

COMPETITION COMMISSION CONSULTATION ON GUIDANCE CC2

(“Merger references: Competition Commission Guidelines - June 2003”)

CONSULTATION RESPONSE BY SJ BERWIN LLP

1 Introduction

- 1.1 SJ Berwin LLP (“SJ Berwin”) welcomes the opportunity to respond to the CC2 Guidance (the “Guidance”) consultation announced by the Competition Commission on 13 February 2008.
- 1.2 We share the Competition Commission’s view, as set out in its 13 February press release, that the Guidance as it stands contains no critical shortcomings. However, we do believe that the Guidance could be expanded in a limited number of key areas, particularly relating to remedies. We set out our views on this in more detail below.

2 General comments

- 2.1 We believe that the Guidance as it stands is clear, comprehensive in terms of what it covers (subject to our comments on remedies set out below) and we do not see the need for any major redrafting of the existing text.

3 Specific comments

- 3.1 We believe that the Guidance would benefit most from strengthening Section 4 - Remedial Action. Although paragraph 4.50 of the Guidance states that “*For more information about... the procedure that will apply when remedies are being considered see General Advice and Information Parts 6 and 7*”, it would be helpful if the Guidance could expand on the points set out below.
- 3.2 First, the Guidance could usefully expand on the practical steps the Competition Commission takes in the event that a substantial lessening of competition is found and a remedy package needs to be agreed.
- 3.3 In particular, it would be helpful if the Guidance were to provide further details (regarding both structural and behavioural remedies) concerning:
- (a) the extent to which any proposed remedy package needs to be developed by the time the Final Report is published (i.e. the degree of specificity required pre-Final Report);
 - (b) the Commission’s general approach to including ‘fall back’ remedy options in the Final Report; and
 - (c) the Commission’s practical approach to finalising a remedies package post-Final Report and, in particular, the role of third parties (such as customers or suppliers) in that process.
- 3.4 Secondly, mirroring comments SJ Berwin made to a Competition Commission delegation in a recent meeting to discuss experiences of working with the Competition Commission, we feel that the nature and scale of the interaction between the relevant Inquiry Group and other senior Competition Commission staff (such as the Director of Remedies) at the remedy phase is not sufficiently clear. Some further guidance or information on this topic would be welcome.

SJ Berwin LLP

28 March 2008