

ACQUISITION BY SCR-SIBELCO SA OF FIFE SILICA SANDS LTD AND FIFE RESOURCES LTD

UNDERTAKINGS GIVEN BY SCR-SIBELCO SA TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY PURSUANT TO SECTION 88(2) OF THE FAIR TRADING ACT 1973

SCR-Sibelco SA hereby gives to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973 the following undertakings for the purpose of remedying or preventing the adverse effects specified in the report of the Competition Commission entitled *SCR-Sibelco SA and Fife Silica Sands Limited and Fife Resources Limited – A report on the merger situation* (Cm 5139, June 2001).

Divestment of the Fife companies

- 1.1 Sibelco shall ensure, as soon as is reasonably practicable and in any event by 18 February 2002, the completion of the sale of the Fife companies to a purchaser proposing to sell Fife sand on the market and approved by the Director in accordance with paragraph 1.3 below.
- 1.2 Without prejudice to the generality of paragraph 1.1, Sibelco shall take any of the following measures to the extent to which they may be necessary to effect the sale of the Fife companies in accordance with that provision:-
 - (a) the transfer or vesting of property, assets, rights, liabilities or obligations;
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (d) the formation or winding up of a company.
- 1.3 Sibelco shall notify the Director of the identity of the proposed purchaser of the Fife companies as soon as is reasonably practicable and in any event at least fifteen Working Days in advance of completion of the proposed sale and shall not sell or permit the sale of the Fife companies unless it has obtained the Director's prior approval in writing.
- 1.4 In the event that Sibelco fails to complete the sale of the Fife companies within the period of time specified in paragraph 1.1, the Trustee shall carry out the Trustee Functions.

Interim Action

2. Pending the sale of the Fife companies, Sibelco shall ensure that:

- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the acquisition, the Fife companies shall be maintained as a going concern;
- (b) except with the prior written consent of the Director no step shall be taken which might lead to the integration of the Fife companies with any other business carried on by or under the Control of Sibelco;
- (c) except with the prior written consent of the Director the assets of the Fife companies are maintained and preserved;
- (d) except with the prior written consent of the Director in accordance with paragraphs 1.1 and 1.3 above, no assets of the Fife companies shall be disposed of, and no Interest in such assets shall be created or disposed of, other than in the ordinary course of business of the Fife companies.

Continued Separation

- 3. Following the sale of the Fife companies pursuant to paragraph 1.1 or paragraph 5.1, except with the prior written consent of the Secretary of State, Sibelco:
 - (a) will not directly or indirectly:
 - (i) hold any Interest in the Fife companies
 - (ii) hold any Interest in any company carrying on or having Control of the Fife companies; or
 - (iii) acquire, other than in the ordinary course of business, any of the assets of the Fife companies;
 - (b) will procure that no employee or director of Sibelco or of any of its Subsidiaries will hold or be nominated to any directorship or managerial position in the Fife companies or in any company or other undertaking carrying on or having Control of the Fife companies;
 - (c) will not participate in the formulation or making of, or (other than in the ordinary course of business) influence or attempt to influence the policy of the Fife companies or, with respect to the Fife companies, the policy of any person carrying on or having Control of the Fife companies; and
 - (d) will not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person of Sibelco

or Sibelco's Subsidiaries, directly or indirectly, doing any of the things listed in sub-paragraphs 3(a) - (c) above.

Appointment of a Trustee

- 4.1 By 2 November 2001, or within such other later period as may be specified by the Director, Sibelco shall propose to the Director the names of at least two persons to exercise the Trustee Functions.
- 4.2 The persons nominated by Sibelco pursuant to paragraph 4.1 shall meet the following requirements:
 - (a) they shall each be an investment bank, bank, building society, law firm or accountancy firm with a positive reputation either nationwide or in a substantial part of the United Kingdom or another EU member state and an EU national; and
 - (b) they shall each be independent from Sibelco and, in the opinion of Sibelco, appropriate to be appointed as Trustee.
- 4.3 Within 20 Working Days of the Director approving, at his discretion, one or more of the persons nominated by Sibelco pursuant to paragraph 4.1 above, Sibelco shall use all reasonable endeavours to appoint from the persons so approved, one person to carry out the Trustee Functions.
- 4.4 In the event that either i) none of the persons nominated by Sibelco pursuant to paragraph 4.1 are approved by the Director or, ii) Sibelco is unable for any reason to conclude within the time limit stipulated in paragraph 4.3 the appointment of any such person following approval by the Director, Sibelco shall use all reasonable endeavours to appoint from persons nominated by the Director one person to carry out the Trustee Functions. Sibelco shall use all reasonable endeavours to make such appointment within 7 Working Days of receiving the nominations from the Director.
- 4.5 The appointment of the Trustee pursuant to paragraph 4.3 or 4.4 shall take effect no later than 19 February 2002, and shall be irrevocable unless the Director is satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.
- 4.6 In the event the appointment of the Trustee is terminated under paragraph 4.5, Sibelco shall within 10 working days of such termination appoint another person approved by the Director to carry out the Trustee Functions.

Functions of Trustee

- 5.1 The Trustee shall procure within 3 months of its appointment taking effect, or within such other later period as may be specified by the Director, the completion of the sale of the Fife companies at the best

price reasonably obtainable in the circumstances, to a purchaser approved by the Director.

- 5.2 The provisions of paragraphs 1.2 and 1.3 shall apply to any such sale by the Trustee as if these undertakings were given by the Trustee rather than Sibelco.
- 5.3 Pending the sale of the Fife companies pursuant to paragraph 5.1, the Trustee shall monitor Sibelco's compliance with its obligations under these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 5.4 The Trustee may give written directions to Sibelco to take such steps within its competence as may be specified or described in the directions for the purpose of securing Sibelco's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Sibelco to:-
 - i) offer any reverse premium or similar inducement to a purchaser
 - ii) accept any actual or contingent liability towards a purchaser or otherwise in connection with the sale which would be unusual in scope, duration or financially having regard to the price and usual market practice in relation to similar disposals.
- 5.5 The Trustee shall provide to the Director such information and reports in relation to the carrying out of the Trustee Functions as the Director may require and shall promptly report in writing to the Director if the Trustee concludes on reasonable grounds that Sibelco is failing to comply with any of its obligations under these undertakings.
- 5.6 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Sibelco nor shall the Trustee Functions be extended or varied in any way by Sibelco save under the express written consent of the Director.
- 5.7 Sibelco will not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 5.8 Sibelco shall take all such steps as are necessary to enable the Trustee to carry out the Trustee Functions and shall take all such steps, including complying with such written directions as the Trustee may from time to time give pursuant to paragraph 5.4, and provide the Trustee with all such assistance and information, including copies of all relevant documents, as it may require in carrying out the Trustee Functions.

Remuneration of Trustee

6. Sibelco shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions.

Subsidiaries

7. Sibelco shall procure that each of its Subsidiaries complies with these undertakings as if had given them.

Information

8. Sibelco shall provide promptly to the Director such information as he may reasonably require for the purpose of ascertaining that these undertakings are being or have been complied with or of performing any of his functions under section 88 of the Act.

Interpretation

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

10. For the purpose of these undertakings:

"**the Act**" means the Fair Trading Act 1973;

"**Associated Person**" shall be construed in accordance with section 77(4) of the Act;

"**business**" has the meaning given by section 137(2) of the Act;

"**Control**" shall be construed in accordance with section 65 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more or of the total number of votes which may be cast at such meetings;

"**the Director**" means the Director General of Fair Trading;

"**the Fife companies**" means the business and assets of Fife Silica Sands Ltd and Fife Resources Ltd as at 22 September 2000 and any additional business carried on by, and assets used by, the Fife companies since that date;

"**Fife sand**" means the silica sand which is produced by the Fife companies;

"**Interest**" means shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose an "interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of those shares or an entitlement to Control the exercise of any such right;

"**Sibelco**" means SCR-Sibelco SA;

"**Subsidiary**" shall be construed in accordance with section 736(1) of the Companies Act 1985;

"**Trustee**" means the person appointed pursuant to paragraph 4.3, 4.4 or 4.6 to carry out the Trustee Functions;

"**Trustee Functions**" means the functions set out in paragraphs 5.1, 5.2, 5.3, 5.4 and 5.5;

"**Working Days**" mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England.

SIGNED FOR AND ON BEHALF OF SCR-SIBELCO SA

..... Signature Signature
..... Name Name
..... Title Title
..... Date Date