

# Administrative, provisional and final decisions on reviews of 12 Enterprise Act 2002 merger remedies

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## Introduction

1. The Competition and Markets Authority's (CMA) annual plan for 2015/16<sup>1</sup> 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.

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<sup>1</sup> See [CMA annual plan 2015/16](#), paragraphs 4.12 & 4.17.

3. This notice concerns 12 of the 14 remaining structural merger remedies under consideration in the CMA's systematic review, and therefore completes all but two of the reviews of all 76 merger remedies that commenced in March 2015. The remaining cases under consideration are the proposed acquisition by Severn Trent Water plc of South West Water plc, where a provisional decision was published on 18 November 2015 and Hanson plc / Pioneer International Ltd, on which a provisional decision is published at Annex 1 of this notice.

## **Jurisdiction**

4. The CMA has a statutory duty 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  - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or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 the undertakings lies with the CMA.

## **One review that does not meet the CMA's prioritisation criteria**

6. There is one merger remedy review in relation to which the CMA does not propose to reach a provisional decision at this time and will be closed on administrative priority grounds. This is because the CMA considers that completing the review of this remedy now does not accord with the CMA's published prioritisation principles.<sup>2</sup> This case and the reasoning for reaching this administrative decision is set out below:
  - **Ladbroke Group plc/Coral:** This merger remedy review concerned a transaction in 1999 in the market for betting in the UK. The CMA is currently investigating another proposed merger between Ladbroke Group plc and Gala Coral Group Ltd, and on 11 January 2016, the CMA [announced that it had referred the transaction for an in-depth phase 2 investigation](#), through its fast-track procedure. The group must publish its final decision by 24 June 2016. This investigation will include consideration of the ongoing relevance of the undertakings given in 1999.

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<sup>2</sup> See the CMA's [prioritisation principles](#).

## Provisional decision

7. This notice includes one merger remedy review in which the CMA is publishing, for consultation, a provisional decision to retain the undertakings in the case of Hanson plc/Pioneer International Ltd. This decision is set out in Annex 1.<sup>3</sup>
8. During this review of these undertakings, the CMA has neither received nor found sufficient evidence to enable it to decide whether there has been a change of circumstances in any of the specific competitive overlaps in the local markets referred to in the undertakings.
9. In this case, the CMA's provisional decision is to retain the undertakings on the basis that its own-initiative review has not to date produced evidence which enables it to conclude that the remedy is no longer appropriate in dealing with the competition problem/adverse effects it was designed to remedy. The CMA will consider any further evidence on this provisional decision that would enable it to reach a conclusion on whether there has been a change of circumstances.
10. In the event that the CMA's final decision is to retain the undertakings, the CMA will keep these undertakings under consideration, as part of the on-going systematic work of reviewing remedies set out in its annual plan and will consider whether to launch a review of these undertakings at a future date if further evidence comes to light.<sup>4</sup>

## Consultation on the CMA's provisional decision

11. The CMA is consulting on its provisional decision to retain the undertakings in one case as set out in Annex 1.
12. This consultation will close on **2 March 2016**. If you wish to respond to this consultation, please contact the CMA as follows:

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<sup>3</sup> This decision was the subject of a previous provisional decision, however due to an administrative matter, the CMA is issuing a further provisional decision in this case.

<sup>4</sup> It remains open for a party to request a review of a remedy if they consider by reason of a change of circumstance it is no longer appropriate; the CMA's published guidance [Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders](#) (CMA 11) sets out what the CMA would expect to see in such a request.

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Email: [remedies.reviews@cma.gsi.gov.uk](mailto:remedies.reviews@cma.gsi.gov.uk)

13. Following this consultation, the CMA will consider any responses received and the evidence and views presented and will assess the impact of these responses on its provisional decision before reaching its final decision in this case.

## Final decisions

14. The CMA's final decisions in relation to 10 merger remedies are set out in the annexes described in Table 1 below. In six cases, our final decision is that the parties can be released from the remedies, while in the other four cases our final decision is to retain the remedies.

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

<i>Purchaser</i>	<i>Target business</i>	<i>Decision</i>	<i>Annex</i>
Enterprise Inns plc	Laurel Pub Group Ltd	Retain	2
Fresenius AG	Caremark Ltd	Release	3
Greene King plc	Laurel Pub Holdings Ltd	Retain	4
GWR Group plc	Scottish Radio Holdings plc	Retain	5
Hiram Walker-Gooderham and Worts Ltd	Highland Distilleries Ltd	Release	6
Littlewoods Organisation plc	Freemans plc	Release	7
Nutreco Holding NV	Hydro Seafood GSP Ltd	Release	8
Rexam plc (Bowater plc)	DRG Packaging	Release	9
Scotts Company	Monsanto Company	Release	10
SCR Sibelco SA	Fife Silica Sands Ltd and Fife Resources Ltd	Retain	11

## **Annex 1 – Hanson plc / Pioneer International Ltd**

### **Undertakings given by**

1. Hanson plc.

### **Jurisdiction**

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

### **Details of the transaction**

3. Hanson proposed to acquire Pioneer International Limited (Pioneer).

### **Competition Commission (CC) report published**

4. Undertakings in lieu of reference to the CC were instead given on 4 May 2000.

### **The market(s) concerned**

5. The supply of aggregates, asphalt, and ready-mixed concrete (RMX).

### **Theory of harm**

6. Reduction of competition in local markets for the supply of aggregates, asphalt, and RMX.

### **Description of the undertakings in lieu of reference**

7. The undertakings (given on 4 May 2000) required Hanson to sell the 'Nominated Assets' (listed below) by 2 November 2000 and not to reacquire any interest in them.

(a) Aggregates plants Durnford and Grove.

(b) Asphalt plants Durnford, Forest Wood and Burley Hill.

(c) RMX plants listed below:

Andover (Pioneer)

Ashford (Pioneer)

Banbury (Pioneer)

Barford (Hanson)

Bedford (Pioneer)

Bristol (Pioneer)

Chichester (Pioneer)  
Corby (Hanson)  
Dawley (Pioneer)  
Eastbourne (Hanson)  
Exeter (Hanson)  
Fairford (Pioneer)  
Filey (Hanson)  
Gloucester (Pioneer)  
Great Billing (Hanson)  
Havant (Pioneer)  
Heathfield (Pioneer)  
Newhaven (Hanson)  
Newport (Pioneer)  
Plymouth (Pioneer)  
Portsmouth (Pioneer)  
Risca (Hanson)  
Rushden (Pioneer)  
Swansea (Hanson)  
Shoreham (Pioneer)

8. The undertakings required Hanson to divest such assets, sites and quarries as would reduce their market share:
- (a) in respect of aggregates and asphalt to 33% or less in all production areas within a 30-mile radius of a Hanson or Pioneer quarry; and
  - (b) in respect of ready mixed concrete to 40% or less in all production areas within a 10-mile radius of a Hanson or Pioneer RMX plant (50% or less in those areas where there are at least four other competitors present, at least one of which is not a national player).<sup>5</sup>

#### **History of the companies since the undertakings were given<sup>6</sup>**

9. Hanson (company number 00488067) was renamed Hanson Building Materials Limited on 14 October 2003. It is still active.
10. There is no reference to a UK company with the name Pioneer International that was in business at the time of the signing of the undertakings. The CMA considers that the Pioneer International concerned was an Australian company of that name.<sup>7</sup> It is not clear whether this company is still active.

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<sup>5</sup> See the Department of Trade & Industry's press release at [www.investegate.co.uk](http://www.investegate.co.uk).

<sup>6</sup> All information in this section is sourced from Companies House unless otherwise stated.

<sup>7</sup> See [www.delisted.com.au](http://www.delisted.com.au).

## **Change of circumstances**

11. Hanson provided a submission to the CMA's consultation on reviewing old structural merger remedies and provided an update later in 2015. In its submission it noted that:
  - (a) there had been a number of significant structural changes to the market brought about by various mergers and more change was likely arising from Breedon's announcement in November 2015 that it intended to acquire Hope Construction Materials;
  - (b) at least the Barford, Dawley, Fairford and Heathfield RMX sites seemed to have closed;
  - (c) demand for construction products overall had decreased significantly; and
  - (d) the 2014 CMA market investigation into the supply and acquisition of aggregates, cement and RMX had not identified any competition issues in the aggregates or RMX markets, noting that both operated in competitive environments.
12. The CMA considers that while there have been a number of changes to the broader market for these products, as indicated by the transactions to which Hanson referred, the relevant markets are limited to areas around the sites in question, as asphalt, RMX and aggregates all have local geographic markets.
13. Moreover, the CMA notes that Hanson has not been able to be definitive regarding whether a number of sites have closed, and also notes the difference between merger inquiries involving a dynamic test of whether a transaction may lead to a substantial lessening of competition, and the more static assessment of competition in a market investigation.
14. The CMA's provisional conclusion is that the views and evidence submitted by Hanson, while indicative of broader changes in this sector, are not sufficient to demonstrate a change of circumstances relevant to the undertakings in this case, such that they may no longer be appropriate.

## **Provisional decision**

15. Based on the information available, the CMA's provisional decision is to retain the undertakings.

## Annex 2 – Enterprise Inns plc / Laurel Pub Group Limited

### Undertakings given by

1. Enterprise Inns plc (Enterprise).

### Jurisdiction

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

### Details of the transaction

3. Enterprise acquired 1,860 pubs from Laurel Pub Group Limited (Laurel Pubs) for £875 million in April 2002.<sup>8</sup> Laurel Pubs had been set up by, and was owned by, Morgan Grenfell to acquire about 3,000 pubs from Whitbread in 2001.<sup>9</sup>

### Competition Commission (CC) report published

4. Undertakings in lieu of a reference to the CC were instead given on 23 September 2002.

### The market concerned

5. The supply of public house services. Table 1 shows the leading pub operators and their market shares at the time of the transaction and in more recent years.

**Table 1: UK leading pub operators' estate sizes and market shares**

Pub company	Number of pubs in the UK (market shares)			
	2002	2004	2009	2013
Enterprise Inns (inc 1,860 Laurel pubs)	3,498	8,575 (14)	7,765 (14)	5,493 (11)
Punch Taverns	5,360	8,300 (14)	8,425 (15)	4,096 (9)
Marston's	N/A	2,125 (4)	2,250 (4)	2,050 (4)
Greene King	N/A	2,075 (3)	2,585 (5)	1,900 (4)
Mitchells and Butlers	N/A	2,000 (3)	2,050 (4)	1,600 (3)
S and N/Heineken	N/A	1,500 (2)	2,200 (4)	1,300 (3)
Spirit	N/A	2,025 (3)	N/A	1,200 (2)
J D Wetherspoon	580	650 (1)	715 (1)	927* (2)
Wellington Pub Co	840	850 (1)	850 (1)	850 (2)
County Estate Management	N/A	1,400 (2)	1,195 (2)	N/A
London & Edinburgh Inns	N/A	825 (1)	N/A	N/A
Others	N/A	29,675	N/A	N/A
Total number of pubs in the UK	N/A	60,000	55,300	48,003

Source: 2004, 2009 and 2013 figures sourced from: Key Note reports – Public Houses 2005, 2009 and 2015. 2002 figures sourced from Publican annual report for January 2002.

\*2014 figure.

<sup>8</sup> Source: Publican industry reports.

<sup>9</sup> FundingUniverse, [The Laurel Pub Company Limited History](#).

6. Enterprise acquired Unique Pub Company's 4,043 pubs in 2004, which accounted for its expansion in that year.<sup>10</sup> Since that time it has, according to its website, made a number of pub disposals to various purchasers to bring the size of its estate down by over 3,000 to 5,493 in 2013.

### **Theory of harm**

7. Potential loss of competition between pubs in ten petty sessional divisions (PSDs).

### **Description of the undertakings in lieu of reference**

8. The undertakings (given on 23 September 2002) required Enterprise to sell, within nine months, as many pubs as was necessary to reduce its share of pubs in any PSD to 25% or less (or, if either Enterprise or Laurel Pubs held more than 25% in any PSD prior to the acquisition, to sell as many pubs as is necessary to reduce their share back down to that level).

### **History of the companies since the undertakings were given<sup>11</sup>**

9. Enterprise (company number 02562808) is still active in pub retailing.
10. Laurel Pubs (company number 04313544) was renamed Enterprise Pubs Five Limited on 29 May 2002 and was dissolved on 17 September 2010.

### **Change of circumstances**

11. The CMA found a number of changes in the ownership of pubs and pub chains in the UK since these undertakings were given, including a significant number of divestments by Enterprise in the years since its acquisition of Unique Pub Co.
12. As noted above, there have been a number of changes in the market since the time of the original transaction, concerning the ownership of pubs in the UK. However, the CMA has not found, nor has it received evidence that these changes have been of a magnitude sufficient to lead the CMA to conclude that they represent a change in circumstances in this market, and specifically within the relevant PSDs, such that the undertakings would no longer be appropriate.

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<sup>10</sup> Source: Publican annual reports and [Office of Fair Trading \(OFT\) phase 1 clearance](#).

<sup>11</sup> All information in this section is sourced from Companies House unless otherwise stated.

## **Final decision**

13. The CMA's final decision is to retain the undertakings.

## Annex 3 – Fresenius AG / Caremark Limited

### Undertakings given by

1. Fresenius AG.

### Jurisdiction

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

### Details of the transaction

3. Proposed acquisition by Fresenius of Caremark Limited.

### Monopolies and Mergers Commission (MMC) report published

4. 30 April 1998.

### The market concerned

5. The market was contracted care services and services for patients on parental nutrition, purchased primarily by the NHS. The MMC found these could be considered as a single market, while noting there were also differences between the services which mean that separate scrutiny was warranted for some of them.
6. Table 1 below identifies the main areas of overlap between the parties.

**Table 1: Main areas of overlap**

<i>Main areas of overlap*</i>	<i>Fresenius</i>		<i>Caremark</i>		%
	<i>Market share by revenue</i>	<i>Market share by no. of patient days</i>	<i>Market share by revenue</i>	<i>Market share by no. of patient days</i>	
Contracted healthcare services	6	5	69	58	
Services for patients on parental nutrition (PN)†	8	8	75	75	

Source: MMC report.

\*Both in the area of homecare services to patients.

†Nutrition administered other than to the gut, normally by IV infusion.

### Theory of harm

7. In contracted healthcare services Fresenius was one of only three private sector suppliers, other than Caremark, with a significant share of the market. In particular it was an important competitor in the supply of PN services and in the absence of the merger was likely to become more active in the other contracted services. The MMC found to be a clear loss of competition from the merger. Barriers to entry (primarily reputational) were significant and the

MMC did not expect competitive pressures from new entrants to build up sufficiently quickly to offset this loss of competition.

8. NHS provision was not a major factor in the supply of PN services and, whilst it was more important in relation to the other contracted services, the MMC did not consider it satisfactory that the NHS should have to rely on own-provision in order to offset weakness in private sector competition caused by the merger. The MMC found that NHS purchasing practice was evolving in ways which, in due course, might enable the NHS to safeguard its position. In the short to medium term the MMC did not expect developments which would offset the effect of a significant reduction in competition. In the MMC's view, the merger would make it harder for the NHS to obtain value for money in purchasing PN services and in some instances value for money would in fact deteriorate. The MMC believed the merger would also lead to a significant reduction in competition for the supply of other contracted services, compared with the situation that would otherwise exist.
9. Besides its effects on competition, the merger entailed an element of vertical integration. The MMC believed that Fresenius would have sought to use the acquisition of Caremark to increase sales of its products and it expected that in the contracted services market, as a result, the merger would reduce purchasers' freedom to choose the products and services that they judged to be best suited to their needs.

### **Description of the undertakings**

10. The undertakings (given on 11 December 1998) required Fresenius not to hold any interest in the Business or interest in companies owning the Business or assets of the Business.
11. 'Business' means the business of the provision of healthcare services using advanced medical technology to patients at home and PN services carried on at the date of the undertakings by Caremark Limited or any of its subsidiaries.

### **History of the companies since the undertakings were given**

12. On 16 July 2007, Fresenius AG completed its conversion from an Aktiengesellschaft (AG – German public limited company) to a Societas Europaea, the European Union-wide equivalent.<sup>12</sup> The company changed its legal status again on 28 January 2011, becoming a Kommanditgesellschaft auf Aktien (KGaA – German partnership limited by shares) with a Societas

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<sup>12</sup> See [Fresenius website for details](#).

Europaea as a partner with unlimited liability (SE & Co. KGaA).<sup>13</sup> The company that gave the undertakings has changed its legal form.

13. The activities of Fresenius AG have been taken over by Fresenius SE and Co KGaA. This company is active in the supply of products and services for patients with chronic kidney failure.<sup>14</sup> Fresenius has confirmed to the CMA that Fresenius AG, Fresenius SE and Fresenius SE & Co KGaA is the same legal entity.<sup>15</sup>
14. Caremark Limited (company number 02678415) was renamed Caremark Services Limited on 15 June 1999. It was dissolved on 24 December 2013.<sup>16</sup> The CMA has not determined what became of Caremark's Business as defined above. A company called Caremark was formed in 2005 which may be the successor to the Business.<sup>17</sup>

### **Change of circumstances**

15. In this case, 17 years after the original transaction, the CMA considers that it would not now be practicable to identify the elements of Caremark's enterprise that formed the Business as defined in the undertakings. This is because the undertakings did not encompass the evolution of the 'Business'<sup>18</sup> or changes in delivery/technology, and the CMA considers that significant changes would be expected to have taken place in the last 17 years. Consequently, the CMA considers that it is no longer practical for it to enforce these undertakings. The CMA considers this to be a change of circumstances relevant to the undertakings, and as such, considers the undertakings to no longer be appropriate.

### **Final decision**

16. The CMA's final decision is to release the undertakings.

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> This was done through 'conversions'. Whenever a conversion becomes legally effective under German law through registration in the commercial register, a new commercial register number is being assigned to the legal entity – Fresenius AG - HRB 2617; Fresenius SE - HRB 10660; Fresenius SE & Co. KGaA - HRB 11852.

<sup>16</sup> All information in this section is sourced from Companies House unless otherwise stated.

<sup>17</sup> See the [Caremark website](#).

<sup>18</sup> The 'business' was defined as the provision of healthcare services using advanced medical technology to patients at home carried on at the date of the undertakings.

## **Annex 4 – Greene King plc / Laurel Pub Holdings Limited**

### **Undertakings given by**

1. Greene King plc (GK). An enforcement order, the Greene King Order (the Order), was made in respect of these undertakings and the CMA has decided to review this alongside the undertakings.<sup>19</sup>

### **Jurisdiction**

2. Enterprise Act 2002.

### **Details of the transaction**

3. GK acquired 432 pubs from Laurel Pub Holdings Limited (Laurel Holdings) on 6 August 2004. Laurel Holdings had been set up by and was owned by Morgan Grenfell to acquire about 3,000 pubs from Whitbread in 2001.<sup>20</sup> This acquisition followed one in 2002 by Enterprise Inns of pubs from Laurel Pub Group Limited / Morgan Grenfell which is the subject of a separate review.

### **Competition Commission (CC) report published**

4. Undertakings in lieu of a reference to the CC were instead given on 6 October 2004.

### **The market concerned**

5. The supply of public house services. The size of GK's pub estate remained fairly stable up to 2013 – see the table below.

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<sup>19</sup> The CMA decided that due to their interlinked nature it was appropriate that the enforcement order be reviewed as part of the open review of the original undertaking and so appointed the same Remedy Review Group to do so.

<sup>20</sup> See FundingUniverse, [The Laurel Pub Company Limited History](#).

**Table 1: Market shares of pub owners 2004 to 2013**

Pub company	Number of pubs in the UK (market shares)		
	2004	2009	2013
Enterprise Inns	8,575 (14)	7,765 (14)	5,493 (11)
Punch Taverns	8,300 (14)	8,425 (15)	4,096 (9)
Marston's	2,125 (4)	2,250 (4)	2,050 (4)
Greene King	2,075 (3)	2,585 (5)	1,900 (4)
Mitchells and Butlers	2,000 (3)	2,050 (4)	1,600 (3)
S and N/Heineken	1,500 (2)	2,200 (4)	1,300 (3)
Spirit	2,025 (3)	N/A	1,200 (2)
J D Wetherspoon	650 (1)	715 (1)	927* (2)
Wellington Pub Co	850 (1)	850 (1)	850 (2)
County Estate Management	1,400 (2)	1,195 (2)	N/A
London & Edinburgh Inns	825 (1)	N/A	N/A
Others	29,675	N/A	N/A
Total number pubs in the UK	60,000	55,300	48,003

Source: 2004, 2009 and 2013 figures sourced from: Key Note reports – Public Houses 2005 and 2009 (OFT, [Response to CAMRA super-complaint](#)) and Key Note reports – Public Houses 2015.

\*2014 figure.

6. In 2015 GK considerably increased the size of its pub estate through the acquisition of Spirit Pub Company. GK's website indicates that the company currently has around 3,057 pubs in its estate.<sup>21</sup> This acquisition was examined by the CMA and resulted in GK giving undertakings in lieu of reference<sup>22</sup> which included a requirement to dispose of a number of pubs, including some in the Oxford area (see below). Between 2004 and 2015, GK made a number of acquisitions of estates and groups of pubs. It made no major disposals in this time.<sup>23</sup>

## Theory of harm

7. Potential reduction of competition between pubs in seven PSDs.

## Description of the undertakings in lieu of reference

8. The undertakings (given on 6 October 2004) required GK to sell, within six months, as many pubs as was necessary to reduce its share of pubs in any PSD to 25% or less (or, if either GK or Laurel Holdings held more than 25% in any PSD prior to the acquisition, to sell as many pubs as was necessary to reduce their share back down to that level) to purchasers approved by the OFT (now CMA). GK was also not to reacquire any pubs sold if those acquisitions enhanced a market share held by either business of 25% or more in any PSD or otherwise created a market share of 25% or more in any PSD. The disposals required were 13 pubs in seven PSDs.

<sup>21</sup> See the Greene King '[Understanding our business](#)' webpage.

<sup>22</sup> See Greene King's [final undertakings](#).

<sup>23</sup> See the Greene King '[Our history](#)' webpage.

### **Description of the Order in lieu of reference**

9. The Order was made pursuant to section 75 and Schedule 8 to the Enterprise Act 2002 on 23 June 2006 on the grounds that GK had not complied with the undertakings described above.
10. GK had disposed of all but one of the pubs within the deadline provided in the undertakings, the outstanding divestment being the disposal of one pub in the Oxford PSD. Despite extensions to the original deadline, GK had still not divested the remaining pub in the Oxford PSD, as required by the undertakings. The Order replaced the undertakings completely in relation to the Oxford PSD only.
11. The Order was in the same terms as the undertakings but related only to the Oxford PSD and gave GK three months to dispose of the pub in question.

### **History of the companies since the undertakings were given and the Order made<sup>24</sup>**

12. GK (company number 00024511) is active in pub retailing and brewing.
13. Laurel Holdings (company number 04147397) was renamed Greene King Neighbourhood Pub Holdings Limited on 17 November 2004 and was dissolved on 21 December 2009.

### **Change of circumstances**

14. There have been a number of changes in the market since the time of the original transaction, typically concerning the ownership of pubs in the UK. However, the CMA has not found, nor has it received evidence that these changes have been of a magnitude sufficient to lead the CMA to conclude that they represent a change in circumstances in this market, and specifically within the relevant PSDs, such that the undertakings and the order would no longer be appropriate.

### **Final decision**

15. The CMA's final decision is to retain the undertakings and the Order.

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<sup>24</sup> All information in this section is sourced from Companies House.

## **Annex 5 – GWR Group plc / Scottish Radio Holdings plc, Galaxy Radio Wales and the West Ltd**

### **Undertakings given by**

1. GWR Group plc (GWR).

### **Jurisdiction**

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

### **Details of the transaction**

3. The merger situation arose from the creation of Vibe Radio Services Limited (VRSL), a joint venture company set up to acquire Eastern Counties Radio Limited (Vibe Radio)<sup>25</sup> and Galaxy Radio Wales and the West Limited (Galaxy).<sup>26</sup> VRSL was 51% owned by Scottish Radio Holdings plc (SRH) and 49% owned by GWR.

### **Competition Commission (CC) report published**

4. 16 May 2003.

### **The market concerned**

5. The parties overlapped in the supply of radio advertising airtime in parts of South West England.

### **2003**

6. SRH was a media group with interests in radio and local newspapers.
7. GWR was a commercial radio broadcasting group. GWR's sales house (Opus) sold airtime for the group as well as for other independent radio stations.<sup>27</sup>
8. The CC found that, following the merger, GWR would account for three-quarters of advertising revenue from local advertisers and almost all advertising revenue from national advertisers in the Bristol and Bath area; and

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<sup>25</sup> Formerly owned 50.01% by Daily Mail and General Trust plc and 49.99% by GWR Radio Group plc.

<sup>26</sup> Formerly owned by Chrysalis.

<sup>27</sup> Source: Fair Trading Act 1973 Section 76 submission by the Director General of Fair Trading to the Secretary of State.

for over 90% of advertising revenue from local advertisers and all advertising revenue from national advertisers in the Taunton and Yeovil area.

2012/2013

9. During 2012 and 2013, the OFT and subsequently, the CC investigated the completed acquisition by Global Radio Holdings Ltd of GMG Radio Holdings Ltd, with an overlap in relation to a number of commercial radio stations in the UK. The analysis carried out covered radio advertising, noting the differences between national contracted advertising and local advertising. The CC concluded that in a number of local areas in the UK, the transaction may be expected to generate significant adverse effects. The analysis undertaken at this time showed the continued value of local overlaps in radio advertising markets and the concerns that may arise.<sup>28</sup>

2015

10. SRH is now owned by Bauer Media Group and GWR is now owned by Global Media Limited (see below). Ofcom has told the CMA that these two groups compete with each other nationally and locally.
11. Since the merger Celador has entered the market locally. Market shares by listeners in South West England are set out below.

**Table 1: Percentage of market share of listeners in South West England in 2014/15**

<i>Radio group</i>	<i>Kiss West TSA area (includes Cardiff &amp; Newport)*</i>	<i>Heart West Country area (includes Gloucestershire)†</i>	%
Heart West Country (owned by Global Media Limited)	27.0	51.4	
Smooth (owned by Global Media Limited)	6.2	11.1	
Kiss West (owned by Bauer Media Group)	20.5	16.9	
Global and Bauer combined	53.7	79.4	
Celador‡	13.7	20.5	
Other	32.6§	0	

Source: RAJAR.

\*Excludes Swindon and Eastern Wiltshire.

†Includes Heart and Smooth Gloucestershire and The Breeze Cheltenham.

‡Includes Sam FM Bristol.

§Includes Real South Wales, Capital Cardiff/Newport, Gold South Wales and Nation Radio.

12. Since the time of the merger, the UK has seen the advent and roll out of digital radio.<sup>29</sup> Ofcom has told the CMA that its view is that digital radio has allowed the two big groups (Bauer and Global) to expand traditional local

<sup>28</sup> Global Radio Holdings Limited and GMG Radio Holding Limited, a report on the completed acquisition. Competition Commission, 21 May 2013.

<sup>29</sup> In the second quarter of 2014, the percentage of radio listening hours in the UK accounted for by digital radio had reached 36.8%. See Ofcom (July 2010), [The Communications Market: Digital radio report chart pack](#); and Ofcom (September 2014), [Digital Radio Report 2014](#).

brands nationally. There are few digital-only local radio stations and much of the listening to national digital stations is to the big players.

### **Theory of harm**

13. In the CC's view, if GWR had not acquired Galaxy, Galaxy might have reversed the previous decline in market share. The merger foreclosed such potential competition. Hence, the merger had significantly increased the already high market shares of local radio advertising held by the GWR stations in the Bristol, Bath, and four Taunton and Yeovil areas. There was extensive overlap of listeners between Galaxy's Galaxy 101 and both the GWR stations and some overlap of advertisers. The merger reduced the options open to companies advertising locally and reduced competition for local radio advertisers.
14. The CC found no prospect of entry sufficient to offset the effects of the reduction in competition resulting from the merger, given the need to obtain a licence from the Radio Authority and its judgment that the take-up of digital radio would not affect this situation significantly in the next three to five years.

### **Description of the undertakings**

15. The undertakings (given on 22 July 2003) required GWR:
  - (a) to sell its interests in VRSL to SRH;
  - (b) not to hold more than a 3% interest in Galaxy or participate in the formulation of its policy;
  - (c) not to carry out any agreement or arrangement for the provision of accommodation or support services with Galaxy or anyone who controls it for the purpose of facilitating the provision of any services by Galaxy in the broadcast area of GWR FM (Bristol and Bath) and in the broadcast area of Orchard FM;
  - (d) not to enter into or carry out any agreement with Galaxy with respect to the performance by GWR or any company part of the GWR group of companies, of local sales of advertising airtime on radio services supplied by Galaxy in the broadcast area of GWR FM (Bristol and Bath) and in the broadcast area of Orchard FM on behalf of Galaxy or any company controlling it; and
  - (e) by 1 February 2004 to cease to share accommodation with Galaxy and end any accommodation or support services arrangements with it.

## **History of the companies since the undertakings were given<sup>30</sup>**

16. GWR (company number 00715143) was renamed GWR Group Limited on 14 January 2009. It is still active in radio broadcasting. It is owned by Global Radio Limited.<sup>31</sup>
17. VRSL (company number 04525365) is dormant; that is, non-trading.
18. Galaxy Radio Wales and the West Limited (company number 02827755) was renamed Vibe Radio Wales and the West Limited on 27 January 2003 and Kiss 101 Limited on 6 September 2006. It is still active.
19. SRH (company number SC048376) changed its name to Scottish Radio Holdings Limited on 17 October 2005. It is still active. It is owned by Bauer Media Group.<sup>32</sup>

## **Change of circumstances**

20. There have been corporate changes since GWR gave undertakings in 2003. SRH and GWR's owners, Bauer Media Group and Global respectively, compete both locally and on a national level. There is also now a third player, Celador, operating in the South West area. However, Bauer Media Group and Global, continue to have high shares in South West England.
21. While there have been some changes in the market since the time of the original transaction, the CMA has not found, nor has it received evidence that, these changes have been of a magnitude sufficient to lead the CMA to conclude that they represent a change in circumstances in this market such that the undertakings would no longer be appropriate. A more recent CC investigation in radio markets in 2012 and 2013 into Global Radio Holdings Ltd and GMG Radio Holdings Ltd, as described above, reinforces the CMA's approach to the importance of overlaps in radio advertising in local areas and the competition concerns that may arise from these.

## **Final decision**

22. The CMA's final decision is to retain the undertakings.

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<sup>30</sup> All information in this section is sourced from Companies House unless otherwise stated.

<sup>31</sup> According to Ofcom.

<sup>32</sup> According to Ofcom.

## **Annex 6 – Hiram Walker-Gooderham and Worts Ltd / Highland Distilleries Ltd**

### **Undertakings given by**

1. Hiram Walker-Gooderham and Worts Limited (Hiram).

### **Jurisdiction**

2. Enterprise Act 2002 (transferred from Fair Trading Act 1973 jurisdiction by SI 2006/0355).

### **Details of the transaction**

3. Hiram proposed to acquire Highland Distilleries Limited (HD).

### **Monopolies and Mergers Commission (MMC) report published**

4. 6 August 1980.

### **The market concerned**

5. Scotch whisky new fillings<sup>33</sup> market.

### **Theory of harm**

6. The level of concentration in the market might have led to competition being restricted in the new fillings market.

### **Description of the undertakings**

7. The undertakings (given on 11 August 1980) required Hiram to refrain from taking any action that would result in enterprises carried on by Hiram ceasing to be distinct from enterprises carried on by HD.

### **History of the companies since the undertakings were given<sup>34</sup>**

8. Hiram is a Canadian company (company number CAD155458102D). In 1986, Hiram was acquired by Allied Lyons,<sup>35</sup> which has itself since ceased trading and its various whisky and other spirit brands have been sold to a number of

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<sup>33</sup> The practice in the industry at the time of the MMC report was that blending companies obtain new whisky as fillings, either by purchasing it or in exchange for their own distilleries' output.

<sup>34</sup> All information in this section is sourced from Companies House unless otherwise stated.

<sup>35</sup> See Reference for Business, [Hiram Walker Resources Ltd](#).

different companies. Consequently, Hiram, while active in other countries, is no longer active in the relevant market in the UK.

9. HD (company number SC001645), was renamed Highland Distilleries Co plc in 1982, becoming Highland Distillers Limited in 1998. In 1999, the company was acquired by the Edrington Group Limited, the successor company of Robertson & Baxter Ltd. Highland Distillers Limited changed its name again in 2001 to Highland Distillers Group Ltd, remaining a production arm of the Edrington Group with products including Famous Grouse and Cutty Sark blended whisky brands. The company is still active.<sup>36</sup>

### **Change of circumstances**

10. The CMA has concluded that Hiram is no longer active in the relevant whisky market in the UK. The CMA considers this amounts to a change of circumstances. On this basis, the CMA considers that the undertakings are no longer appropriate.

### **Final decision**

11. The CMA's final decision is to release the undertakings.

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<sup>36</sup> Source: University of Glasgow, [Records of Highland Distilleries Co plc, whisky distillers, Glasgow, Scotland](#); and Companies House data.

## **Annex 7 – Littlewoods Organisation plc / Freemans plc**

### **Undertakings given by**

1. The Littlewoods Organisation plc (TLO).

### **Jurisdiction**

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

### **Details of the transaction**

3. TLO proposed to acquire Freemans plc.

### **Monopolies and Mergers Commission (MMC) report published**

4. 8 November 1997.

### **The market concerned**

5. TLO's subsidiary Littlewoods Home Shopping Group Ltd, and Freemans operated catalogue mail order businesses in the home shopping sector of non-food retailing, of which agency mail order accounted for some 60% in value terms in 1995.

### **Theory of harm**

6. The proposed merger would have raised concentration, resulting in the merged company and the then current market leader, accounting for over 80% of agency mail order sales. The MMC expected this increase in concentration to reduce the level of existing competition significantly.

### **Description of the undertakings**

7. The undertakings (given on 25 September 1998) prevented TLO and its subsidiaries from acquiring control of Freemans plc or any assets of Freemans plc without seeking prior written consent from the Secretary of State.

### **History of the companies since the undertakings were given<sup>37</sup>**

8. TLO agreed not to acquire more than 10% of the issued share capital or any assets of Freemans' agency mail order business.

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<sup>37</sup> Information in this section is sourced from Companies House unless otherwise stated.

9. TLO (company number 00262152) was renamed Littlewoods plc on 17 October 2000. This entity again changed its name to Littlewoods Limited on 1 November 2002.<sup>38</sup> It is still active. Littlewoods merged with Shop Direct in 2005 and is now branded Shop Direct.<sup>39</sup>
10. Freemans plc (company number 00321643) is still active in retail sales via mail order houses or online.<sup>40</sup>

### **Change of circumstances**

11. On 23 November 2015, Shop Direct Secretarial Services Limited, which provides company secretarial services to Littlewoods Limited, confirmed to the CMA that it sees its exit from the agency mail order model, in 2014, as permanent. Littlewoods has no intention to return to the agency business model.
12. Shop Direct Secretarial Services Limited also confirmed to the CMA that Littlewoods no longer issues mail order catalogues. The last catalogues were published in the spring/summer season 2015, although Littlewoods still publishes magazines and paper-based marketing material for some Littlewoods brands, but there is no intention, at present, to revert to the traditional, large catalogue.
13. Shop Direct Secretarial Services Limited also confirmed that Littlewoods is concentrating its efforts as an online retailer which trades with customers by providing a variety of interest-free and interest-bearing credit options under a running account credit facility. Accordingly the area of overlap between the parties, namely agency mail order, which was the subject of the theory of harm in this case, no longer exists. The CMA considers that this represents a change of circumstance such that the undertakings are no longer appropriate.

### **Final decision**

14. The CMA's final decision is to release the undertakings.

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<sup>38</sup> Source: Companies House data.

<sup>39</sup> See the Shop Direct '[History](#)' webpage.

<sup>40</sup> Source: Companies House data.

## **Annex 8 – Nutreco Holding NV / Hydro Seafood GSP Limited**

### **Undertakings given by**

1. Nutreco Holding NV (Nutreco).

### **Details of the transaction**

2. Nutreco proposed to acquire Hydro Seafood GSP Limited (SSF).

### **Competition Commission (CC) report published**

3. 22 December 2000.

### **The markets concerned**

#### *2000*

4. Nutreco and SSF overlapped in the supply of farmed salmon in the UK. The CC found that, following the merger, the combined entity's UK share of Scottish salmon production would have been 46%.
5. Nutreco also had substantial interests in the animal and fish feed industries. In 1999, it supplied 48% of UK salmon feed by volume and nearly 53% of all UK fish feed by volume. The fish feed market was relatively concentrated, with the top three companies accounting for around 90% of the supply.
6. The merger would also have significantly increased the scale of Nutreco's purchasing of salmon feed from a share of 26% to over 38% in 2000.

#### *2015*

7. Nutreco no longer supplies salmon in the UK. Therefore the overlap with Hydro that was present in 2000 has disappeared. It follows that Nutreco is no longer a purchaser of salmon feed in the UK. Accordingly, both the CC's horizontal and vertical concerns about the merger described below are no longer present.

### **Theory of harm**

8. The CC found that if the merger had gone ahead, Nutreco would have gained an enhanced position as a feed purchaser in Scotland arising from the merger, when added to its already high share of the supply of salmon feed, which would have reduced competition in the supply of salmon feed. The CC concluded that, following the merger, it expected the combined Nutreco – SSF

salmon farming business to purchase all or most of its salmon feed from Nutreco.

### **Description of the undertakings**

9. The undertakings prohibited Nutreco from acquiring SSF and its subsidiaries.

### **History of the companies since the undertakings were given**

10. As a result of Hydro Seafood GSP Limited being acquired by SalMar ASA and Lerøy Seafood Group ASA, it was renamed Scottish Sea Farms Limited (SSF) on 21 January 2002. It is still active.
11. As noted above, Nutreco is still active.

### **Change of circumstances**

12. As explained above, both the CC's horizontal and vertical concerns about the merger are no longer present. Consequently, the CMA considers that the undertakings are no longer appropriate.

### **Final decision**

13. The CMA's final decision is to release the undertakings.

## **Annex 9 – Rexam plc (Bowater plc) / DRG Packaging**

### **Undertakings given by**

1. Bowater plc.

### **Jurisdiction**

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

### **Details of the transaction**

3. In 1992 Bowater plc acquired DRG Packaging, a maker of food and healthcare packaging, for £216 million.<sup>41</sup>

### **Competition Commission (CC) report published**

4. Undertakings in lieu of reference to the CC were instead given on 15 December 1992.

### **The market concerned**

5. Packaging.

### **Theory of harm**

6. The acquisition gave rise to competition concerns in relation to the supply of medical sterilisation bags and pouches in the UK.

### **Description of the undertakings in lieu of reference**

7. The undertakings, which were given on 15 December 1992, required Bowater to dispose of its medical sterilisation bags and pouches business in Midsomer Norton, Avon.<sup>42</sup>

### **History of the companies since the undertakings were given<sup>43</sup>**

8. Bowater plc (company number 00191285) was renamed Rexam plc on 1 June 1995. It is still active.

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<sup>41</sup> See FundingUniverse, [Rexam PLC History](#).

<sup>42</sup> Source: PLC report, itself sourced from DTI press notice P/92/527 dated 11 August 1992 and DTI press notice P/92/586 dated 15 September 1992 (neither press notice is now available).

<sup>43</sup> Source: Companies House records.

9. There are no records of DRG Packaging on the Companies House webpages.
10. The divested business is now owned by Westfield Medical Limited, which itself was purchased in 2000 by Jourdan plc.<sup>44</sup> The principal activities of Jourdan plc are undertaken by its two subsidiaries, Westfield Medical Limited and Clinipak Limited.<sup>45</sup>

### **Change of circumstances**

11. The CMA's review has found that the divestment of the medical sterilisation bags and pouches business in Midsomer Norton has taken place, as indicated above.
12. The CMA has been unable to determine whether the reacquisition of the divested business is subject to an ongoing restraint. To the extent that they may still apply, the CMA is no longer able to monitor or enforce the undertakings.
13. The CMA considers that these represent changes in circumstance relevant to the undertakings, such that it is no longer appropriate to retain them on the register.

### **Final decision**

14. The CMA's final decision is to release the undertakings.

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<sup>44</sup> See the Westfield Medical 'About us' webpage and the [Jourdan plc website](#).

<sup>45</sup> Jourdan plc (2015), [Annual Report 2015](#).

## **Annex 10 – Scotts Company / Monsanto Company**

### **Undertakings given by**

1. Scotts Company.

### **Jurisdiction**

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

### **Details of the transaction**

3. Scotts Company and Monsanto Company merged their garden fertilisers business.

### **Competition Commission (CC) report published**

4. Undertakings in lieu of a reference to the CC were instead given on 11 June 1999.

### **The market concerned**

5. Garden fertilisers.

### **Theory of harm**

6. There were competition concerns in relation to the market for garden fertilisers, through giving Scotts Company control of both the Miracle-Gro and Phostrogen brands of garden fertiliser.

### **Description of the undertakings in lieu of reference**

7. The undertakings (given on 11 June 1999) required Scotts Company to divest the Phostrogen brand to a purchaser to be approved by the Director General of Fair Trading. The assets to be divested included trademarks and patents; stock in trade; pesticide approvals; supply contracts; sales, marketing and research and development personnel; and customer records. The undertakings also required Scotts Company to maintain Phostrogen as a separate business until the divestment took place.<sup>46</sup>

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<sup>46</sup> Source: DTI press release, 11 June 1999.

## **History of the companies since the undertakings were given**

8. Scotts Company has been renamed Scotts Miracle-Gro Company. It is based in Ohio, USA and is still active.<sup>47</sup>
9. Monsanto Company is still active: it is based in Missouri, USA. The companies are still working together.<sup>48</sup> The Phostrogen brand is now owned by the Bayer Group.<sup>49</sup>

## **Change of circumstances**

10. The CMA's review has found that the sale of the Phostrogen brand has taken place, as indicated above, and this divestment was successful as the new owner continues to operate the business.
11. The CMA has been unable to determine whether the reacquisition of the divested business is subject to an ongoing restraint. To the extent that they may still apply, the CMA is no longer able to monitor or enforce the undertakings.
12. The CMA considers that these represent changes in circumstance relevant to the undertakings, such that it is no longer appropriate to retain them on the register.

## **Final decision**

13. The CMA's final decision is to release the undertakings.

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<sup>47</sup> See the [Scotts Miracle-Gro website](#).

<sup>48</sup> See Monsanto press release (May 2015): [Monsanto and Scotts Miracle-Gro Expand Long-Standing Partnership](#).

<sup>49</sup> See the Bayer Garden '[Phostrogen All Purpose Plant Food](#)' webpage.

## **Annex 11 – SCR Sibelco SA / Fife Silica Sands Ltd and Fife Resources Ltd<sup>50</sup>**

### **Undertakings given by**

1. SCR Sibelco SA.

### **Jurisdiction**

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

### **Details of the transaction**

3. SCR Sibelco SA acquired Fife Silica Sands Limited and Fife Resources Limited on 22 September 2000.

### **Competition Commission (CC) report published**

4. 4 July 2001.

### **The market concerned**

5. The acquisition increased SCR Sibelco's market share by volume in sand for glass manufacture from 71% to 86%.

### **Theory of harm**

6. Prices of sand for glass manufacture in the UK were subject to individual negotiation; there were no price lists. The CC considered that there was no likelihood in the short term of glass-sand prices being constrained by imports. Moreover, there were severe constraints on new entry. Following the merger and without the competitive constraint formerly exercised by Fife Silica Sands in the market, the CC concluded that glass-sand prices may be expected to be higher than would otherwise have been the case.

### **Description of the undertakings**

7. The undertakings (given on 31 October 2001) required SCR Sibelco to divest the business and assets of Fife Silica Sand Limited and Fife Resources Limited (together the 'Fife companies') by 18 February 2002. SCR Sibelco was also required not to acquire or hold any interest in the Fife companies.

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<sup>50</sup> This remedy was included in a paper published by the CMA in July 2015, [Understanding past merger remedies – Report on case study research](#) (CMA48). This provides greater details on the undertakings and the merger case.

The 'Fife companies' were defined in the undertakings as 'the business and assets of Fife Silica Sands Limited and Fife Resources Limited as at 22 September 2000 and any additional business carried on by, and assets used by, the Fife companies since that date'. As such, these undertakings were designed to outlast changes in ownership of the Fife companies.

8. The undertakings gave SCR Sibelco six months to find a suitable purchaser, and allowed for the appointment of a divestment trustee in the event that the sale had not taken place in that time.

### **History of the companies since the undertakings were given<sup>51</sup>**

9. SCR Sibelco SA is still active in the supply of silica sand.<sup>52</sup>
10. Fife Silica Sands Limited (company number SC081696) changed its name to FSS (2002) Limited on 17 July 2002. It was subsequently dissolved.
11. Fife Resources Limited (company number 3450569) is a dormant company. This means it has had no significant accounting transactions during its last reporting period which in effect means it has not been trading.
12. SCR Sibelco failed to sell the Fife companies within six months and a divestment trustee was appointed in February 2002. The trustee achieved a sale of the Fife companies for a nominal £1 in June 2002. The business that was sold remains active and is currently owned by [Patersons Quarries Limited](#) of Coatbridge. Fife Silica Sands provides a wide product range of sands for a variety of uses.

### **Change of circumstances**

13. The CMA has not found, nor received evidence of a change in circumstances relevant to the undertakings in this case.

### **Final decision**

14. The CMA's final decision is to retain the undertakings.

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<sup>51</sup> Source: Companies House data, unless otherwise stated.

<sup>52</sup> See the Sibelco '[About us](#)' webpage.