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**Merger notice under section 96 of the Enterprise Act 2002**

December 2010

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**Ref No:** (Office use only)

Use this Merger notice only for notifying the OFT of proposed mergers which will not be completed before expiry of the consideration period and which you wish to be subject to the statutory time limit for decision. Do not use it for notifying completed mergers or for submitting requests for confidential guidance or proposed mergers which will be subject to an administrative timetable. If you need any help or further information contact the Mergers Branch at the address at the end of Part Three.

The Guidance Notes form part of the Notice. Read them in full before answering any of the questions.

Please complete Parts One and Three of the notice in typescript or block letters. Give your answers to Part Two in typescript on separate sheets.

## **PART ONE - GENERAL INFORMATION**

1 Who is the authorised person giving this notice?

See Guidance Note 1.1

Name:

Position:

Company/firm:

2 Have you authorised any representative to act on your behalf?

See Guidance Note 1.2

Name:

Position:

Company/firm:

3 To which person and address should the OFT send any correspondence?

See Guidance Note 1.3

Name:

UK Address:

Postcode:

Telephone No

Fax No:

E-mail address:

4. Briefly describe the merger proposal being notified stating:

- the names of the acquiring company and target
- the type of transaction (for example, whether it is an agreed bid, a full takeover or the acquisition of assets or of a minority shareholding giving material influence, or a joint venture)
- how the transaction qualifies as a relevant merger situation (for example through UK turnover or combined share of supply)
- a brief description of the business or businesses being acquired
- the areas of overlap between the acquirer and target
- the reasons for the acquisition, and
- any other countries where the transaction has been notified.

See Guidance Note 1.4 and Chapter 5 of *Mergers – Jurisdictional and procedural guidance*

5. Briefly describe the steps taken to publicise the proposal and enclose a copy of any press release or report (including those in specialist or trade journals) and details of any notifications to listing authorities - for example, for admission to the UK Listing Authority Official List and for admission to trading on the London Stock Exchange.

See Guidance Note 1.5

## **PART TWO – MERGER DETAILS**

Now give a full description of the merger proposal, on separate sheets, by replying to the following questions. Some of the questions are complex, and they may not all be relevant in every case. If in doubt, you should consider seeking legal advice. Please provide copies of documents referred to in this notice where possible.

### **The merger situation**

See Guidance Note 2.1 and Chapter 3 of *Mergers – Jurisdictional and procedural guidance* and Part 3 of *Merger Assessment Guidelines*

1. Give details of the proposed arrangements by which the main enterprises will cease to be distinct ('the merging enterprises'). Include share acquisitions, changes of directorships etc, and any factors upon which completion of the merger is conditional.

2. Give details of the ownership and control of the merging enterprises:

(a) before the merger, and

(b) following the merger.

3. What other enterprises may cease to be distinct as a result of the notified arrangements? Give details of the proposed change in shareholdings or in other relationships by which they might cease to be distinct.

### **Jurisdiction**

See Chapter 3 of *Mergers – Jurisdictional and procedural guidance* and paragraphs 3.1.3 to 3.3.10 of *Merger Assessment Guidelines*

4. What is the UK turnover associated with the enterprise being acquired?  
Guidance Note 2.2

5. Briefly describe the main products and services supplied by each of the merging enterprises. Give an estimate of their share of supply for any product or service of any description where any of the merging businesses (and/or any members of the same corporate group) have a share of supply in the UK, or in a substantial part of the UK, by value or volume, of 25 per cent or more.

## **Financial information**

See Guidance Note 2.3

6. Supply, for each of the merging enterprises, two copies of the most recent annual report and accounts. If annual reports are not available, give, for each of the merging enterprises, a profit and loss account and proforma balance sheet showing: total turnover (excluding VAT); and profit before tax.

7. What is the UK turnover associated with the acquirer?

8. What is the value of the consideration being offered? What form will it take?

## **Timing**

See Guidance Note 2.4

9. What is the expected time scale for: exchange of contracts; and completion of the merger?

## **City code on takeovers and mergers**

See Guidance Note 2.5

10. If the offer is subject to the City Code on Takeovers and Mergers, please supply two copies of the Offer Document and Listing Particulars. If these are not yet available, provide copies of the latest drafts and supply the final versions as soon as they are issued.

11. What is the effective closing date likely to be?

12. Has the offer been recommended by the board of directors of the target company?

## **Plans and motives**

13. What are the reasons for the merger and the plans for the merged businesses?

14. Please provide copies of analyses, reports, studies and surveys submitted to or prepared for any member(s) of the board of directors, the supervisory board, or

the shareholders' meeting, for the purpose of assessing or analysing the proposed transaction

with respect to competitive conditions, competitors (actual and potential), and market conditions and indicate (if not contained in the document itself) the date of preparation.

### **Markets**

See Part 5, section 5.2 of *Merger Assessment Guidelines*

### **Horizontal links**

See Part 5 sections 5.4 and 5.5 of *Merger Assessment Guidelines*

15. Please provide:

(a) a brief description of each product or service, including the extent to which it is served at a regional, national or wider level and a brief description of the relevant product or geographic markets, referring where appropriate to any independent sources of information (such as MINTEL, trade publications, independent commissioned research etc.), and

(b) a brief description, in terms of characteristics/price differences, of any product(s) or service(s) that might be considered close substitutes, on the demand or supply side, to the goods or services produced by the merged companies.

16. For the markets identified at 15 and where the merger will create combined market shares for the merged businesses of 10 per cent or more, by value or volume, in any product or service of any description, in the UK as a whole, or in any region, give the following information. Refer to industry data where available. Use the most recent figures available and specify the period they cover.

(a) an estimate of the merged companies' market share plus attributed shares arising from any affiliated companies for these markets. Where this differs from the merging companies' market share as put forward in answer to 15a, provide an estimate of the merging companies' market share and that of the affiliated companies

(b) an estimate of the value and volume of goods or services supplied within the UK as a whole (that is, UK output less exports, plus imports)

(c) an estimate of the value and volume of imports and exports for the UK as a whole

(d) an estimate of the value and volume of UK sales for each business:

(e) the names, contact details and market shares of both parties' top five competitors (including overseas companies/importers) for each product or service provided by both parties to the merger. Contact details to include contact name, address, e-mail address, fax and telephone numbers

(f) the names and contact details (to include contact names, addresses, e-mail addresses, fax and telephone numbers) and estimated share of the party's business of both parties' top five customers (including overseas customers if appropriate)

Where there are marked differences in the size of your customers, such that some customers may purchase goods or services by different means or in significantly different quantities, please provide these same details for five medium and five small customers

(g) a description of how competition works in the market(s) identified at 15 (a) and (b)

(h) details of any bids made by the parties in the last three years to win business in the overlapping markets, indicate whether these bids were won or lost and if known the reasons why

(i) details of any shareholding, agreement or joint ventures with other suppliers

(j) an estimate of the capital expenditure required to enter the market on a scale necessary to gain a five per cent market share, both as a new entrant, and as a company which already has the necessary technology and expertise (for example, a company located overseas) and estimate to what extent this cost is recoverable should the firm decide to exit the market

See section 5.8 of *Merger Assessment Guidelines*

(k) an estimate of the scale of annual expenditure on advertising/promotion relative to sales required to achieve a market share of five per cent

(l) details of any other factors affecting entry, for example, planning restraints, technology or R&D requirements, availability of raw materials, length of contract etc including, where possible, an estimate of the time and resources necessary to overcome these factors

(m) an assessment of the extent to which imports provide actual competition in the UK market, and the extent of potential competition from imports. (Cover factors such as transport costs, tariffs, quotas, standards, government regulations etc)

(n) an assessment of the ease of exit from the market. Indicate any entry and exit over the past five years

(o) an assessment of any effects the merger may have at local level.

Describe the nature of local competition and give details of any localities where competition may be reduced as a result of the merger

(p) a description of any efficiencies or customer benefits that you believe the merger will bring (attach any appropriate supporting documentation). See paragraphs Section 5.7 of *Merger Assessment Guidelines* and Chapter 4 paragraphs 4.1 to 4.13 of *Mergers - Exceptions to the duty to refer and undertakings in lieu of reference guidance*

(q) a brief assessment of any other features of the industry that the OFT should take into account in considering the effect of the merger.

### **Combined purchases**

17. Identify any product(s) (including raw materials) or service(s) for which the combined purchases of the merged businesses will account for more than 10 per cent of the total UK sales of that product or service.

### **Vertical links**

See Section 5.6 of *Merger Assessment Guidelines*

18. Where either of the parties has greater than 15 per cent of the share of supply of any inputs or outputs in a vertical supply chain, please provide details of:

(a) the share of supply of these goods or services

- (b) the extent of pre-merger vertical integration
- (c) any long term existing supply agreements, and
- (d) the impact of the merger, if any, on the vertical supply chain.

## **PART THREE – DECLARATION**

Please return Parts One and Three of the Notice, with your answers to Part Two, to:

Office of Fair Trading, Mergers Branch, 2-6 Salisbury Square, London EC4Y 8JX

Telephone No. 020 7211 8915/8917/8452/8586

Fax No. 020 7211 8916 or Email [mergers@oft.gsi.gov.uk](mailto:mergers@oft.gsi.gov.uk)

### **Declaration**

The OFT will not accept a Merger Notice unless the Declaration has been signed by the authorised person. (See Guidance Notes 3.1 and 3.2)

I understand that:

It is a criminal offence for a person to supply information in a Merger Notice which he knows to be false or misleading in any material respect.

The OFT may reject any Merger Notice if it is suspected that it contains information which is false or misleading in any material respect.

The OFT may bring the existence of the merger proposal described in this Notice, and the fact that the Notice has been given, to the attention of interested parties.

Signed:

Name: (block letters)

Position: (block letters)

Date:

I confirm that the person named in reply to question 1.2 (if any) is authorised to act on my behalf for the purposes of this Notice.

Signed:

**Have you attached** (as appropriate):

**Press release**

**Two copies of the most recent annual report and accounts or appropriate profit and loss accounts and pro-forma balance sheets**

**Two copies of the Offer Document and Listing Particulars**

**Relevant Board documents**

**The appropriate fee – payable to the OFT**

## **GUIDANCE NOTES TO MERGER NOTICE**

### **Part One - General Information**

#### **Guidance Note 1.1**

Only an authorised person can give a Merger Notice. An authorised person is defined by Regulations as any person carrying on an enterprise to which the notified arrangements relate.

#### **Guidance Note 1.2**

An authorised person can appoint a representative, for example, a firm of solicitors, to complete the Notice on his behalf and to act for him in further correspondence with the OFT. If you do authorise someone to act in this way you must sign the authorisation at Part Three of the Notice.

You can withdraw or change the authorisation at any time but if you do so you must give immediate notice to the OFT in writing.

#### **Guidance Note 1.3**

You must give a full address to which the OFT can send all correspondence. If you have appointed a representative and wish correspondence to be sent to them, give their address here. Otherwise give details of the person within your company who will deal with the correspondence, and the address to which the OFT should write.

Wherever possible, give a UK address, fax number and email address and ensure that the OFT can make contact between 9.00am and 5.00pm on weekdays. If your address changes, you must notify the OFT immediately in writing.

### **Guidance Note 1.4**

Part Two of the Notice seeks a full description of the proposed merger. Give a short description here on the following lines:

'AB Holdings Limited announced on 3 June that it was to acquire the whole of the assets and business of CD Co Plc (which is a wholly owned subsidiary of XY Group Plc) by share issue, for a consideration of £25 million. The overlap of products/services is in business computers and office equipment...'

If there are any changes in the circumstances of the merger after you have submitted the Notice, tell the OFT immediately.

### **Guidance Note 1.5**

Use this Notice to notify the OFT of proposals which have already been made public. The OFT will issue a statement on the lines that: 'the proposed acquisition by A of B was notified to the OFT on [x date]. The period for considering the merger will end on [y date].

### **Part two - merger details**

#### **THE MERGER SITUATION**

### **Guidance Note 2.1**

Questions 1-3 will enable the Office to identify each of the merger situations which may arise from the transaction being notified. This is important because if the period for considering the Notice expires without the notified merger being referred to the Competition Commission (CC), there are restrictions on the OFT referring any of the relevant merger situations which might arise from completion of the notified merger. (This does not affect the OFT's powers to make a reference where material information was withheld or where the information given was false or misleading).

## **JURISDICTION**

### **Guidance Note 2.2**

UK Turnover is determined in accordance with The Enterprise Act 2002 (Determination of Turnover) Order 2003. Guidance is also available in Annex B of *Mergers – Jurisdictional and procedural guidance*.

## **FINANCIAL INFORMATION**

### **Guidance Note 2.3**

The OFT will usually need only the most recent annual report and accounts of the main parties to the merger. However, where the acquiring company is part of a larger group, the OFT will normally also need the most recent group annual report and accounts. It will not need group accounts for the target's parent company where the target is a subsidiary or associate company and separate accounts are prepared for that company. It is important that the target's UK turnover for the preceding business year is provided. If no annual report or accounts are available, provide separate figures (audited if possible) on turnover (including UK turnover), profits and assets. On turnover, the OFT needs details of sales before VAT and duty. On profits, it requires details of operating profit before tax and interest.

If a merger gives rise to a significant increase in market share, the OFT may subsequently wish to review profits, sales and capital employed in the relevant businesses.

Ensure that this information is available, or could be estimated if required, for both the acquiring and target company.

## **TIMING**

### **Guidance Note 2.4**

Section 100(1)(b) of the Enterprise Act provides that if any of the enterprises to which the Notice relates cease to be distinct from each other at any time during the consideration period, the pre-notified merger could remain liable for reference to the CC for four months from the date of its completion. You should bear this in mind when considering the timing of completion of a merger or submission of a Notice.

## **CITY CODE ON TAKEOVERS AND MERGERS**

### **Guidance Note 2.5**

To allow for submission of a Notice before the posting of an offer, you can supply the Offer Document and Listing Particulars in draft form. The consideration period will run from submission of the drafts, although the OFT will still need copies of the final versions as soon as these are published.

The OFT does not envisage that the pre-notification timetable will raise significant difficulties in relation to the timing of public offers. You should however bear in mind the need to reconcile submission of the Notice with the requirements of City Code on Takeovers and Mergers. If you are seeking a decision by the first closing date of an offer, the OFT will need to receive the Notice before the posting of the Offer Document. This will assist the OFT in reaching a decision by the first closing date. The OFT cannot be bound by the first closing date however, and where it is not in a position to reach a decision by then, the consideration period will need to be extended.

## **MARKETS**

### **See Part 4 and 5 of *Merger Assessment Guidelines***

#### **Part three - Declaration**

##### **Guidance Note 3.1**

The Declaration must be signed by the authorised person. It draws your attention to two important provisions of the Enterprise Act. The first relates to the provision of false or misleading information. Under section 117 of the Enterprise Act it is an offence to intentionally or recklessly giving false or misleading information. In relation to pre-notification, it is an offence:

- knowingly or recklessly to give false or misleading information to the OFT, either in response to the Notice, or in reply to any additional questions raised by the OFT during the consideration period or
- knowingly or recklessly to furnish false or misleading information to a third party, for example your authorised representative or legal adviser, in the knowledge that they will then supply it to the OFT.

The penalties for breach of this provision are severe: a fine of up to the current statutory maximum, or a maximum of two years' imprisonment, or both.

The OFT also has powers to reject the Notice, at any time before the period for considering it expires, where it suspects that any information given in the Notice, or in response to further enquiries, is false or misleading. The effect of rejection is that the proposal which has been notified will remain liable for reference to the CC for a period of four months after the date of its completion.

Secondly, the Declaration reminds you that the OFT will publicise the existence of the merger proposal as notified. It will also draw it to the attention of third parties in order to seek their views (Guidance Note 1.5). The OFT will have regard to the provisions of the Act in relation to disclosure of information. Its aim in publicising the merger proposal is solely to ensure that those with an interest in the merger are given an opportunity to comment.

### **Guidance Note 3.2**

The Declaration also confirms the authorisation of any representative named in reply to act on behalf of a company the Declaration must be signed by a director or other officer of that company.