

**UNDERTAKINGS BY ALANOD ALUMINIUM-VEREDLUNG GmbH & Co
AND METALLOXYD ANO-COIL LIMITED
TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY
UNDER SECTION 88(2) OF THE FAIR TRADING ACT 1973**

WHEREAS on 17 March 1999 Alanod Aluminium-Veredlung GmbH & Co ('Alanod') acquired the entire issued share capital of Metalloxyd Ano-Coil Limited ('Ano-Coil');

WHEREAS on 15 July 1999 the Secretary of State for Trade and Industry ('the Secretary of State') referred the resulting merger situation to the Competition Commission ('the Commission') under sections 64 and 69(2) of the Fair Trading Act 1973 ('the Act');

WHEREAS on 11 August 1999 Alanod gave certain non statutory assurances to the Secretary of State and the Secretary of State hereby releases Alanod from those assurances on the day that the undertakings below take effect;

WHEREAS the report of the Commission presented to Parliament in January 2000 (Cm 4545) ('the Report') sets out such conclusions as are mentioned in section 73(1) of the Act;

AND WHEREAS pursuant to a request by the Secretary of State, the Director General of Fair Trading ('the Director') has consulted with Alanod and Ano-Coil with a view to obtaining from them undertakings to take certain action;

NOW THEREFORE Alanod and Ano-Coil give to the Secretary of State under section 88(2) of the Act the undertakings below to take action requisite for the purpose of remedying the adverse effects specified in the report of the Commission:

Pricing

1.- Subject to clauses 2-4 below, the Companies shall not supply, agree or offer to supply or procure others to supply, agree or offer to supply to any person described at the top of a page in

the Schedule hereto any of the products listed on the remainder of a Relevant Page (or products substantially the same as the products listed on the remainder of a Relevant Page) at prices higher than those prescribed by the Director and

- (1) on the day that these undertakings take effect and until otherwise prescribed by the Director either pursuant to paragraph (2) below or because the Director is satisfied that due to a material error or otherwise any price listed in the Schedule hereto is not the price for the supply of a corresponding product on 17 March 1999, the prices prescribed by the Director for supply to any person described at the top of a page in the Schedule hereto are listed on the remainder of a Relevant Page for any corresponding product, and
- (2) following an application by the Companies and having had regard to the cost information provided by them, the Director may from time to time prescribe such other prices as he sees fit.

2.- Notwithstanding clause 1 above, on the day that these undertakings take effect and subsequently on 31 December and 30 June in each year, the Companies:

- (1) shall reduce all prices listed in the Schedule hereto for the supply of all products during the following six months if the three month price per tonne of aluminium ingots quoted on the London Metal Exchange (and listed for information purposes only in the *Financial Times*) on that day has fallen below seven hundred and thirty four pounds sterling (being the three month price per tonne to the nearest pound sterling of aluminium ingots on 17 March 1999) and such reduction in all prices per tonne listed in the Schedule shall always equal the relevant fall in such three month price per tonne of aluminium ingots; and
- (2) may increase any prices listed in the Schedule hereto for the supply of any corresponding product during the following six months if the three month price per tonne of aluminium ingots quoted on the London Metal Exchange (and listed

for information purposes only in the *Financial Times*) on that day has risen above seven hundred and thirty four pounds sterling (being the three month price per tonne to the nearest pound sterling of aluminium ingots on 17 March 1999) ***provided always that*** any such increase in any prices per tonne listed in the Schedule shall not exceed the relevant rise in such three month price per tonne of aluminium ingots

and whenever, pursuant to this clause, any prices listed in the Schedule hereto are revised, the Companies shall inform the Director of all such revised prices within 30 days of such revision.

3.- If, on the last day in any calendar month, a person described at the top of a page in the Schedule hereto has reduced the total volume of Anodised Aluminium Coil purchased from the Companies during the 365 days ending on that day by:

- (1) more than 30 percent measured against the 1999 Volume listed directly underneath the name of that person in the Schedule hereto where such 1999 Volume is less than or equal to 100 tonnes; or
- (2) more than 20 percent measured against the 1999 Volume listed directly underneath the name of that person in the Schedule hereto where such 1999 Volume is more than 100 tonnes,

clause 1 above shall not prevent the Companies from increasing the price charged for the supply of such reduced volume ***provided always that*** such increase in the price charged is objectively justifiable by reference to such reduced volume and explained by the Companies in writing to such person.

4.- (1) Subject to paragraph (2) below, where:

- (a) a person orders a particular volume of a product, such product being listed in a Schedule hereto; and

(b) such product is, on the day such order is placed, a Non-Standard Product,

clause 1 above shall not prevent the Companies from charging such person the reasonable cost of the excess raw material that the Companies have had to purchase to manufacture the Anodised Aluminium Coil to meet that particular order.

(2) The exception in paragraph (1) above shall not apply unless:

(a) the Companies have offered to supply an alternative standard product to the person which, in the reasonable opinion of the Companies, would meet the commercial requirements of that person, and that person has nevertheless decided to purchase the Non-Standard Product;

(b) the Companies cannot reasonably foresee that they will be able to use the excess raw material (which they have had to purchase to manufacture the Anodised Aluminium Coil to meet that order) or the Anodised Aluminium Coil (which they have had to manufacture to meet that order) to supply any other person during the 182 days beginning on the day on which such excess raw material was purchased by the Companies; and

(c) the Companies transfer title in such excess raw material or such Anodised Aluminium Coil to the person purchasing the Non-Standard Product unless such person refuses to accept such transfer of title.

Retrospective Rebates

5.- Subject to Clause 6 below, the Companies shall not supply, agree or offer to supply, or procure others to supply, agree or offer to supply Anodised Aluminium Coil to any person if such supply is or is to be on terms which include a price discount based on that person or any Affiliate

of that person purchasing sufficient quantities of Anodised Aluminium Coil

(1) during a period and

(2) to meet a target

both being agreed between the Companies and that person before, at the beginning of or during such period, such price discount being payable by whatever means at any time on or after the day on which such target is met.

6.- Clause 5 above shall not prevent the Companies from supplying Anodised Aluminium Coil following a request from a person who carries on business both within and outside the United Kingdom on terms which include a retrospective rebate, *provided always that*:

(1) such supply is for use in one or more countries in addition to the United Kingdom;

(2) a retrospective rebate is a commercially indispensable element of the contract so arising; and

(3) the Anodised Aluminium Coil so supplied is mainly for use outside the United Kingdom.

Obligation to supply

7.- Subject to clause 10 below, where, during the 365 days up to and including 17 March 1999, either of the Companies had a contract subsisting for the supply in the United Kingdom of Anodised Aluminium Coil to any person carrying on business for the purposes of that contract in the United Kingdom, the Companies shall not:

(1) directly or indirectly withhold, agree or threaten to withhold, or procure others to withhold, agree or threaten to withhold such Anodised Aluminium Coil of the

same or directly equivalent Product Coding from such person; or

- (2) directly or indirectly refuse, agree or threaten to refuse, or procure others to refuse, agree or threaten to refuse to supply on terms which are identical to those in such subsisting contract.

8.- Subject to clauses 9 and 10 below, the Companies shall not directly or indirectly withhold, agree or threaten to withhold, or procure others to withhold, agree or threaten to withhold MIRO products from any person for resale in the United Kingdom and supplies of MIRO products shall always be on terms which maintain a margin between:

- (1) the price the Companies charge for the supply of any particular MIRO product to any person actually or potentially competing with the Companies (which includes, for the avoidance of doubt, both manufacturers and distributors) in the distribution of such MIRO product to end users; and
- (2) the price which the Companies charge an end-user for such MIRO product.

9.- The margin referred to in clause 8 above shall in any particular case always be sufficient to reflect the Companies' own costs of distributing that particular MIRO product to end users and, in case of any dispute, shall be determined by the Director.

10.- Clauses 7, 8 or 9 above shall not prevent the Companies from:

- (1) pricing their products in accordance with these undertakings;
- (2) withholding a particular supply of a product from a person to the extent that the Companies are able to demonstrate in writing to that person that this is directly due to circumstances beyond the Companies' reasonable control, including circumstances where the Companies are unable to obtain the raw material to manufacture the Anodised Aluminium Coil required for such supply;

- (3) requiring full payment, before delivery for a particular supply of a product, from a person whom the Companies have reasonable cause to believe is a Credit Risk at the time of such supply.

Bundling

11.- The Companies shall not directly or indirectly require, agree or threaten to require, or procure others to require, agree or threaten to require, as a condition of the supplying of any MIRO products in the United Kingdom to any person carrying on business in the United Kingdom for the purposes of such supply, the buying of any quantity of Anodised Aluminium Coil.

Von Ardenne

12.- The Companies shall not give effect to, enforce or purport to enforce the agreement between Alanod and Von Ardenne dated 4 March 1998 in respect of any payment due to the Companies should any other person enter into a contract with Von Ardenne for the supply (including commissioning) of a plant suitable for the production of MIRO products.

13.- The Companies shall not make any other Agreement (whether with Von Ardenne or any other person or persons) to the like effect as the agreement referred to and to the extent described in clause 12.

14.- Where an Agreement (whether with Von Ardenne or any other person or persons) to the like effect as the agreement referred to and to the extent described in clause 12 above has already been made, the Companies shall not give effect to that Agreement or enforce or purport to enforce it.

Jordan

15.- The Companies shall not have any business dealings with Jordan or any Affiliate of Jordan

other than on an arm's length basis and, for the purposes of this clause 15, 'any Affiliate of Jordan' shall not include the Companies or any subsidiaries (within the meaning of section 736 Companies Act 1985) of the Companies.

Information

16.- The Companies shall furnish promptly to the Director such information as the Director considers necessary to monitor these undertakings.

Affiliates

17.- The Companies shall procure that the Affiliates from time to time of the Companies comply with these undertakings as if they had given them, and for the purposes of this clause 17, an Affiliate of the Companies shall not include Jordan or any subsidiaries (within the meaning of section 736 Companies Act 1985) of Jordan.

Interpretation

18.- The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

19.- Compliance with these undertakings does not affect the duty on the Companies to comply with or restrict the application of:

(1) the Competition Act 1998; or

(2) any other law.

20.- In these undertakings:

'1999 Volume' for any person means the volume listed directly underneath their name and

address at the top of any page in the Schedule hereto being the total volume of Anodised Aluminium Coil purchased by that person during the 365 days up to and including 17 March 1999;

‘the Act’ means the Fair Trading Act 1973 as amended from time to time;

an ‘Affiliate’ of a person is another person who satisfies the following condition, namely that any Enterprise that the first person carries on from time to time and any Enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 65 of the Act;

‘Agreement’ has the meaning given in section 137(2) of the Act;

‘Alanod’ means Alanod Aluminium-Veredlung GmbH & Co, a limited partnership incorporated in the Federal Republic of Germany with company registered number HRA1546 having as its registered office Amtsgericht Schwelm, Schulsterasse 5, D-58332 Scheelm;

‘Ano-Coil’ means Metalloxyd Ano-Coil Limited, a company incorporated in England and Wales with company registered number 592752 having as its registered office Chippenham Drive, Kingston, Milton Keynes MK10 0AN;

‘Anodised Aluminium Coil’ means any particular grade, specification or quality of that product supplied in sheets, coil or otherwise from time to time;

‘the Commission’ means the Competition Commission;

‘the Companies’ means Alanod and Ano-Coil or any one of them;

‘Credit Risk’ means a person who, where required as a matter of law or equity to pay for goods or services, does not pay for goods or services within a reasonable period of time

after delivery of such goods or services ***provided that*** such supply does not give that person a cause of action in law or equity against the supplier;

‘the Director’ means the Director General of Fair Trading;

‘Enterprise’ has the meaning given in section 63(2) of the Act;

‘Jordan’ means Jordan Reflectors Limited, a company incorporated in England and Wales with company registered number 02844015 having as its registered office 9-10 Seax Way, Southfields Industrial Park, Laindon, Basildon Essex SS15 6SW;

‘MIRO’ means the Alanod range of materials for lighting applications which are produced using anodised aluminium as the substrate and with enhanced surface characteristics obtained using vacuum deposited high purity reflective aluminium sheet as more particularly described in the Report;

‘Non-Standard Product’ on any day means a product listed in a Schedule hereto which the Companies do not supply in sufficient quantities to make such product generally commercially viable, so that, to meet orders for a small quantity of a Non-Standard Product, the Companies have no alternative but to purchase a larger quantity of the raw material than is necessary to manufacture that small quantity of product;

‘Product Coding’ means the letters and numbers assigned by the Companies from time to time to identify different specifications and grades of different products examples of which are found in the Schedules hereto;

‘a Relevant Page’ for any person is the page (including any continuation sheets) in the Schedule hereto on which they are described at the top of that page;

‘the Report’ means the report of the Commission on the merger situation presented to Parliament in January 2000 (Cm 4545);

'the Secretary of State' means the Secretary of State for Trade and Industry;

'Von Ardenne' means Von Ardenne Anlagentechnik GmbH, a limited partnership incorporated in the Federal Republic of Germany with company registered number HRB2610 having as its registered office Plattleite 19/29, D-01324 Dresden.

FOR AND ON BEHALF OF ALANOD ALUMINIUM-VEREDLUNG GmbH & Co

..... **Date**

Name.....(Director)

.....

Name.....(Director/Secretary)

FOR AND ON BEHALF OF METALLOXYD ANO-COIL LIMITED

..... **Date**

Name.....(Director)

.....

Name.....(Director/Secretary)

SCHEDULE

In this Schedule:

- 1 the prices quoted are in pounds sterling:
 - (a) per kilogram;
 - (b) per sheet where indicated or
 - (c) for the entire order as a lump sum where indicated; and
- 2 'gauge' means the thickness of the relevant aluminium in millimetres.