

**Competition Commission Acceptance of Interim Undertakings**

**IN THE MATTER of a reference to the Competition Commission dated 6 April 2005 concerning the acquisition by Bucher Industries AG of Johnston Sweepers Limited**

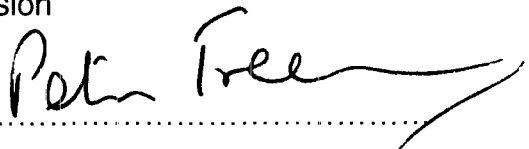
Whereas on 6 April 2005, the Office of Fair Trading made a reference to the Competition Commission ("the CC") under section 22 of the Enterprise Act 2002 ("the Act") in connection with the completed acquisition by Bucher Industries AG of Johnston Sweepers Limited:

And whereas Bucher Industries AG has given undertakings to the CC under section 80 of the Act, a copy of which is set out in the attached Annex:

And whereas the reference has not been finally determined:

Now the CC, in exercise of its powers under section 80(2) of the Act and for the purpose of preventing pre-emptive action (that is to say 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 decisions on the reference) hereby accepts the undertakings, and accordingly the undertakings come into force in accordance with section 80(5) of the Act.

Signed by authority of the Competition Commission



.....

Peter Freeman  
Group Chairman  
15 April 2005

## Annex

### INTERIM UNDERTAKINGS

#### **ACQUISITION BY BUCHER INDUSTRIES AG ("BUCHER") OF JOHNSTON SWEEPERS LIMITED ("JOHNSTON") UNDERTAKINGS GIVEN BY BUCHER TO THE COMPETITION COMMISSION PURSUANT TO SECTION 80 OF THE ENTERPRISE ACT 2002**

Whereas, on 6 April 2005, the OFT made the reference to the Competition Commission ("CC") under section 22 of the Act concerning the completed acquisition by Bucher of Johnston.

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 Bucher hereby gives to the CC the following undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action.

#### **Management of the Johnston business until determination of proceedings**

1. Except with the prior written consent of the CC, Bucher undertakes that it 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 Johnston business with the Bucher business;
  - (b) transfer the ownership or control of Johnston or any of its subsidiaries; or
  - (c) otherwise impair the ability of Johnston to compete independently in any of the markets affected by the acquisition.
  
2. Further and without prejudice to the generality of paragraph 1, Bucher will at all times during the specified period, procure that except with the prior written consent of the CC:
  - (a) the Johnston business is carried on separately from the Bucher business and Johnston's separate sales or brand identity is maintained;
  - (b) the Johnston business is maintained as a going concern and sufficient resources are made available for the development of the Johnston business, on the basis of its pre-merger business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Johnston business or to the management responsibilities within the Johnston business;
  - (d) the nature, description, range and quality of goods and services currently supplied in the United Kingdom by each of the two businesses are maintained and preserved;

- (e) except in the ordinary course of business for the separate operation of the two businesses;
  - i. the assets of the Johnston business are maintained and preserved, including facilities and goodwill;
  - ii. none of the assets of the Johnston business is disposed of; and
  - iii. no interest in the assets of the Johnston business is created or disposed of;
- (f) there is no integration of the information technology of the two businesses, and the software and hardware platforms of the Johnston business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) no key staff are transferred between the two businesses;
- (h) all reasonable steps are taken to encourage all key staff to remain with the Johnston business; and
- (i) no business secrets, 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,
  - i. from Johnston (or any of its employees, directors, agents or affiliates) to Bucher (or any of its employees, directors, agents or affiliates), unless such information has already been disclosed to Bucher as part of the due diligence process; or
  - ii. from Bucher to Johnston,except where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed.

### **Compliance**

3. Bucher shall procure that each of its subsidiaries complies with these undertakings as if it had given them.
4. Bucher shall forthwith provide to the OFT and the CC such information or statement of compliance as either of them may from time to time require for the purposes of monitoring compliance by Bucher and its subsidiaries with these undertakings.
5. Bucher shall 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.

### **Acceptance of service**

6. Bucher hereby authorizes Clifford Chance to accept on behalf of Bucher service at Clifford Chance's office at 10 Upper Bank Street, London E14 5JJ of all documents (including any document of any kind which falls to be served on or sent to Bucher in connection with any proceedings in courts in the United Kingdom) orders, requests,

notifications or other communications connected with these interim Undertakings or this inquiry.

7. Any document, orders, requests, notifications or other communication shall be deemed to have been validly served on Bucher if it is served on Clifford Chance at its office; and service or receipt shall be deemed to be acknowledged by Bucher if it is acknowledged by Clifford Chance.
8. Paragraph 7 has effect irrespective of whether, as between Clifford Chance and Bucher, Clifford Chance has or continues to have, any authority to accept and acknowledge service on Bucher's behalf; and no failure or mistake by Clifford Chance (including a failure to notify Bucher of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these interim Undertakings or this inquiry, including any proceeding or judgement.

### **Interpretation**

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

10. For the purposes of these undertakings:

"the acquisition" means the acquisition by Bucher of Johnston, completed on-31 March 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;

"Bucher" means Bucher Industries AG;

"the Bucher business" means the business of Bucher and its subsidiaries carried on as at 31 March 2005;

"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;

"Johnston" means Johnston Sweepers Limited;

"the Johnston business" means the business of Johnston and its subsidiaries carried on as at 31 March 2005;

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

"the OFT" means the Office of Fair Trading;

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

"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 Bucher business and the Johnston business; and

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

FOR AND ON BEHALF OF BUCHER INDUSTRIES AG

..... Signature  
Philip Mosimann..... Name  
CEO ..... Title  
13 April 2005..... Date

..... Signature  
Vanessa Oelz ..... Name  
Head of legal and communication Title  
13 April 2005..... Date