
STATUTORY INSTRUMENTS

2006 No. 355

COMPETITION

The Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2006

<i>Made</i>	- - - -	<i>13th February 2006</i>
<i>Laid before Parliament</i>		<i>16th February 2006</i>
<i>Coming into force</i>	- -	<i>10th March 2006</i>

The Secretary of State, in exercise of the powers conferred upon him by section 277(1) and (2) of, and by paragraphs 15(1) to 15(3), 16(1) and 17(1) of Schedule 24 to, the Enterprise Act 2002⁽¹⁾ makes the following Order:

Title and commencement

1. This Order may be cited as the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2006 and shall come into force on 10th March 2006.

Interpretation

2. In this Order—
- “the Act” means the Enterprise Act 2002;
 - “the 1973 Act” means the Fair Trading Act 1973⁽²⁾.

Specification

3.—(1) The undertakings described in Schedule 1 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 orders described in Schedule 2 to this Order, which were made by the Secretary of State under section 56 of the 1973 Act, are specified for the purposes of paragraphs 15(2), 15(3)(b) and 17(1) of Schedule 24 to the Act.

(1) 2002 c. 40.
(2) 1973 c. 41.

Consequential amendments

4.—(1) Where the merger undertakings described in paragraphs 3, 4, 5, 6 and 9 of Part I of Schedule 1 refer to actions requiring the consent of the Secretary of State, such consent may be granted by the Office of Fair Trading.

(2) Where the monopoly undertakings described in paragraphs 18 and 20 of Part II of Schedule 1 refer to a determination by or consent of the Secretary of State such determination may be made or consent granted by the Office of Fair Trading.

(3) In article 10(1) and (3) of the Supply of Extended Warranties on Domestic Electrical Goods Order 2005(3) for the “Secretary of State” substitute “Office of Fair Trading”.

(4) In article 8(1) and (3) of the Supply of Relevant Veterinary Medicinal Products Order 2005(4) for the “Secretary of State” substitute “Office of Fair Trading”.

(5) Where the undertakings described in paragraphs 7-13 and 16-27 of Schedule 1 to the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004(5) Order refer to directions or consent being given by the Secretary of State such directions or consent may be given by the Office of Fair Trading.

(6) In article 7(1) and (2) of the Foreign Package Holidays (Tour Operators and Travel Agents) Order 2000(6) for the “Secretary of State” substitute “Office of Fair Trading”.

(7) In article 14 (1) and (3) of the Supply of New Cars Order 2000(7) for the “ Secretary of State” substitute the “ Office of Fair Trading”.

(8) In article 10(1) and (3) of Restriction on Agreements and Conduct (Specified Domestic Electrical Goods) Order 1998(8) for the “Secretary of State” substitute “Office of Fair Trading”.

Gerry Sutcliffe
Parliamentary Under-Secretary of State for
Employment Relations and Consumer Affairs
Department of Trade and Industry

13th February 2006

(3) S.I.2005/37.
(4) S.I. 2005/2751.
(5) S.I. 2004/2181.
(6) S.I. 2000/2110.
(7) S.I. 2000/2088, as amended by the Enterprise Act 2002 (c. 40).
(8) S.I. 1998/1271, as amended by S.I. 2000/2031.

SCHEDULE 1

Article 3(1)

PART I MERGERS

1. The undertakings given to the Secretary of State by Vivendi Water UKPLC and Southern Water Capital Limited following the report of the Commission entitled “Vivendi Water UK PLC and First Aqua (JVCo) Limited: A report on the proposed merger”(9).

2. The undertakings given to the Secretary of State by Firstgroup plc following the report of the Commission entitled “FirstBus plc and S B Holdings Limited: A report on the merger situation”(10).

3. The undertakings given to the Secretary of State by IMS Health Inc dated 29 October 1999 following the report of the Commission entitled “IMS Health Inc and Pharmaceutical Marketing Services Inc: A report on the merger situation”(11).

4. The undertakings given to the Secretary of State by General Utilities PLC dated 21 April 1998 and SAUR Water Services plc dated 8 May 1998 following the report of the Commission entitled “Mid Kent Holdings plc and General Utilities PLC and SAUR Water Services plc: A report on the proposed merger”(12).

5. The undertakings given to the Secretary of State by Severn Trent Plc dated 19 December 1997 following the report of the Commission entitled “Severn Trent Plc and South West Water Plc: A report on the proposed merger”(13).

6. The undertakings given to the Secretary of State by Wessex Water Plc dated 19 February 1998 following the report of the Commission entitled “Wessex Water Plc and South West Water Plc: A report on the proposed merger”(14).

7. The undertakings given to the Secretary of State by National Express Group PLC dated 2 October 1997 following the report of the Commission entitled “National Express Group PLC and Midland Main Line Limited: A report on the merger situation”(15).

8. The undertakings given to the Secretary of State by Lyonnais Europe Plc dated 23 April 1996 following the report of the Commission entitled “Lyonnais des Eaux SA and Northumbrian Water Group PLC: A report on the merger situation”(16).

9. The undertakings given to the Secretary of State by Sara Lee Corporation dated 22 October 1992 and Sara Lee Household & Personal Care UK Limited dated 22 October 1992 following the report of the Commission entitled “Sara Lee Corporation and Reckitt & Colman plc: A report on

(9) Cm 5681 November 2002. The acceptance of the undertakings was announced in a DTI Press Notice dated 28 April 2003 (P/2003/265), which provided for the publication of the undertakings in accordance with section 88(2A) of the 1973 Act.

(10) Cm 3531 January 1997. The acceptance of the undertakings was announced in a DTI Press Notice dated 17 January 2002 (P/2002/032).

(11) Cm 4261 February 1999. The acceptance of the undertakings was announced in a DTI Press Notice dated 29 October 1999 (P/99/876). The Office of Fair Trading announced in its Press Notice (32/05) of 18 February 2005 that an undertaking by IMS Health Inc requiring it to license all prescription data in its possession to other companies will expire on 28 February 2005. Following an OFT review, the remaining undertakings given by IMS will continue in place.

(12) Cm 3514 January 1997. The acceptance of the undertakings was announced in a DTI Press Notice dated 15 May 1998 (P/98/385).

(13) Cm 3429 October 1996. The acceptance of the undertakings was announced in a DTI Press Notice dated 19 February 1998 (P/98/132).

(14) Cm 3430 October 1996. The acceptance of the undertakings was announced in a DTI Press Notice dated 19 February 1998 (P98/132).

(15) Cm 3495 December 1996. The acceptance of the undertakings was announced in a DTI Press Notice dated 16 December 1997 (P/97/844).

(16) Cm 2936 July 1995. The acceptance of the undertakings was announced in a DTI Press Notice dated 13 May 1996 (P/96/362).

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the acquisition by the Sara Lee Corporation of part of the shoe care business of Reckitt & Colman plc”(17).

10. The undertakings given to the Secretary of State by General Utilities PLC dated 21 March 1991 following the report of the Commission entitled “General Utilities PLC and The Mid Kent Water Company: A report on the merger situation”(18).

11. The undertakings given to the Secretary of State by Michelin Tyre Public Limited Company dated 1 March 1991 following the report of the Commission entitled “Michelin Tyre PLC and National Tyre Service Ltd: A report on the merger situation”(19).

12. The undertakings given to the Secretary of State by Stagecoach (Holdings) Limited following the report of the Commission entitled “Stagecoach (Holdings) Ltd and Portsmouth Citybus Ltd: A report on the acquisition by Stagecoach (Holdings) Ltd of Portsmouth Citybus Ltd”(20).

13. The undertakings given to the Secretary of State by Lee Valley Water Company dated 1 August 1990 and Colne Valley Water Company and Rickmansworth Water Company following the report of the Commission entitled “General Utilities PLC, The Colne Valley Water Company and Rickmansworth Water Company: A report on the proposed merger”(21).

14. The undertakings given to the Secretary of State by Coats Viyella Plc following the report of the Commission entitled “Coats Viyella Plc and Tootal Group plc: A report on the merger situations”(22).

15. The undertakings given to the Secretary of State by Tate & Lyle plc following the report of the Commission entitled “Tate & Lyle PLC and Ferruzzi Finanziaria SpA and S & W Berisford PLC: A report on the existing and proposed mergers”(23).

16. The undertakings given to the Secretary of State by Hiram Walker-Gooderham & Worts Limited dated 11 August 1980 following the report of the Commission entitled “Hiram Walker-Gooderham & Worts Limited and Highland Distilleries Limited: A report on the proposed merger”(24).

PART II

MONOPOLY SITUATIONS

17. The undertakings given to the Secretary of State by Arriva Southern Counties Ltd (formerly Einkorn Ltd) dated 7 August 1995 following the report of the Commission entitled, “The supply of bus services in Mid and West Kent”(25).

18. The undertakings given to the Secretary of State by Britvic Soft Drinks Ltd, Coca-Cola Bottlers (Ulster) Ltd, Coca-Cola and Schweppes Beverages Ltd dated 21 May 1993 following the

(17) Cm 2040 August 1992. The acceptance of the undertakings was announced in a DTI Press Notice dated 22 October 1992 (P/92/677), which provided for the publication of the undertakings in accordance with section 88(2A) of the 1973 Act.

(18) Cm 1125 July 1990. The acceptance of the undertakings was announced in a DTI Press Notice dated 25 April 1991 (P/91/221). The President of the Board of Trade agreed to a variation, details of which were published in a DTI Press Notice dated 26 September 1997 (P/97/607).

(19) Cm 986 March 1990. The acceptance of the undertakings was announced in a DTI Press Notice dated 8 March 1991 (P/91/116).

(20) Cm 1130 July 1990. The acceptance of the undertakings was announced in a DTI Press Notice dated 10 January 1991 (P/91/13).

(21) Cm 1029 April 1990. The acceptance of the undertakings was announced in a DTI Press Notice dated 1 November 1990 (P/90/639).

(22) Cm 833 October 1989. The acceptance of the undertakings was announced in a DTI Press Notice dated 3 August 1990 (P/90/478).

(23) Cm 89 February 1987. The acceptance of the undertakings was announced in a DTI Press Notice dated 23 April 1987 (P/87/243).

(24) Cm 743 August 1980.

(25) Cm 2309, August 1993. The text of the undertakings was published as an attachment to a DTI Press Notice dated 29 August 1995 (P/95/567).

report of the Commission entitled, “Carbonated Drinks: a report on the supply by manufacturers of carbonated drinks in the United Kingdom”(26).

19. The undertakings given to the Secretary of State by Carnaudmetalbox plc (formerly Metal Box Ltd) dated 22 February 1972 following the report of the Commission entitled, “Metal Containers: a report on the supply of metal containers”(27).

20. The undertakings given to the Secretary of State by Asda Stores Ltd, Asda Group Ltd, Safeway Stores Plc, J Sainsbury Plc and Tesco Plc dated 18 December 2001 following the report of the Commission entitled, “Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom”(28).

21. The undertakings given to the Secretary of State by Provident Financial plc (formerly Provident Financial Group plc) dated 5 March 1982 following the report of the Commission entitled, “Trading Check Franchise and Financial Services: a report on the supply of trading check franchise and financial services in the United Kingdom”(29).

SCHEDULE 2

Article 3(2)

The Supply of Extended Warranties on Domestic Electrical Goods Order 2005;
The Supply of Relevant Veterinary Medicinal Products Order 2005.

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”) and orders made by a Minister of the Crown under section 56 of the 1973 Act for the purposes of paragraphs 15(1) – (3), 16(1) and 17(1) of Schedule 24 to the Enterprise Act 2002 (“the Act”). This Order also makes consequential amendments to the undertakings.

Although Part 3 and related provisions of the 1973 Act have been repealed they continue to apply in relation to certain undertakings, by virtue of paragraph 13(10) 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.

(26) Cm 1625, August 1991. The text of the undertakings was published as an attachment to a DTI Press Notice dated 2 June 1993 (P/93/302).

(27) House of Commons 6, July 1970. The text of the undertakings was published in a DTI Press Notice dated 16 March 1972 (72/248). The undertakings were varied in October 1980 and then in June 1992. The acceptance of the varied undertakings was announced in a DTI Press Notice dated 16 October 1980 (P/80/532). The text of the varied undertakings dated 5 June 1992 was published as an attachment to a DTI Press Notice dated 11 September 1992 (P/92/578).

(28) Cm 4842, October 2000. The acceptance of the undertakings was announced in a DTI Press Notice dated 18 December 2001 (P/2001/725).

(29) House of Commons 62, December 1981. The terms of the undertakings were announced on 10 December 1982 in a Parliamentary Reply to a Department of Trade Parliamentary Question, the text of which was published as an attachment to a Department of Trade Press Notice dated 11 May 1982 (P/82/223).

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The effect of specification under paragraphs 15(1) and 15(2) 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 and orders instead of sections 93 and 93A of the 1973 Act. Specification under paragraph 15(3) has the effect that undertakings made under section 88 and orders made under section 56 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 with a power to supersede, vary or release any such undertaking instead of the Secretary of State. The effect of specification, under paragraph 17(1), of an order made under section 56 of the 1973 Act is that the order may be varied or revoked by an order made by the Competition Commission.

Article 4 provides for consequential amendments to the terms of the undertakings and orders so that the Office of Fair Trading may give directions or consent in place of the Secretary of State.

Copies of the merger undertakings and press notices referred to in Part I of Schedule 1 to this Order 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). Copies of the monopoly undertakings, orders and press notices referred to in Part II of Schedule 1 and Schedule 2 to this Order may be obtained from the Consumer and Competition Policy Directorate, DTI (telephone: 020 7215 6363; facsimile: 020 7215 6565; e-mail: Philip.martin@dti.gov.uk).

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