



News Release

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CC WELCOMES CAT BACKING

The Competition Commission (CC) has welcomed backing from the Competition Appeal Tribunal (CAT) for action it has taken to separate two businesses following a completed merger, pending its decision on whether the merger is anti-competitive.

CC Deputy Chairman, Diana Guy said:

We welcome the CAT's judgment as it establishes a very important principle for us. In any completed merger case, there is a danger that we will complete our inquiry only to find that the two companies have become inextricably integrated and that our ability to take effective action has been undermined.

It's therefore very important that, where necessary, we can take appropriate action to ensure that companies in a merger inquiry stay as separable, viable businesses, capable of competing with each other, until we have completed our work. Without the ability to take action, there would be the incentive for merging companies to continue integrating or for the acquired business to be run down.

The CC is finding that an increasing number of mergers that are referred to it for investigation have already been completed by the time of the reference. However the CC has the power to direct merged firms to appoint a "hold separate manager" to ensure that two separate and viable businesses are maintained effectively. In the case of all previous completed mergers, the companies concerned had agreed undertakings with the CC, so that it had not been necessary for the CC to issue directions. In this case, however, the companies did not agree satisfactory undertakings and the CC accordingly issued directions to clinical waste firms Stericycle International Limited and Sterile Technologies Group Limited (STG), whose completed merger was referred to the CC on 28 June 2006. The directions required the firms to appoint a hold separate manager to manage the STG business separately from the Stericycle business until the end of the inquiry. The CC also directed the firms to separate out some of the teams that had been combined since the merger.

The companies appealed against the CC's directions to the CAT. But in a judgment published in full today at <http://www.catribunal.org.uk/default.asp>, the CAT upheld the CC's actions, ruling that:

“the applicants took a substantial risk in pressing on with the integration [of the two businesses] while the OFT inquiry was underway”,

“it was in our view well within the CC’s margin of appreciation to appoint a hold separate manager in this case.”

“Given in particular the facts that in this case the applicants have already taken considerable steps to integrate the two businesses, it does not seem to us disproportionate for the CC to consider that, in the circumstances, an external safeguard in the form of a hold separate manager was necessary.”

“We accept the CC’s submission that the degree of integration that has taken place makes it more, not less, important to appoint a hold separate manager in circumstances such as the present.”

Notes for editors

1. In 2005-06, 8 completed mergers were referred to the CC, out of a total of 17 references.
2. The CC has been asked to decide whether the merger has resulted or may be expected to result in a substantial lessening of competition in any market in the UK. It is expected to complete its final report on the merger by 12 December 2006.
3. The Enterprise Act empowers the CC to put in place interim measures with the purpose of preventing ‘pre-emptive action’—that is, action that might prejudice the inquiry or the taking of remedial action following the inquiry.
4. The CC recently published guidance on interim measures in merger inquiries, which outlined what action it could take in these cases. The CC’s guidance on interim measures can be found at: http://www.competition-commission.org.uk/rep_pub/consultations/past/pdf/guidance_on_interim_measures_pending_final_determination.pdf
5. The Enterprise Act 2002 imposes a duty on the OFT to refer to the CC completed or proposed mergers for investigation and report which create or enhance a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million.
6. The CC has a 24-week period in which it is required to publish its report, which may be extended by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period.
7. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its website at: www.competition-commission.org.uk.
8. Enquiries should be directed to Rory Taylor on 020 7271 0242 (email rory.taylor@cc.gsi.gov.uk).