

The 1986 undertakings

Prosper De Mulder Limited (PDM) hereby undertakes to the Secretary of State that it will and will procure that its subsidiaries will:

1. (i) not enter into or offer a price for any gut-room contract unless, on the basis of reasonable estimates, the total expected revenue (calculated in accordance with undertaking (iii) below) accruing from the performance of such contract exceeds the total expected direct and indirect costs (calculated in accordance with undertaking (ii) below) attributable to the entry into and performance of such contract;

(ii) conduct all gut-room business in a manner which avoids any cross-subsidy between that business and any other business of PDM or any of its subsidiaries or between one gut-room contract entered into by PDM or any of its subsidiaries and another such contract;

(iii) in particular and without prejudice to undertaking (ii) above, adopt and operate accounting systems and accounting procedures so that the accounts of each gut-room contract entered into by PDM or any of its subsidiaries and of the gut-room contract entered into by or business of PDM and its subsidiaries will be:

(a) charged with all direct and indirect costs reasonably attributable to the conduct of that business; and

(b) credited with all revenue deriving from the conduct of such business;

such costs and revenue in any case where they arise out of a transaction otherwise than at arms-length being equal to the costs and revenue that would be charged or credited in respect of any equivalent transaction at arms-length; and

(iv) provide the Director General of Fair Trading (DGFT) with such information as he may reasonably require from time to time to monitor compliance with the foregoing undertakings, and in particular:

(a) a statement of its gut-room contracts in operation at the date of these undertakings, specifying separately each abattoir or abattoirs in respect of which a gut-room contract is then in operation;

(b) in respect of each gut-room contract which it is proposed to enter into a statement showing:

(i) estimated throughput of, by number and type, animal and price to be paid for each type of animal;

(ii) estimated yield of product by weight from each type of animal and price of yield of product;

(iii) estimated direct expenses;

(iv) in the case of a gut-room contract relating to more than one abattoir, estimated amount and basis of apportionment of any common direct expenses;

(v) estimated indirect expenses and their basis of allocation;

(c) an audited annual statement, within three months of the end of the relevant accounting reference period, of the profit and loss of its gut-room business, together with reconcilable management accounts showing the profit and loss of each gut-room contract separately.

2. Not purchase or collect, or offer to purchase or collect, any grade of animal waste from any person on condition that such person supplies or will supply animal waste of a higher grade or grades to PDM or any of its subsidiaries.
3. (i) notify the DGFT at least one month before the date on which PDM or its subsidiaries (as the case may be):
 - (a) acquire directly or indirectly or do anything with the intent that an associated person will acquire directly or indirectly any animal waste, enterprise, or
 - (b) do anything alone or with others which would result in any animal waste enterprise ceasing to be distinct (within the meaning of Section 65, interpreted, where appropriate, in accordance with Section 77, of the Fair Trading Act 1973) from any enterprise carried on by or under the control of PDM or any of its subsidiaries.
- (ii) on notifying the DGFT in accordance with undertaking (i) above any proposed action, provide him with details of such action, which shall include:
 - (a) the identity of the animal waste enterprise or enterprises in relation to which such action is proposed;
 - (b) where available, a profit and loss account for the most recent year's trading of such enterprise, or each such enterprise, and a balance sheet showing the financial position of such enterprise, or each such enterprise, at the end of that year;
 - (c) details of any consideration proposed to be paid, specifying the amount, if any, attributable to the acquisition of the goodwill of such enterprise or each such enterprise; and
- (iii) provide the DGFT with such further information as he may reasonably require with respect to any proposed action which is notified in accordance with undertaking (i) above.

In these undertakings:

`subsidiary' has the same meaning as in section 736 of the Companies Act 1985;

`associated person' means any person who is associated within the meaning of section 77(14) of the Fair Trading Act 1973 with PDM or any of its subsidiaries;

`enterprise' means, in relation to PDM and its subsidiaries, the activities or part of the activities of a business;

animal waste enterprise' means the activities or part of the activities of rendering or collecting business carried on by or under the control of any person other than PDM or its subsidiaries;

gut-room contract' means a contract for the operation of a gut-room in an abattoir or a contract for the operation of gut-rooms in abattoirs under common ownership;

`gut-room business' means the business of operating gut-rooms under gut-room contracts;

animal waste' and `animal' have the meanings attributed to them in the reference to the Monopolies and Mergers Commission dated 23 November 1982 of the matter of the existence or the possible existence of a monopoly situation in relation to the supply of animal waste in Great Britain.