

2006 No. 3095

COMPETITION

**The Enterprise Act 2002 (Enforcement Undertakings) (No.2)
Order 2006**

<i>Made</i>	- - - -	<i>20th November 2006</i>
<i>Laid before Parliament</i>		<i>23rd November 2006</i>
<i>Coming into force</i>	- -	<i>20th December 2006</i>

The Secretary of State makes the following Order in exercise of the powers conferred upon him by section 277(1) and (2) of, and by paragraphs 15(1) and (3) and 16(1) of Schedule 24 to, the Enterprise Act 2002(a):

Title and commencement

1. This Order may be cited as the Enterprise Act 2002 (Enforcement Undertakings) (No.2) Order 2006 and shall come into force on 20th December 2006.

Interpretation

2. In this Order—

“the Act” means the Enterprise Act 2002;

“the 1973 Act” means the Fair Trading Act 1973(b).

Specification

3.—(1) The undertakings described in Part 1 of the Schedule to this Order, which have been accepted by the Secretary of State under section 88 of the 1973 Act, are specified for the purposes of paragraphs 15(1), 15(3)(a) and 16(1) of Schedule 24 to the Act.

(2) The undertakings described in Part 2 of the Schedule to this Order, which have been accepted by the Secretary of State under section 75G of the 1973 Act, are specified for the purposes of paragraphs 15(1) and 16(1) of Schedule 24 to the Act.

Consequential amendment

4. Where the undertakings numbered 1, 2, 4, 11 and 12 in Part 1 of the Schedule and numbered 14, 15 and 19 in Part 2 of the Schedule refer to action requiring the consent, approval or agreement of the Secretary of State, such consent, approval or agreement may be granted by the Office of Fair Trading.

(a) 2002 c.40.
(b) 1973 c.41.

20th November 2006

Ian McCartney
Minister of State for Trade, Investment and Foreign Affairs
Department of Trade and Industry

SCHEDULE

Article 3

PART 1

1. The undertakings given to the Secretary of State by National Power PLC following a report of the Monopolies and Mergers Commission entitled “National Power PLC and Southern Electric PLC: A report on the proposed merger” April 1996 (Cm 3230)(a).

2. The undertakings given to the Secretary of State by the Littlewoods Organisation PLC following a report of the Monopolies and Mergers Commission entitled “The Littlewoods Organisation PLC and Freemans PLC (a subsidiary of Sears PLC): A report on the proposed merger” November 1997 (Cm 3761)(b).

3. The undertakings given to the Secretary of State by Grand Metropolitan PLC, Brent Walker Group PLC and the William Hill Group PLC following a report of the Monopolies and Mergers Commission entitled “Grand Metropolitan PLC and William Hill Organisation: A report on the merger situation” August 1989 (Cm 776)(c).

4. The undertakings given to the Secretary of State by Cendant Corporation following a report by the Monopolies and Mergers Commission entitled “Cendant Corporation and RAC Holdings Limited: A report on the merger situation” February 1999 (Cm 4196)(d).

5. The undertakings given to the Secretary of State by MAI PLC following a report by the Monopolies and Mergers Commission entitled “MAI plc and London and Continental Advertising Holdings plc: A report on the merger” November 1987 (Cm 258)(e).

6. The undertakings given to the Secretary of State by the Scottish Milk Marketing Board following a report by the Monopolies and Mergers Commission entitled “Scottish Milk Marketing Board and Co-operative Wholesale Society Limited: A report on the proposed acquisition by the Scottish Milk Marketing Board of the Scottish Milk business of the Co-operative Wholesale Society Limited” December 1992 (Cm 2120)(f).

7. The undertakings given to the Secretary of State by Allied-Lyons PLC and Carlsberg A/S following a report by the Monopolies and Mergers Commission entitled “Allied-Lyons PLC and Carlsberg A/S: A report on the proposed joint venture” July 1992 (Cm 2029)(g).

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- (a) Cm 3230 April 1996. The acceptance of the undertakings was announced in a DTI Press Notice dated 5 March 1997 (P/97/189).
- (b) Cm 3761 November 1997. The acceptance of the undertakings was announced in a DTI Press Notice dated 25 September 1998 (P/98/725).
- (c) Cm 776 August 1989. The acceptance of the undertakings was announced in a DTI Press Notice dated 7 December 1989 (P/89/820).
- (d) Cm 4196 February 1999. The acceptance of the undertakings was announced in a DTI Press Notice dated 23 November 1999 (P/99/950).
- (e) Cm 258 November 1987. The acceptance of the undertakings was announced in a DTI Press Notice dated 29 June 1988 (88/473).
- (f) Cm 2120 December 1992. The acceptance of the undertakings was announced in a DTI Press Notice dated 18 March 1993 (P/93/96).
- (g) Cm 2029 July 1992. The acceptance of the undertakings was announced in a DTI Press Notice dated 27 November 1992 (P/92/769).

8. The undertakings (residual) given to the Secretary of State by Badgerline Holdings Ltd following a report by the Monopolies and Mergers Commission entitled “Badgerline Holdings Ltd and Midland Red West Holdings Ltd: A report on the acquisition by Badgerline Holdings Limited of Midland Red West Holdings Limited” March 1989 (Cm 595)(a).

9. The undertakings given to the Secretary of State by Hepworth Ceramic Holdings PLC following a report by the Monopolies and Mergers Commission entitled “Hepworth Ceramic Holdings PLC and Steetley PLC: A report on the proposed merger of Hepworth Ceramic Holdings PLC and Steetley PLC” February 1984 (Cm 9164)(b).

10. The undertakings given to the Secretary of State by Valhi Incorporated following a report by the Monopolies and Mergers Commission entitled “Valhi Incorporated and Akzo NV: A report on the proposed merger” January 1991 (Cm 1387)(c).

11. The undertakings given to the Secretary of State by Sunlight Service Group Ltd following a report by the Monopolies and Mergers Commission entitled “The Sunlight Service Group PLC and Johnson Group Cleaners PLC and Initial PLC and Johnson Group Cleaners PLC” May 1983 (Cm 8868)(d).

12. The undertakings given to the Secretary of State by Hoverspeed (UK) Ltd following a report by the Monopolies and Mergers Commission entitled “British Rail Hovercraft Limited and Hoverlloyd Limited: A report on the proposed merger”. June 1981 (Cm 374)(e).

13. The undertakings given to the Secretary of State by Birds Eye Wall’s Ltd, Walls-Whippy Ltd, Calorval Ltd, Camp Bros (Café) Ltd, Creamery fare Continental Ice Cream Ltd, Criterion Ices Ltd, Ebor Ice Cream Co Ltd, Fifti Ices Ltd, Franco Ices, Milk Marketing Board for Northern Ireland, Northern Dairies (Ireland) Ltd, Pollards Confections Ltd, G Porrelli & Co Ltd, Precis (4000) Ltd (Formerly J Thayer and Sons Ltd), B Sidoli and Sons Ltd and Windsor Creameries during the period from November 1981 to April 1982 following a report by the Monopolies and Mergers Commission entitled “Ice Cream and Water Ices; A report in the supply in the United Kingdom of ice cream and water ices”. August 1979 (Cm 7632)(f).

PART 2

14. The undertakings given to the Secretary of State by National Power PLC in relation to its acquisition of certain assets of Midlands Electricity PLC(g).

15. The undertakings given to the Secretary of State by PowerGen PLC in relation to its acquisition of D R Investments (owner of Midlands Electricity PLC)(h).

16. The undertakings given to the Secretary of State by Hillside Holdings PLC in relation to its acquisition of Strong & Fisher (Holdings) PLC(i).

17. The undertakings given to the Secretary of State by Scottish and Newcastle PLC in relation to its proposed acquisition of the pubs, restaurants and lodges businesses of Greenhalls Group PLC(j).

(a) Cm 595 March 1989. The acceptance of the undertakings was announced in a DTI Press Announcement dated 2 February 1989 (P/89/687).

(b) Cm 9164 February 1984. The acceptance of the undertakings was announced in a DTI Press Notice dated 22 February 1984 (Ref 105).

(c) Cm 1387 January 1991. The undertaking was dated 2nd May 1991 and was published in the Register of Undertakings and Orders of the Office of Fair Trading dated October 1998.

(d) Cm 8868 May 1983. The acceptance of the undertakings was announced in a DTI Press Notice dated 5th May 1983 (Ref. 181).

(e) Cm June 1981. The acceptance of the undertakings was announced in a DTI Press Notice dated 27 Aug 1981 (Ref 390).

(f) The acceptance of the undertakings dated from November 1981 through to April 1982 was announced in a DTI Press Notice dated 6 May 1982 (ref 215).

(g) The acceptance of the undertakings was announced in a DTI Press Notice dated 1 October 1999 (P/99/790).

(h) The acceptance of the undertakings was announced in a DTI Press Notice dated 25 November 1998 (P/98/938).

(i) The acceptance of the undertakings was announced in a DTI Press Notice dated 22 November 1990 (P/90/693).

(j) The acceptance of the undertakings was announced in a DTI Press Notice dated 22 December 1999 (P/99/1054).

18. The undertakings given to the Secretary of State by Scottish and Newcastle PLC in relation to its acquisition of the brewing assets of Fosters Brewing Group Ltd (namely the brewing interests of Courage Ltd)(a).

19. The undertakings given to the Secretary of State by Granada PLC in relation to its acquisition of Pavilion Services Group Ltd(b).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies certain undertakings accepted by a Minister of the Crown in relation to merger and monopoly situations under section 88 of the Fair Trading Act 1973 (c.41) (“the 1973 Act”) for the purposes of paragraphs 15(1) and (3) and 16(1) of Schedule 24 to the Enterprise Act 2002 (“the Act”). This Order also specifies certain undertakings specified by a Minister of the Crown in relation to merger situations under section 75G of the 1973 Act for the purposes of paragraphs 15(1) and 16(1) of Schedule 24 to the Act.

Although Part V and related provisions of the 1973 Act have been repealed they continue to apply in relation to certain undertakings, by virtue of paragraph 13(1) and (2) of Schedule 24 to the Act and Article 4 of the Enterprise Act 2002 (Commencement No 3, Transitional and Transitory Provisions and Savings) Order 2003 (SI 2003/1397), subject to paragraphs 15 to 18 of Schedule 24 to the Act.

The effect of specification under paragraph 15(1) is that sections 94(1) to (6) of the Act (which provides for the enforcement of undertakings and related rights) shall apply in relation to the undertakings instead of sections 93 and 93A of the 1973 Act.

Specification under paragraph 15(3) has the effect that undertakings made under section 88 may be enforced by civil proceedings brought by the Competition Commission. The effect of specification under paragraph 16(1) is to provide the Competition Commission, in the case of section 88 cases, and the Office of Fair Trading, in the case of section 75G cases, with a power to supersede, vary or release any such undertaking instead of the Secretary of State.

Article 4 provides that where certain undertakings refer to action requiring the consent, approval or agreement of the Secretary of State, the Office of Fair Trading may give such consent, approval or agreement in place of the Secretary of State.

Copies of the merger undertakings and press notices referred to in the Schedule may be obtained from the Consumer and Competition Policy Directorate, DTI (telephone: 020 7215 5009; facsimile: 020 7215 6565; e-mail: paul.banister@dti.gov.uk).

A regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

(a) The acceptance of the undertakings was announced in a DTI Press Notice dated 14 August 1995 (P/95/541).

(b) The acceptance of the undertakings was announced in a DTI Press Notice dated 5 October 1995 (P/95/660).

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