

**Notice of proposal to release Undertakings given pursuant to section 88 of the Fair Trading Act 1973**

**Introduction**

1. Following the 1993 Monopolies and Mergers Commission (MMC) report into the supply of animal waste in England and Wales and in Scotland, Prosper de Mulder (PDM) and William Forrest and Son (Paisley) Limited (Forrest) gave undertakings, dated 1 February 1995, to the Secretary of State for Trade and Industry (the Undertakings). These undertakings addressed aspects of PDM's and Forrest's trading practices that had been found by the MMC to operate against the public interest.
2. The main public interest concerns identified in the MMC's report, in respect of both PDM's and Forrest's trading practices, related to discriminatory pricing, and in particular the finding that this had harmed smaller competitors and restricted competition. In addition, the MMC found that PDM's financial reporting arrangements were not suitably transparent and gave a distorted account of the true profitability of its rendering business. PDM was also found to have breached earlier undertakings relating to its gut-room business and to acquisitions, which had led to a restriction of competition.
3. On 4 October 2004, the Undertakings were specified under paragraph 16(1) of Schedule 24 to the Enterprise Act 2002 by the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004 (SI 2004/2181) (the Order) with the effect that the CC now has the power to supersede, vary or revoke the Original Undertakings.

**OFT recommendation**

4. Following a review of the operation of the Undertakings carried out in accordance with section 88 of the Fair Trading Act 1973, and sections 4, 5 and 7 of the Enterprise Act 2002 (the Act), the Office of Fair Trading (OFT) made a recommendation to the CC in October 2006 (the Recommendation).
5. The OFT recommended that PDM be released from the following undertakings:
  - Undertaking 1(1)b (conditional purchasing);
  - Undertaking 3 (Acquisitions);
  - Undertaking 4 (accounting information);
  - Undertakings 5 to 8 (gut rooms);
  - Undertaking 9 (Market Harborough plant);
  - Undertaking 10 (consequential amendments to remove references to issues in removed undertakings);
  - Undertaking 11b (PDM auditors to provide information to the OFT);
  - Undertaking 12 (appointment of auditors); and
  - Undertaking 13 (replacement of the 1986 undertakings).

6. The OFT did not provide advice to the CC to vary, supersede or revoke Undertakings 1(1)a, 1(1)(2) and 2, which relate to PDM's pricing practices. The OFT believed that these Undertakings should be retained in place subject to review in due course once changes in the industry have stabilized.
7. The OFT did not provide advice to the CC to vary, supersede or revoke Forrest's Undertakings. The OFT believed that these Undertakings should be retained in place subject to monitoring and further review in due course.

### **Notice of proposal to accept Recommendation**

8. For the reasons set out in the OFT's report,<sup>1</sup> the CC proposes to accept the Recommendation of the OFT to release PDM from its Undertakings 1(1)b, 3, 4, 5 to 8, 9, 10, 11b, 12, and 13.

### **Next steps**

9. The CC is issuing this Notice to provide an opportunity for representations to be made in relation to the release of the specified Undertakings.
10. Comments are therefore invited and should be received by the CC no later than 17.00 on Thursday 7 June 2007 and should be addressed to:

Cathryn Ross  
Director of Remedies and Business Analysis  
Competition Commission  
Victoria House  
Southampton Row  
London  
WC1B 4AD

or email: [cathryn.ross@cc.gsi.gov.uk](mailto:cathryn.ross@cc.gsi.gov.uk).

11. Before releasing PDM from the specified Undertakings, the CC will have regard to any representations made in accordance with this Notice and may modify its decision as a result of such representations.



PETER FREEMAN  
*Chairman*  
24 May 2007

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<sup>1</sup>[www.of.gov.uk/advice\\_and\\_resources/resource\\_base/register-orders-undertakings/advice](http://www.of.gov.uk/advice_and_resources/resource_base/register-orders-undertakings/advice)