

**COMPLETED MERGER BETWEEN STONEGATE FARMERS LIMITED AND  
DEANS FOOD GROUP LIMITED THROUGH NOBLE FOODS LIMITED**

**Final Undertakings given by Noble Foods Limited, Deans Food Group Limited,  
Clifford Kent Holdings Limited, Stonegate Farmers Limited, Mr Peter Dean and  
Mr Michael Kent to the CC pursuant to section 82 of the Enterprise Act 2002**

On 13 September 2006 the Office of Fair Trading (the OFT) referred the completed merger between Deans Food Group Limited (Deans) and Clifford Kent Holdings Limited (Clifford Kent) (parent company of Stonegate Farmers Limited (Stonegate)) through Noble Foods Limited (Noble) (the merger) to the Competition Commission (CC) for investigation and report under section 22 of the Enterprise Act 2002 (the Act).

The CC published a report entitled *Clifford Kent Holdings Limited and Deans Food Group Limited: A report on the completed merger of Clifford Kent Holdings Limited, parent company of Stonegate Farmers Limited and Deans Food Group Limited* on 20 April 2007 (the Report).

The Report concluded that:

- (a) the merger between Deans and Stonegate was the creation of a relevant merger situation;
- (b) the creation of that relevant merger situation may be expected to result in a substantial lessening of competition within the market(s) for the supply of cage and barn eggs, of free range eggs and of organic shell eggs to retailers in Great Britain and in the procurement of shell eggs from producers (the SLC). This may in turn be expected to result in the adverse effects of producers receiving less favourable terms (including price), the reduction in the quantity of eggs produced, higher prices being faced by retailers and ultimately by the final consumers of shell eggs (the adverse effects);
- (c) the CC should take action to remedy the SLC and the adverse effects flowing from it; and
- (d) undertakings should be required to be given to the CC by Noble on behalf of itself and its subsidiaries, Mr Peter Dean and Mr Michael Kent to give effect to the remedies identified by the CC in paragraphs 8.41 to 8.44, 8.50, 8.77 and 8.78 of the Report.

Noble on behalf of itself and its subsidiaries, Deans, Clifford Kent, Stonegate, Mr Peter Dean and Mr Michael Kent give to the CC the following undertakings under section 82 of the Act for the purpose of remedying the SLC and the adverse effects resulting from it identified in the Report.

**1. Interpretation**

- 1.1 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.
- 1.2 In these Undertakings the word ‘including’ shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word ‘include’ and its derivatives shall be construed accordingly.
- 1.3 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 1.4 Expressions in the singular include the plural and vice versa and references to persons include corporations.
- 1.5 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.6 References to recitals, paragraphs, sub-paragraphs and appendices are references to the recitals to, paragraphs and sub-paragraphs of, and appendices to, these Undertakings.
- 1.7 The appendices to these Undertakings form part of these Undertakings.
- 1.8 References in these Undertakings to ‘completion’ are references to such legally recognized transfer, assignment, delivery or other disposal or assumption of property, rights, assets, liabilities and other obligations as the context requires.
- 1.9 For the purposes of these Undertakings the following terms shall mean:

<b>Approved Agreement</b>	means a binding agreement or agreements to enable an Effective Disposal approved by the CC; and the Vendors recognize that in considering whether to approve any agreement the CC shall consider whether (1) the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) are such as to give rise to a significant risk that the disposal of the Stonegate Business will not remedy the SLC and adverse effects (including risks as to the purchaser’s ability to compete in the supply and procurement of shell eggs) and (2) the agreement includes a warranty, breach of which is actionable in damages or other compensation at the suit of the Purchaser, that each requirement of the Secondary Undertakings has been complied with;
<b>Approved Purchaser</b>	means a purchaser or purchasers whom the CC is satisfied, following an application from the Vendors (in accordance with paragraph 4.7) or from the Divestiture Trustee, (1) is independent of, and unconnected to, any of the Vendors (2) has the incentive, the financial resources and the expertise to operate the Stonegate Business as a viable and active business in competition with other buyers of shell eggs from producers and other suppliers of shell eggs to retailers so as to remedy the

	SLC (3) will obtain all necessary approvals and consents, including the consent of any regulatory or competition authority, for the acquisition of the Stonegate Business; and the Vendors recognize that the CC may require any such purchaser to provide the CC with such documents (including business plans relating to the Stonegate business and information regarding the financing of the acquisition and the financing of the purchaser's existing business) and other material or information as the CC may require so as to be satisfied on the matters set out above;
<b>Clifford Kent</b>	means Clifford Kent Holdings Limited a company registered in England and Wales with number 03228867 whose registered office is at HORIZON FARM, TREMAR, LISKEARD, CORNWALL. PL14 6EA and all its Subsidiaries;
<b>Commencement Date</b>	means the date on which these Undertakings are accepted by the CC;
<b>Confidential Information</b>	business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the Stonegate Business or the Deans Business;
<b>Deans</b>	means Deans Food Group Limited, a company registered in England and Wales with number 03276116 whose registered office is at BRIDGEWAY HOUSE, ICKNIELD WAY, TRING, HERTFORDSHIRE, HP23 4JX and all its Subsidiaries;
<b>Deans Assets</b>	means the assets being part of the Deans Business that an Approved Purchaser requests the CC and the CC considers reasonable to be included to enable an Effective Disposal;
<b>Deans Business</b>	means that part of Noble which corresponds to the business carried on by Deans as at the Commencement Date;
<b>Deans Sale and Purchase Agreement</b>	means the Agreement for the Sale and Purchase of the Entire Share Capital of Deans made between (i) Mr Peter Dean and Others and (ii) Goodmix Limited (now Noble) dated 23 June 2006;
<b>Disposal Obligations</b>	means the obligations in sub-paragraph 3.3 of these Undertakings;
<b>Divestiture Period</b>	means the Initial Divestiture Period and any Trustee Divestiture Period;
<b>Divestiture Trustee</b>	means any person appointed in accordance with paragraph 12;
<b>Effective Disposal</b>	means completion of the disposal of the Stonegate Business (which may be effected by the transfer of the entire share capital of Clifford Kent or the transfer of the property, assets and goodwill of the Stonegate Business) and may also include Deans Assets under an Approved Agreement to an Approved Purchaser;

<b>First Disposal Obligation</b>	means the Disposal Obligation in sub-paragraph 3.3.1;
<b>Heads of Terms</b>	means an agreement in principle to acquire the entire share capital of Clifford Kent (which corresponds to the Stonegate Business) or the transfer of the property, assets and goodwill of the Stonegate Business that is reduced to writing, and that is expressed by all parties to be final (1) subject to contract and (2) on all the issues that in the reasonable opinion of the parties will form the basis of a subsequent binding agreement;
<b>Heads of Terms Notice</b>	means a Notice (1) stating either that Heads of Terms have been agreed or have not been agreed and (2) in the former case, attaching the Heads of Terms to the Notice;
[X]	[X]
<b>Initial Divestiture Period</b>	means the period ending [X] months from the Commencement Date. This period may be extended once up to a maximum period ending [X] months from the Commencement Date if: (1) the First Disposal Obligation has been satisfied; (2) the Vendors serve Notice to the CC at least five working days before the end of the [X] month period, setting out why such period should be extended and for how long; and (3) the CC having consulted the Monitoring Trustee grants approval for such extension or other extension as the CC considers reasonable;
<b>Independent Expert</b>	means a qualified solicitor, barrister, chartered accountant or other person of suitable expertise as the CC may reasonably require for the relevant purpose;
<b>Interim Undertakings</b>	means the undertakings given by Noble, Clifford Kent, Stonegate, Deans, Mr Peter Dean and Mr Michael Kent to the CC on 20 November 2006;
[X]	[X]
<b>Key Staff</b>	means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Stonegate Business or the Deans Business;
<b>Liquid Egg Business</b>	means the business of the sale to food manufacturers and the catering trade of raw eggs removed from their shells and pasteurized;
<b>Monitoring Trustee</b>	means Mr Gerald Sturtridge who was appointed in accordance with paragraph 12 of the Interim Undertakings on 29 November 2006 and who continues to be appointed in accordance with paragraph 5 of these Undertakings and any successor to Mr Gerald Sturtridge as directed by the CC;
<b>Noble</b>	means Noble Foods Limited, a company registered in England and Wales with number 05826545 whose registered office is at BRIDGEWAY HOUSE, ICKNIELD WAY, TRING, HERTFORDSHIRE, HP23 4JX;

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<b>Noble Group</b>	means Noble, its Subsidiaries from time to time, any company of which Noble becomes a Subsidiary, and includes any person not in existence at the Commencement Date;
<b>Notice</b>	means a written communication from Noble to the CC sent by post, fax, personal delivery, or with the prior consent of the CC, email;
<b>Post Divestiture Undertakings</b>	means all of the obligations in paragraph 7 of these Undertakings or any one of them;
<b>Principal Undertakings</b>	means all of the obligations in paragraph 3 of these Undertakings or any one of them;
<b>Purchaser</b>	means that Approved Purchaser who will acquire the Stonegate Business to bring about Effective Disposal;
<b>Purchaser Representation</b>	means a genuine representation by an Approved Purchaser (or a person who appears to have the potential to be an Approved Purchaser) that the terms or subject matter of the disposal of the Stonegate Business, and all matters ancillary or connected to it, proposed by the Vendors are insufficient to enable the operation of the Stonegate Business on a viable basis;
<b>Secondary Undertakings</b>	means all of the obligations in sub-paragraph 6.1 of these Undertakings or any one of them;
<b>Second Disposal Obligation</b>	means the Disposal Obligation in paragraph 3.3.2;
<b>Specified Information</b>	means specified information as defined in the Interim Undertakings;
<b>Stonegate</b>	means Stonegate Farmers Limited a company registered in England and Wales with number 00740635 whose registered office is at WHITEOAKS FARM, THE OLD SIDINGS, CORSHAM ROAD, LACOCK, WILTSHIRE SN15 2LZ and all its Subsidiaries;
<b>Stonegate Business</b>	<p>means that part of the Noble Group which corresponds to the business carried on by Clifford Kent as at the Commencement Date and includes the business of procuring, packing and supplying shell eggs and related products to retailers and other customers being the rights, interests, assets and obligations of that business and including:</p> <p>(1) all the tangible assets involved in the procurement, packing and supply of shell eggs to retailers and other supplies of goods or services ancillary or connected to the supply of eggs at the property owned or leased by Clifford Kent including all equipment (including packing machinery), fixed assets and fixtures, stock, office furniture, materials, supplies and other tangible property used in connection with those assets; and all contracts, agreements, leases, commitments, certificates and understandings relating to those assets including supply agreements; and all accounts; and all records relating to the assets set out in this paragraph (1);</p> <p>(2) all the intangible assets involved in the procurement,</p>

	packing and supply of shell eggs to retailers and other supplies of goods or services ancillary or connected to the supply of shell eggs at the property owned or leased by Clifford Kent including all licences and sub-licences, intellectual property, technical information, computer software and related documentation, know-how, drawings, designs specifications for material, parts and devices, quality assurance and control procedures; and  (3) all rights, interests and obligations under agreements with suppliers (including producers of shell eggs), customers and employees;
<b>Subsidiary</b>	has the meaning given to it in section 736 of the Companies Act 1985 as amended;
<b>Third Party Producer</b>	means producers of shell eggs that supply the Noble Group at the Commencement Date and from time to time thereafter and are not themselves part of the Noble Group;
<b>Third Party Producer Contract</b>	means a contract between a Third Party Producer and the Noble Group (including Deans, Stonegate and Clifford Kent) for the supply of shell eggs which has a greater than six-week notice period for termination of the contract by the Third Party Producer;
<b>Trustee Divestiture Period</b>	means the period of [ <del>3</del> ] months or, if there is an Approved Purchaser, such other longer period as the CC may direct from (1) the end of the Initial Divestiture Period or (2) in the event that a Divestiture Trustee is appointed by reason of a breach of the obligations contained in these Undertakings occurring before the end of the Initial Divestiture Period, from the day on which the breach occurred;
<b>Trustee Obligation</b>	means bringing about Effective Disposal without a reserve price and the performance of all ancillary tasks as are necessary or desirable for the purposes of Effective Disposal (including the disposal of such other property, assets, rights, consents, licences, privileges or interests of the Noble Group such as the removal or adjustment of any liability or for the provision of any conditions or for indemnification) as the CC considers necessary to bring about Effective Disposal promptly and in any event within the Trustee Divestiture Period;
<b>Undertakings</b>	means these undertakings given by the Vendors for the purpose of remedying the SLC and the adverse effects; and
<b>Vendors</b>	means the Noble Group, Mr Peter Dean and Mr Michael Kent (or each or any of them as the context may require).

**2. Commencement**

- 2.1 The obligations in these Undertakings shall come into effect on the Commencement Date.

**3. The Principal Undertakings**

- 3.1 In order to remedy the SLC and adverse effects identified in the Report, the Vendors together and separately undertake that they shall use their best efforts to satisfy the Disposal Obligations within the Initial Divestiture Period.
- 3.2 The Vendors undertake to use their best efforts to satisfy the Disposal Obligations, or to procure that the Disposal Obligations are satisfied, in accordance with the provisions of these Undertakings.
- 3.3 The Disposal Obligations are:
  - 3.3.1 to agree Heads of Terms for Effective Disposal; and
  - 3.3.2 to bring about Effective Disposal.
- 3.4 The Vendors undertake that they shall use all reasonable endeavours to ensure that the Stonegate Business is divested with at least the producer volumes and customer contracts as at the Commencement Date.
- 3.5 The Vendors undertake that they shall use their best efforts to ensure that Noble Group's financing arrangements do not prevent an Effective Disposal.

**4. Matters ancillary to the Principal Undertakings**

- 4.1 The Vendors each undertake that where the Undertakings or any one of them require the consent or approval of the CC (however that requirement is expressed in these Undertakings) they will seek the consent or approval in writing.
- 4.2 The Vendors each undertake that any application by them for the CC's consent or approval shall make full disclosure of every fact and matter that is relevant to the CC's decision.
- 4.3 The Vendors recognize that where the CC grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CC.
- 4.4 In the event that the Vendors discover that an application for consent or approval has been made without full disclosure and is therefore incomplete the Vendors undertake to:
  - 4.4.1 inform the CC in writing identifying the particulars in which the application for consent is incomplete within seven days of becoming aware that the application is incomplete; and
  - 4.4.2 at the same time or as soon as possible thereafter, provide to the CC an application for consent that is complete.
- 4.5 The Vendors shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CC at least five working days, or such lesser period as the CC may allow, before the day on which the CC's consent or approval is necessary to avoid a breach of these Undertakings.
- 4.6 The Vendors recognize that the CC shall not be required to use more than its reasonable endeavours to grant or refuse any consent or approval within the five-working-day period referred to in paragraph 4.5.
- 4.7 Where in the Vendors' reasonable opinion it has identified a candidate purchaser with an active interest in the acquisition of the Stonegate Business, the Vendors will apply to the CC for a decision on whether or not the candidate purchaser is an Approved Purchaser.

## 5 Monitoring Trustee [✂]—appointment and duties

- 5.1 The Vendors undertake that on the Commencement Date they shall secure on the same terms the continued appointment of the Monitoring Trustee which arises from the directions made under paragraph 12 of the Interim Undertakings made by the CC on 20 November 2006 and the further directions made by the CC on 6 June 2007. The Monitoring Trustee will continue to have the same powers (as set out in his appointment) and will carry out the duties set out in paragraphs 5.2, 5.3 and 5.4.
- 5.2 The duties set out in this paragraph are those of monitoring the process of marketing the Stonegate Business for disposal and the subsequent disposal of the Stonegate Business, and shall in particular include:
- 5.2.1 ensuring that the Vendors have established an appropriate timetable for the disposal process;
- 5.2.2 monitoring the progress made by the Vendors including progress made against the timetable towards the satisfaction of the Disposal Obligations, and the steps that have otherwise been taken to comply with the Principal Undertakings including:
- 5.2.2.1 the status of the information memorandum, the identities of the persons to whom it has been circulated, and the responses to the information memorandum;
- 5.2.2.2 the status of the data room, its contents, and the persons who have had access to it; and
- 5.2.2.3 the steps that have been taken toward the preparation of an agreement for the sale of the Stonegate Business, and the persons to whom such an agreement has been distributed;
- 5.2.3 monitoring communications (including attending any meetings) from the Vendors or any of them to possible purchasers and from possible purchasers to the Vendors or any of them in connection with the disposal process;
- 5.2.4 monitoring communications (including attending any meetings) from the Vendors or any of them to their financial advisers in connection with the disposal process;
- 5.2.5 assessing whether there are any grounds for concern that the Disposal Obligations will not be fulfilled; and
- 5.2.6 such other matters as may be directed by the CC from time to time.
- 5.3 The Monitoring Trustee will monitor the compliance of the Vendors with the undertaking at paragraph 3.4 and the Secondary Undertakings in paragraph 6.
- 5.4 The Monitoring Trustee will provide reports to the CC at fortnightly intervals or at other times to be agreed with the CC on the matters set out in paragraphs 5.2 and 5.3.
- 5.5 [✂]

## 6. The Vendors' Secondary Undertakings

- 6.1 The Vendors each undertake that during the Divestiture Period each will or will procure that the relevant members of the Noble Group, Mr Peter Dean and Mr Michael Kent will:
- 6.1.1 ensure that the Stonegate Business is carried on separately and under different names from the Deans Business and a separate sales and brand identity is maintained for each of the Stonegate Business and the Deans Business;
  - 6.1.2 maintain the Stonegate Business and the Deans Business as separate entities;
  - 6.1.3 use reasonable endeavours to make sufficient resources (including but not limited to management resources) available to the Stonegate Business to enable the Stonegate Business to be a separate, competitive and viable entity and continue to develop throughout the Divestiture Period;
  - 6.1.4 make additional management resources available (including the appointment of additional Key Staff) to satisfy the undertaking given at paragraph 6.1.3 above as required by the CC from time to time and in accordance with directions issued by the CC;
  - 6.1.5 [✂]
  - 6.1.6 except in the ordinary course of business, make no substantive changes to the organizational structure of, or the management responsibilities within, either the Stonegate Business or the Deans Business;
  - 6.1.7 in all material respects, maintain and preserve the nature, description, range, brands and quality of the eggs, egg products and other products and services relating to egg production supplied in the UK by each of the Stonegate Business and the Deans Business as at the Commencement Date;
  - 6.1.8 ensure that, except in the ordinary course of business for the separate operation of the two businesses:
    - 6.1.8.1 the assets of the Stonegate Business and the Deans Business are maintained and preserved, including facilities and goodwill;
    - 6.1.8.2 none of the assets of the Stonegate Business or the Deans Business are disposed of; or
    - 6.1.8.3 no interest in the assets of the Stonegate Business or the Deans Business is created or disposed of;
  - 6.1.9 not integrate the information technology systems (including but not limited to operational, accounting and financial management systems) of the Stonegate Business and the Deans Business; Deans and Stonegate data is to be stored on separate servers; Deans personnel will not have access to Stonegate data and vice versa;
  - 6.1.10 the software and hardware platforms of the Stonegate Business shall remain essentially unchanged, except for routine changes and maintenance;
  - 6.1.11 operate and update separately both the customer and supplier (including producer) lists of the Stonegate Business and the Deans Business and any negotiations with Stonegate's customers and suppliers in relation to the Stonegate Business will be carried out by and for the Stonegate Business alone; any negotiations with Deans'

customers and suppliers in relation to the Deans Business will be carried out by and for the Deans Business alone; and for the avoidance of doubt Deans will not negotiate on behalf of Stonegate and Stonegate will not negotiate on behalf of Deans and neither business will solicit customers and suppliers (including producers) from the other business;

- 6.1.12 ensure that the Deans Business does not solicit customers, suppliers (including producers) and Key Staff from the Stonegate Business and vice versa;
- 6.1.13 continue to service all existing contracts by the business to which they were awarded, provided always that nothing shall prevent either business from proposing price changes which are commercially justified (except to the extent that the other party to the contract terminates the contract);
- 6.1.14 ensure that no Key Staff are transferred (either directly or indirectly after a period of time has elapsed since the termination of employment with either the Deans Business or the Stonegate Business as appropriate) between the Stonegate Business and the Deans Business and no contracts of employment of Key Staff are terminated by Stonegate;
- 6.1.15 take all reasonable steps to encourage all Key Staff of the Stonegate Business and the Deans Business to remain with the business in relation to which they were employed prior to the Commencement Date including the payment of loyalty bonuses where necessary;
- 6.1.16 ensure that to the extent it has not already occurred prior to the Commencement Date no Confidential Information shall pass, directly or indirectly, from the Stonegate Business (or any of its employees, directors, agents or affiliates) to the Deans Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business or where strictly necessary and subject to the prior written consent of the CC in order to fulfil the Disposal Obligations or where the information is Specified Information that is transferred from the Deans Business or the Stonegate Business to Noble in accordance with the following:
  - 6.1.16.1 the Deans Business and the Stonegate Business may transfer Specified Information to Noble. Mr Mark Stott or such other person approved by the CC will coordinate any financial information that is Specified Information for and on behalf of Noble. Mr Mark Stott will not use or further disseminate Specified Information he receives from Stonegate other than within Noble. Any report prepared by Mr Mark Stott for Noble or its bankers is to be submitted to the CC in advance of it being disseminated to the directors of Noble or sent to its bankers for the CC to approve the information being disseminated or sent; and
  - 6.1.16.2 on the basis that, should there be an Effective Disposal, any records or copies (electronic or otherwise) of such information wherever they may be held will either be returned to the relevant business or destroyed (unless required to be retained by law);
- 6.1.17 except with the prior written consent of the CC, not take any actions separately or jointly which might change the shareholding of Noble as at the Commencement Date;
- 6.1.18 use reasonable endeavours to ensure that the composition of the boards of Noble, Deans and Stonegate will remain the same as at the Commencement Date; and

6.1.19 not take steps that would impair the marketability, or that would jeopardize, delay or impede the sale of the Stonegate Business, subject only to the continuing obligation of the Vendors to maintain the Liquid Egg Business within the Stonegate Business.

**7 Post Divestiture Undertakings**

7.1 The Vendors undertake that following an Effective Disposal the Noble Group, Mr Peter Dean and Mr Michael Kent will not:

[✂]

7.2 The Vendors undertake that following an Effective Disposal the Noble Group, Mr Peter Dean and Mr Michael Kent will not [✂].

7.3 The Vendors undertake that following an Effective Disposal the Noble Group, Mr Peter Dean and Mr Michael Kent will not [✂].

7.4 The Vendors undertake that following an Effective Disposal the Noble Group, Mr Peter Dean and Mr Michael Kent will not acquire any interest in the Stonegate Business, without the prior written consent of the OFT.

7.5 The Vendors undertake that following an Effective Disposal, the Noble Group, Mr Peter Dean and Mr Michael Kent will not use the brand names of the Stonegate Business.

**8. Conditions for the appointment of a Divestiture Trustee**

- 8.1 In the event that the Disposal Obligations or either of them are not satisfied within the Initial Divestiture Period, or in the event that the CC considers that the Vendors or any of them is in material breach of any of the obligations identified in sub-paragraph 8.3 and that such breach is not remedied within a reasonable time, the Vendors undertake that they shall at the written direction of the CC appoint a Divestiture Trustee to give effect to the duty set out in sub-paragraph 8.2.
- 8.2 The duty of the Divestiture Trustee will be to give effect to the Trustee Obligation or to give effect to such part of the Trustee Obligation or undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CC may specify in the direction. The direction referred to in paragraph 8.1 above will include provision for the Divestiture Trustee to advise the CC as to Noble's ability to remain a going concern following the disposal of the Stonegate Business in giving effect to the Trustee Obligation.
- 8.3 The obligations identified in this paragraph are those found in sub-paragraphs 3.1, 3.4, 3.5, 4.2, 5.1, 10.2 and each obligation in paragraph 6 of these Undertakings.
- 8.4 The Vendors recognize that the CC may choose not to appoint a Divestiture Trustee immediately upon becoming entitled to do so, and further recognize that any delay by the CC in making a written direction appointing a Divestiture Trustee shall not affect the Vendors' obligations at such time as the CC makes any such written direction under sub-paragraph 8.1; and that in the event that in respect of any breach the CC directs the appointment of a Divestiture Trustee in respect of part only of the Trustee Obligation, or only in respect of matters preparatory, that direction shall not affect the Vendors' obligations under sub-paragraph 8.1 should the CC choose to make a further direction in respect of that breach.

## 9. Reporting Obligations

- 9.1 The Vendors each undertake that:
- 9.1.1 within the period of seven days from the Commencement Date they will provide a written report to the CC explaining the timetable that they have adopted for the satisfaction of the Disposal Obligations, outlining the progress that they have made towards the satisfaction of the Disposal Obligations, and the steps that have otherwise been taken to comply with the Principal and Secondary Undertakings;
  - 9.1.2 thereafter they will provide similar written reports to the CC every 14 days for the duration of the Divestiture Period; and
  - 9.1.3 they will report on such other matters as the CC may from time to time direct.
- 9.2 The Vendors each undertake that in their reports to the CC they shall *inter alia* provide to the CC:
- 9.2.1 the name, address, email address, contact point and telephone number of each possible candidate purchaser identified by the Vendors since the publication of the Report; and
  - 9.2.2 details of the efforts taken by the Vendors to find purchasers for the Stonegate Business.

**10. Purchaser Representations**

10.1 The Vendors each undertake that the provisions of sub-paragraph 10.2 shall apply where any person with an active interest in the acquisition of the Stonegate Business makes a Purchaser Representation to the CC.

10.2 The provisions of this paragraph are that:

10.2.1 the CC shall consult the Vendors as to whether the Purchaser Representation is justified and the Vendors shall provide to the CC such assistance as the CC shall require (including by the disclosure to the CC of commercially sensitive material, such material to be supplied on the basis that the CC will make no disclosure of it) to consider whether the Purchaser Representation is justified; and

10.2.2 in the event that the CC considers that the Purchaser Representation is justified the Vendors shall take such steps, or shall procure that the relevant members of the Noble Group take such steps, as the CC shall consider necessary to address satisfactorily the issues raised in or by the Purchaser Representation.

**11. Miscellaneous undertakings**

11.1 The Vendors each undertake jointly and severally to remunerate in full and to pay all the reasonable costs and expenses of, any Independent Expert whose assistance the CC may require in connection with any of the matters in sub-paragraph 11.2.

11.2 The matters in this paragraph are:

11.2.1 the determination of a person as an Approved Purchaser;

11.2.2 the determination of an agreement as an Approved Agreement;

11.2.3 the consideration of any Purchaser Representation; and

11.2.4 any other matter on which the CC may reasonably require the assistance of an Independent Expert in connection with these Undertakings.

## **12. Divestiture Trustee—appointment procedure**

- 12.1 The Vendors undertake that within the period of seven working days from the day on which a direction is made by the CC pursuant to paragraph 8.1, the Vendors shall submit a list of two or more persons whom they propose to appoint as Divestiture Trustee to the CC for approval. The proposal shall contain sufficient information for the CC to verify that each proposed Divestiture Trustee fulfils the requirements set out in paragraph 12.2 and shall include:
- 12.1.1 the full terms of the proposed mandate (covering the provisions set out in Appendix A), which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties; and
  - 12.1.2 a schedule of the steps to be taken to give effect to the mandate.
- 12.2 Each person on the list shall be independent of any of the Vendors, possess the qualifications necessary for the performance of its mandate, and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms on which it is remunerated.
- 12.3 The CC may approve or reject any or all of the proposed Divestiture Trustees and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, the Vendors shall use their best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CC. If more than one name is approved, the Vendors shall be free to choose the Divestiture Trustee to be appointed from among the names approved. The Vendors undertake to appoint the Divestiture Trustee within five working days from the CC's approval and in the terms of the mandate approved by the CC.
- 12.4 If all the proposed Divestiture Trustees are rejected, the Vendors shall submit the names of at least two further persons within five working days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 12.1 to 12.3.
- 12.5 The provisions of paragraph 12.6 shall apply if:
- 12.5.1 the Vendors fail to nominate further persons in accordance with paragraph 12.4; or
  - 12.5.2 those further persons are rejected by the CC; or
  - 12.5.3 the Vendors are unable for any reason to conclude the appointment within a time limit specified by the CC.
- 12.6 The CC shall nominate one or more persons to act as Divestiture Trustee, and the Vendors shall appoint, or cause to be appointed such Divestiture Trustee within two working days from such nomination under the terms of a Divestiture Trustee mandate approved by the CC.

**13. Divestiture Trustee—functions**

- 13.1 The Vendors undertake to enable, and shall procure that the members of the Noble Group, Mr Peter Dean and Mr Michael Kent shall enable, the Divestiture Trustee to carry out its duty.
- 13.2 The Vendors recognize that:
- 13.2.1 the CC may, on its own initiative or at the request of the Divestiture Trustee or the Vendors, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty (including directions as to the disposal of such property, assets, rights, consents, licences, privileges or interests of the Noble Group as the CC considers necessary to bring about Effective Disposal);
- 13.2.2 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty such terms and conditions as it considers appropriate; and
- 13.2.3 the Divestiture Trustee shall protect the legitimate financial interests of the Vendors subject to the Divestiture Trustee's overriding obligation to give effect to the Trustee Obligation.
- 13.3 The Divestiture Trustee shall take such steps and measures as it considers necessary to discharge its duty and to that end the Divestiture Trustee may give written directions to the Vendors, and the Vendors undertake to comply with such directions or to procure compliance with such directions as are within their powers and to take such steps within their competence as the Divestiture Trustee may specify.
- 13.4 The Vendors recognize that in the performance of its duties, the Divestiture Trustee shall act solely on the instructions of the CC and shall not be bound by any instruction of the Vendors and the Vendors undertake that they shall not seek to create or vary the obligations and duties of the Divestiture Trustee, except with the CC's prior written consent.

**14. Divestiture Trustee—duties and obligations of The Vendors**

- 14.1 The Vendors undertake to provide and shall cause each member of the Noble Group, Mr Peter Dean, Mr Michael Kent and their advisers to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request relevant to the Stonegate Business but excluding any matter properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of its duty. The Vendors recognize that the Divestiture Trustee shall be entitled, subject to a duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of its duty and the Vendors undertake that they shall, and shall procure that each member of the Noble Group, Mr Peter Dean and Mr Michael Kent shall, provide the Divestiture Trustee upon request with copies of any such document. The Vendors undertake to make available, and shall procure that each member of the Noble Group, Mr Peter Dean and Mr Michael Kent makes available, as necessary, to the Divestiture Trustee one or more offices on their premises and shall be available, and shall procure that personnel of the Noble Group shall be available, for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of its duty.
- 14.2 The Vendors undertake that they shall grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge its duty including by the appointment of advisers to assist with the disposal process. The Vendors undertake that upon the reasonable request of the Divestiture Trustee the Vendors shall execute the documents required to give effect to the Trustee Obligation.
- 14.3 The Vendors undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Divestiture Trustee's duty, and the Vendors recognize that the Divestiture Trustee, its employees, agents or advisers shall have no liability to the Vendors or any member of the Noble Group for any liabilities arising out of the proper performance of the Divestiture Trustee's duty under these Undertakings, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 14.4 The Vendors undertake that at their expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee considers the appointment of such advisers reasonably necessary or appropriate in the discharge of its duty, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Should the Vendors refuse to approve the advisers proposed by the Divestiture Trustee the CC may, after consulting the Vendors, approve and direct the appointment of such advisers. The Divestiture Trustee may use advisers who served the Vendors during the Initial Divestiture Period if the Divestiture Trustee considers this to be in the best interest of a prompt sale.

**15. Divestiture Trustee—replacement, discharge and reappointment**

- 15.1 The Vendors undertake that if the Divestiture Trustee ceases to perform its duty, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest the CC may, after consulting the Divestiture Trustee, require the Vendors to replace the Divestiture Trustee.
- 15.2 If the Divestiture Trustee is removed under sub-paragraph 15.1, the Divestiture Trustee may be required to continue in post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full hand over of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure referred to in paragraph 12.
- 15.3 The Vendors recognize that other than in accordance with paragraph 15.1, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CC has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been implemented.

**16. Behavioural Undertaking**

- 16.1 In the event that the Trustee Obligations are not satisfied, the Noble Group, Mr Peter Dean and Mr Michael Kent undertake that they shall at the written direction of the CC adopt the Behavioural Undertaking as set out in clause 16.2 below.
- 16.2 Noble Group, Mr Peter Dean and Mr Michael Kent undertake that each will waive its contractual rights relating to the notice period if requested to do so in accordance with paragraph 16.3.
- 16.3 In the event that a Third Party Producer gives notice to the Noble Group (including any entity within the Noble Group) to terminate a Third Party Producer Contract, Noble will waive its contractual right in the Third Party Producer Contract to the specified period of notice and accept instead a period of six weeks' notice, unless:
  - 16.3.1 the Third Party Producer requests a longer period of notice; or
  - 16.3.2 Noble Group (including any entity within the Noble Group) and the Third Party Producer agree a shorter than six-week notice period.

**17. Effect of invalidity**

- 17.1 The Vendors undertake that should any provision of these Undertakings be contrary to law or invalid for any reason the Vendors and members of the Noble Group shall continue to observe the remaining provisions.
- 17.2 The Vendors undertake that no member of the Noble Group shall rely on any default or want of authority on the part of any member of the Noble Group or of any officer or employee thereof in the execution of these Undertakings unless directed so to do by the CC.

**18. Provision of information to the CC and the OFT**

- 18.1 The Vendors undertake that they shall and will procure that each member of the Noble Group shall (insofar as they are able to) promptly provide to the CC such information as the CC may reasonably require for the purpose of performing any of its functions under these Undertakings or under Sections 82, 83 and 94(7) of the Act.
- 18.2 The Vendors undertake that they shall and will procure that each member of the Noble Group shall (insofar as they are able to) promptly provide to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under these Undertakings or under Sections 92, 93(6) and 94(6) of the Act.
- 18.3 The Vendors undertake that should they or any of them at any time be in breach of any provision of these Undertakings such of them as are in breach will write to the CC within five working days to advise the CC:
- 18.3.1 that there has been a breach; and
- 18.3.2 of all the circumstances.

**19. Service**

- 19.1 The Vendors hereby authorize Lyons Davidson to accept on their behalf service of all documents (including any document of any kind which falls to be served on or sent to the Vendors or any of them in connection with any proceedings in Courts in the United Kingdom) orders, requests, notifications or other communications connected with these Undertakings.
- 19.2 Any document, order, request, notification or other communication shall be validly served on a Vendor if it is served on Lyons Davidson; and service shall be deemed to have been acknowledged by any Vendor or Vendors if it is acknowledged by Lyons Davidson or such other nominee.
- 19.3 Paragraph 19.2 has effect irrespective of whether, as between any Vendor and Lyons Davidson or other nominees, Lyons Davidson or other nominees has or continues to have any authority to accept and acknowledge service on that Vendor's behalf; and no failure or mistake by Lyons Davidson or other nominees (including a failure to notify a Vendor of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceeding or judgment.
- 19.4 Any communication between any of the Vendors and the CC under these Undertakings shall be addressed to The Secretary to the Remedies Standing Group, CC, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CC may direct in writing.
- 19.5 Any communication between any of the Vendors and the OFT under these Undertakings shall be addressed to Director of Mergers, Office of Fair Trading, Fleetbank House, 2–6 Salisbury Square, London EC4Y 8JY or such other address as the OFT may direct in writing.

**20. Compliance**

- 20.1 The Vendors undertake to comply with such reasonable written directions as the CC or the OFT may from time to time give to take such steps within their competence for the purpose of carrying out or securing compliance with these Undertakings.

**21. Subsidiaries**

- 21.1 The Vendors undertake to procure that their Subsidiaries comply with these Undertakings as if they had been given by those Subsidiaries.

**22. Extension of time limits**

- 22.1 The CC may, where appropriate, in response to a written request from the Vendors showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Undertakings within which the Vendors must take action.

**23. Governing Law**

- 23.1 The Vendors recognize that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 23.2 In the event that a dispute arises concerning these Undertakings, the Vendors undertake to submit that dispute to the courts of England and Wales.

**24. Termination**

- 24.1 The Vendors recognize that these Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 24.2 The Vendors recognize that the variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

### **Mandate of the Divestiture Trustee**

1. The Divestiture Trustee will be required to carry out its duties in accordance with the provisions of these Undertakings, but subject to this overriding obligation shall protect the legitimate financial interests of the Vendors. The Divestiture Trustee will advise the CC as to Noble's ability to remain a going concern following the disposal of the Stonegate Business in giving effect to the Trustee Obligation.
2. The Divestiture Trustee will have the sole right to sell the Stonegate Business during the Trustee Divestiture Period.
3. Neither the Vendors nor any member of the Noble Group will take any steps towards the sale of the Stonegate Business, once the Divestiture Trustee has been appointed, save at the direction of the Divestiture Trustee.
4. The Divestiture Trustee shall account for sale monies and for all costs and expenses incurred in connection with the sale to the Vendors and after the deduction of all the sums properly payable to the Divestiture Trustee or to any person out of the sale proceeds shall pay the balance to the Vendors in such proportion as the Vendors have jointly directed the CC.
5. The terms of the remuneration of the Divestiture Trustee may provide the Divestiture Trustee with an incentive provided that such incentive does not give rise to any conflict of interest and does not create any impediment to a prompt sale to remedy the SLC.
6. The Vendors shall assist the Divestiture Trustee to carry out its duty in accordance with the terms of these Undertakings.
7. The Divestiture Trustee shall provide the CC with such information and reports as the CC may require to ascertain whether the Vendors, and/or the members of the Noble Group, and or alternatively, the Divestiture Trustee, are complying with their obligations under and in relation to these Undertakings and shall promptly report to the CC if it concludes that the Vendors, and/or the members of the Noble Group, are failing to comply with any of their obligations under this paragraph.