

**Competition Commission Acceptance of Undertakings No. 4 of 2004**

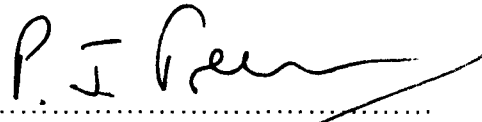
**IN THE MATTER of a reference to the Competition Commission dated 20 May 2004 concerning the acquisition by DS Smith PLC of LINPAC Containers Limited**

Whereas on 20 May 2004 the Office of Fair Trading, in exercise of its duty under section 22 of the Enterprise Act 2002 ("the Act") referred to the Competition Commission ("the CC") the completed acquisition by DS Smith plc of LINPAC Containers Limited:

And whereas DS Smith plc has agreed to give undertakings to the CC under section 80 of the Act for the purpose of preventing pre-emptive action, to ensure that no action is taken which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Act which may be justified by the CC's decisions on the reference:

Now the CC pursuant to section 80(2) of the Act hereby accepts the undertakings, a copy of which is set out in the attached Annex below, and accordingly the undertakings come into force in accordance with section 80(5) of the Act:

Signed by authority of the CC



Peter Freeman  
Group Chairman  
29 June 2004

## Annex

### **ACQUISITION BY DS SMITH PLC OF LINPAC CONTAINERS LIMITED**

#### **UNDERTAKINGS GIVEN BY DS SMITH PLC TO THE COMPETITION COMMISSION PURSUANT TO SECTION 80 OF THE ENTERPRISE ACT 2002**

Whereas, on 20 May 2004, the OFT made the reference to the CC under section 22 of the Act concerning the completed acquisition by DS Smith of LINPAC Containers:

And whereas the CC and DS Smith wish to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference:

And whereas the reference has not been finally determined in accordance with section 79(1) of the Act:

Now DS Smith hereby gives to the CC the following undertakings.

#### **Management of the LINPAC Containers business until determination of proceedings**

1. Except with the prior written consent of the CC, DS Smith undertakes that it will not during the specified period take any action which might:
  - (a) lead to the integration of the LINPAC Containers business with the DS Smith business;
  - (b) transfer the ownership or control of LINPAC Containers or any of its subsidiaries; or
  - (c) otherwise impair the ability of LINPAC Containers to compete independently in any of the markets affected by the acquisition.
2. Further and without prejudice to the generality of paragraph 1, DS Smith will at all times during the specified period, procure that except with the prior written consent of the CC:
  - (a) the LINPAC Containers business is maintained as a going concern, and sufficient resources are made available for the development of the LINPAC Containers business, on the basis of its pre-merger business plans;
  - (b) the LINPAC Containers business is carried on separately and under a different name from the DS Smith business;
  - (c) no substantive changes are made to the organisational structure of the LINPAC Containers business or to the management responsibilities within the LINPAC Containers business;

- (d) other than in the ordinary course of business, none of the assets of the LINPAC Containers business are disposed of and no interest in the assets of the LINPAC Containers business is created or disposed of;
- (e) the assets of the LINPAC Containers business are maintained and preserved, including facilities and goodwill;
- (f) the nature, description, range, and standard of corrugated cardboard sheet and corrugated cardboard cases currently supplied in the United Kingdom by each of the DS Smith business and the LINPAC Containers business are maintained and preserved, and for the avoidance of doubt, DS Smith shall not allow production capacity in existence at any of the LINPAC Containers plants as at 20 May 2004 to be reduced without the express written permission of the CC;
- (g) there is no integration of the information technology of the LINPAC Containers business and the DS Smith business (other than that which took place prior to 20 May 2004), and the software and hardware platforms of LINPAC Containers business shall remain essentially unchanged, except for routine changes and maintenance (though, for the avoidance of doubt, DS Smith shall be entitled to review and evaluate the relative merits of the existing Enterprise Resource Planning (ERP) packages operated by the two businesses during the specified period);
- (h) no key staff are transferred between the DS Smith business and the LINPAC Containers business;
- (i) all reasonable steps are taken to encourage all key staff to remain with the LINPAC Containers business; and
- (j) sales staff in the DS Smith business do not have access to pricing information for individual customers of the LINPAC Containers business and vice versa.

### **Compliance**

3. DS Smith will procure that each of its subsidiaries complies with these undertakings as if it had given them.
4. DS Smith will forthwith provide to the OFT and the CC such information as either of them may from time to time require for the purposes of monitoring compliance by DS Smith and its subsidiaries with these undertakings.
5. DS Smith will comply insofar as it is able with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

## Interpretation

7. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

8. For the purposes of these undertakings:

**“the acquisition”** means the acquisition by DS Smith of LINPAC Containers, completed on 22 March 2004

**“the Act”** means the Enterprise Act 2002;

**“business”** has the meaning given by section 129(1) and (3) of the Act;

**“the CC”** means the Competition Commission;

**“the decisions”** means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

**“DS Smith”** means DS Smith PLC;

**“the DS Smith business”** means the business of DS Smith and its subsidiaries carried on in the United Kingdom as at 20 May 2004;

**“key staff”** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**“LINPAC Containers”** means LINPAC Containers Limited;

**“the LINPAC Containers business”** means the business of LINPAC Containers and its subsidiaries carried on in the United Kingdom as at 20 May 2004;

**“the LINPAC Containers plants”** means six integrated or box plants which produce corrugated sheet and convert it into corrugated cases (Louth, Featherstone, Devizes, Glasgow, Rawcliffe and Erith); a sheet feeder plant in Louth, manufacturing corrugated sheet; and a sheet or converter plant in Louth, which converts corrugated sheet into corrugated cases;

**“the OFT”** means the Office of Fair Trading;

**“sales staff”** means staff responsible for making or procuring sales of products in the markets affected by the acquisition;

**“the specified period”** means the period beginning on the date of these undertakings and terminating when the reference is finally determined in accordance with subsections 79(1) and (2) of the Act;

**“subsidiary”**, unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended); and

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF DS Smith PLC