or affiliates) to X (or any of its employees, directors, agents or affiliates), or *vice versa*.

FOR AND ON BEHALF OF X

Signature

Name

Title

Date