

**REFERENCE RELATING TO THE ANTICIPATED ACQUISITION OF NEW  
CHESHIRE SALT WORKS LIMITED BY BRITISH SALT LIMITED**

**Notice of Possible Remedies under Rule 11 of the Competition Commission  
Rules of Procedure**

**Introduction**

1. On 26 May 2005, the Office of Fair Trading (OFT), in exercise of its duty under section 22 of the Enterprise Act 2002 (the Act) and its power under 35(6) of the Act, referred to the Competition Commission (CC) the completed acquisition of New Cheshire Salt Works Limited (NCSW) by British Salt Limited (British Salt).
2. In its provisional findings on the reference notified to British Salt (the main party) on 6 September 2005, the CC inquiry group (the Group) concluded provisionally that the acquisition of NCSW by British Salt (the merger) had resulted in the creation of a relevant merger situation; and that the creation of that situation 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 Group expects that this SLC would result in higher prices than would have been the case absent the merger.
3. This notice sets out the actions that the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings and invites comments on possible remedies (see note (i)).

**Possible remedies on which views are sought**

4. The Group invites views on two possible remedies, to be used alone or in either sequential combination.

Option 1: Divestiture

5. The Group invites views on whether divestiture would be effective in addressing the SLC identified as expected to result from the merger. In particular the Group invites views on:
  - the scope of the divestiture package. The CC generally prefers the divestiture of an existing business that can compete effectively in the market on a standalone basis. The Group is currently of the view that, in this case, the divestiture of the whole of the NCSW business would be necessary to address effectively the SLC. However, views are invited on whether a divestiture package short of the NCSW business as a whole would be effective in addressing the SLC; and
  - possible purchasers. In order to be an effective remedy, divestiture would need to result in NCSW being purchased by someone who would operate it as a competitor in the market. Views are invited on possible suitable purchasers;

Option 2: Price control

6. The Group is considering whether a price control would be effective in addressing the SLC and adverse effects identified as expected to result from the merger. In particular, views are invited on the following issues:
  - the scope and form of a price control. The Group invites views on:
    - which prices could and should be controlled;
    - whether these prices could and should be controlled individually or in a basket, and, if in a basket, of what the basket should comprise;
    - by reference to what could and should these prices be controlled (e.g. some measure of UK inflation, industry cost indices, prices of other types of salt, prices of salt in other countries);
  - compliance monitoring arrangements. The Group invites views on how compliance with any price control should be effectively monitored. Specifically, views are sought on whether an independent monitor, working to a mandate approved by the CC but remunerated by British Salt, should be used to assist the OFT in monitoring a price control remedy, for example by processing compliance returns and reporting to the OFT.
7. In considering a price control remedy, the Group will take into account, inter alia:
  - its effectiveness in achieving appropriate prices, in particular given that prices tend to be individually negotiated;
  - its complexity and the impact of any complexity on monitoring compliance and enforcement; and
  - the duration of the remedy that would be necessary to ensure its effectiveness.
8. The Group would, of course, be willing to consider any other practicable remedies – structural or behavioural – that the main party or any interested third parties propose in order to address the expected SLC and any resulting adverse effects.

## **Criteria**

9. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects identified as expected to result from the merger. When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction. In exceptional circumstances, the Group may conclude that no remedy is appropriate.

## **Relevant customer benefits**

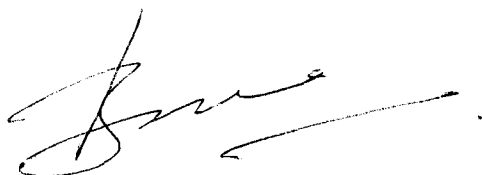
10. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act. Relevant customer benefits are limited to benefits to relevant customers. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable

period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

11. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

### **Next steps**

12. The main party is requested to provide any views in writing, including any practical alternative remedies it wishes the Group to consider, by **27 September 2005** (see note (i)).
13. A copy of this notice will be posted on the CC's web site. Other interested parties are requested to provide any views in writing, including any other practicable remedies they wish the Group to consider, by **27 September 2005**.



John Baillie  
Group Chairman  
2 September 2005

### *Note*

- (i) This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings notified to the main party on 6 September 2005. The main party has until 27 September 2005 to respond to the provisional findings published on 6 September 2005. In the light of any responses by the main party, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.