

# Review of monopoly remedies put in place before 1 January 2005

Invitation to comment

© Crown copyright 2015

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

## **Contents**

	<i>Page</i>
1. Introduction .....	2
2. Background.....	3
3. The review of pre-1 January 2005 monopoly remedies .....	5
Annex 1: Pre-1 January 2005 Monopoly Remedies that the CMA is considering reviewing.....	9

## **1. Introduction**

- 1.1 The Competition and Markets Authority (CMA) is minded to conduct reviews of whether some or all of 13 sets of monopoly remedies put in place before 1 January 2005 that have not been reviewed recently (see the list in Annex 1) have experienced a change in circumstances relevant to the remedy in place, and whether these remedies may be no longer appropriate and need to be varied, superseded or removed.
- 1.2 The CMA invites all parties affected by these monopoly remedies to provide their views as to whether such reviews should take place, and to submit relevant evidence on whether a change of circumstances has occurred.
- 1.3 This invitation to comment follows the CMA's commitment, set out in its 2015/16 Annual Plan,<sup>1</sup> to commence a systematic review of existing merger, market and monopoly remedies, which may lead to the removal of measures that are no longer necessary or are now restricting or distorting competition.
- 1.4 The CMA considers that the monopoly remedies put in place before 1 January 2005 might be worthy of review, at least in part due to the length of time they have been in place. While the passing of time does not, in itself, constitute a change of circumstances, it increases the possibility that there may have been developments since the remedies were put in place that may lead to a realistic prospect of finding a change of circumstances relevant to these remedies.

---

<sup>1</sup> See [CMA annual plan 2015/16](#), paragraphs 4.12 and 4.17.

## 2. Background

- 2.1 The 13 monopoly remedies were put in place to remedy competition and other public interest concerns arising in markets investigated by the Monopolies and Mergers Commission (MMC) or its successor the Competition Commission (CC).
- 2.2 The CMA has a statutory duty under sections 88(4) and 88 (5) of the Fair Trading Act 1973, as preserved in Schedule 24 to the Enterprise Act 2002, to keep under review undertakings and orders. From time to time, the CMA must consider whether, by reason of any change of circumstances:
  - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
  - (b) an order is no longer appropriate and needs to be varied or revoked.
- 2.3 The CMA is responsible for deciding whether to vary or remove the 13 sets of remedies.<sup>2</sup> The CMA will act in accordance with its prioritisation principles<sup>3</sup> in deciding whether to review each remedy. Accordingly, it could decide to review some remedies and not others.
- 2.4 The CMA is currently reviewing, alongside its Retail Banking market investigation, the behavioural undertakings given in 2002 and 2003 by nine banks in relation to small and medium-sized enterprise (SME) banking.<sup>4</sup> The CMA also announced on 14 July 2015<sup>5</sup> its decision to review the undertakings given in 1972 by Metal Box,<sup>6</sup> as well as the Credit Cards (Merchant Acquisitions)<sup>7</sup> Order 1990. In addition, undertakings concerning BBC magazines were reviewed in 2013.<sup>8</sup> As such, these remedies are excluded from the scope of this exercise and are not included in the list of pre-1 January 2005 monopoly remedies in Annex 1.<sup>9</sup>
- 2.5 The CMA is also undertaking a number of related projects on remedies. On 26 March 2015, the CMA decided to review 76 merger undertakings given before 1 January 2005.<sup>10</sup> In addition, the CMA is consulting, separately, on

---

<sup>2</sup> This includes remedies which were transferred to Enterprise Act 2002 jurisdiction by [Statutory Instruments 2004 No. 2181](#) and [2006 No. 355](#).

<sup>3</sup> See CMA (1 April 2014), [CMA Prioritisation Principles](#).

<sup>4</sup> Further information can be found on the [SME banking undertakings review case page](#).

<sup>5</sup> See the [Metal Box](#) and [Credit Cards](#) case pages.

<sup>6</sup> A summary of the undertakings can be found on the [CMA's webpages](#).

<sup>7</sup> A summary of the order can be found on the [CMA's webpages](#).

<sup>8</sup> For further information, see CC (2013), [Review of BBC magazines undertakings](#).

<sup>9</sup> For clarity, if a party to a remedy not included in the list in Annex 1 requests a review by reason of a change of circumstances, the CMA will consider such request under its published [guidance](#).

<sup>10</sup> For further information, see CMA (26 March 2015) [Review of structural merger undertakings given before 1 January 2005](#).

updated guidance on the use of ‘sunset clauses’ in market investigations. Sunset clauses act as a time limit on measures introduced by the CMA by specifying a date or event after which they will no longer apply. The proposed guidance includes a commitment to considering such time-limited remedies in future investigations, as well as providing guidance on how the CMA will approach that consideration. This consultation document also proposes that, if the CMA introduces a new remedy without a sunset clause or if the sunset clause substantially exceeds ten years, then the CMA would normally expect to initiate a review of whether a remedy remains appropriate within no more than ten years of the remedy coming into force.<sup>11</sup>

---

<sup>11</sup> For further information, see CMA (May 2015), [Updated guidance on ‘sunset clauses’ in market investigation remedies – Consultation document](#).

### **3. The review of pre-1 January 2005 monopoly remedies**

- 3.1 In deciding to issue this call for information and considering whether to carry out a review of monopoly remedies that were put in place before 1 January 2005, the CMA takes into account its statutory duties and the commitment set out in its 2015/16 Annual Plan to ‘ensure current merger and market remedies are still fit for purpose, carrying out a project to take stock of the current suite of market and merger remedies’.
- 3.2 The CMA has also taken into account that there may be indirect benefits for consumer welfare by varying or releasing, if appropriate to do so, constraints on the business community in the UK that are no longer needed. This review is aligned with the government’s objective to reduce excessive and unnecessary bureaucracy and regulation on businesses in order to encourage economic growth.<sup>12</sup> It also enables the CMA to target its monitoring and enforcement resources on those remedies which remain necessary to promote competition and safeguard customer interests.
- 3.3 For the purposes of this exercise, the CMA has decided to restrict its attention on monopoly remedies put in place before 1 January 2005 because of the combination of two factors.
- 3.4 First, focusing on older remedies would target the CMA’s resources towards markets where there is most likely to be a realistic prospect of finding a change of circumstances relevant to the remedy in place.<sup>13</sup>
- 3.5 Second, the CMA considers there to be a reasonable likelihood that remedies that have been in place for more than ten years may have already produced their effects, and/or that the operation of the relevant markets may have changed materially. The 13 monopolies remedies in Annex 1 have been in place for 20 years on average, and many have not been subject to a review. Where reviews were undertaken, these all took place more than eight years ago.
- 3.6 Taking into account the resources available, the CMA will need to prioritise the review of certain remedies over others. In applying its prioritisation principles, the CMA is minded to have regard to the following non-exclusive

---

<sup>12</sup> See the [regulation reform webpage](#).

<sup>13</sup> Looking at remedies that are more than ten years old and have not been reviewed recently is consistent with the approach that has been proposed for new remedies introduced by the CMA without a sunset clause, or with a sunset clause that substantially exceeds ten years.

criteria, but invites interested parties to set out any other criteria that they consider the CMA should take into account:

- (a) **Age of the remedy** – the review of older remedies might be prioritised over (relatively) newer ones as, in the absence of a recent review, the age of a remedy may be correlated with the likelihood of a change in circumstances to some degree.
- (b) **Strength of evidence of a change of circumstances** – where there is clear evidence of a likely change of circumstances and it appears likely that the remedy in place will be revoked or amended, a review is more likely to be prioritised. This could happen, for example, if new players have entered a particular market to a substantial degree, technology has transformed the competitive dynamics in a market, or if legislative changes directly impacting on the remedy have occurred.
- (c) **Anticipated cost of the review** – if undertaking the review would impose a substantial burden on third parties and/or the CMA (eg in terms of evidence to be collected, resources used), the review would be prioritised only if it is proportionate to do so given initial expectations as to the likely outcome of the review (eg to retain, revoke or amend the remedy).
- (d) **Other opportunity to review** – if the same remedy is likely to be reviewed as part of an ongoing or expected future study or market investigation (eg as is currently occurring with the SME banking undertakings), then a standalone review is unlikely to be prioritised separately.

- 3.7 These criteria represent indicative factors that the CMA may take into account, together with other factors that may be relevant to one or more remedies under consideration. Moreover, these criteria will be considered as part of the application of the CMA's published prioritisation principles.<sup>14</sup>

---

<sup>14</sup> See CMA (1 April 2014), [CMA Prioritisation Principles](#).

## **Invitation to comment**

- 3.8 The CMA invites parties and those interested in the 13 monopoly remedies listed in Annex 1 to:
- (a) provide evidence and relevant reasoning on whether they should be reviewed;
  - (b) submit any relevant evidence that indicates for which remedies, if any, a change of circumstances has occurred; and
  - (c) give reasons supported by evidence where possible, with reference to the criteria listed above, the CMA's prioritisation principles, and any other relevant factors, whether or not a review of any particular remedy or remedies should be prioritised by the CMA.
- 3.9 Interested parties may express their views or submit evidence of a change of circumstances only on one or more monopoly remedies.
- 3.10 Responses should be received by 5pm on **Friday 28 August 2015**, by email or in writing to the address below:

Review of monopoly remedies  
Competition and Markets Authority  
7<sup>th</sup> Floor North  
Victoria House  
37 Southampton Row  
London WC1B 4AD

Email: [remedies.reviews@cma.gsi.gov.uk](mailto:remedies.reviews@cma.gsi.gov.uk)

- 3.11 We will analyse the responses we have received and publish later in 2015 our decision on the remedies that will be reviewed.
- 3.12 In cases where the CMA decides not to proceed with a review in the short term, it will inform the relevant parties and publish its decision, if appropriate. If the CMA decides to undertake a review, it will inform relevant parties and appoint a group to make the review. The process the CMA will follow during a review of an existing remedy is outlined in Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders (CMA 11).<sup>15</sup>

---

<sup>15</sup> CMA (10 January 2014), [Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders \(CMA 11\)](#).

- 3.13 The CMA will also place a review opening announcement on [its webpages](#) with a description of the case and the reasons for commencing a review. It will indicate, as soon as practicable, an indicative timetable showing the anticipated dates of key milestones and the contact details for the main CMA contacts for the case, including the first point of contact for general queries and submission of information.

***Data use statement for responses<sup>16</sup>***

- 3.14 Personal data received in the course of this invitation to comment will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002 (EA02). We may wish to refer to comments received in response to this invitation to comment in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.
- 3.15 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

---

<sup>16</sup> For further information relating to the CMA's handling and disclosing of information, see CMA (April 2003) [Chairman's Guidance on Disclosure of Information in Merger Inquiries, Market Investigations and Reviews of Undertakings and Orders accepted or made under the Enterprise Act 2002 and Fair Trading Act 1973](#), CC7 (revised).

## **Annex 1: Pre-1 January 2005 Monopoly Remedies that the CMA is considering reviewing**

### **Animal waste**

Date of the original undertakings: 1 February 1995.

MMC associated report: *Animal waste: a report on the supply of animal waste in England and Wales and in Scotland* ([Cm 2340](#), published on 30 September 1993).

#### ***Summary***

The MMC investigated potential competition issues related to the supply of animal waste in England and Wales, and in Scotland. At the time of the investigation, the MMC found a monopoly situation in England and Wales in favour of Prosper De Mulder Ltd (PDM) and one monopoly situation in Scotland in favour of William Forrest & Son (Forrest). The MMC found that both PDM and Forrest engaged, in their respective markets, in discriminatory pricing which harmed smaller competitors and restricted competition. In addition to this, the MMC found that PDM's financial reporting arrangements were not suitably transparent giving a distorted account of the true profitability of its business. As such, both PDM and Forrest gave undertakings not to engage in price discrimination and to improve the transparency of pricing by publishing pricing information in the *Meat Trades Journal*. Additional undertakings were given by PDM, including commitments to make the true profitability of its business more transparent.

#### ***The current undertakings***

PDM is [required](#) to publish, in the *Meat Trades Journal*, details of prices paid to (or charges made for collection from) abattoirs for various grades of animal waste.

#### ***Previous reviews of the undertakings***

In April 2007, the Office of Fair Trading (OFT) reviewed<sup>17</sup> the undertakings given by PDM and Forrest and made a recommendation to the CC to release PDM from all the undertakings not related to price transparency. The OFT found that a change of circumstances had occurred in the relevant market (new legislation came into force and changes in the market structure have occurred), but it was not sufficient to release PDM and Forest from the undertakings on price transparency. In June 2007,

---

<sup>17</sup> See OFT (April 2007), [Animal waste: A review of undertakings given by Prosper de Mulder and William Forrest and Son \(Paisley\)](#).

the CC accepted<sup>18</sup> the OFT's recommendation. Recently, Forrest exited the relevant market.

## **Carbonated drinks**

Date of the order: 21 May 1993.

MMC associated report: *Carbonated drinks: a report on the supply by manufacturers of carbonated drinks in the United Kingdom* ([Cm 1625](#), published on 15 August 1991).

### ***Summary***

The MMC investigated potential competition issues related to the supply of carbonated drinks in Great Britain by manufacturers of such drinks. At the time of the investigation, the two largest suppliers in UK were Coca-Cola & Schweppes Beverages Ltd (CCSB) and Britvic Soft Drinks Ltd (Britvic), while the largest supplier in Northern Ireland was Coca-Cola Bottlers (Ulster) Ltd (CCBU), which had franchise arrangements with Coca-Cola. The investigation found that a statutory complex monopoly situation existed in the relevant market because CCSB, Britvic and CCBU had entered into exclusive arrangements in the leisure trade (ie pubs, fast-food restaurants, clubs) and CCSB and Britvic placed restrictions on the brands that could be sold through their can-vending machines.

### ***The order***

[It applies](#) to CCSB, CCBU and Britvic, and prevents them from enforcing cabinet and outlet exclusivity when selling to their customers (distributors or resellers).

### ***Previous reviews of the order***

None.

---

<sup>18</sup> CC (27 June 2007), [Supply of animal waste – Prosper de Mulder Ltd and William Forrest & Son undertakings](#).

## **Electrical contracting at London exhibition halls**

Date of the order: 18 December 1995.

MMC associated report: *Electrical Contracting at Exhibition Halls in London: a report on the supply in Greater London of electrical contracting services at large exhibition halls* ([Cm 995](#), published on 12 April 1990).

### ***Summary***

The MMC investigated potential competition issues in the supply in Greater London of electrical contracting services at large exhibition halls. The investigation established that a monopoly existed in favour of five electrical contractors who were tied to certain of the large exhibition halls (the hall tie). These contractors accounted for 75% of the relevant market. Specifically, the following aspects of the tied electrical contractors' behaviour were considered to be against the public interest:

- (a) Their failure to show their prices separately from the hall charges for electricity and mains connections impeded comparison of prices.
- (b) Their payment of commission to hall owners and/or exhibition organisers distorted competition between electrical contractors.
- (c) Their tie to the halls:
  - (i) restricted competition between electrical contractors for work at those halls;
  - (ii) discouraged new entry into electrical contracting at those halls; and
  - (iii) inhibited the growth of potential competition in the supply of electrical contracting services.

### ***The order***

[It applies](#) to exhibition halls in Greater London with more than 2,500 square metres of exhibition space. Owners of such halls are prohibited from requiring exhibitors to use particular electrical contractors without objective justification, unless electrical contractors are chosen competitively.

### ***Previous reviews of the order***

None.

## Film (exhibition periods)

Date of the order: 12 December 1996.

Monopolies and Mergers associated report: *Films: a report on the supply of films for exhibition in cinemas in the UK* (Cm 2673, published on 6 October 1994).

### **Summary**

The MMC investigated potential competition issues in the supply of films for exhibition in cinemas in the UK. At the time, the distribution market included five leading players (Buena Vista, Columbia, Fox, UIP and Warner Distributors), which mainly distributed the films of their respective Hollywood studios (and, to a limited extent, also independently produced films), and several independent distributors who competed to obtain independent films. The exhibition market included five leading players (MGM Cinemas, Odeon, Natl Amusements, UCI and Warner Theatres).

The investigation found a number of anticompetitive practices in the industry, including the distributors' practice of imposing lengthy minimum exhibition periods to exhibitors (eg four weeks or longer) as a condition of supplying them with prints of popular films. This practice acted as a competition barrier, particularly for cinemas with few screens or a single screen that were not able to respond to consumer demand. Moreover, it reduced the ability of independent distributors to get their films shown.

### **The order**

Film distributors are prohibited from requiring exhibitors to display films for a period longer than:

- (a) two weeks – in the case of exhibitions that start within six weeks of a film's general release day; and
- (b) one week – in any other case.

### **Previous reviews of the order**

In July 2004, the OFT initiated an own-initiative review<sup>19</sup> of the order and recommended the CC to maintain it on the basis that a change of circumstances did not occur since the order was put in place. Specifically, the OFT noted that a revocation of the order would have incentivised distributors to impose again lengthy

---

<sup>19</sup> OFT (26 July 2004), *Review of orders following 1983 and 1994 MMC monopoly reports on the supply of films of exhibition in cinemas*.

minimum exhibition periods, particularly on smaller exhibitors. In January 2005, the CC accepted the recommendation and the order was maintained.<sup>20</sup>

## **Restriction on agreements and conduct (tour operators) – Order 1987**

Date of the order: 30 June 1987.

MMC associated report: *Foreign Package Holidays: a report on the matter of the existence or the possible existence of a complex monopoly situation in relation to the supply in the United Kingdom of agency services by travel agents for tour operators in relation to the marketing and supply of foreign package holidays* ([Cmnd 9879](#), published on 10 September 1986).

### ***Summary***

The MMC investigated whether potential competition issues existed on the supply of services by travel agents for tour operators, focusing on the marketing and supply of the tour operators' foreign package holidays. The MMC found that certain tour operators prohibited the travel agents from supplying their foreign package holidays at a discount from the price they prescribed. This practice was considered to operate against the public interest by reason of the adverse effects on competition between travel agents. Specifically, the practice was considered to be capable of:

- (a) restricting competition between travel agents in the value and incidence of discounts offered by them;
- (b) discouraging innovation by travel agents; and
- (c) depriving customers of offers most suited to their needs.

### ***The order***

[It prevents](#) tour operators who supply foreign package holidays from requiring travel agents to remove offer inducements (ie discounts) to customers on these holidays.

### ***Previous reviews of the order***

None.

---

<sup>20</sup> CC (17 January 2005), [Competition Commission decision on an OFT recommendation](#).

## **Foreign package holidays (tour operators and travel agents) – Order 2000 and Order 2001**

Dates of the orders: 27 July 2000 and 12 July 2001.

MMC associated report: *Foreign package holidays: A report on the supply in the UK of tour operators' services and travel agents' services in relation to foreign package* ([Cm 3813](#), published on 19 December 1997).

### ***Summary***

The MMC investigated whether competition issues existed on the supply in the UK of travel agents' and tour operators' services in relation to foreign package holidays, focusing on vertical agreements and tying practices. The report identified two complex monopoly situations, one concerning tour operators and the other travel agents, and three practices it considered to be against the public interest:

- (a) the tying of travel insurance to the purchase of discounted holidays;
- (b) 'most favoured customer' clauses, meaning provisions in an agreement between a tour operator and a travel agent which required the latter to offer the same discounts on that tour operator's foreign package holidays as it did on other tour operators' holidays; and
- (c) failure to take sufficient steps to ensure that consumers were made aware of the ownership links between vertically integrated tour operators and travel agents.

### ***The order 2000***

[It requires](#) vertically integrated tour operators and travel agents to draw the corporate link to the attention of consumers when the travel agent offers to them the foreign package holidays of the tour operator, except where a market share test is not satisfied.

### ***The order 2001***

[It prohibits](#) travel agents or tour operators from discriminating in the price charged for a foreign package holiday, or by imposing an additional charge, against a person who does not buy travel insurance in respect of that holiday. Moreover, it prohibits tour operators from entering into or carrying out an agreement which requires the travel agent to comply with a most favoured customer requirement except where the tour operator is required to compensate the travel agent for the value of the inducements required to be offered by the travel agent as a result of such a requirement.

### ***Previous reviews of the orders***

None.

### **Impulse ice cream**

Dates of the undertakings: 07 April 2000 and 19 July 2000.

CC associated report: *The supply of impulse ice cream: A report on the supply in the UK of ice cream purchased for immediate consumption* ([Cm 4510](#), published on 28 January 2000).

### ***Summary***

The CC investigated whether competition concerns existed in the supply of wrapped impulse ice cream in the UK. At the time of the investigation, the three major manufacturers of wrapped impulse ice cream were Unilever/Birds Eye Walls (BEW), Mars UK Limited (Mars) and Nestlé UK Ltd (Nestlé). The investigation found that complex monopoly situations existed in favour of these three players in respect of freezer exclusivity and outlet exclusivity. The report identified a series of practices having adverse effects on the ability of other manufacturers and distributors to compete with each other, resulting in less choice and higher prices for consumers.

### ***The undertakings***

[The undertakings apply](#) to wrapped impulse ice cream products and stop BEW, Mars and Nestlé from limiting the ability of the retailers they supply, to acquire and sell competing suppliers' products. BEW's additionally undertook not to prevent the retailers they supply from stocking competitors' products in BEW-supplied freezers.

### ***Previous reviews of the undertakings***

None.

### **New cars**

Dates of the order: 1 August 2000.

CC associated report: *New Cars: A report on the supply of new motor cars within the UK* ([Cm 4660](#), published on 10 April 2000).

### ***Summary***

The CC investigated whether competition concerns existed on the supply of new cars within the UK by manufacturers and importers (ie suppliers). The report

identified a complex monopoly situation resulting from suppliers' practices in distributing new cars in the UK. Specifically, the CC noted that:

- (a) the wholesale price charged by suppliers to car dealers was higher than the retail price paid by the larger fleet customers;
- (b) some suppliers appeared to control the prices advertised by their dealers. Certain requirements imposed by suppliers to dealers, such as specified showroom and operational standards, increased dealers' costs and contributed to higher prices; and
- (c) certain suppliers' selling practices, based on RPMs, discounts, financial benefits and pre-registrations, reduced transparency and increased prices as a result.

### ***The order***

It prevents suppliers of new cars from:

- (a) discriminating on price between dealers and fleet buyers;
- (b) providing bonuses and discounts to dealers on pre-registered cars; and
- (c) imposing on dealers restrictions on price advertising.

### ***Previous reviews of the order***

None.

## **Opium derivatives**

Date of the undertakings: 20 April 1989.

MMC associated report: *Opium Derivatives: a report on the matter of the existence or possible existence of a monopoly situation in relation to the supply in the United Kingdom of opium derivatives* ([Cm 630](#), published on 20 April 1989).

### ***Summary***

The MMC investigated whether competition concerns existed in the supply of six opium derivatives (morphine, codeine, dihydrocodeine, diamorphine, ethylmorphine and pholcodine) in the UK. Macfarlan Smith Ltd (MSL), a subsidiary of Glaxo PLC, was the sole manufacturer of opium derivatives (accounting for around 87% of the market) and faced little internal and external competition, because opium derivatives could not be imported into the UK (the Home Office's policy was not to issue any import licences) and entry of rival manufacturers was unlikely. The investigation found that MSL exploited the monopoly situation by engaging in price discrimination and was able to charge high prices in the domestic market.

In the report, the MMC also noted that the liberalisation of trade in opium derivatives within the then European Community was the most effective way to increase competition in supply in the UK.

### ***The undertakings***

**Prevent** price discrimination by requiring MSL to publish and make generally available a maximum price list for opium derivatives.

### ***Previous reviews of the undertakings***

The undertakings were first reviewed by the OFT in 1997,<sup>21</sup> following changes in the Home Office's import policy of opium derivatives. The undertakings were maintained, but the OFT noted that the liberalisation of trade in opium derivatives within the European Union was the best way of improving the supply of opium derivatives in the UK. In 2004, the OFT undertook a further review.<sup>22</sup> The OFT noted that the undertaking to publish maximum price lists was ineffective in substantially constraining price discrimination against MSL's smaller customers and committed to take steps to improve MSL's compliance. It also recommended not to change the undertakings and invited the government to review its licensing policy which still imposed trading restrictions on opium derivatives. Following the OFT's recommendation, the government committed<sup>23</sup> to review regularly its policy, taking into account both competition and security considerations.<sup>24</sup>

## **Performing rights**

Date of the undertakings: 27 February 1997.

MMC associated report: *Performing rights: A report on the supply in the UK of the services of administering performing rights and film synchronisation rights* ([Cm 3142](#), published on 1 February 1996).

### ***Summary***

The MMC investigated whether a monopoly situation existed in relation to the supply of the services of administering performing rights and film synchronisation rights. The investigation showed that a monopoly situation existed in favour of the Performance

---

<sup>21</sup> Report by the Director General of Fair Trading to the Secretary of State for Trade and Industry concerning the undertaking given by Macfarlan Smith Ltd, 27 April 1997.

<sup>22</sup> [Opium derivatives: A review of the undertaking given by MacFarlan Smith Limited](#), March 2006.

<sup>23</sup> [Government response to OFT's undertakings by Macfarlan Smith Ltd](#), September 2006.

<sup>24</sup> In September 2014, the Home Office launched a consultation on the proposed review of the existing policy on the import of oxycodone (an opium derivative). For further information, see Home Office, [Oxycodone import policy](#).

Right Society (PRS) and identified a number of adverse findings that were attributable to the PRS monopoly situation. The competitive issues identified by the MMC included: inefficient corporate structure and management practices of the PRS, lack of transparency in PRS policies and procedures, inappropriate cost allocation system, and inadequate systems for ensuring an equitable distribution of royalties. Furthermore, members of the PRS could not self-administer their own live performing rights and could not appeal against decisions, particularly those regarding the distribution of royalties. The MMC made 44 detailed recommendations to PRS to remedy these and other matters.

### ***The undertakings***

**PRS For Music has to abide** by the recommendations made by the MMC. Specifically, PRS has to ensure that:

- (a) their members can self-administer their own live performing rights;
- (b) an appropriate structure for corporate governance is in place; and
- (c) royalties are collected and distributed efficiently.

### ***Previous reviews of the undertakings***

None.

## **Private medical services**

Date of the undertakings: 21 September 1994.

MMC associated report: *Private medical services: A report on agreements and practices relating to charges for the supply of private medical services by NHS consultants* ([Cm 2452](#), published 11 February 1994).

### ***Summary***

The MMC investigated the potential competition issues existing in the supply of private medical services (PMS) in the UK by medical practitioners who had appointments as consultants within the National Health Service. The report identified a monopoly situation in the supply of PMS. In particular, the MMC noted that the practice of certain consultants to fix their charges by reference to the British Medical Association (BMA) Guidelines' rates constituted a conduct which prevented competition in the supply of PMS.

### ***The undertakings***

**BMA is required** to not recommend, in any form, fees to be charged for PMS.

### ***Previous reviews of the undertakings***

None.

### **Structural warranty services**

Date of the undertakings: 7 December 1995.

MMC associated report: *Structural warranty services in relation to new homes: A report on the existence or possible existence of a monopoly situation in relation to the supply within the United Kingdom of structural warranty services in relation to new homes* ([Cm 1439](#), published on 6 March 1991).

### ***Summary***

The issue related to the supply in the UK of structural warranty services in relation to new homes. At the time of the investigation, the National House Building Council (NHBC) supplied over 90% of the market through its Buildmark scheme. The investigation found that certain of NHBC's rules of membership were acting as a barrier to entry for NHBC's potential competitors by making it more costly for them to offer alternative warranty schemes of comparable standards. The MMC made detailed recommendations to remedy this and other matters and suggested NHBC amend its rules of membership.

### ***The undertakings***

[The NHBC is required](#) not to amend some of its rules of membership without the OFT's consent. In particular, such consent is needed where the amendment leads to non- or lesser compliance with the recommendations set out in the MMC report.

### ***Previous reviews of the undertakings***

None.