

Competition Commission written directions under 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 ("Bucher") of Johnston Sweepers Limited.

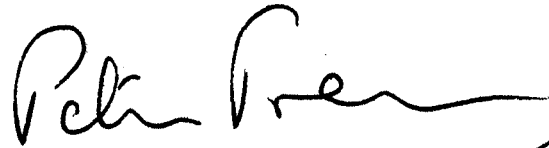
Whereas on 15 April 2005 Bucher gave interim undertakings to the CC under section 80 of the Act ("the Undertakings").

Whereas paragraph 5 of the Undertakings provides: "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".

Whereas on 8 July 2005 Bucher wrote to the CC in the following terms: "It was our honest belief that we were acting in the spirit of the undertakings and in the best interest of Johnston Sweepers. However, in hindsight, we acknowledge that some actions did not fully comply with the interim undertakings".

The CC now issues written directions under paragraph 5 of the Undertakings that, in order to secure compliance with the Undertakings, Bucher shall appoint a Monitoring Trustee in accordance with the terms of Annex I.

Signed by authority of the CC



Peter Freeman
Group Chairman
13 July 2005

ANNEX I

1. In order to monitor the compliance of Bucher and Johnston with the undertakings¹ and, so far as possible, ensure their full and effective compliance, Bucher shall appoint a Monitoring Trustee (“MT”). The functions of the MT shall be as set out below. The MT shall act on behalf of the Competition Commission and shall be under an obligation to the Competition Commission to carry out his functions to the best of his abilities.
2. Bucher and Johnston shall cooperate fully with the MT, in particular (but not exclusively) as set out below. Bucher shall ensure that the terms and conditions of appointment of the MT shall reflect and give effect to the functions and obligations of the MT, Bucher and Johnston as set out in this document. Where this document refers to an obligation on Johnston (e.g. “Johnston shall do X”), Bucher shall procure that Johnston satisfies that obligation.

General

3. The MT shall possess appropriate qualifications and experience to carry out his functions.
4. The MT shall be independent from Bucher and Johnston and shall neither be nor become exposed to a conflict of interest.
5. The MT shall be remunerated and reimbursed by Bucher for all reasonable costs properly incurred in accordance with the terms and conditions of his appointment. This shall be done in such a way that does not impede his independence or his ability effectively to carry out his functions.
6. The MT shall be appointed by Bucher as soon as is reasonably practicable and in any event by 4pm on Wednesday 13 July 2005 and shall continue to act until the Competition Commission has finally determined the Bucher /

¹ References in this document to the ‘undertakings’ are to: (a) the interim undertakings given by Bucher and accepted by the Competition Commission on 15 April 2005, taking into account the ‘Consent to certain disclosures’ agreed between Bucher and the Competition Commission on 27 April 2005; or (b) any varied or new undertakings subsequently given by Bucher and accepted by the Competition Commission under section 80(4) of the Enterprise Act 2002 which supersede the 15 April 2005 undertakings.

Johnston merger reference (within the meaning of section 79 of the Enterprise Act 2002).

7. The appointment by Bucher of a MT shall be subject to the approval of the Competition Commission as to the identity of the MT and his terms and conditions of appointment in their entirety (i.e. the Competition Commission shall have a veto). To this end, Bucher shall inform the Competition Commission as soon as is reasonably practicable and in any event by 4pm on Tuesday 12 July 2005 of the identity of the MT that Bucher proposes to appoint and provide the Competition Commission with draft terms and conditions of appointment and once appointed, Bucher shall provide the Competition Commission with a copy of the agreed terms and conditions of appointment.

Primary Function

8. The Primary Function of the MT shall be to monitor the compliance by Bucher and Johnston with the undertakings and, so far as possible, ensure their full and effective compliance during his term of appointment.
9. The MT shall take all steps that he reasonably considers to be necessary in order for him effectively to carry out his Primary Function. Those steps may include, but shall not be limited to, the following.
 - a) The monitoring of communications between Bucher and Johnston, including written and electronic communications, telephone conversations and meetings.
 - b) Meeting with appropriate persons at Bucher and Johnston to discuss compliance with the undertakings by Bucher and Johnston.
 - c) Requesting that Bucher and Johnston take any steps which the MT reasonably considers would assist him in carrying out his functions. Such requests may include requests for Bucher and Johnston to provide the MT with access to books, records, documents, management or other personnel, facilities, sites, IT/computer systems and/or technical information (and any assistance in searching for or understanding information, documents or other material).

- d) Requesting that Bucher and Johnston provide a detailed note of the content of any communication between them, and an explanation of the purpose, significance and/or context of that communication.
10. The MT shall comply with any requests made by the Competition Commission for the purpose of ensuring the full and effective compliance by Bucher and Johnston with the undertakings.

The obligations of Bucher and Johnston

11. Bucher and Johnston (including all employees, officers, directors, advisors and consultants) shall cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to carry out his functions.
12. Notwithstanding the generality of that obligation, during the MT's term of appointment that cooperation shall include but shall not be limited to the following.
- a) Bucher and Johnston shall provide such facilities as are necessary to enable the MT to carry out his Primary Function including provision of an office with a workstation, telephone and computer and access to a facsimile machine.
 - b) Bucher and Johnston shall copy all written and electronic communications between them to the MT (at the time when the communication is sent).
 - c) Bucher and Johnston shall provide the MT with advance notice of any telephone conversations between Bucher and Johnston and allow and provide the facilities necessary (e.g. conferencing facilities) for the MT to listen to all such conversations. Such notice shall be provided at the earliest possible opportunity and in any event adequately in advance of a conversation for the MT to be in a position to listen to that conversation.
 - d) Bucher and Johnston shall provide the MT with advance notice of any meetings at which Bucher and Johnston will both be present, and will allow the MT to attend any such meeting. Such notice shall be provided at the earliest possible opportunity and in any event adequately in advance of a meeting for the MT to be in a position to attend that meeting.

- e) Bucher and Johnston shall provide the MT with adequate advance notice of any other communications between them not falling within the scope of subparagraphs (a) to (c) above and allow and provide the facilities necessary for the MT to monitor all such communications.
 - f) Johnston shall notify the MT immediately of: (i) any changes made to the organisational structure of the Johnston business or the management responsibilities within the Johnston business; (ii) the disposal of any Johnston assets (of greater than £5,000 in value); (iii) the creation or disposal of any interests in Johnston assets (of greater than £5,000 in value); (iv) any integration of the information technology of Bucher and Johnston; and (v) any staff which leave Johnston. Johnston shall notify the MT of any such events regardless of whether or not Johnston considers them to be 'substantial' or to have been carried out 'in the ordinary course of business'.
 - g) Bucher shall notify the MT immediately of any staff who join Bucher and who Bucher is aware previously worked for Johnston.
13. References to Bucher and Johnston in paragraph 12 shall be taken to refer to all employees, officers, directors, advisors and consultants of Bucher and Johnston with the exception of [X]. If Bucher and/or Johnston has any reason to suspect that any actions or communications of [X] might have placed Bucher and/or Johnston in breach of the undertakings, it should notify the Competition Commission immediately in accordance with paragraph 16.
14. Johnston shall provide the MT with copies of all Johnston 2004 and 2005 business plans prior to 31 March 2005, and a document setting out the organisational structure (including reporting obligations) of Johnston as it was on 31 March 2005. These documents shall be provided to the MT by 4pm on Wednesday 13 July 2005 at the latest.
15. If Bucher and/or Johnston is in any doubt as to whether any action or communication would infringe the undertakings, it should contact the MT to clarify the position.

16. If Bucher and/or Johnston has any reason to suspect that the undertakings might have been breached, it should notify the MT and the Competition Commission immediately.

Reporting functions

17. On a fortnightly basis, the MT shall provide the Competition Commission with a statement certifying whether or not, in his view, Bucher and Johnston have complied with the undertakings. At the same time, the MT shall provide the Competition Commission with a report setting out his views in relation to the following.

- a) The reasons why the MT has concluded that the undertakings have or have not been complied with. In particular, the MT should set out and explain whether: (i) anything has caused him to be concerned as to whether Bucher and Johnston were complying with the undertakings and, if it has, what steps he has taken so as to satisfy himself as to their compliance; (ii) he has any remaining doubts or uncertainties as to whether Bucher and Johnston have complied with the undertakings; and (iii) anything causes him to be concerned about a possible future breach of the undertakings (whether deliberate or inadvertent).
- b) The extent to which the MT considers that he is in a good position to monitor the compliance of Bucher and Johnston with the undertakings. The MT should set out and explain if there is anything that he considers would assist him in monitoring the compliance of Bucher and Johnston with the undertakings.
- c) The extent to which Bucher and Johnston have cooperated with the MT in his task of monitoring their compliance with the undertakings. The MT should set out and explain if there are any aspects of the cooperation of Bucher and Johnston that he considers could be improved.

18. When providing his reports to the Competition Commission, the MT must ensure that he does not disclose any information or documents to the Competition Commission which Bucher and/or Johnston would be entitled to withhold from the Competition Commission on the grounds of legal privilege.

19. The MT should notify the Competition Commission immediately if he forms a reasonable suspicion that the undertakings have been breached, or if he considers that he is not in a position effectively to carry out his functions. In that situation, the MT should set out the reasons for his view and attach relevant supporting evidence (so far as he is permitted by paragraph 18).
20. All communications between the MT and the Competition Commission (including the statements and reports of the MT referred to in paragraph 17) shall be confidential and not disclosed to Bucher and/or Johnston, save with the express written permission of the Competition Commission. In relation to the possibility of disclosure of such communications to third parties, the Competition Commission shall act in accordance with the provisions of Part 9 of the Enterprise Act 2002. The MT shall not disclose such communications to third parties.