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COMPLETED ACQUISITION BY RAILWAY INVESTMENTS LIMITED (A WHOLLY OWNED SUBSIDIARY OF ENGLISH WELSH & SCOTTISH RAILWAY HOLDINGS LIMITED) OF MARCROFT HOLDINGS LIMITED

CONSENT TO ALLOW EWS TO EXTEND ITS BULK UTILITIES PROCUREMENT TO MARCROFT'S STOKE-ON-TRENT PREMISES

On 6 February 2006, the Office of Fair Trading made a reference to the Competition Commission (the **CC**) under section 22 of the Enterprise Act 2002 (the **Act**) concerning the completed acquisition by Railway Investments Limited (a wholly owned subsidiary of English Welsh & Scottish Railway Holdings Limited (**EWS**)) of Marcroft Holdings Limited (**Marcroft**).

And, on 13 March 2006, the CC accepted Interim Undertakings from EWS, pursuant to section 80 of the Act, for the purpose of ensuring that no action is taken pending the 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 (the **Undertakings**).

And the Undertakings are still in force.

And, on 19 July 2006, the CC determined pursuant to section 39(3) of the Act that there were special reasons why its report could not be prepared and published within the initial statutory reference period, and that the reference period therefore be extended by a period of 8 weeks to 18 September 2006.

And, on 12 September 2006, the CC published its final report, concluding in paragraph 26 that 'divestiture of the Stoke workshop was not necessary to remedy the SLC and adverse effects identified' and in paragraph 8.30 that 'the divestiture package need not include the Stoke workshop'.

Now therefore, in accordance with and without prejudice to the generality of paragraph 1 of the Undertakings, the CC hereby gives the following consent:

Procurement of utilities for Marcroft's Stoke-on-Trent premises

1. EWS shall be entitled to propose prices to Marcroft for the supply of electricity and gas (the **Utilities**) to Marcroft's Stoke-on-Trent premises (the **Premises**).
2. Marcroft shall provide details to the CC of the Utilities prices proposed by EWS and the prices currently paid by Marcroft in respect of the Premises.
3. In the event that the prices proposed by EWS for the provision of the Utilities to the Premises are cheaper than those currently paid by Marcroft:
 - (a) Marcroft shall be entitled to accept the prices proposed by EWS and to make arrangements for the supply of the Utilities by EWS;
 - (b) EWS shall be entitled to amend its existing arrangements for the procurement of the Utilities so as to extend the terms of those arrangements to the Premises; and

- (c) EWS and its agents (including, for the avoidance of doubt, employees and agents of the relevant providers of the Utilities) shall be entitled to have access to the Premises for the purpose of undertaking any steps necessary to effect the transfer of Utilities procurement arrangements for the Premises.

Protection of the outstation business

4. Nothing in this consent allows EWS to take any action concerning the procurement of Utilities in respect of any of the manned or unmanned outstation locations used by Marcroft (the **Outstations Business**) and both Marcroft and EWS shall ensure that no steps taken in pursuance of this consent shall have any effect on the Utilities procurement arrangements for the Outstations Business.



Jeremy Seddon
Group Chair
13 October 2006