

## NOTICE OF PROPOSAL TO RELEASE UNDERTAKINGS GIVEN PURSUANT TO SECTION 88 FAIR TRADING ACT 1973

### Introduction

In 1994, the Monopolies and Mergers Commission ('MMC') found that the practice of London Rubber Company ('LRC', now a subsidiary of SSL plc ('SSL')) of entering into agreements with customers whereby they agree to stock only LRC condoms were actions on the part of LRC which operated against the public interest. It recommended to the Secretary of State that LRC be required not to enter into agreements with wholesalers or retailers under which LRC would give the other party a material benefit whether in the form of special payments, bigger discounts or in any other way in return for that party's undertaking to stock only LRC condoms, or not to stock the condoms of any other, named, supplier.

The MMC's recommendation was adopted by the Secretary of State and on 30 June 1994 LRC gave undertakings not to enter into or carry out any agreement with wholesalers or retailers under which LRC gives, or agrees to give, the other party a material benefit—whether in the form of special payments, higher discounts or in any other form—in return for that party's undertaking to stock only LRC condoms, or not to stock the condoms of a named supplier (the 'Undertakings').

On 4 October 2004, responsibility for varying and revoking the Undertakings was transferred to the Competition Commission (the 'CC') by the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004 (SI 2004/2181).

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 and paragraph 16(3), schedule 24 of the Enterprise Act 2002 (the 'Act'), the Office of Fair Trading ('OFT') made a recommendation to the CC in December 2005 (the 'Recommendation') that LRC be released from the Undertakings in full.

### Notice of proposal to accept Recommendation

The OFT's report concluded that changes to the structure of retail distribution channels, the increasing importance to customers of choice of brand and changes in competition law justified releasing SSL's subsidiary LRC from the Undertakings. For the reasons set out in the OFT's report<sup>1</sup> and having reviewed the circumstances of the case, the CC proposes to accept the Recommendation of the OFT to release LRC from the Undertakings in full.

### Next steps

The CC is issuing this Notice to provide an opportunity for representations to be made in relation to the release of the Undertakings.

Comments are therefore invited and should be received by the CC no later than 5pm on Thursday 13 April 2006 and should be addressed to:

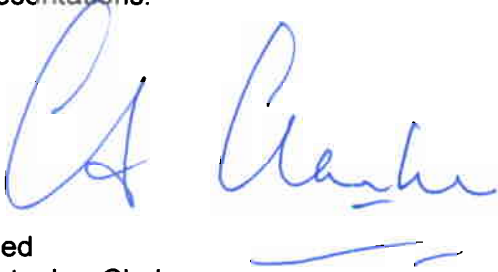
Catherine Davies  
Legal Adviser  
Competition Commission

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<sup>1</sup>The OFT's report is available at <http://www.of.gov.uk/Business/Register+of+Orders/advice.htm>.

Victoria House  
Southampton Row  
London  
WC1B 4AD  
Or email: [Catherine.Davies@competition-commission.gsi.gov.uk](mailto:Catherine.Davies@competition-commission.gsi.gov.uk)

Before releasing LRC from the 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.



Signed  
Christopher Clarke  
Deputy Chairman  
15 March 2006