

Final decisions on 13 Enterprise Act 2002 merger remedies

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Introduction

1. The Competition and Markets Authority's (CMA) annual plan for 2015/16¹ noted the start of a systematic review of existing merger, market and monopoly remedies, which may lead to the removal of measures that are no longer necessary and/or may be restricting or distorting competition.
2. The CMA announced on 26 March 2015 that it had launched a review of all structural merger remedies put in place before 1 January 2005 and to which

¹ See [CMA annual plan 2015/16](#), paragraphs 4.12 and 4.17.

the mergers provisions of either the Fair Trading Act 1973 or the Enterprise Act 2002 apply.

3. This notice concerns 13 structural merger remedies under the Enterprise Act 2002.

Jurisdiction

4. The CMA has a statutory duty in Schedule 24 to the Enterprise Act 2002 to keep under review undertakings and orders. From time to time, the CMA must consider whether, by reason of a change in circumstances:
 - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
 - (b) an order is no longer appropriate and needs to be varied or revoked.
5. Responsibility for deciding on variation or termination of orders lies with the CMA.

Undertakings that have lapsed

6. This review has found that one of the 13 merger remedies has lapsed. The CMA will remove this case from its register of undertakings and orders. This is the acquisition by Ferruzzi Finanziaria SpA of W Berisford plc and the offer by Tate and Lyle plc to acquire Berisford plc (including its subsidiary British Sugar plc).

Final decisions

7. The CMA's final decisions in relation to each of the remaining 12 merger remedies is set out in the annexes described in Table 1 below. In 11 cases, our final decision is that the remedies should be revoked, while in one case our final decision is to retain the remedy.

Table 1: Undertakings on which the CMA has reached final decisions

<i>Purchaser</i>	<i>Target business</i>	<i>Decision</i>	<i>Annex</i>
Valhi Inc.	Akzo Chemicals Ltd	Release	1
Anglo American	Tarmac plc	Release	2
British United Provident Association Ltd	Goldsborough Healthcare plc	Release	3
Capital Radio	GWR Group plc	Release	4
Cendant Corporation	RAC Motoring Services Ltd	Release	5
Gala Clubs Ltd	Riva Clubs Ltd	Release	6
GEHE AG	Lloyds Chemists plc	Release	7
Granada Group plc	Pavillion Group plc	Release	8
H+H International A/S	Marley Building Materials Ltd	Retain	9
Hepworth Ceramic Holdings plc	Steetley plc	Release	10
Ibstock Building Products Ltd	Redland plc	Release	11
Asda Group Ltd/Wm Morrison Supermarkets plc/J Sainsbury plc	Safeway plc	Release	12

Annex 1: Valhi Inc and Akzo Chemicals Limited

Undertakings given by

1. Akzo Chemicals Limited (Akzo).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 355/2006).

Details of the transaction

3. The proposed transaction involved the purchase by Rheox International Inc. (Rheox), the ultimate parent of which was Valhi Inc, of the UK business of Akzo Chemicals Ltd, a subsidiary of Akzo NV, in organoclays, organics and organic pastes.

Monopolies and Mergers Commission (MMC) report published:

4. 9 January 1991.

The markets concerned

5. Organoclays, organics and organic pastes are types of rheological additive that affect the deformation and flow properties of fluids. They are used in two separate markets: the manufacture of solvent-based paints, other coatings, inks, greases, adhesives, sealants and cosmetics (solvent-based systems); and the production of oil-based drilling fluids (known as 'muds').
6. In the market for solvent-based systems, the effect of the merger would have been to remove the most significant competitor to Rheox International and its subsidiaries. The combined market shares in volume terms of Akzo and Rheox would be 92% for organoclays, 36% for organics and 67% for organic pastes. The balance of evidence was that there are no close substitutes which could be used by customers to reduce Rheox's market power, without significant cost and inconvenience of reformulation. Nevertheless, as the products represent only a small proportion of ultimate product costs, the MMC considered it was unlikely that the larger customers would exert strong countervailing buyer power.
7. Akzo was the largest supplier of organoclays for oil-based muds to the UK market with a market share of 26%. Rheox was a smaller supplier, and supplied a different type of organoclay, namely a wet process organoclay that was significantly more expensive. This product competed with the dry process organoclays (which Akzo supplied) in special applications (such as deep

drilling). The merger would have brought Akzo's organoclays business into the Valhi group, which also had effective control of the Baroid Corporation (which, with its subsidiaries, is referred to as Baroid), a subsidiary of which was the largest UK drilling mud service company as well as itself producing organoclays. There were four other suppliers of organoclays for oil-based muds to the UK market, but the major part of the sales of two of them (as well as of Baroid) were to the drilling mud service businesses within their own corporate group. Drilling mud suppliers not linked to an organoclay manufacturer would therefore have lost their main independent source of organoclay supplies.

Theory of harm

8. In relation to both markets described below, although existing suppliers might have increased their activities in the UK to some extent and imports might also increase, the MMC considered that this would be from a very low base, and it did not consider that these factors would be likely to counteract the detriment to competition which would arise as a result of the merger. The MMC concluded that the effect of the merger would be that prices for organoclays, organics and organic pastes for solvent-based systems and for organoclays for oil-based muds would be higher than would otherwise prevail and there would also be a distortion of competition between drilling mud service companies as a result of the loss of the major independent source of organoclay supply to them. The MMC concluded that the proposed merger should not be permitted.

Description of the undertakings

9. The undertakings, given on 2 May 1991, required Akzo Chemicals Limited not to dispose to Valhi Inc. any interest in any UK enterprise involved in the production or supply of organoclays, organics or organic pastes; and, except in the ordinary course of business, not to dispose to Valhi any assets employed in any such enterprise.
10. The undertakings did not prohibit either the grant of any non-exclusive licence of intellectual property; or the disposal of any shares or interest in shares in any company in which Valhi holds or has an interest in 10% or less of the issued share capital and has not more than 10% of the voting rights.

History of the companies since the undertakings were given

11. The CMA's research indicates that Valhi Inc (which is a US company) is still a going concern and is still involved in chemicals.

12. Akzo Chemicals Limited (company number 01277553) went through a series of name changes and now continues as Flexys Rubber Chemicals Limited. It is recorded by Companies House as a manufacturer of organic basic chemicals, but is shown as a dormant company – which means it was non-trading in its last trading year. It could of course restart trading (source: phone conversation with Companies House on 29 June 2015), but it is unlikely that this could happen without significant reinvestment in the markets it was once in.
13. A BBC News article in 2008 indicated that Flexys Rubber Chemicals had closed its manufacturing operations in 2008.²

Change of circumstances

14. Akzo (now Flexys Rubber Chemicals Limited) closed its manufacturing operations in the UK in 2008. Given the company is not engaged in any business, and has not been for about seven years, the CMA considers this to be a change of circumstances relevant to the appropriateness of the undertakings.

Final decision

15. On the basis of the change in circumstances above, the CMA considers that these undertakings are no longer appropriate, and its final decision is that Flexys Rubber Chemicals Limited can be released from the undertakings.

² BBC News (2008), [‘163 jobs to go at rubber factory’](#).

Annex 2: Anglo American and Tarmac plc

Undertakings given by

1. Anglo American plc (Anglo).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/0354).

Details of the transaction

3. Anglo proposed to acquire the entire issues share capital of Tarmac plc (Tarmac).

Competition Commission (CC) report published

4. Undertakings in lieu of a reference to the CC were given in March 2000.

The markets concerned

5. Aggregates, ready-mixed concrete, asphalt and mortar.
6. Following the sale of its remaining interests in Tarmac (see company history below), Anglo is no longer a major player in these markets.³

Theory of harm

7. Loss of competition between Anglo and Tarmac in markets for aggregates, ready-mixed concrete, asphalt and mortar.

Description of the undertakings in lieu of reference

8. The undertakings (given on 1 March 2000) required Anglo:
 - (a) within six months to sell all interests held directly or indirectly in the Nominated Assets (the undertakings were amended on 29 September 2000 to allow Anglo to dispose of the assets by way of a lease). The

³ See the CMA's 2014 [market investigation report into aggregates](#), summary paragraph 16: In this report, we use the term 'the Majors' to refer to the five largest heavy building materials producers in GB. Before 2013, these companies were (in alphabetical order): Aggregate Industries UK Limited (Aggregate Industries), Cemex UK Operations Limited (Cemex), the UK construction and building materials businesses of Hanson and Heidelberg Cement AG (Hanson), Lafarge Aggregates Limited and Lafarge Cement UK Limited (together Lafarge) and the UK and international operations of Anglo American's construction and building materials arm (Tarmac). After January 2013, these companies are (in alphabetical order): Aggregate Industries, Cemex, Hanson, HCM and Lafarge Tarmac.

Nominated Assets are listed in the annexes to the undertakings and, following such disposal, Anglo is not to hold or acquire any interest in the Nominated Assets and to ensure that its subsidiaries do not hold or acquire any such interest;

- (b) to provide the Director General of Fair Trading with at least ten working days' notice of the identity of the purchaser/s of the assets and shall not affect or permit such a sale without the consent of the Director General of Fair Trading; and
- (c) not to take any steps that might impede the disposal of the business or its ability to operate as a going concern following the disposal and, in particular, to procure that, other than in the ordinary course of business, no assets, or interest in any assets, used in the business are transferred.

9. The undertakings were amended on 21 November 2012 to allow Anglo American plc to re-acquire the Ackworth and Renishaw asphalt plants.

History of the companies since the undertakings were given⁴

10. Anglo (company number 03564138) is still active.
11. Tarmac (company number 03751525) was renamed Tarmac Group Limited on 29 September 2000. It is still active.
12. Lafarge Tarmac was created in 2012 when Anglo American and Lafarge pooled their UK interests. However, in July 2015, Anglo sold its 50% stake in Lafarge Tarmac to Lafarge.⁵ Thus, Anglo no longer has any interest in Tarmac.

Change of circumstances

13. The CMA considers that the overlap identified between Anglo and Tarmac has been removed as Anglo sold its interests in Lafarge Tarmac (which constituted its UK interests). This represents a relevant change of circumstances in the market concerned, and consequently, the CMA considers that the undertakings given by Anglo are no longer appropriate.

⁴ All information in this section is sourced from Companies House unless otherwise stated.

⁵ The Construction Index (July 2015), '[Anglo American sells Tarmac stake to pave way for next owners](#)'. The sale paved the way for newly formed Lafarge Tarmac to be sold to CRH to meet competition concerns relating to the global merger of Lafarge and Holcim, which completed on 12 July 2015, creating Lafarge Holcim.

Final decision

14. On the basis of the change of circumstances above, the CMA considers that these undertakings are no longer appropriate, and its final decision is that Anglo should be released from the undertakings.

Annex 3: British United Provident Association Limited and Goldsborough Healthcare plc

Undertakings given by

1. British United Provident Association (Bupa).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/354).

Details of the transaction

3. Bupa acquired Goldsborough Healthcare plc (Goldsborough).

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of a reference given in October 1997.

The market concerned

5. Private hospital services. Independent British Healthcare (IBH) plc was a subsidiary of Goldsborough, which owned a number of private hospitals. At the time Bupa also owned a large national chain of hospitals.
6. Bupa responded to the CMA's invitation to comment on its review of remedies, and identified it now owns only one hospital in the UK, the Bupa Cromwell Hospital. Bupa's presence in the UK private hospitals market has reduced. See the table from the CMA's report on private healthcare below.

Table 1: Top ten private hospital operators by acute medical/surgical revenue, 2005 to 2012

<i>Provider and range</i>	<i>2006 £m</i>	<i>2007 £m</i>	<i>2008 £m</i>	<i>2009 £m</i>	<i>2010 £m</i>	<i>2011 £m</i>	<i>2012 £m</i>	<i>2012 share %</i>
1. General Healthcare Group	644.0	665.1	746.2	807.4	836.2	885.5	877.5	20.0
Netcare Healthcare UK	23.0	23.8	26.4	24.1	19.0	2.2	1.0	0.0
2. Spire Healthcare	420.6	449.3	564.1	620.0	643.0	674.0	739.0	16.9
3. HCA	331.3	368.2	419.7	448.0	490.3	585.9	662.0	15.1
4. Nuffield Health	448.5	455.4	420.2	389.2	391.6	414.2	450.6	10.3
5. Ramsay Health Care UK	227.7	251.9	273.7	322.2	351.4	357.7	363.8	8.3
Top five providers	2,095	2,214	2,450	2,611	2,732	2,920	3,094	70.6
6. Care UK	32.4	42.3	121.1	137.9	148.3	150.0	145.0	3.3
Partnership Health Group	32.0	54.4	-	-	-	-	-	-
7. The London Clinic	75.0	81.3	94.1	102.5	114.7	124.3	131.1	3.0
8. Aspen	52.1	59.0	65.8	67.2	66.4	68.7	89.0	2.0
9. Bupa's Cromwell Hospital	65.5	61.9	63.6	64.7	67.3	73.0	83.2	1.9
10. Circle	13.4	24.2	35.0	63.1	76.2	74.6	73.2	1.7
Top ten providers	2,365	2,537	2,830	3,046	3,205	3,411	3,616	82.5
Other providers	604.6	669.9	672.4	692.6	717.1	745.4	769.6	17.5
All private hospital operators	2,970	3,207	3,502	3,739	3,922	4,156	4,385	100.0

Source: Laing and Buisson Private Acute Medical Care, 2013, p46.

Theory of harm

7. There were concerns about the level of concentration in private medical hospitals in certain local or regional markets which might have made it difficult for other private medical insurance companies to compete with Bupa in those markets.⁶

Description of the undertakings in lieu of reference

8. The undertakings (given on 20 October 1997) required Bupa:
- (a) by 31 March 1998 to sell IBH and not to reacquire it or an interest in it or an interest in any company or undertaking having control of it;
 - (b) not to acquire any assets of IBH other than in the ordinary course of business;
 - (c) to procure that none of its employees or directors holds or is nominated to any directorship or managerial position in IBH or in any company or other undertaking having control of IBH;
 - (d) not to participate in any way with the policy of IBH, whether directly or through any person having control of IBH;

⁶ OECD (1997), *United Kingdom*, paragraph 93.

- (e) not to cooperate or attempt to cooperate with IBH, or any person having control of IBH, except in certain circumstances; and
- (f) to procure that, except in certain circumstances, no confidential information about IBH is disclosed to any employee, manager or director of any subsidiary or division of Bupa which is responsible for, carries on, or is connected with Bupa's insurance or healthcare activities.

9. On 4 November 1997, Bupa sold IBH to Community Hospitals Group plc.⁷

History of the companies since the undertakings were given⁸

10. Bupa (company number 00432511) is active (as described above).

Change of circumstances

11. The CMA considers the evidence submitted by Bupa to the CMA's review, that it now only owns a single private hospital, alongside the figures from the CMA's report on private healthcare above, constitute a change in circumstances in the private hospitals market, where concentration had given rise to concern.

Final decision

12. On the basis of the change of circumstances above, the CMA considers that these undertakings are no longer appropriate, and its final decision is that Bupa can be released from these undertakings.

⁷ 1997 Annual report of the Director General of Fair Trading, p43.

⁸ All information in this section is sourced from Companies House.

Annex 4: Capital Radio and GWR Group plc

Undertakings in lieu of reference given by

1. Capital Radio plc (Capital).

Jurisdiction

2. Enterprise Act 2002.

Details of the transaction

3. Capital Radio plc proposed to acquire the whole of GWR Group plc (GWR).

Competition Commission (CC) report published

4. The Office of Fair Trading (OFT) accepted undertakings in lieu of a reference to the CC in March 2005.

The market concerned

5. Capital was a commercial radio group, providing 21 local analogue stations and 58 digital programme stations, including the Capital FM network, Capital Gold, Century FM, Xfm and Choice FM. Capital owned outright four local digital multiplexes, had a 50% holding in three more and minority interests in a further seven.
6. GWR was a commercial radio group that owned Classic FM and 30 local analogue licences (providing 36 local stations) and 35 digital programme stations. It owned a controlling interest in the national commercial digital multiplex, controlled 14 local digital multiplexes and had a minority investment in one London multiplex. GWR also had a minority shareholding in Classic Gold Digital Limited, which owned 18 AM licences and digital services.
7. The OFT concluded that while other media may be a close substitute to radio advertising for some customers, it was not clear that they were a substitute for sufficient customers to warrant inclusion in a wider frame of reference. Accordingly, the OFT believed that, while other advertising media were likely to exert a degree of competitive pressure on radio advertising, the appropriate (if perhaps cautious) approach was to treat radio advertising alone as the starting point for its competition analysis.

8. The OFT believed that two categories of radio advertiser needed to be considered:
 - (a) National radio advertisers were typically large-volume buyers constructing advertising campaigns to cover broad geographic areas. They tended to purchase advertising airtime centrally through suppliers' sales houses, typically via media agencies. Together with the widespread UK coverage of the parties' stations, these demand considerations pointed to a UK-wide geographic frame of reference for such customers.
 - (b) Local advertisers were typically smaller-volume buyers that mainly purchased advertising directly from local radio stations in their chosen locality. Previous OFT and CC inquiries had determined that the geographic reach of radio stations affected their ability to attract advertising and competitively constrain other stations. Accordingly, the geographic frame of reference for such customers was localised. The scope of that local framework was measured by Total Survey Area or by Measured Coverage Area.
9. Post-merger the parties would have had a 40% share of national Net Advertising Revenue for radio (NAR) (increment 20%), and would have become the largest commercial radio group. The next largest radio groups were EMAP/Scottish Radio Holdings (25% of NAR) and Chrysalis (15%). Capital/GWR would also be able to provide advertisers with geographic coverage of a significant proportion of the UK as, although their only national station is owned by GWR (Classic FM), both have extensive packages of local radio stations that are used to build up national advertising campaigns. The extent of the overlap of those local stations was therefore important for national advertisers.
10. The OFT considered four local areas where there was overlap but only the East Midlands gave rise to concern. In this area, Capital's Century 106 FM overlapped with five GWR stations and four Classic Gold stations. Post-merger, the parties would have held [45–55]% (increment [15–25]%) of local NAR within Century's Measured Coverage Area.⁹

Theory of harm

11. In relation to local radio services in the East Midlands, third party concerns and buy-around analyses conducted for this region suggested that switching to an alternative (non-Capital/GWR) station in this area would have been difficult. As such, the removal of Century 106 FM as the closest competitor to

⁹ OFT (2005), [Capital Radio/GWR](#).

GWR's stations would have substantially lessened competition for local radio advertising in the area.

Description of the undertakings in lieu of reference

12. The undertakings required Capital to divest its own Century 106 business as a going concern by the end of the Divestment Period to a purchaser approved by the OFT. The purchaser was not to be linked to Capital Radio plc.

History of the companies since the undertakings were given

13. Capital Radio plc (company number 00923454) was renamed Global Radio Limited on 17 December 2008. It remains active in radio broadcasting at the time of this review.¹⁰
14. GWR Group plc (company number 00715143) was renamed GWR Group Limited on 14 January 2009. It remains active in radio broadcasting.¹¹ It is 100% owned by Global Radio Limited.¹²
15. Chrysalis Group bought Century 106 in about May 2005¹³ and rebranded the station Heart 106.
16. Along with other radio stations, Heart 106 was sold to Global Radio Limited on 6 June 2008. There were further undertakings in lieu accepted by the OFT on 1 July 2009 requiring the sale of Global Radio's East Midlands radio business to an approved purchaser,¹⁴ and Global was to continue to keep separate from and not reacquire this business.

Change of circumstances

17. The CMA concludes that the 2009 acquisition and the acceptance of undertakings in lieu of reference in relation to this transaction represent a change of circumstances. Consequently, the CMA considers that the 2004 undertakings have been superseded by the 2009 undertakings and are no longer relevant, both for this reason and the fact that the Century 106 radio business was acquired again by Global.

¹⁰ Source: Companies House.

¹¹ Source: Companies House.

¹² Source: [Company Check website](#).

¹³ Brand Republic (May 2005), 'Chrysalis acquires 106 Century FM as GCap begins trading on a downbeat note'.

¹⁴ OFT (2009), [Global Radio UK Ltd/ GCap Media plc Undertakings in lieu of reference](#).

Final decision

18. The CMA's final decision is that the 2004 undertakings are no longer appropriate and that the parties should be released from them.

Annex 5: Cendant Corporation and RAC Holdings plc

Undertakings given by

1. Cendant Corporation (Cendant) (a former US company).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/3095).

Details of the transaction

3. Proposed acquisition of RAC Motoring Services Limited (company number 1424399) by Cendant, a former US company.

Monopolies and Mergers Commission (MMC) report published

4. 4 February 1999.

The market concerned

5. Breakdown services for light vehicles in the UK.

Theory of harm

6. Not considered.

Description of the undertakings

7. The undertakings prohibited Cendant from acquiring RAC Motoring Services Limited for as long as it held any controlling interest in Green Flag Group Limited or subsidiaries thereof.

History of the companies since the undertakings were given

8. Cendant was split into four separate organisations in 2005 and the Cendant name no longer exists.¹⁵
9. Green Flag Group Limited is now owned by Direct Line Insurance Group plc in which Cendant has no shareholding, according to Companies House records.

¹⁵ Ryan Chittum (October 2005), '[Cendant to Split Into 4 Companies](#)', *The Wall Street Journal*.

Change of circumstances

10. The CMA considers that the divestment of the Green Flag Group to Direct Line Insurance Group plc is a relevant change in circumstances for the position of Cendant, to the extent it still exists, in the market for breakdown services for light vehicles in the UK, and the concentration concerns that arose from the proposed merger.

Final decision

11. On the basis of the change of circumstances above, the CMA considers that these undertakings are no longer appropriate, and its final decision is that Cendant can be released from the undertakings.

Annex 6: Gala Group Limited and Riva Clubs Limited

Undertakings given by

1. Gala Group Limited (Gala).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 354/2006).

Details of the transaction

3. Acquisition of Riva Clubs Limited by Gala.

Monopolies and Mergers Commission (MMC) report published

4. The Office of Fair Trading (OFT) accepted undertakings in lieu of a reference to the MMC in August 2000.

The market concerned

5. Bingo clubs.

Theory of harm

6. Loss of competition between the two parties.

Description of the undertakings in lieu of reference

7. These undertakings (given on 17 August 2000) required Gala to divest bingo clubs in five areas where Gala overlapped with Riva Clubs Limited and to 'continue to participate in the National Game for five years'.

History of the companies since the undertakings were given¹⁶

8. Gala (company number 03446414) was renamed Gala Group Investments Limited on 28 September 2000. It is still an active company.
9. Riva Clubs Limited (company number 03458312) was renamed Gala Leisure (2000) Limited on 4 September 2000 and is in liquidation.

¹⁶ Information sourced from Companies House unless otherwise stated.

Change of circumstances

10. The CMA considers the requirement 'to participate in the National Game for five years' has expired and has found that with the required divestments completed there has been a change in circumstances.

Final decision

11. On the basis of the change of circumstances above, the CMA considers that these undertakings serve no ongoing purpose and are no longer appropriate. Its final decision is that Gala should be released from the undertakings.

Annex 7: GEHE and Lloyds Chemists plc

Undertakings given by

1. GEHE AG (GEHE).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2181/2004).

Details of the transaction

3. In February 1996, GEHE made an offer for Lloyds Chemists plc (Lloyds). GEHE was the second largest wholesaler of pharmaceutical products in Germany and its wholly-owned subsidiary AAH plc (AAH) was the other large UK pharmaceutical wholesaler. The MMC investigated the transaction alongside a bid by UniChem for Lloyds, and reported on the merger situations arising from these two proposed acquisitions respectively. The proposed GEHE/Lloyds merger fell for consideration under the EC Merger Regulation. The European Commission agreed to a request by the UK government to refer back the case for consideration by the UK competition authorities.
4. UniChem was unsuccessful in its bid for Lloyds. It gave no undertakings, and so that proposed transaction is not considered further here.

Monopolies and Mergers Commission (MMC) report published

5. 19 July 1996.

The market concerned

6. UK sales of pharmaceuticals amounted to some £6,400 million in 1995. Of these, around 80% were prescription medicines (known as ethicals) and 20% were over-the-counter (OTC) medicines. There were about 12,000 retail pharmacies with contracts to dispense National Health Service (NHS) prescriptions. They typically also sold a range of other products including OTC medicines, toiletries, baby foods and health foods. The largest retail pharmacy chain was Boots The Chemists Ltd, with a share of retail ethical sales of 12.6%. Lloyds had 7.8%, UniChem 3.4% and AAH 2.8%.
7. Retail pharmacies and dispensing doctors were supplied with most of their requirements of ethicals by 19 full-line wholesalers. Many pharmacies used one full-line wholesaler as their preferred supplier and a second to provide a back-up service. The full-line wholesalers included UniChem and AAH, with 37% and 32% shares of supply respectively, Lloyds with 14% and regional

wholesalers which together accounted for 17%. The three leading wholesalers and some of the regionals also owned retail pharmacies; in particular two-thirds of Lloyds' wholesale sales were to its own retail chain. Shares of supply to external customers were only 39% for UniChem, 34% for AAH, 7% for Lloyds and 20% for the regionals.

8. The pharmaceutical market remains subject to regulation, and a number of asymmetries are present in the provision of prescribed pharmaceuticals. Those who decide on prescriptions (doctors) neither pay for nor consume; those that pay (NHS), neither decide nor consume, while those that consume neither pay nor decide. The pricing of branded ethicals at both wholesale and retail levels is constrained by a number of voluntary pricing schemes agreed by the manufacturers with the Department of Health. OTC medicines were subject to resale price maintenance until 2001. Entry into pharmaceutical retailing is subject to control. The Department of Health determines the payment to retail pharmacies for dispensing NHS prescriptions. In summary, some of the normal competitive pressures do not apply in these markets.
9. There had been a trend leading up to 1996 towards concentration in both the wholesale and retail sectors. UniChem and AAH had increased their shares of the wholesale market, while the regionals taken together had declined in number and market share, mainly as a result of acquisition by Lloyds and, to a lesser extent, UniChem. Nevertheless there was evidence that the regionals which remained had on average been increasing their sales and profits more quickly than the nationals. In retailing, the proportion of outlets owned by chains of over 50 stores had risen from 20% in 1991 to 28% in 1995.
10. The wholesale market was found to be sub-national, a key factor being that the twice-daily delivery service to pharmacies which full-line wholesalers provide cannot be economically provided at more than a certain distance from the depot.
11. Vertical integration had existed in the industry for many years. A more recent trend is the increase in the number of pharmacies owned by full-line wholesalers and typically supplied largely from within the group to the extent possible. This has risen from 419 in 1991 to some 1,820 (including Lloyds) in 2015.

Theory of harm

12. The proposed merger would have involved GEHE, owner of one of the two leading full-line pharmaceutical wholesalers, with about a third of the market, acquiring the third-largest wholesaler. It would also have brought together the second and fourth largest chains of retail pharmacies.

13. The MMC made no adverse finding in relation to retailing.
14. As regards wholesaling, since the market was found to be sub-national the MMC examined the situation in the areas where Lloyds' depots were based case by case. The MMC believed the proposed merger would have resulted in a significant loss of competition in seven cases, leading to higher prices and lower standards of service. The MMC recommended divestment of the seven depots concerned and the full-line wholesaling businesses operated therefrom.

Description of the undertakings

15. The undertakings, given on 18 October 1996, required that within three months of acquiring Lloyds Chemists plc, GEHE had to sell the full-line wholesaling businesses operated by Lloyds in Belfast, Cambridge, Carlisle, Coulsdon, Derby, Glasgow and York. There were no undertakings preventing reacquisition.

History of the companies since the undertakings were given

16. GEHE acquired Lloyds Chemists plc in 1997¹⁷ (which meant that UniChem had been unsuccessful in its bid for the company).
17. GEHE changed its name to Celesio AG in 2003.¹⁸
18. Celesio AG has made a number of acquisitions of pharmacies across the world and is still active in the market concerned.

Change of circumstances

19. The absence of further intervention in the acquisition by the OFT shows that the divestments were completed to the OFT's satisfaction as it saw no need to intervene further.
20. The undertakings required the divestments described above but did not have an ongoing operation once the divestments had been completed, and consequently the CMA considers that the indication that these divestments were completed represents a change of circumstances relevant to the appropriateness of the undertakings.

¹⁷ See Celesio's [History](#) webpage; and Pharma and MedTech Business Intelligence (1997), [Gehe wins takeover battle for Lloyds Chemists](#).

¹⁸ See Celesio's [History](#) webpage.

Final decision

21. On the basis of the change of circumstances above, the CMA considers that these undertakings serve no ongoing purpose and are no longer appropriate. Its final decision is that GEHE can be released from the undertakings.

Annex 8: Granada Group plc and Pavilion Group plc

Undertakings given by

1. Granada Group plc (Granada).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/3095).

Details of the transaction

3. Granada acquired Pavilion Group plc (Pavilion).

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of a reference to the MMC were given in October 1995.

The market concerned

5. Motorway service areas.

Theory of harm

6. Reduction of competition between motorway service areas.

Description of the undertakings in lieu of reference

7. The undertakings given on 5 October 1995 required Granada to sell the Granada Motorway Service area at Magor on the M4; sell the Pavilion Motorway Service area at Rivington on the M61; and 'sell, close the site of, or cease operating the Pavilion Motorway Service area at 'Crossing' within 12 months'.

History of the companies since the undertakings were given¹⁹

8. Granada stopped operating motorway service areas in 2001.²⁰ Granada (company number 00290076) changed its name on 21 September 2004 to Granada Group Limited. It is active, but non-trading.
9. The CMA has been unable to find details of Pavilion in Companies House records.

¹⁹ All information in this section is sourced from Companies House unless otherwise stated.

²⁰ See [Motorway Services Operators](#) webpages.

Change of circumstances

10. The consideration that Granada ceased owning motorway service areas in 2001 represents a change in circumstances relevant to the undertakings.

Final decision

11. On the basis of the change of circumstances above, the CMA considers that these undertakings are no longer appropriate. Its final decision is that Granada can be released from the undertakings.

Annex 9: H+H International A/S and Marley Building Materials Limited

Undertakings given by:

1. H+H International A/S (trading as H+H Celcon Ltd in the UK).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2181/2004).

Details of the transaction

3. In December 2001, the proposed acquisition of Marley Building Materials Ltd, part of the Etex Group SA, by H+H Celcon Ltd, a subsidiary of H+H International A/S was notified to the OFT. The terms of the acquisition were agreed to be subject to regulatory clearance.

Competition Commission (CC) report published

4. May 2002.

The market concerned

5. The market for aircrete concrete blocks in the UK. These are aerated concrete blocks produced through a chemical reaction to produce a lightweight block with good insulating properties that set it apart from standard concrete blocks.
6. At the time of the merger, there were three main producers of aircrete concrete blocks, in the UK, with a further smaller supplier in Northern Ireland. In 2015, the main three suppliers are still active, with an additional supplier now active in the production and supply of aircrete blocks in Northern England and Scotland.²¹

Theory of harm

7. The supply of aircrete concrete blocks was highly concentrated at the time the merger was notified to the OFT. There were three producers of aircrete blocks in the UK, each producing one-third of the supply in the UK, H+H International A/S, Marley Building Materials Ltd and Tarmac Ltd. There were minimal imports, although one business in Northern Ireland occasionally supplied relatively small quantities of aircrete blocks to mainland UK.

²¹ Thomas Armstrong (Concrete Blocks) Ltd, source: Aircrete Producers Association, www.aircrete.co.uk.

8. There were few effective substitutes for aircrete concrete blocks, with third parties noting their key properties of low weight and good thermal insulation making them particularly useful in certain applications in order to meet building regulation requirements. For these reasons the relevant market was considered to be aircrete concrete blocks in the UK.
9. The CC's investigation found that the merger would make the market in effect a concentrated duopoly. It noted that other suppliers of aircrete blocks had only limited spare capacity, and concluded that other manufacturers would not be in a position to act as a competitive constraint on the newly merged firm.
10. The CC also considered that the prospects for new entry and concluded that this was not likely to be of a scale that would provide a significant competitive constraint on the activities of the merged firm. Moreover, the CC concluded that there would be insufficient buyer power to offset the market power of the merged company, and that such buyer power as did exist would be likely to be reduced as a result of the merger.
11. The CC concluded that the merger may be expected to operate against the public interest because prices for aircrete blocks would be higher than otherwise and because competition in the aircrete block market would be impaired.

Description of the undertakings

12. The undertakings, given on 14 January 2003, required H+H International A/S not to acquire, either directly or indirectly, any interest in any company having control of the Marley business, or any of the assets of the Marley business.
13. There was one exception to these undertakings which was that they would not prevent H+H International A/S from acquiring one of the Marley factories, provided any such acquisition was not implemented in advance of a decision to clear the acquisition, either conditionally or unconditionally, or otherwise take no action under the relevant UK merger control legislation.

History of the companies since the undertakings were given

14. H+H International A/S is still active in the sale of aircrete concrete blocks in the UK.
15. Marley Building Materials Ltd, the target of the proposed merger transaction, was subject to a demerger during 2003. Etex Group S.A, the then parent company of Marley Building Materials Ltd took over the roofing, walling and cladding areas of the Marley Building Materials business, including the Thermalite branded aircrete blocks business, which was the source of

competition concerns in the original transaction. In March 2005, the international building materials company Hanson purchased the Thermalite aircrete blocks business from Etex S.A for £120 million. Hanson remains active in the sale of Thermalite aircrete concrete blocks in the UK.

16. No submissions were received from parties in relation to this case and these undertakings.

Change of circumstances

17. Since the undertakings were given there is now an additional producer of aircrete blocks in Scotland and Northern England. However, we have no indication of the size or significance of this provider. We understand that H+H International A/S and Thermalite/Hanson remain significant large providers in a still relatively concentrated sector, with Tarmac as the only other significant national provider.
18. In conclusion, the CMA has not seen evidence that would suggest that the supply of aircrete blocks in the UK has changed substantially, such that the 2001 transaction, if repeated today, would not have the capability to generate similar competition concerns. Consequently, and based on the evidence available, the CMA does not consider there to be a relevant change of circumstances in this sector.

Final decision

19. The CMA's final decision is to retain these undertakings.

Annex 10: Hepworth Ceramic Holdings plc and Steetley plc

Undertakings given by

1. Hepworth Ceramic Holdings plc (Hepworth).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/3095).

Details of the transaction

3. Hepworth made a public offer to acquire Steetley plc (Steetley) in March 1983.

Monopolies and Mergers Commission (MMC) report published

4. 22 February 1984.

The market concerned

5. Manufacture and supply of refractories where the companies' combined UK market share approached 40%.

Theory of harm

6. The merger would have given rise to an adverse effect on competition in the supply of refractories.

Description of the undertakings

7. The undertakings (given 17 September 1984) required Hepworth not to:
 - (a) acquire any part of the equity share capital of Steetley;
 - (b) hold or have an interest in more than 10% of the equity share capital of Steetley or any part of the equity share capital of any subsidiary of Steetley so long as the enterprises of Steetley or of such subsidiary, as the case may be, include a refractories business or a material part of its assets are used in such a business; or
 - (c) acquire any enterprise or any material part of the assets of Steetley save for the undertaking or assets of any non-refractories business.

History of the companies since the undertakings were given²²

8. Hepworth (company number 00965093) changed its name to Hepworth Limited on 9 May 1988. In 2001, Hepworth Limited sold its refractories business to the Alpine Group.²³ Hepworth Limited was acquired by the Vaillant Group in 2001,²⁴ and changed its name to Vaillant Holdings Limited on 7 September 2005.
9. Steetley (company number 00246750) had in fact changed its name to Steetley Limited on 10 June 1982. We presume that the undertakings were meant to refer to Steetley Limited rather than Steetley plc. It is in liquidation and so no longer exists as a trading entity. There is no record of a separate Steetley plc.

Change of circumstances

10. The CMA considers that there is a relevant change in circumstances, in that Hepworth (now Vaillant Holdings Limited) sold its refractories business which means the competition concerns as outlined by the MMC may no longer be expected to arise if this transaction were to take place now.

Final decision

11. On the basis of the change of circumstances above, the CMA considers that these undertakings are no longer appropriate and its final decision is that Vaillant Holdings Limited can be released from the undertakings.

²² All information in this section is sourced from Companies House unless otherwise stated.

²³ See Alpine Group press release (April 1997): [‘The Alpine Group, Inc. announces acquisition of Hepworth Refractories Limited to establish one of the world’s largest refractories companies’](#).

²⁴ See Vaillant Group press release (March 2005): [Vaillant Group and Wavin Group Complete Hepworth Building Products Transaction](#).

Annex 11: Istock Building Products Limited and Redland plc

Undertakings given by

1. Istock Building Products Limited (Istock).

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/0354).

Details of the transaction

3. Istock proposed to purchase the brick manufacturing business of Redland plc.

Monopolies and Mergers Commission (MMC) report published

4. Undertakings in lieu of a reference to the MMC were given in July 1996.

The market concerned

5. Brick manufacturing.
6. By 2004, Istock had been acquired by CRH plc and was one of the UK's two largest manufacturers of bricks.²⁵
7. A CC merger report dated 10 May 2007 – Wienerberger and Baggeridge Brick²⁶ – indicated at paragraph 4.15 that Istock was the UK's largest brick manufacturer.
8. Paragraph 5.27 of this report indicated that the market for the supply of bricks was national rather than regional. The report indicated that shares in 2007 were as shown in Table 1 below.

Table 1: Market shares in the UK supply of bricks

<i>Producer/source</i>	<i>Share of supply</i>
Wienerberger	15–20
Baggeridge	10–15
Istock	30–35
Hanson	20–25
Michelmersh	0–5
Other UK producers	0–10
Imports	0–5

Source: CC merger report – Wienerberger–Baggeridge Brick

²⁵ See Wienerberger press release (September 2004): [Acquisition of the 3rd largest brick producer in UK](#).

²⁶ CC (2007), [Wienerberger Finance Service BV/Baggeridge Brick plc merger inquiry](#).

9. The CC cleared the acquisition of Baggeridge by Wienerberger, leading to Wienerberger's market share in the supply of bricks in the UK being on a par with Ibstock's.

Theory of harm

10. The undertakings were expected to address the risk of a loss of competition between Ibstock and Redland plc in the manufacture and supply of bricks.

Description of the undertakings in lieu of reference

11. The undertakings (given on 29 July 1996) required Ibstock to dispose to a buyer approved by the Director General of Fair Trading all interests in the businesses carried on by Ibstock or its subsidiaries at the brick manufacturing plants at Stearpoint, Eldon, Todhills, Warnham and Wealdon ('the Business'). Following such disposal neither Ibstock nor its subsidiaries may hold or acquire any interest in the Business.

History of the companies since the undertakings were given²⁷

12. Ibstock (company number 00063230) changed its name to Ibstock Brick Limited on 3 April 2000. It is still active.
13. Redland plc (company number 00137294) changed its name on 5 October 2006 to Redland Limited. It is still active. The company was acquired by Lafarge in 1997 but is now owned by Braas-Monier Building Group. Redland plc no longer manufactures bricks: it now makes only roofing materials.²⁸

Change of circumstances

14. Ibstock responded to the CMA invitation to comment by letter of 2 April 2015, and confirmed the sites were divested as required by the undertakings and have not been reacquired.²⁹
15. The CMA considers that the divestment made by Ibstock and the subsequent changes in ownership of these assets has resulted in them being owned by Wienerberger. Consequently, if this transaction were repeated now, the significance of the change in ownership would be different to that examined by the OFT. The CMA considers these changes in ownership, collectively, to represent a change of circumstances relevant to the undertakings.

²⁷ Source: Companies House records, unless otherwise stated.

²⁸ See Redland's [product catalogue](#) webpages.

²⁹ Letter to the CMA from Wayne Sheppard – Managing Director of Ibstock Bricks Limited, dated 2 April 2015.

Final decision

16. On the basis of the change of circumstances above, the CMA considers that these undertakings are no longer appropriate and its final decision is that Ibstock can be released from them.

Annex 12: Undertakings relating to four proposed transactions to acquire Safeway plc

Undertakings given by

1. Asda Group Ltd, Tesco plc, Wm Morrison Supermarkets plc, and J Sainsbury plc.

Jurisdiction

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2181/2004).

Details of the transactions

3. In January 2003, Wm Morrison Supermarkets plc offered to purchase Safeway plc, and this was followed shortly afterwards by offers from Asda Group Ltd, Tesco plc, and J Sainsbury plc to purchase Safeway plc. All four proposed transactions were notified to the OFT.³⁰

Competition Commission (CC) report published

4. In March 2003, the OFT referred these four transactions to the CC, which reported in September 2003.

The market(s) concerned

5. The CC considered a number of markets as part of its consideration of these transactions including one-stop shopping in grocery stores of 1,400 square metres and above, which it considered to be a relevant market for the purposes of the inquiries, because most consumers visit such stores to carry out their main weekly shop. It found that the market for one-stop shopping was essentially local, because most consumers were prepared to travel only a limited distance for their main grocery shop. It also considered the effect of these mergers on convenience stores, which were stores below 280 square metres, and on stores between 280 and 1,400 square metres, which provided for secondary or top-up shopping.

³⁰ A further proposed acquisition by Track-dean Investments (Philip Green, the owner of BHS) was notified to the OFT at the same time. No competition concerns were found due to a lack of competitive overlap in relevant markets and this transaction was not referred to the CC. Track-dean Investments withdrew its offer for Safeway plc in October 2003.

Theory of harm

6. The CC's analysis focused both on competition concerns from the lack of choice at a local level and competition at a national level. The CC considered that all four proposed transactions would be likely to generate concerns in a number of local areas of overlap between the various proposed purchasers and Safeway plc. Further it considered that three of the four proposed transactions would generate concerns at a national level, while the proposed acquisition by Wm Morrison Supermarkets plc would not raise concerns at a national level.
7. The CC concluded that local level divestments would be insufficient to remedy the competition harm expected from the mergers proposed by Asda Group Ltd, Tesco plc, and J Sainsbury plc, and that local level divestments by Wm Morrison Supermarkets plc would be sufficient to remedy the local level concerns that were raised by its proposed transaction.

Description of the undertakings

8. The undertakings given by Wm Morrison Supermarkets plc differed from those given by Asda Group Ltd, Tesco plc, and J Sainsbury plc.
9. Asda Group Ltd, Tesco plc, and J Sainsbury plc undertook to have their proposed acquisitions of Safeway plc prohibited, other than the purchase of Safeway stores which Wm Morrison Supermarkets plc was to divest to remedy the adverse effects resulting from its acquisition of Safeway plc (and subject to conditions in relation to divestment following an acquisition by Wm Morrison Supermarkets plc).
10. The undertakings sought from Wm Morrison Supermarkets plc were to allow the proposed acquisition subject to the divestment of one-stop grocery stores in the 48 localities identified by the CC along the broad lines of the divestment framework and five smaller grocery stores identified by the CC where adverse effects would result from the merger. Undertakings were also sought to ensure that the divestment of five smaller grocery stores should be to a purchaser approved by the OFT within a time limit to be agreed by the OFT.

History of the companies since the undertakings were given

11. In March 2004, Wm Morrison Supermarkets plc completed its purchase of Safeway plc. As part of this transaction, divestments were made of stores which gave rise to competition concerns. The John Lewis Partnership and its Waitrose division purchased the largest volume, some 19 stores, while others were sold to competing providers in smaller blocks to limit the impact on competition in these areas and ensure compliance with the divestments

rules as outlined by the CC. Further to these compulsory divestments, Wm Morrison Supermarkets plc made voluntary divestments of further stores that did not fit within the strategic approach of the business. In November 2005, the last Safeway branded store was converted to the Morrisons brand.

12. Asda Group Ltd, Tesco plc, Wm Morrison Supermarkets plc, and J Sainsbury plc remain active in the provision of groceries in one-stop, top-up and smaller stores in the UK.

Change of circumstances

13. Wm Morrison Supermarkets plc has completed the acquisition of Safeway plc; the target company no longer exists as an entity, and its assets are now owned by multiple providers within the various grocery retail markets in the UK. With the divestments arising from the merger completed, the CMA considers this to be a change of circumstances relevant to all four sets of undertakings.

Final decision

14. On the basis of the change of circumstances above, the CMA's final decision is that these undertakings are no longer appropriate and therefore the four companies can be released from these undertakings.