

Competition Commission Release of Undertakings and Acceptance of Undertakings

IN THE MATTER of a reference to the Competition Commission dated 26 May 2005 concerning the acquisition by British Salt Limited of New Cheshire Salt Works Limited.

Whereas on 30 March 2005, the Office of Fair Trading ("OFT") accepted undertakings ("the OFT undertakings") from British Salt Limited and British Salt Holdings LLC under section 71(2) of the Enterprise Act 2002 ("the Act") in connection with the completed acquisition by British Salt Limited of New Cheshire Salt Works Limited;

And whereas on 26 May 2005, the OFT made a reference to the Competition Commission ("the CC") under section 22 of the Act in connection with the acquisition;

And whereas on 1 June 2005, the OFT undertakings were adopted by the CC under section 80(3) of the Act;

And whereas British Salt Limited and British Salt Holdings LLC has given new undertakings ("the new undertakings") to the CC, the text of which is set out in the attached Annex hereto;

And whereas the reference has not been finally determined;

Now the CC, in exercise of its powers under section 80(4) of the Act releases British Salt Limited and British Salt Holdings LLC from the undertakings accepted by the CC on 1 June 2005 and in the exercise of its powers under section 80(2) of the Act and for the purpose of preventing pre-emptive action which might prejudice the reference or impede the taking of any action under Part 3 of the Act which may be justified by the CC's decision on the reference, hereby accepts the new undertakings.

Signed by authority of the CC



John Baillie
14 July 2005

**COMPLETED ACQUISITION BY BRITISH SALT LIMITED OF NEW CHESHIRE
SALT WORKS LIMITED**

**UNDERTAKINGS GIVEN BY BRITISH SALT LIMITED AND BRITISH SALT
HOLDINGS LLC TO THE COMPETITION COMMISSION PURSUANT TO SECTION
80 OF THE ENTERPRISE ACT 2002**

Whereas, on 26 May 2005, the OFT made the reference to the CC under section 22 of the Act concerning the completed acquisition by British Salt of NCSW:

And whereas the CC wishes 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 British Salt and its parent, British Salt Holdings hereby give to the CC the following undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action:

Management of the NCSW business until determination of proceedings

1. Except with the prior written consent of the CC, British Salt and British Salt Holdings undertake that they will not during the specified period take any action which might prejudice the reference concerned or impede the taking of any action under the Act by the CC or other party which may be justified by the CC's decisions on the reference, including any action which might:
 - (a) lead to the integration of the NCSW business with the British Salt business;
 - (b) transfer the ownership or control of NCSW or any of its subsidiaries;
or
 - (c) otherwise impair the ability of the NCSW business to compete independently in any of the markets affected by the acquisition.

2. Further and without prejudice to the generality of paragraph 1, British Salt and British Salt Holdings will at all times during the specified period, procure that except with the prior written consent of the CC:
 - (a) the NCSW business is carried on separately and under a different name from the British Salt business and NCSW's separate sales identity and brand identity are maintained;
 - (b) the customer lists of British Salt and NCSW shall be operated and updated separately;

- (c) existing contracts continue to be serviced by the business to which they were awarded;
- (d) the NCSW business is maintained as a going concern and sufficient resources are made available for the development of the NCSW business, on the basis of its pre-merger business plans, and any risk of loss of competitive potential of NCSW is minimised as far as possible;
- (e) except in the ordinary course of business, no substantive changes are made to the organisational structure of the NCSW business or to the management responsibilities within the NCSW business;
- (f) the nature, description, range and quality of goods and/or services currently supplied in the United Kingdom by each of the two businesses are maintained and preserved;
- (g) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) the assets of the NCSW business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the NCSW business are disposed of; and
 - (iii) no interest in the assets of the NCSW business is created or disposed of;
- (h) there is no integration of the information technology of the two businesses, and the software and hardware platforms of the NCSW business shall remain essentially unchanged, except for routine changes and maintenance;
- (i) no key staff are transferred between the two businesses;
- (j) all reasonable steps are taken to encourage all key staff to remain with the NCSW business; and
- (k) except as provided for in paragraph 3 below, no business secrets, customer lists, customer account information, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the two businesses, shall pass, directly or indirectly, from NCSW (or any of its employees, directors, agents or affiliates) to British Salt or British Salt Holdings (or any of its employees, directors, agents or affiliates), or *vice versa*, and if such information has already passed directly or indirectly to British Salt and/or British Salt Holdings prior to the giving of these undertakings:
 - (i) any records or copies (electronic or otherwise) of such information wherever they may be held should be either returned to NCSW or destroyed as soon as practicably possible and in any case within 48 hours of the giving of these undertakings;

- (ii) such information should not be passed directly or indirectly to any employees, directors, agents or affiliates of British Salt or British Salt Holdings that do not have possession of such information; and
- (iii) such information should not be used directly or indirectly by British Salt and/or British Salt Holdings to obtain customers.

3. Notwithstanding the undertakings set out above, the following information flow is permitted:

- the British Salt Managing Director (Robert Jones) may receive such information as is strictly required for him to manage the NCSW business, limited to the monthly management accounts and balance sheets of NCSW, NCSW monthly and weekly production volumes by product type; aggregated budgeted and actual sales data; and maintenance cost reports,
- the British Salt Finance Director (David Ward) may receive the monthly management accounts of NCSW, limited to profit and loss account and balance sheet; aggregated budgeted and actual sales data; and the cash controller spreadsheet,

provided in either case that, should remedies be imposed as a result of this reference, any records or copies held will be returned to NCSW or destroyed.

Compliance

- 4. British Salt and British Salt Holdings shall procure that each of their subsidiaries complies with these undertakings as if it had given them.
- 5. British Salt and British Salt Holdings shall comply insofar as they are 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.
- 6. British Salt and British Salt Holdings shall 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 British Salt and British Salt Holdings and their subsidiaries with these undertakings. In particular, on the first working day of each month commencing on 1 August 2005 British Salt and British Salt Holdings shall provide a monthly statement to the CC confirming compliance with these undertakings signed by the Managing Director of British Salt (Robert Jones) and the site manager of NCSW (Richard Galbraith).

Interpretation

- 6. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 7. For the purposes of these undertakings:

“the acquisition” means the acquisition by British Salt of NCSW, completed on [25] February 2005;

“the Act” means the Enterprise Act 2002;

“an affiliate” of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

“British Salt” means British Salt Limited;

“the British Salt business” means the business of British Salt and its subsidiaries carried on as at [25] February 2005;

“British Salt Holdings” means British Salt Holdings LLC;

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

“the CC” means the Competition Commission;

“control” includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“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;

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

“NCSW” means New Cheshire Salt Works Limited;

“the NCSW business” means the business of NCSW and its subsidiaries carried on as at [25] February 2005;

“the OFT” means the Office of Fair Trading;

“the ordinary course of business” means matters connected to the day to day supply of salt and connected services by NCSW and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of NCSW;

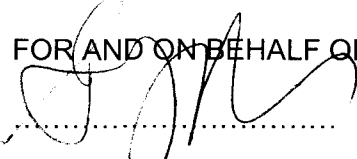
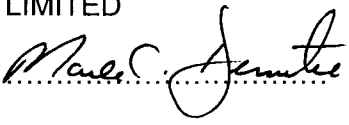
“the specified period” means the period beginning on the date of these undertakings and terminating when the reference is finally determined in accordance with sections 79(1) and (2) of the Act;

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

"the two businesses" means the British Salt business and the NCSW business; and

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

FOR AND ON BEHALF OF BRITISH SALT LIMITED

 Signature	 Signature
G MURPHY Name	MARK C. DEMETREE Name
VPO GM Title	CEO Title
8 th July 2005 Date	8 th July 2005 Date

FOR AND ON BEHALF OF BRITISH SALT HOLDINGS LLC

 Signature	 Signature
G MURPHY Name	MARK C. DEMETREE Name
VPO GM Title	CEO Title
8 th July 2005 Date	8 th July 2005 Date