

Decision to release Undertakings given pursuant to section 88 Fair Trading Act 1973

Introduction

1. Following the 1993 Monopolies and Mergers Commission (MMC) report into the supply of animal waste in England and Wales and in Scotland, Prosper de Mulder (PDM) and William Forrest and Son (Paisley) Limited (Forrest) gave undertakings, dated 1 February 1995, to the Secretary of State for Trade and Industry (the Undertakings). These undertakings addressed aspects of PDM's and Forrest's trading practices that had been found by the MMC to operate against the public interest.
2. The main public interest concerns identified in the MMC's report, in respect of both PDM's and Forrest's trading practices, related to discriminatory pricing, and in particular the finding that this had harmed smaller competitors and restricted competition. In addition, the MMC found that PDM's financial reporting arrangements were not suitably transparent and gave a distorted account of the true profitability of its rendering business. PDM was also found to have breached earlier undertakings relating to its gut room business and to acquisitions, which had led to a restriction of competition.
3. On 4 October 2004, the Undertakings were specified under paragraph 16(1) of Schedule 24 to the Enterprise Act 2002 by the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004 (SI 2004/2181) (the Order) with the effect that the CC now has the power to supersede, vary or revoke the Original Undertakings.

OFT recommendation

4. Following a review of the operation of the Undertakings carried out in accordance with section 88 of the Fair Trading Act 1973, and sections 4, 5 and 7 of the Enterprise Act 2002 (the Act), the Office of Fair Trading (OFT) made a recommendation to the CC in October 2006 (the Recommendation).
5. The OFT recommended that PDM be released from the following undertakings:
 - Undertaking 1(1)b (conditional purchasing);
 - Undertaking 3 (Acquisitions);
 - Undertaking 4 (accounting information);
 - Undertakings 5 to 8 (gut rooms);
 - Undertaking 9 (Market Harborough plant);
 - Undertaking 10 (consequential amendments to remove references to issues in removed undertakings);
 - Undertaking 11b (PDM auditors to provide information to the OFT);
 - Undertaking 12 (appointment of auditors); and
 - Undertaking 13 (replacement of the 1986 undertakings).

6. The OFT did not provide advice to the CC to vary, supersede or revoke Undertakings 1(1)a, 1(1)(2) and 2, which relate to PDM's pricing practices. The OFT believed that these Undertakings should be retained in place subject to review in due course once changes in the industry have stabilized.
7. The OFT did not provide advice to the CC to vary, supersede or revoke Forrest's Undertakings. The OFT believed that these Undertakings should be retained in place subject to monitoring and further review in due course.

CC consultation on provisional decision

8. On 24 May 2007, the CC published a notice of proposal to release undertakings setting out its provisional decision to accept the Recommendation of the OFT to release PDM from its Undertakings 1(1)b, 3, 4, 5 to 8, 9, 10, 11b, 12, and 13.
9. The CC received no responses to this notice of proposal to release.

Decision

10. For the reasons set out in the OFT's report,¹ and having consulted on this proposed decision, the CC accepts the Recommendation of the OFT and hereby releases PDM from its Undertakings 1(1)b, 3, 4, 5 to 8, 9, 10, 11b, 12, and 13.



PETER FREEMAN
Chairman
27 June 2007

¹http://www.of.gov.uk/advice_and_resources/resource_base/register-orders-undertakings/advice.