

BRITISH SALT LTD/NEW CHESHIRE SALT WORKS LTD MERGER INQUIRY

Additional Remedy Option – Toll Manufacturing (amended version)

20 September 2005

In its provisional findings report, published on 6 September 2005, the Inquiry Group concluded provisionally that the acquisition of New Cheshire Salt Works Ltd (NCSW) by British Salt Ltd (British Salt) might be expected to result in a substantial lessening of competition (SLC) in the supply of pure dried vacuum salt (PDV) and compacted salt in Great Britain or the UK and the Republic of Ireland. The Inquiry Group expects that the SLC would result in higher prices than would have been the case without the merger. The CC issued a Provisional Findings Notice to that effect on 2 September.

The CC also issued a Notice of Possible Remedies on 2 September designed to address the SLC and the resulting adverse effects. The Notice of Possible Remedies invited views on two possible remedies, divestiture and price control, to be used alone or in either sequential combination.

A further possible remedy, set out below, has been proposed to the CC and we are seeking views on it, either to be used alone or in any sequential combination with either or both of the two options identified in the Notice of Possible Remedies.

The new remedy option would address the SLC by creating an arrangement between British Salt and a third party, the elements of which would be:

- British Salt would agree to make available, or transfer for consideration, NCSW's customer list to a third party;
- British Salt would manufacture and make available to the third party an agreed volume of salt each year on a 'cost plus' basis, sufficient to allow the third party to supply NCSW's former customers. In other words, British Salt would undertake "toll manufacturing" of that volume of salt on behalf of the third party;
- there would be no obligation on the third party to purchase all of the agreed volume of salt, ie it could meet the needs of the former NCSW customers by purchasing salt elsewhere; and
- these arrangements would apply for an appropriate period of time only.

We are seeking your views on the effectiveness of this remedy in addressing the SLC and on its practicability. In particular, we would appreciate your views on the following questions:

- Are there likely to be third parties that would find this a sufficiently attractive commercial proposition? Would the proposition be made more attractive by measures such as transferring the current NCSW sales team to the third party or preventing British Salt from competing for the former NCSW customers for a limited period? Would such a restriction on competition be justifiable?
- Should the arrangements be limited to PDV and compacted salt or should they extend to pharmaceutical and block salt also? If so, why?
- How should the 'cost plus' price at which British Salt sells salt to the third party be calculated?
- Would an obligation on the third party to purchase the agreed volume of salt from British Salt more accurately reflect the incentives on NCSW to sell its production volume and thus better replicate NCSW's former role in the market?
- Alternatively, would an obligation (if practicable) on the third party to sell the agreed volume of salt - regardless of who the salt was purchased from (but with the obligation remaining on British Salt to supply that volume on a 'cost plus' basis if required) - be a more attractive proposition to potential third parties, whilst still reflecting the incentives on NCSW prior to the merger?
- What would be an appropriate period for such arrangements and why?
- What monitoring arrangements, if any, would be appropriate?

The CC now invites views on this possible remedy by **Tuesday 27 September 2005**. Comments should be made in writing to:

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