

# **Animal waste**

**A review of undertakings given by Prosper de Mulder and William Forrest and Son (Paisley)**

**April 2007**

(Advice provided to the Competition Commission, 16 October 2006,  
Letter of clarification provided to the Competition Commission  
(Annexe F) on 8 March 2007)

© **Crown copyright (2007)**

This publication (excluding the OFT logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

## CONTENTS

<i>Chapter</i>		<i>Page</i>
1	Executive summary	5
2	Introduction	13
3	Rendering in Great Britain	19
4	Competition in animal waste rendering	34
5	The Undertakings	57
<i>Annexes</i>		
A	The Undertakings	82
B	Reports by the MMC on animal waste	99
C	The major regulatory changes	105
D	The renderers	108
E	PDM acquisitions and joint ventures since 1995	114
F	Letter of Clarification to the Competition Commission <sup>1</sup>	115

Note: [...]

This report is published pursuant to section 4(4) of the Enterprise Act 2002. It has been edited for publication in accordance with Part 9 that Act. Among other things, this Part requires that the Office of Fair Trading has regard to the need for excluding from the published report, so far as is practicable, commercial information whose disclosure it thinks might significantly harm the legitimate business interests of the undertaking to which it relates.

---

<sup>1</sup> Provided to the Competition Commission, following the provision of original advice, on the 8 of March 2006.



# 1 EXECUTIVE SUMMARY

## Introduction

- 1.1 Following the 1993 Monopolies and Mergers Commission (MMC) Report (the report) into the supply of animal waste in England and Wales, and Scotland<sup>2</sup>, Prosper de Mulder (PDM) and William Forrest and Son (Paisley) Limited (Forrest) gave undertakings to the Secretary of State for Trade and Industry in 1995.<sup>3</sup> These undertakings were given to address the report's finding that aspects of PDM's and Forrest's trading practices operated or may be expected to operate against the public interest.<sup>4</sup>
- 1.2 The main public interest concerns raised by the MMC, in both PDM and Forrest's case, related to their pricing policies, particularly the finding that both companies had engaged in discriminatory pricing which harmed smaller competitors and restricted competition.<sup>5</sup> 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 rendering business.<sup>6</sup> Finally PDM was also found to have breached earlier undertakings relating to its gut room

---

<sup>2</sup> MMC 1993, Animal waste - A report on the supply of animal waste in England and Wales and in Scotland. Report Cm 2340.

<sup>3</sup> Although the undertakings were originally given to the Secretary of State for Trade and Industry, powers to vary, supersede or release undertakings have since been transferred to the Competition Commission (The Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004, SI No. 2181).

<sup>4</sup> The full text of the undertakings is at Annexe A and a summary of the MMC report, and previous reports and undertakings in this market, are given at Annexe B.

<sup>5</sup> MMC (1993), paragraphs 1.8-1.11, 1.15

<sup>6</sup> MMC (1993), paragraph 1.13

business<sup>7</sup> and to acquisitions. The MMC concluded that these breaches were a 'serious matter' which led to competition being restricted.<sup>8</sup>

- 1.3 Under section 88 of the Fair Trading Act 1973 (FTA), the Office of Fair Trading (OFT) has a duty to review these undertakings to ensure that the undertakings remain appropriate to remedy the adverse findings identified by the MMC.

## Summary of findings

- 1.4 The review has found that there have been several significant changes in the rendering industry since the MMC reported. These have occurred primarily as a result of Government intervention to eliminate the risk of transmission of Bovine Spongiform Encephalopathy (BSE) to humans. Regulations have been introduced which have significantly restricted the uses to which outputs of the rendering process<sup>9</sup> can be put, transforming the industry from one producing valuable outputs to one which is principally involved in the disposal of waste materials. In addition a number of government schemes were established to govern the disposal of animals that have a higher risk of transmitting BSE, notably the Over Thirty Months Scheme (OTMS). These schemes considerably increased the volume of material supplied to renderers but imposed restrictive rules on the handling of material.
- 1.5 The review has found that the range of methods to dispose of animal waste has broadened since 1993 to include composting and biogas. However OFT has not found evidence that they are available on a large enough scale to represent a real alternative to rendering and give enough customers a choice of disposal methods such that they act as an effective competitive constraint on the rendering industry at this time.

---

<sup>7</sup> See paragraph 5.56 for a definition of the gut room business.

<sup>8</sup> MMC (1993), paragraph 1.12

<sup>9</sup> meat and bone meal and tallow.

- 1.6 The structure of the rendering industry in both England and Wales, and Scotland has changed since the MMC reported in 1993. In each market, the historical market leader (PDM in England and Wales and Forrest in Scotland) has lost overall market share to other companies. This change appears to be the result of the opportunities created by other renderers through their use of continuous processing technology (something that has historically been almost reserved to Forrest and PDM). This has significantly increased the smaller companies rendering capacity at a time when PDM's rendering capacity has declined. The structure of each geographical market has changed from having one company in it with a very high market share and a large number of smaller players, with only small market shares, to one where PDM and Forrest each face competitors with higher market shares than in 1993 and the capacity to expand.
- 1.7 The OFT has been informed that the increased capacity amongst smaller parties in the industry has led to more vigorous competition for sources of animal waste. It has been suggested that this competition led to a significant reduction in rendering charges in 2001, although since 2004 charges have been generally increasing.
- 1.8 As the OFT conducted its review the Government replaced the OTMS with the Older Cattle Disposal Scheme (OCDS), The OCDS reduces the volumes of material supplied to renderers. Renderers have expressed different views as to the likely effects of the termination of OTMS, some claiming they will lose important sources of raw material, whereas others consider the effect is limited. It is not possible, within the confines of this review, to come to a firm view about the mid term effect the termination of this scheme will have on competition between renderers. Indeed as the amount of material made available through the OCDS progressively reduces we would expect the impact to change over time.
- 1.9 Thus the market is currently in a state of significant regulatory change and therefore it would be inappropriate to make further interventions in the absence of a clear picture of how it is likely to develop, particularly in the absence of any particular evidence of serious distortion or damage to competition.

## The undertakings

- 1.10 The undertakings have been reviewed against the background of the changes in the market set out above.

### Price undertakings

- 1.11 Both PDM and Forrest gave undertakings not to engage in price discrimination (see annexe A for the specific details of the price discrimination undertakings). In addition both companies undertook to improve the transparency of pricing by publishing pricing information in the Meat Trades Journal. The MMC intended that increased transparency of information would be of use to customers and competing renderers enabling more effective competition.<sup>10</sup>
- 1.12 The OFT has found no evidence that PDM and Forrest are not complying with the price discrimination/price information undertakings. Also, larger market players, which have historically expressed concerns about price discrimination, have indicated that changes in industry capacity have reduced their concerns about price discrimination by PDM/Forrest. However, we have noted the ongoing concerns from smaller parties in the industry which emphasise that PDM and Forrest, as the largest renderers in their respective geographic markets, still have market power which could be used to the detriment of competitors. In addition the complexity of pricing, supplemented by the changes to the regulatory structure, and general lack of transparency means that it is not possible to come to a final view on the extent, if any, of price discrimination in this market with certainty. This uncertainty has been heightened through the failure of several renderers to provide requested information during the course of the review.<sup>11</sup>

---

<sup>10</sup> MMC (1993), paragraph 10.128

<sup>11</sup> Information was requested of renderers using the OFT's powers under section 5 of the Enterprise Act 2002. These powers provide the OFT with the functions of 'obtaining, compiling, and keeping under review information about matters relating to the carrying out of its functions'. These powers do not compel parties requested to provide information to do so.



- 1.13 Some renderers have informed the OFT that the published pricing information is not used by customers in negotiating price, whereas other renderers (most notably Forrest) have told us published prices are routinely used by customers during price negotiations. We have also received mixed views from customers, some claiming published prices are not generally useful, as they are considered unreliable or not appropriate to those companies. However others claim the information is useful in identifying trends in prices, which can provide information for the purposes of negotiation. One customer indicated that published pricing information made customers aware of the decreases in prices in the industry after 2001 thereby spreading the benefits of lower prices further throughout the market than would otherwise have been the case. The OFT has also noted the complexity of pricing arrangements throughout animal waste rendering, the prevalence of negotiated prices and the limited sources of pricing information, other than that available in the Meat Trades Journal (and tariffs available to butchers and retailers).
- 1.14 Given these findings the OFT believes that the undertakings on price discrimination and price information should remain in place for the present and will not be providing advice to the CC to vary, revoke and supersede these undertakings. Their continued presence provides an increased degree of transparency of pricing. The OFT will continue to monitor these undertakings to ensure that they do not have a distortionary effect on the market and will review these undertakings further after a period of stability in the industry.

## Remaining PDM undertakings

- 1.15 PDM also undertook not to make the collecting of low grade wastes conditional upon a customer also supplying higher grade material to PDM. The reduction in value of raw materials in the wake of BSE reduces the incentives for PDM to engage in this practice. In accordance with section 88 (4) of the FTA the OFT considers that this constitutes a change in circumstances since the undertakings were given and that by reason of that change the undertakings are no longer appropriate. It therefore recommends that PDM should be released from this undertaking.
- 1.16 PDM undertook not to directly or indirectly acquire an animal waste enterprise unless the OFT has first been notified and informed PDM of its opinion that any such acquisition is in the public interest. The OFT has reviewed PDM's acquisitions over the last decade and can find no evidence that it has made any acquisitions of the type regulated by the undertakings. The OFT notes that the number of smaller rendering companies, which have historically been likely acquisition targets for PDM, has greatly decreased since 1993 due to the increasing concentration across the industry. The OFT believes that the changes in the structure of the market constitutes a change in circumstances since the undertakings were given and that by reason of the change the undertakings are no longer appropriate. In addition, PDM's current share of supply means that any future acquisitions are most likely to qualify for OFT consideration under the merger provisions of the Enterprise Act 2002 (EA02). The OFT therefore recommends that PDM should be released from this undertaking.
- 1.17 PDM also undertook to provide its complete consolidated accounts to the OFT and anyone who requests them so that market participants would have a greater idea about PDM's profitability to challenge them on pricing. PDM has wound up the unlimited companies (PDM Transport and PDM Services) which the MMC noted distorted PDM's accounts and has incorporated its operations into a single company, the accounts of which are made available. The OFT believes that this change in PDM's accounting policies has resulted in a greater degree of transparency in PDM's accounts, that this constitutes a change of circumstance

since the undertakings were given and that by reason of the change they are no longer appropriate. The OFT therefore recommends that PDM should be released from these undertakings.

- 1.18 PDM further undertook to carry on gut room activities (for the segregation of high value products from abattoirs) separately from the remainder of the business, ensuring no cross subsidies, and to provide various pieces of accountancy information to the OFT. PDM ceased its gut room operations in 2001 and subsequently dissolved the company which was responsible for operating gut rooms, PDM Abattoir Services Limited. These two changes constitute a change in circumstance since the undertakings were given and that by reason of those changes that they are no longer appropriate. The OFT recommends that PDM be released from this undertaking.
- 1.19 Finally, PDM undertook that it would not hold any interest in the rendering plant at Market Harborough or influence the running of it. Since the undertakings were given the plant has been sold to J. G. Pears, a significant renderer, which operates a major rendering facility from the site. The OFT has received no evidence that PDM has any interest in the running of the facility or has an influence upon J G Pears of the type prohibited by the undertakings. The OFT believes that the sale of the Market Harborough plant to a competing renderer constitutes a change in circumstances since the undertakings were given and that by reason of the change that the undertaking is no longer appropriate.

## **Conclusions and recommendation**

### **England and Wales (PDM)**

- 1.20 For the reasons outlined above (in paragraph 1.12 to 1.14) the OFT will not be providing advice to the CC to vary, supersede or revoke undertakings 1 (1) a, 1 (1) (2), and 2, which relate to PDM's pricing practices. The OFT believes that they should be retained in place subject to review in due course once changes in the industry have stabilised. In the mean time the OFT will continue actively to monitor the remaining undertakings alongside further developments in the market.

1.21 As outlined above, a number of changes which have occurred in the market mean that the following undertakings are no longer appropriate and the OFT recommends that PDM be released from them:

**Undertaking 1 (1) b** (conditional purchasing)

**Undertaking 3** (acquisitions)

**Undertaking 4** (accounting information)

**Undertakings 5-8** (gut rooms)

**Undertaking 9** (Market Harborough plant)

**Undertaking 10** (consequential amendments to remove references to issues in removed undertakings)

**Undertaking 11b** (PDM auditors to provide information to the OFT)

**Undertaking 12** (appointment of auditors)

**Undertaking 13** (replacement of the 1986 undertakings)

### **Scotland (Forrest)**

1.22 For the reasons outlined above (paragraphs 1.12 to 1.14) the OFT has concluded that Forrest's undertakings should remain in place, subject to monitoring and further review in due course, as set out in paragraph 1.20.

## 2 INTRODUCTION

### Background

- 2.1 This report reviews the effectiveness of the undertakings given in 1995 by PDM and Forrest, the largest rendering companies operating in England and Wales, and in Scotland respectively at that time. The undertakings<sup>12</sup> were given following the MMC report<sup>13</sup> in 1993 on the supply of animal waste in England and Wales, and in Scotland.<sup>14</sup> This review also considers how the market has developed over the last decade and provides an assessment of the current competitiveness of the market.
- 2.2 It is the duty of the OFT to consider from time to time whether, by reason of any change of circumstances, any undertaking is no longer appropriate and whether either of the relevant parties can be released from the undertaking or whether it should be varied, or superseded by a new undertaking, and to give advice to the Competition Commission (CC)<sup>15</sup> to this effect as it may think proper in the circumstances.<sup>16</sup>

---

<sup>12</sup> The full texts of the undertakings are at Annexe A.

<sup>13</sup> The functions of the MMC were transferred to the Competition Commission from the 1<sup>st</sup> of April 1999, pursuant to section 45 of the Competition Act 1998.

<sup>14</sup> MMC 1993, Animal waste - A report on the supply of animal waste in England and Wales and in Scotland. Report Cm 2340.

<sup>15</sup> The OFT previously provided the Secretary of State for Trade and Industry with such advice. SI 2004 No.2181 the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004, transferred responsibility for the undertakings from the Secretary of State to the Competition Commission.

<sup>16</sup> Section 88 (4) of the Fair Trading Act 1973 as amended.

2.3 On 1 April 2005 the OFT announced a review of the undertakings given by PDM and Forrest.<sup>17</sup> The review has been undertaken using statutory powers under the FTA and the Enterprise Act 2002.<sup>18</sup> This report sets out the findings of the review.

### **Monopolies and Mergers Commission reports**

2.4. The MMC first reported on the rendering of red meat animal waste (waste material from cattle, sheep and pigs but excluding poultry) in Great Britain in 1985.<sup>19</sup> As a consequence of this report PDM agreed to a number of undertakings relating to gut rooms, acquisitions and the terms on which it purchased materials.<sup>20</sup>

2.5 In 1992 the Director General of Fair Trading<sup>21</sup> made two separate references to the MMC on animal waste, one relating to animal waste in England and Wales and the other to animal waste in Scotland.

---

<sup>17</sup> Refer to: [www.offt.gov.uk/News/Press+releases/2005/59-05.htm](http://www.offt.gov.uk/News/Press+releases/2005/59-05.htm)

<sup>18</sup> Section 88 of the Fair Trading Act 1973, and sections 5 and 7 and paragraph 16, Schedule 24 of the Enterprise Act 2002.

<sup>19</sup> *Animal Waste: a report on the supply of animal waste in Great Britain*, MMC, 1985 Cm. 9470

<sup>20</sup> A summary of the MMC's findings in 1985 and the consequent undertakings can be found in Annexe B.

<sup>21</sup> Pursuant to section 2 of the Enterprise Act 2002 (c. 40) the functions of the Director General of Fair Trading have now been transferred to the Office of Fair Trading and the office of the Director has been abolished. In accordance with section 2 (3) of the Enterprise Act the references to the Director General in the undertakings refer to the OFT.

2.6 The MMC reported on these references in 1993<sup>22</sup> and concluded that there were two geographic markets for the rendering of animal waste: England and Wales, and Scotland. Rendering in Northern Ireland was not included in either of the terms of reference and is therefore outside of the scope of the report and the resulting undertakings. In 1993 PDM processed 69 per cent of the total animal waste acquired for rendering in England and Wales and Forrest processed 71 per cent of the red meat acquired for rendering in Scotland (all poultry waste in Scotland was processed in England).<sup>23</sup>

## England and Wales

- 2.7 The MMC's main public interest concerns related to PDM's pricing policy. It found that PDM engaged in price discrimination by setting different charges/payments which were unrelated to cost differences. The MMC found that this harmed smaller competitors, restricting their ability to acquire new supplies of raw materials, and thus limiting competition in rendering in England and Wales.<sup>24</sup> The MMC's investigation also found that there was generally little competition between renderers for supplies.<sup>25</sup>
- 2.8 The MMC also found that PDM failed to fulfil its obligations under undertakings entered into in 1986 (following the MMC's report in 1985) to pre-notify the OFT of acquisitions of animal waste businesses and to account and budget properly for its gut room operations.<sup>26</sup> The financial results of PDM's rendering operations

---

<sup>22</sup> *Animal waste: a report on the supply of animal waste in England and Wales and in Scotland*, MMC, 1993

<sup>23</sup> MMC (1993), tables 2.4 and paragraph 2.24.

<sup>24</sup> MMC (1993), paragraphs 10.61- 10.62 and 10.118.

<sup>25</sup> MMC (1993), paragraph 10.59

<sup>26</sup> MMC (1993), paragraphs 10.68, 10.71

were also not sufficiently transparent, and were distorted by the activities of unlimited companies, which depressed the reported profits of PDM, this deprived customers and potential competitors of information which could help redress the market imbalance.<sup>27</sup>

## Scotland

- 2.9 In relation to Scotland, the MMC concluded that Forrest engaged in discriminatory pricing by making charges/payments which could not be accounted for by cost differences. This practice harmed its two smaller competitors, restricting competition in rendering in Scotland.<sup>28</sup> It also found that Forrest's profitability was higher than would otherwise be the case under more competitive conditions.<sup>29</sup>

## Undertakings

- 2.10 As a consequence of the report, PDM and Forrest gave undertakings to address the concerns raised by the MMC.

The undertakings obliged PDM to do the following:

- not to engage in price discrimination which is intended to harm a competitor
- not to make the purchase or collection of animal waste conditional upon the supply of higher grade animal waste to PDM
- to publish in each edition of the Meat Trades Journal, average prices paid or charges made for collection of animal waste

---

<sup>27</sup> MMC (1993), paragraphs 10.82-10.87

<sup>28</sup> MMC (1993), paragraph 10.104 - 10.105

<sup>29</sup> MMC (1993), paragraph 10.109



- not to acquire, directly or indirectly, any animal waste enterprises unless approved by the OFT
- to prepare consolidated accounts which include a segmental analysis distinguishing between different parts of the business, and to file these with the OFT and make them available to anyone who requests a copy
- not to hold any interest in the animal waste plant at Market Harborough
- to carry on the gut-room business separately from all other animal waste activities and prepare monthly and annual audited statements for each gut room.

#### 2.11 Forrest undertook:

- not to discriminate in the prices it pays or the charges it makes for the collection of animal waste, unless it can show that the material was acquired to ensure the efficient operation of its continuous operating plant
- to publish in each edition of the Meat Trades Journal, average prices paid or charges made for collection of animal waste.

### **Report structure**

2.12 Chapter three describes the animal waste rendering industry, how it has developed since 1993 and the regulatory environment in which it operates. Chapter four provides an assessment of the competitiveness of the market, focussing upon the changes in shares of supply, changes to industry capacity, the emergence of alternative processing methods and trends in charges for rendering services. Chapter five considers the undertakings against the background of changes in the market and sets out our recommendations. Further details of the industry, the MMC reports and undertakings and the regulatory environment can be found in the annexes.

## Methodology

- 2.13 In conducting this review the OFT has consulted widely across the rendering industry, including PDM, Forrest and the smaller renderers. In addition the OFT has consulted the Department for the Environment, Food and Rural Affairs (DEFRA) and the Scottish Executive Department for the Environment and Rural Affairs (SEERAD) about developments in the regulatory framework of the industry.
- 2.14 The OFT also conducted 20 structured telephone interviews with customers of animal waste across Great Britain, representing a range of different types of organisation, different sizes and different locations. This method was employed based on the difficulties which the OFT has had in previous investigations in this sector in gaining sufficient responses to more general information requests from renderers' customers (such as abattoirs).
- 2.15 The OFT has found that there is limited detailed information available from third parties.<sup>30</sup> In addition some of the smaller renderers contacted during the course of our review demonstrated a marked reluctance to provide information. Indeed some refused to provide any information on their company's operations at all.<sup>31</sup> Although this has meant that the OFT has not had access to information from some renderers which would have been useful to its review, it has gained sufficiently robust information to draw conclusions about developments in the market and the continued appropriateness of the undertakings.

---

<sup>30</sup> The last significant consultancy report focussing specifically on the rendering market in the United Kingdom was conducted by Coopers and Lybrand in 1996.

<sup>31</sup> Information was requested of renderers using the OFT's powers under section 5 of the Enterprise Act 2002. These powers provide the OFT with the functions of 'obtaining, compiling, and keeping under review information about matters relating to the carrying out of its functions'. These powers do not compel parties requested to provide information to do so.

### 3 RENDERING IN GREAT BRITAIN

#### Introduction

3.1 This section of the report describes the background to animal waste rendering in Great Britain and how it has developed over the course of the last decade. It also considers the effect of developments in the regulatory structure of the market.

#### Animal waste

3.2 Animal waste refers to what remains of an animal after slaughter, when meat and offal for human consumption and other uses has been removed.<sup>32</sup> In 2004, the meat industry and government sponsored slaughter programmes in Great Britain produced almost two million tonnes of materials which were not intended for human consumption.<sup>33</sup> The majority of this material is disposed of through the rendering process. These waste materials can be divided into red meat waste (from cattle, sheep and pigs) and that from poultry (chickens, duck, geese and turkeys).

3.3 Animal waste materials for rendering are obtained from a range of sources (the customers of renderers that provide raw materials are known in the industry as 'suppliers' but will be referred to as customers throughout this report). The larger renderers have confirmed that abattoirs still account for the majority of animal waste, with smaller, though increasing, volumes of animal waste obtained from fallen stock and retail outlets. Over the last decade Government slaughter schemes, such as the former OTMS, have been significant sources of animal waste for the rendering industry.

---

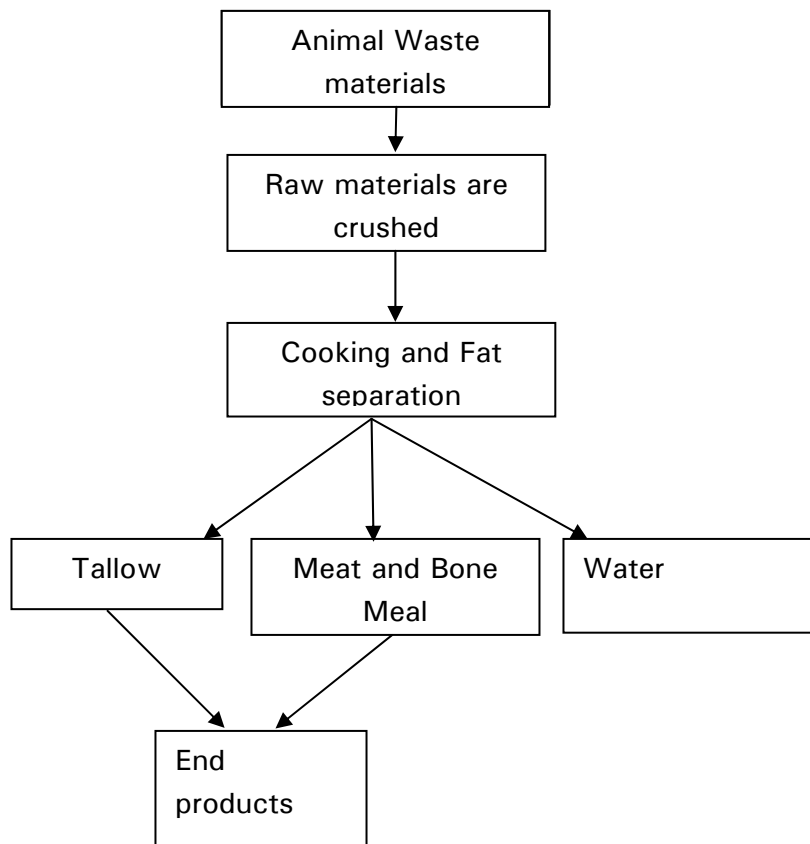
<sup>32</sup> We are aware that a range of terms are used to describe animal waste, notably animal by-products. We use the term animal waste throughout our report for consistency.

<sup>33</sup> Information provided by the United Kingdom Renderers' Association (UKRA).

## The rendering process

3.4 Rendering is a heat and mechanical process which involves the crushing and grinding of animal waste materials, followed by heat treatment to remove moisture. The resulting material is then centrifuged to produce Meat and Bone Meal and Tallow (MBT), historically valuable products, which can be used in a range of industries such as pet food, chemical manufacture and animal feed production. This process is illustrated in diagram 3.1 below.

**Diagram 3.1: The Rendering Process**



Source: United Kingdom Renderers Association (UKRA)

3.5 There are two principal types of rendering process used in Great Britain: 'batch processing' – which involves feeding a single batch of raw material into the rendering machinery, and 'continuous processing' - involves crushing, heating, separation and cooling on a continuous flow basis.

- 3.6 Continuous processing typically involves a significantly higher degree of automation than batch processes.<sup>34</sup>
- 3.7 There has been a long term trend in the rendering industry towards the use of continuous processing methods which are capable of rendering larger volumes of animal waste. The effects of this change are discussed in Chapter four.
- 3.8 Some 400,000 tonnes of meat and bone meal and 250,000 tonnes of tallow were produced from the rendering process in the United Kingdom in 2004.<sup>35</sup> The potential uses of these products have been significantly restricted as a result of changes to the regulatory environment in which rendering operates.<sup>36</sup>

### **The regulatory framework and the effect of BSE**

- 3.9 In March 1996, on the recommendation of the Spongiform Encephalopathy Advisory Committee (SEAC), the government announced a suspected link between the degenerative neurological disorder, BSE which is found in cattle and a related human disorder, new variant Creutzfeld Jacob Disease (vCJD).
- 3.10 The ensuing crisis in the meat production industry has significantly impacted upon the rendering industry,<sup>37</sup> notably through the introduction of regulations to eliminate the risk of transmission of BSE to humans. These changes have been

---

<sup>34</sup> Information available from *The BSE Inquiry: The Report. The inquiry into BSE and variant CJD in the United Kingdom (October 2000)*: Volume 13, Chapter 7. Available at [www.bseinquiry.gov.uk/report/volume13/chapterj.htm#242324](http://www.bseinquiry.gov.uk/report/volume13/chapterj.htm#242324)

<sup>35</sup> Information provided by the UKRA.

<sup>36</sup> Given the lack of information provided by the rendering industry, we were not able to derive a fully verified figure for the total value of the market. However based upon information provided by parties we estimate it to be in the region of £120million - £130 million.

<sup>37</sup> The rendering is described as the 'processing industry' in some parts of the legislation regulating the industry. We have described it as the rendering industry for ease of reference.

mirrored by changes in the framework of environmental regulation, which have changed the obligations with which renderers must comply. We consider the regulations and their effects below, under two general headings.<sup>38</sup> A summary of the changes to health regulation is at Annexe C.

## Health and hygiene regulation

- 3.11 The most significant changes in the regulatory regime have occurred as a result of the restrictions put in place as a result of BSE to protect public and animal health.<sup>39</sup> Before 1996 the MBT produced by the rendering industry was used in the manufacture of a wide range of products. These included animal feed, soap products, pet food, horticultural products and a range of cosmetic/pharmaceutical products.<sup>40</sup>

---

<sup>38</sup> The Animal waste industry will also be subject to the provisions of the waste framework directive, however the introduction of waste regulations impose no significant requirement on the industry as it consists of the obligations imposed as a result of the Pollution an Prevention control regulations (see environmental regulation section of the report for further details on this).

<sup>39</sup> A full chronology of the relevant legislation introduced relating to BSE can be found at [http://216.239.59.104/search?q=cache:zIPWIn7NCFwJ:www.defra.gov.uk/animalh/bse/publications/chronol.pdf+BSE+\(Amendment\)+Order+1996andhl=enandgl=ukandct=clnkandcd=7](http://216.239.59.104/search?q=cache:zIPWIn7NCFwJ:www.defra.gov.uk/animalh/bse/publications/chronol.pdf+BSE+(Amendment)+Order+1996andhl=enandgl=ukandct=clnkandcd=7)

<sup>40</sup> According to the Coopers and Lybrand Coopers and Lybrand. *Agriculture Ministries. The UK Beef Industry, Report on the rendering sector* (1996). (1996) 88 per cent of meat and bone meal produced by the rendering industry in 1995/6 was used in the manufacture of animal feed with a further 5 per cent used for pet food. 32 per cent of the tallow was used in the manufacture of soap products, 26 per cent in cosmetic and pharmaceutical products, 22 per cent in animal feed and 15 per cent in edible fat products.

- 3.12 In the aftermath of the announcement of the suspected causal link between BSE and vCJD all bovine products were banned from export from March 1996.<sup>41</sup> In addition mammalian meat and bone meal was prohibited from use in all livestock and horse feed.<sup>42</sup> The immediate effect of these changes was substantial. The meat and bone meal which renderers had typically sold to animal feed producers lost its main market. These prohibitions significantly restricted the uses of the products of the rendering industry resulting in a significant decline in renderer's income (to only 16 per cent of comparable pre-crisis levels).<sup>43</sup> This decrease in revenues coincided with increases in renderers' costs as they had to incur the costs of safely disposing of the MBT that could no longer be sold.<sup>44</sup>
- 3.13 The export ban on products derived from animal waste also restricted the sale of MBT to customers producing goods only for consumption in the UK. This meant that UK purchasers of tallow (notably soap manufacturers) had to use tallow produced abroad for use in products intended for use abroad. In 2001 the regulatory restrictions on end product use were extended with the banning of any animal proteins (including poultry meal) from animal feed.<sup>45</sup>

---

<sup>41</sup> The export ban was put into place in accordance with EC Council decision 96/239 (29 March 2006). (see [www.publications.parliament.uk/pa/ld199596/ldhansrd/vo960614/text/60614w01.htm](http://www.publications.parliament.uk/pa/ld199596/ldhansrd/vo960614/text/60614w01.htm) for further details)

<sup>42</sup> The BSE Amendment Order 1996 (SI 1996/962).

<sup>43</sup> Coopers and Lybrand (1996), p. 1

<sup>44</sup> Coopers and Lybrand (1996), p. 1

<sup>45</sup> The Processed Animal Protein (England) Regulations 2001 (SI 2001/2376), The Processed Animal Protein (Scotland) Regulations 2001 (SI 2001/276) and Processed Animal Protein (Wales) Regulations 2001 (SI 2001/2780 (W.233)).

3.14 These regulatory restrictions significantly reduced the proportion of materials that could be sold as inputs. Table 3.2 shows the applications for end products produced by PDM, and how that has changed since 1993.

**Table 3.2: Applications for PDM end products, 1993/94 and 2004/05**

Application	Proportion of products used for this application, 1993-94 (per cent)	Proportion of products used for this application, 2004-05 (per cent)
Sold to third parties to make products	[...]	[...]
Incinerated by third parties to produce energy	[...]	[...]
Landfill	[...]	[...]
PDM Use for energy	[...]	[...]

Source: PDM

3.15 The changed regulatory environment has stripped animal waste of much of its value as an input, changing the rendering industry from one which was principally involved in the production and sale of products for use in a range of goods to one which largely deals with the disposal of waste. Whereas customers formerly received payments for the collection of the majority of animal waste, the loss of end product value has meant they have to pay charges for the collection of the majority of animal waste materials.



## Animal by products regulation

3.16 Further changes to the regulatory regime for animal waste were introduced by the Animal By-Products Products Regulation (EC No. 1774/2002)<sup>46, 47</sup> (ABP regulations),<sup>48</sup> which established detailed rules on the use, treatment, transport and disposal of animal by- products to protect public and animal health. The major changes are set out below.

- The introduction of a system to classify animal waste products into three distinct categories, reflective of their risk to public and animal health. The rules on the collection, transport, storage, handling, processing and use or disposal would depend on the risk category of the animal waste. The categories are as follows.
  - **Category one** materials are very high risk materials which carry the greatest prospect of causing transmission of BSE or an equivalent condition.<sup>49</sup>
  - **Category two** materials are high risk materials which present a disease risk to other animals.<sup>50</sup>

---

<sup>46</sup> The Animal by products regulations 2003 are the means by which the Animal by products regulation (EC), No 1774.2002 are administered and enforced in the United Kingdom. These have been updated by the Animal By-Products Regulations 2005

<sup>47</sup> Enforced through separate statutory instruments in England, Scotland and Wales which each have the equivalent effect – The Animal By Product Regulations (SI 2003/1482), The Animal By Product (Wales) Regulations (SI 2003/2756 (W. 267) and The Animal By Product (Scotland) Regulations (SI 2003/411).

<sup>48</sup> The animal by product regulations 2003 have been superseded in England and Wales by further Animal by product regulations made in 2005 and 2006 (SI 2005/2437 in England and SI 2006/1293 (W.127 in Wales) which have similar effect to the versions passed in 2003

<sup>49</sup> Category 1 materials include wild animals suspected of having a communicable disease, experimental animals and animal waste containing certain environmental contaminants.

- **Category three** materials are low risk materials which are fit for human consumption, but are not intended for consumption.<sup>51</sup>
- All rendering plants must be approved by the State Veterinary Service to handle animal waste. The approval specifies precisely what category of materials the processor is permitted to handle. Renderers are not permitted to process categories other than those for which they have approval.<sup>52</sup>
- The regulation ensures a separation of different categories of material: categories of material are segregated at the collection point and remain completely separate throughout rendering. Detailed rules are prescribed to ensure segregation of categories within rendering plants.
- Before 1999, butchers and retail outlets had been able to dispose of animal waste to landfill. The ABP regulations makes this unlawful and prescribes that most animal waste should be disposed of to a permitted outlet, such as a rendering plant or an incineration plant. The practice of burial and open burning of animal waste was prohibited. The range of potential means to dispose of category three animal waste was broadened, including composting and biogas.
- The restrictions upon the potential uses of the end products of animal waste introduced after 1996 were confirmed.

3.17 Renderers have reacted to the regulations by transferring some material which they are not permitted to handle to other renderers who hold such approvals (building on previous transfer relationships). This has facilitated a network of

---

<sup>50</sup> Category 2 materials include animals which die on farm or animal waste containing certain environmental contaminants. This is also the default category for animal waste not falling within the definitions of category 1 and category 3 materials.

<sup>51</sup> Category 3 materials include out of date foods of animal origin.

<sup>52</sup> Although it is possible to process material at lower categories as long as the material is processed as the lowest category in the processing mix. This is known in the rendering industry as 'downgrading' but strictly reflects an upgrading of material to the higher risk category.

inter-renderer trading relationships which mean that processors have been increasingly dependent on industry colleagues as a source of raw material. Renderers have also chosen to process higher category materials along with lower category materials<sup>53</sup> in order to reduce the costs of transporting the material to other plants. This has further reduced the value of these materials to the rendering industry as the more restrictive permitted end uses of these materials mean that they have a lower value.

## **Government and industry programmes**

- 3.18 The impact of the BSE crisis and the related regulatory changes also led to the introduction of a number of government programmes and a related industry plan. These programmes and their effects are discussed below.

### **The Over Thirty Months Scheme**

- 3.19 The Over Thirty Months (OTM) rule was introduced in March 1996 on the advice of SEAC and banned all cattle over thirty months old from entering the food chain. The OTMS was then introduced to support the UK beef market by removing cattle from the market and by compensating farmers who no longer had a market for these cattle. The most immediate effect of this scheme on renderers was the significant increase in the volume of materials that had to be handled by the rendering industry.
- 3.20 A condition of European Union funding was that OTM animals had to be slaughtered and processed in strict isolation from other items. This meant that renderers had to devote entire lines, in some cases entire plants, to OTM cattle. As processors wanted to ensure that their pre-BSE crisis relationships were maintained, plants that processed OTMS material still bought non-OTMS material

---

<sup>53</sup> For example, the processing of category 2 materials with category 1 materials. The materials are then treated as if they were category 1 materials.

and made arrangements with other renderers to handle this material. These arrangements were formalised in the UKRA industry plan (discussed below).<sup>54</sup>

- 3.21 On 7 November 2005, DEFRA replaced the domestic OTM Rule with a robust BSE testing regime for cattle over thirty months of age and born after 1 August 1996. This permits all OTM cattle from this age group back into the food chain. A three year scheme agreed with the European Commission, the Older Cattle Disposal Scheme (OCDS), to dispose of cattle born prior to 1 August 1996 was introduced in the UK on 23 January 2006 so replacing the OTMS. The rules on rendering of animal waste that applied to OTMS have been continued into the OCDS but there are considerably reduced volumes.<sup>55</sup>

### **The Rendering Industry Support Scheme**

- 3.22 The Rendering Industry Support Scheme was introduced in April 1996 and was designed to ensure that renderers maintained their prices to renderer's customers at pre-BSE crisis levels to avert the collapse of the meat disposal chain. Under the scheme the then Ministry of Agriculture, Fisheries and Food subsidised renderers in return for their commitment to pay or charge the same prices for rendering as those that prevailed before the crisis. The support lasted until March 1998 when it was phased out. At that time renderers increased collection charges for material to reflect the limited use and hence value of the end products.<sup>56</sup>

---

<sup>54</sup> DEFRA submission to OFT. P.4. Coopers and Lybrand (1996), p. 16.

<sup>55</sup> Information provided by DEFRA.

<sup>56</sup> This arrangement was registered with the OFT under the Restrictive Trade Practices Act in May 1997.

## United Kingdom Renderers' Association Industry Plan

3.23 The UKRA devised an 'industry plan' in the mid 1990's to maintain commercial relationships between renderers and abattoirs when some plants were devoted to handling only OTMS material. Parties could only transfer material to renderers as outlined in the plan, facilitating substantial co-operation across the industry.<sup>57</sup> Although it was terminated on the 31 March 1997 the transfer of materials between renderers has continued as a result of commercial arrangements within the industry, although in decreasing volumes in recent years.

## Environmental Regulation

- 3.24 The 1990 Environmental Protection Act, which formed the basis of environmental regulation in this market in 1993 has been largely replaced by controls under the Pollution Prevention and Control Act 1999 (PPC).<sup>58</sup> The new regulatory regime<sup>59</sup> continues to stipulate air/odour standards for rendering plants, but goes further, covering a wider range of environmental impacts including noise, vibration, water, land and accidents. Local Authorities remain responsible for enforcing the new regime in relation to rendering plants, although a small number of them have transferred to Environment Agency regulation due to large-scale combustion or food activities being carried on at the same site.<sup>60</sup>
- 3.25 The previous environmental standard of Best Available Techniques Not Entailing Excessive Cost (BATNEEC) has been superseded by a requirement that renderers

---

<sup>57</sup> Coopers and Lybrand. (1996) p.15. This arrangement was registered by the OFT under the Restrictive Trade Practices Act in November 1996.

<sup>58</sup> As applied by the Pollution Prevention and Control (England and Wales) Regulations 2000 (SI 2000/1973) and the Pollution Prevention and Control (Scotland) Regulations 2000 (Scottish SI 2000/323).

<sup>59</sup> Which implements the EU Integrated Pollution Prevention and Control Directive (EC/96/61)

<sup>60</sup> Information provided by DEFRA.

demonstrate that they are using the 'Best Available Techniques' (BAT) to minimise pollution. Statutory guidance setting out what BAT constitutes has also been changed to reflect the additional environmental impacts now covered by the PPC.<sup>61</sup> Each of the large renderers we have spoken to has emphasised the significant and growing burden of environmental regulation with which they have had to comply over the course of the last decade.

## Alternatives to rendering

3.26 As noted above in paragraph 3.16, the ABP regulations permit customers of animal waste to treat and use or dispose of materials using a range of methods other than rendering. The permitted legal methods for each category of material are displayed in table 3.3.

**Table 3.3: Permitted methods to legally dispose of animal waste**

<b>Category of material</b>	<b>Alternative treatment and use or disposal methods</b>
Category one	Incineration, co-incineration some technical uses.
Category two	Incineration, co-incineration, technical uses (for (fo tallow), oleochemical production.

<sup>61</sup> In 2000 revised statutory guidance in England was issued under the 1990 Act on what constituted Best available techniques without exceeding excessive cost for processing plants. This guidance (unsuccessfully challenged by the UKRA) contained stricter provisions in relation to odour control than that contained in the previous 1992 guidance. New statutory guidance was issued in October 2004 under the PPC Act which incorporates the 2000 guidance on odour and includes guidance on the additional environmental impacts now covered by PPC61. A similar regime operates in Scotland.

---

Category three

Incineration, co-incineration, pet food, biogas production, composting, use in a technical plant, biodiesel production, certain chemical methods

---

Source: DEFRA

3.27 The ABP regulations have extended the range of permitted rendering methods, for category three materials, to include composting, biogas, novel techniques<sup>62</sup> and use in a technical plant. The effects of these alternatives on the market will be examined in chapter four.

### **The structure of the rendering industry in Great Britain**

3.28 Since the 1970s there has been a rapid consolidation in the animal waste rendering industry, largely as a result of the exit of significant numbers of smaller firms. More automated and capital intensive continuous processing methods (see above for further details), capable of handling higher volumes of waste and requiring large volumes of materials to make them economically viable have encouraged consolidation. Consolidation has also been catalysed by concentration of slaughterhouse waste that resulted from the post war concentration of the slaughtering industry.<sup>63</sup>

3.29 In 1970 there were 125 mammalian and poultry rendering plants in Great Britain,<sup>64</sup> according to DEFRA figures this has fallen to about 27<sup>65</sup> in 2005.<sup>66</sup>

---

<sup>62</sup> Novel techniques include Alkaline Hydrolysis, Biodiesel production, Brooke's gasification, high pressure high temperature hydrolysis and high pressure hydrolysis biogas.

<sup>63</sup> The BSE Inquiry (1999), volume 13, chapter 6. paragraph 6.6

<sup>64</sup> MMC (1993), paragraph 2.16

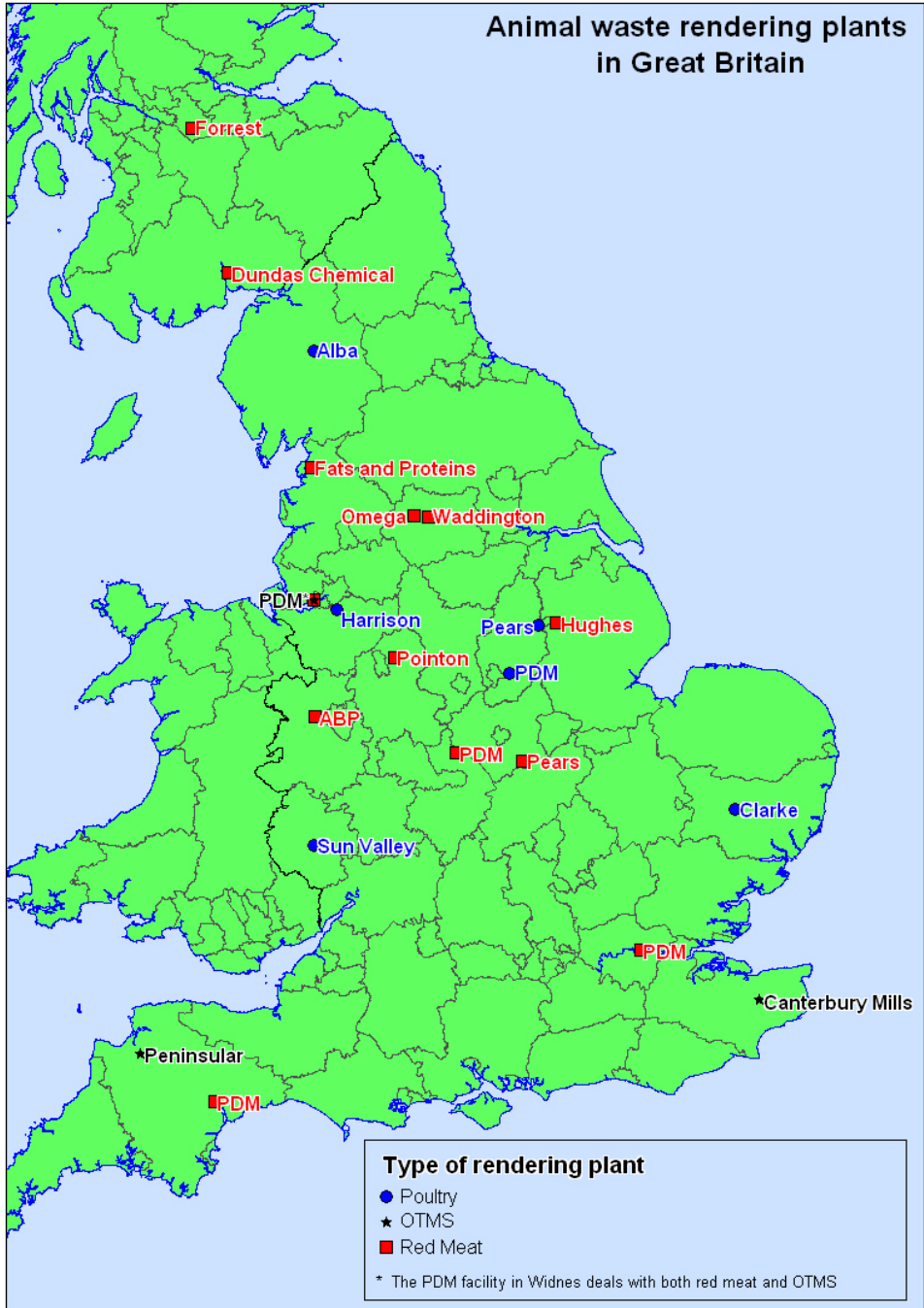
<sup>65</sup> DEFRA list of approved renderers, May 2005 and information provided by the SEERAD.

<sup>66</sup> There are also a small number of blood rendering, non mammalian rendering or part rendering plants.

Most of these companies deal with only either poultry or red meat waste, although some of the larger companies deal with both. Map 3.4 shows the location of rendering plants in Great Britain, including the types of material they process. Further information about the operations of the largest renderers in Great Britain can be found in Annexe D.

**Map 3.4: The location of the major rendering plants in Great Britain, 2004**





Source: DEFRA Information

Note: Fats and Proteins exited the market in late 2005 after a fire at its plant. The map does not show some of the smaller renderers in Great Britain and some structural changes to the rendering industry since 2004.

- 3.30 Although it would appear that there is a greater amount of cross-border transport of animal waste (largely resulting from the activities of Dundas Chemical) this remains relatively limited. The largest renderers have confirmed that only a very limited proportion of their raw materials are acquired from outside the nation where they operate. The OFT has therefore, for the purposes of our review, continued to use the division into two distinct geographic markets (England and Wales, and Scotland) which was employed by the MMC.<sup>67</sup>

---

<sup>67</sup> MMC (1993), paragraph 10.37

## 4 COMPETITION IN ANIMAL WASTE RENDERING

### Introduction

4.1 This chapter examines developments in competition in the animal waste rendering industry since the MMC reported in 1993.

### The market for animal waste materials

4.2 In 1993 the MMC defined a separate market for the supply of animal waste specifically to renderers due to the fact that rendering accounted for the vast majority of animal waste and had a distinctive regulatory regime.<sup>68</sup> All of the large renderers contacted during our review argued this distinction was not appropriate, citing expansion in the permitted means to dispose of animal waste (largely composting, as well as existing incineration)<sup>69</sup> and arguing these alternatives provide a choice for consumers and act as a constraint on rendering charges.

### Customer views

4.3 In order to ascertain the extent to which alternative methods are seen as a viable alternative to rendering we conducted 20 interviews with a range of customers of renderers. These customers represented a range of sizes and types of company and were from different parts of Great Britain.<sup>70</sup> We asked them about the likelihood of them using these alternatives to dispose of waste materials.

---

<sup>68</sup> MMC (1993), paragraphs 10.8 – 10.11

<sup>69</sup> See paragraph 3.26 for further details.

<sup>70</sup> 14 were from England and Wales and 6 were from Scotland.

- 4.4 Most of the renderer's customers contacted were aware of the alternative disposal methods, but explained that a range of practical difficulties made switching to them unlikely. The difficulties specified are outlined below.
- the limited capacity of alternative processing methods, especially composting
  - the higher charges for the use of these alternative methods<sup>71</sup>
  - that alternative processing methods are only suitable for certain categories of animal waste (category three material).
- 4.5 Out of the 20 customers we contacted, only one believed that these alternatives were a viable means of disposing of animal waste (and that customer believed it was not so at the present time).
- 4.6 The National Federation of Meat and Food Traders has also informed the OFT that it believes that there are few practical alternatives to rendering evidenced by the limited number of alternative processors that have emerged since 2004. As of 2005, based on information provided by DEFRA, only 24 composters and one biogas plant had been approved. This limited capacity is likely to further restrict the ability of customers, especially those supplying larger volumes of materials, from using alternative methods to rendering.
- 4.7 Data provided by PDM shows that the level of switching from renderer to alternative processing methods is minimal. PDM estimates that it lost less than [...] of its total red meat supplies to alternative processors in 2004/05, although it emphasised that switching to composting increased in 2005.

---

<sup>71</sup> The OFT has been informed by some customers that have investigated the option of incineration that some of the quotes that they received were significantly in excess of rendering charges, making switching unlikely. Several customers we spoke to had sought quotes for disposal of animal waste materials by incineration. They said that the prices received were between 25 per cent and 100 per cent greater than the rendering charges they paid.

4.8 Despite the increased availability of alternative disposal methods to rendering for certain types of animal waste, the limited capacity, minimal incidence of switching and the difficulties expressed by customers in using these alternative methods, have lead the OFT to conclude that these methods do not presently provide a suitable alternative to rendering services.

### Changes in shares of supply

4.9 PDM and Forrest remain the largest providers of rendering services in each of the geographic markets in Great Britain. However there have been a number of changes to the relative position of each of these renderers compared with smaller renderers. Below we consider the shares in each geographical market separately.

#### England and Wales

4.10 Table 4.1 below demonstrates the approximate shares of supply of the red meat animal waste rendering market in England and Wales in 2004/05.

**Table 4.1: Estimated shares of total rendering throughput by supplier in England and Wales.<sup>72</sup>**

Organisation	Share of total rendering throughput 1992	Approximate share of total rendering throughput 2004/05
PDM	[...]	[...]
J Pointon and Sons <sup>73</sup>	[...]	[...]

<sup>72</sup> This table is an estimate based upon information on market size provided by PDM.

<sup>73</sup> Was Gilberts Animal By Products in 1992.

Fats and Proteins	[...]	[...]
Waddington's	[...]	[...]
Others <sup>74</sup>	[...]	[...]

Source: Information provided by renderers and the UKRA.

- 4.11 During the course of our review, a number of renderers were unable or unwilling to provide us with throughput figures to enable us to estimate a market share figure. This has prevented us from gaining a complete view as to the scope of the activities of some of the smaller renderers operating in England and Wales and how these have changed since 1992. In the absence of this information we would note that the rendering market shares shown are approximate.
- 4.12 Table 4.1 indicates that PDM remains the largest red meat renderer in England and Wales, although there has been a significant decline in its share of rendering services. Over the same period Pointon has increased its market share by [...] since 1992 to gain [...] of the red meat rendering market. This represents a significant change from the structure of the market in 1992, where PDM had a 64 per cent market share, the remainder being composed of multiple small renderers with minimal shares of supply.<sup>75</sup>
- 4.13 However we have been informed by PDM that some of its decline in market share was due to the transfer of red meat to other renderers to allow it to process OTMS material. As this source of material ends (see chapter three) it seems likely that PDM will increase its market share as it resumes the rendering of materials previously transferred to other renderers (as happened between 2002 and 2004). In addition we note that PDM themselves estimate their market

---

<sup>74</sup> The remaining renderers - many of these companies were unwilling/unable to provide throughput figures to the OFT.

<sup>75</sup> MMC (1993), Table 2.4.

share of red meat rendering to be about [...] per cent.<sup>76</sup> Finally some customers have informed us that PDM is the only renderer operating in a certain parts of England and Wales (for example parts of South Western England).

- 4.14 PDM's market share of poultry processing has also declined over the same period, losing supplies to alternative renderers such as Alba Proteins and Pears. Between 1992 and 2005 the volumes of poultry processed by PDM declined by over [...] per cent, whereas, the volumes of material processed by Alba increased by almost [...] per cent between 1993 and 2001. While the information provided by parties in the poultry rendering industry has not been sufficient to provide complete market share figures we believe PDM still retains significant market share as the market leader

### Scotland

- 4.15 As with England and Wales the OFT encountered some problems in gaining clear tonnage figures from renderers. However, Forrest has provided an estimate of its market share in 2004/05 to the OFT. This estimate is shown in the table below.

**Table 4.2: Estimated market shares for renderers in Scotland, 2004-05**

Supplier	Market Share 2004-05 (percentage)
Forrest	[...]
Dundas Chemical	[...]

Source: Forrest

<sup>76</sup> PDM used regional slaughter figures to estimate its market share. This is different from the method we used in calculating market shares according to UKRA information which was established as a result of a full audit of rendering capacities.

4.16 [...]. The data indicates that whereas Forrest's share of the market has declined by [...] Dundas Chemical's share has increased by [...] per cent since 1993. This is a significant change from 1992 when Forrest processed 71 per cent of all red meat rendered, with two significantly smaller renderers, Dundas Brothers and Dundas Chemical (18 per cent and 11 per cent respectively) competing with it.<sup>77</sup> Nevertheless, Forrest remains the market leader with a significant market share.

### **Conclusions on market structure**

4.17 The data demonstrates that there has been a change in market shares, with Forrest and PDM losing share of supply to other renderers. In both markets second place companies have expanded/emerged gaining notable shares of the rendering market. However, in the case of PDM, we note that this lower market share figure may be short lived and is likely to increase in the short term with the termination of OTMS. In order to gain a fuller understanding of the developments in the market since 1993 the OFT has considered the extent of new entry and exit and changes to industry capacity.

### **Entry and Exit**

4.18 At the time of the MMC report there were 15 significant red meat rendering companies in England and Wales and three poultry renderers.<sup>78</sup> In Scotland there were three renderers, all processing red meat waste only.

---

<sup>77</sup> MMC (1993), paragraph 2.24

<sup>78</sup> MMC 1993, paragraphs 2.18–27. Two red meat renderers also processed a small amount of poultry material. The number of renderers excludes a number of abattoirs which conducted their own rendering activities in 1993. We have also been informed that official definitions of what constitutes a renderer have altered between 1993 and 2006.



## England and Wales

- 4.19 Since 1993, the most notable entrant in the rendering market is J G Pears (Pears), entering the market in the mid 1990s through the acquisition of Smith Brothers (Hyde) Ltd and the Market Harborough plant from PDM. Pears renders both red meat waste and poultry waste.
- 4.20 In addition a small number of smaller renderers have commenced operations.<sup>79</sup> Given their small size and limited approved activities it is unlikely that these companies represent a significant constraint on the activities of PDM, Pointon and Pears.<sup>80</sup>
- 4.21 Over the last decade a number of renderers have also exited the market. The exits have almost entirely occurred amongst the smallest rendering companies<sup>81</sup> and we have been informed that these are largely the result of these companies focussing on non-rendering activities or selling their sites. Table 4.3 provides a list of the parties which have left the market and their market share in 1993.

---

<sup>79</sup> Omega Proteins Ltd (rendering red meat waste), Harrison (rendering poultry waste), Clarke (rendering poultry and blood), Sun Valley Foods Ltd (rendering poultry) and a number of blood renderers.

<sup>80</sup> See Annexe D for further details of the geographical scope of some of these companies.

<sup>81</sup> Except Smith Brothers and Fats and Proteins.

**Table 4.3: Exits from the rendering market since 1993**

Name of company	Type of material processed	Date ceased rendering (where known)	Total share of rendering market
Smith Brothers (Hyde) Limited	Red meat and poultry	1998	five
Fats and Proteins	Red meat	2005	seven
Chetwynd Animal by products Limited	Red meat		negligible
Mid Norfolk Proteins	Poultry	2003	one
Blackburn Products	Red meat	1995	negligible
J W Green	Red meat		negligible
J F Rockett	Red meat		negligible
S Spavin	Red meat		negligible
Specialpack	Red meat	1995	negligible
A Burton	Red meat		negligible
A H Taylor	Red meat	1995	negligible
L Sykes	Red meat	1993/4	negligible

Source: MMC and information provided by renderers

Note: The companies with a market share marked 'negligible' comprised the majority of a group which had a market share of 7 per cent between them in 1992.<sup>82</sup>

## **Scotland**

- 4.22 In Scotland, Dundas Brothers, which had an 18 per cent share of red meat rendering in Scotland at the time of the MMC report, has withdrawn from rendering. The OFT has been informed that this was due its inability to make sufficient investment to comply with environmental regulations.<sup>83</sup>
- 4.23 A.P.Jess, a meat processing company, has commenced rendering activities over the last year. However, given that it has limited capacity and that it only renders material derived from its processing facility, it does not currently represent a competitive constraint on the incumbent renderers.

## **Conclusions on entry and exit**

- 4.24 Since the MMC report in 1993, the long term trend towards consolidation in the rendering industry has continued. Entry and exit that has occurred is typically smaller players with very limited scope and capacity of activity. The larger renderers have generally continued their operations and, in some cases significantly expanded their rendering capacity.

---

<sup>82</sup> MMC (1994), table 2.4

<sup>83</sup> Information provided by other renderers.

## Changes in rendering capacity

- 4.25 Since 1993, several renderers have significantly expanded their rendering capacity through changing from batch processing systems to continuous systems which can process greater volumes of materials.<sup>84</sup>
- 4.26 In England and Wales, the number of renderers using continuous processors has increased. Pointon has increased its rendering capacity [...] since 1993.<sup>85</sup> Increases in rendering capacity also appear to have been made by Fats and Proteins, Pears, Alba Proteins and Waddington's.<sup>86</sup> Over the same period PDM has reduced its capacity by just over [...] per cent, as a result of the disposal of the Market Harborough plant and the termination of rendering activities at its Doncaster and Ditchford plants.
- 4.27 PDM share of total rendering capacity in Great Britain has reduced from [...] per cent to [...] per cent since 1993. As the smaller renderers have increased their rendering capacity from [...] to [...] per cent they have sought to gain new sources of material to utilise this capacity, mainly from other renderers. The effects of this are most significant in relation to Pointon, the second largest renderer in England and Wales.
- 4.28 The OFT has been informed by several third parties, [...], that Pointon's substantial increases in capacity allowed it to vigorously compete for new sources of material around 2001 resulting in an increase in its market share. This vigorous competition led to significant discounting across the rendering industry in England and Wales which resulted in price reductions for customers (further discussed below).

---

<sup>84</sup> See chapter 3 for further details of the distinction between these methods

<sup>85</sup> Pointon has informed us that it possessed limited batch processing capabilities in 1993.

<sup>86</sup> Information provided by PDM.

4.29 In Scotland, Dundas Chemical has also considerably increased its rendering capacity by introducing continuous processing systems. Dundas Chemical has provided us with evidence of instances where it has utilised this extra capacity to gain customers from Forrest.

### **Conclusions on changes to Industry capacity**

4.30 Since 1993 the relative capacities of the rendering companies operating in the market have changed. In both England and Wales and in Scotland significant investment in continuous processing facilities on the part of smaller renderers has provided them an increased ability to compete with the large incumbents and increase their respective shares of the market.

### **Barriers to entry**

4.31 In 1993 the MMC identified the following as the main barriers to entry into the rendering industry:

- the initial high sunk costs of acquiring plant and machinery to perform rendering (due, in part, to environmental regulation)<sup>87</sup>
- the static (and probably declining) volumes of raw material meant that animal waste sources had to be gained at the expense of another renderer<sup>88</sup> and
- the reluctance of planning authorities to approve sites for rendering plants.<sup>89</sup>

4.32 The OFT has considered the extent to which these barriers to entry remain relevant to the industry today.

---

<sup>87</sup> MMC (1994), paragraph 10.43

<sup>88</sup> MMC (1994), paragraph 10.44

<sup>89</sup> MMC (1994), paragraph 10.42

## High capital costs of entry

- 4.33 All the renderers we contacted have indicated that the capital costs of entry into the rendering market are high. One renderer estimated that the costs of establishing a rendering facility on a greenfield site could be £6 million. A small number of abattoirs we approached did conduct rendering services in house. However a number also informed us that the potential for in house rendering was limited because of the high costs of establishing a rendering facility.

## Supplies of raw materials

- 4.34 The OFT has been informed that the amount of raw materials available for rendering increased in the mid-1990's as a result of the introduction of governmental slaughter schemes. PDM has told us that this made entry into the market more attractive (this is confirmed by the decision of several companies to enter the market at this time). However, since then there has been a gradual reduction in the amounts of materials made available through these schemes.
- 4.35 Livestock statistics indicate that the trend in the number of livestock (except poultry) in the UK has been declining in recent years. Table 4.4 illustrates the trend in number of animals in the UK since 1993.

**Table 4.4: Total number of livestock in the UK 1993-2003.**

Type of animal	Total number in 1993 ('000 head)	Total number in 2003 ('000 head)
Cattle	11,836	10,517
Sheep and lambs	44,200	35,846
Pigs	7,771	5,047
Fowl	131,030	165,324

Source: Agriculture in the UK, DEFRA

- 4.36 As the numbers of livestock decline, so do the amounts of raw materials available for disposal/processing. This is not the case for poultry which has seen increasing numbers in the UK, however poultry offers lower volumes to renderers than other animals. This has reduced the amount of materials available to renderers seeking to establish their businesses, as well as impacting upon the ability of renderers to expand.
- 4.37 All of the companies which have entered the rendering market since 1993 (such as Pears) have done so by diversifying an existing animal waste rendering or animal by products business, that is these companies already have their own sources of raw material to use as a foundation for developing and expanding their businesses.

### **Planning consent**

- 4.38 Most renderers have indicated that local planning authorities are still reluctant to approve rendering facilities in their districts. We understand one local authority actively considered denying an existing renderer consent to redevelop its existing facility after a fire there.

### **Further evidence**

- 4.39 DEFRA was not aware of any pending applications for the approval of any rendering facility in England and Wales as of 2005. This indicates that new entry in the foreseeable future is very unlikely.
- 4.40 Furthermore, the OFT has been informed by a renderer that the increasing limitations on the sale of processed animal waste products, as a result of the regulatory changes, has further reduced the incentive of entry.

## Conclusions on barriers to entry

4.41 The evidence received in the course of this review has shown that the barriers to entry identified by the MMC in 1993 remain significant. Indeed the decrease in raw materials is likely to have increased barriers to entry. Movement in the market has invariably been by expansion (for example Pointon) or due to the temporary circumstances which prevailed in the aftermath of the BSE crisis.

## Rendering charges

4.42 In order to assess the state of competition in the market we have considered the pricing policies of PDM and Forrest, including how renderers' prices have changed. Renderers charge their customers for the collection of the majority of materials. In a small number of cases, especially for best fat materials, the renderers will make a payment to the customer for the materials they collect, reflecting the greater value to renderers of these materials.

4.43 To undertake this analysis we used the published pricing information in the Meat Trades Journal, focusing on Specified Risk material (SRM<sup>90</sup>), best fat and other offal as providing representative information about a variety of types of material.<sup>91</sup>

## Pricing trends

4.44 In 2000, charges levied by PDM and Forrest to customers for the collection of animal waste materials from larger customers fell quite substantially. The data indicates that PDM's collection charges, in England and Wales, for SRM and other Offal fell by over 63 per cent between July 2000 and October 2003.

---

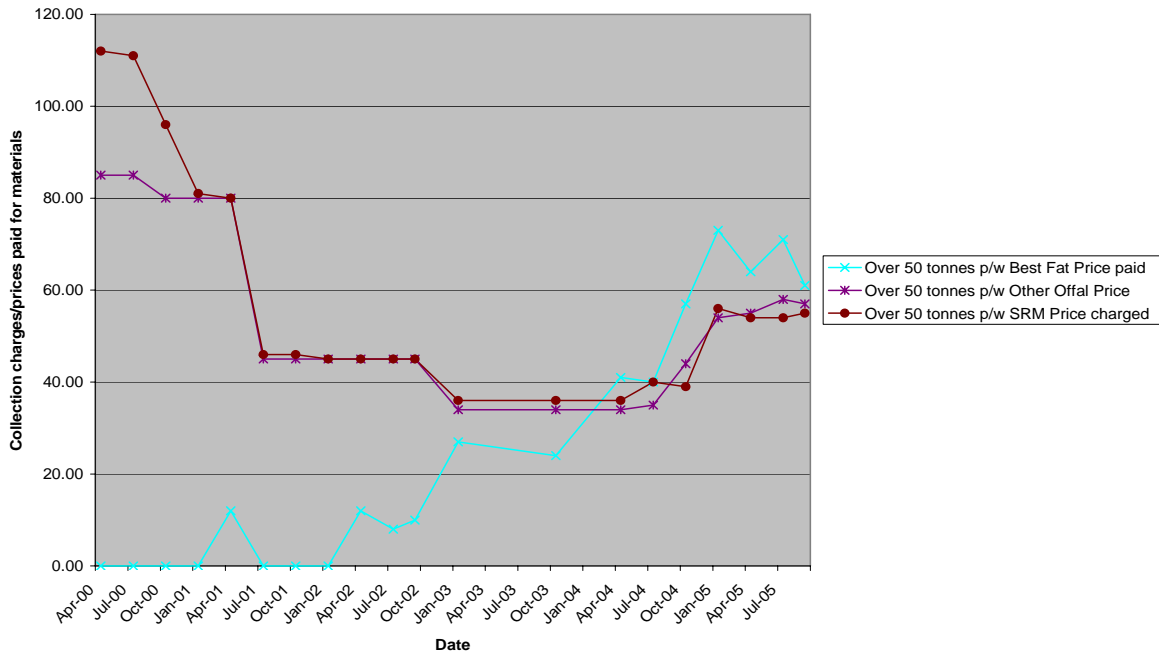
<sup>90</sup> Category 1 materials.

<sup>91</sup> Our analysis of other classifications in the meat trades journal did not indicate that other categories differed significantly from the pricing movements established for SRM, best fat and other offal.



- 4.45 Conversely, between 2001 and 2005 the prices paid by PDM to customers for best fat materials increased significantly, from an average of no payment in 2000 to one of over £70 in January 2005.
- 4.46 In Scotland, a similar, albeit less pronounced, pattern can be observed for Forrest's charges, with collection charges for SRM and Other Offal decreasing by 53 per cent between July 2000 and October 2003. Customers have informed us that other renderers' charges have followed a similar pattern of decline over that period.
- 4.47 Since August 2004 the charges both PDM and Forrest's customers have had to pay for the collection of SRM and Best Fat have steadily increased, in PDM's case by an average of 52 per cent (67 per cent for other Offal) and in Forrest's case by an average of almost 41 per cent to late 2005. Prices paid for best fat by PDM have started to stabilise and decline over the course of 2005. Overall to end 2005 both Forrest and PDM charges are significantly lower than they were in 2000.
- 4.48 The pattern of collection charges or prices paid for materials, for PDM's and Forrest's larger customers are represented graphically in charts 4.5 and 4.6.

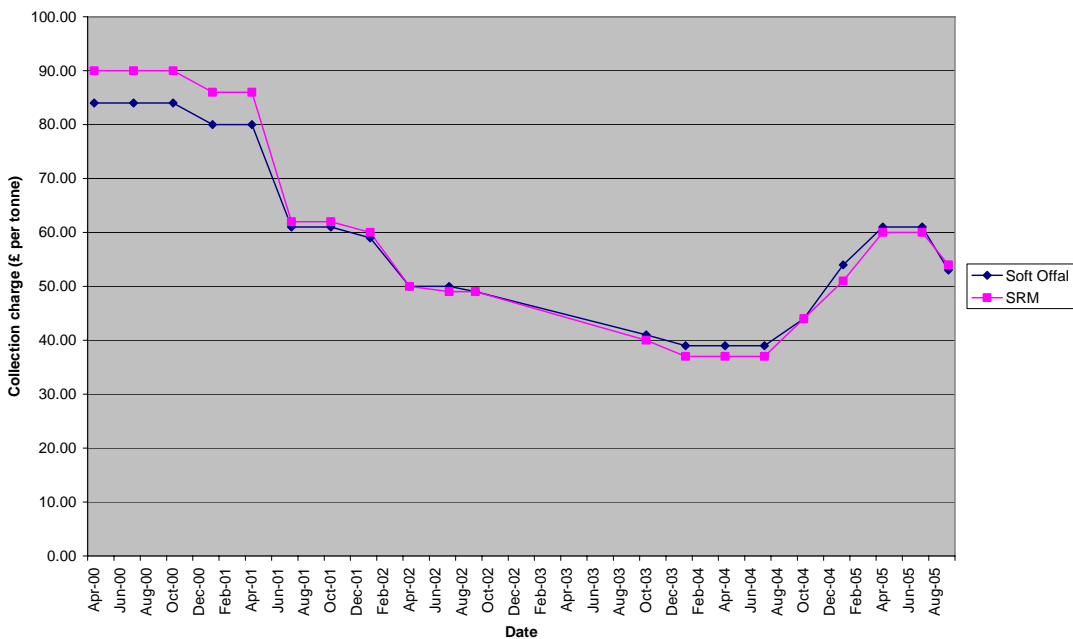
**Chart 4.5: Collection charges and prices paid (£ per tonne) by PDM for the rendering of materials from abattoirs supplying more than 50 tonnes of animal waste per week:**



Source: Meat Trades Journal

Note: The information for best fat represents a payment made to customers by renderers rather than a charge levied on customers by renderers.

**Chart 4.6: Collection charges and prices paid (£ per tonne) by Forrest for the rendering of materials from abattoirs supplying more than 50 tonnes of animal waste per week.**

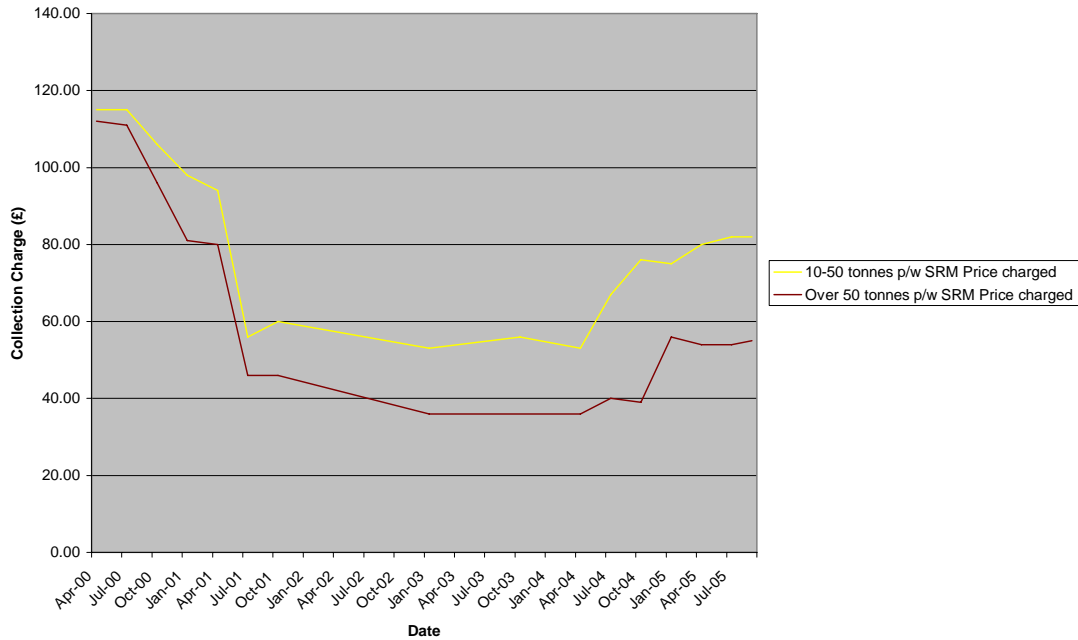


Source: Meat Trades Journal

4.49 This pattern of decreasing charges can also be observed in the case of PDM's and Forrest's smaller customers, those providing less than 50 tonnes of materials a week. However our evidence indicates that prices for these smaller companies fell by less than those for larger companies. Chart 4.8 demonstrates that the decline in PDM's collection charges for SRM fell further for larger customers than smaller customers between July 2000 and July 2003 and increased at a faster rate than those for larger customers thereafter. This may

reflect the greater buyer power, which these larger customers have.<sup>92</sup> Similar trends can be found in the prices charged for the collection of other types of animal waste materials.

**Chart 4.7: PDM Collection charges (£ per tonne) for specified risk material for larger and smaller customers.**



Source: Meat Trades Journal

### Views of parties on prices

4.50 A number of customers and some renderers have told us that decreases in price in 2001 were the result of greater competition from Pointon for PDM's customers. Third parties characterise this period as a 'price war', which led to a

<sup>92</sup> PDM has stressed that the size of its customers, particularly poultry customers, has increased significantly over the last decade as a result of increased concentration in that sector.

sustained period of price cutting by renderers to win new customers or safeguard existing customers.

- 4.51 We have received differing explanations of the recent increases in prices. Some customers have argued that these increases are the result of Poinon competing less aggressively for supplies with PDM.
- 4.52 Renderers have argued that transport and energy costs (in addition to the increased costs of regulatory compliance) explain the steady increases in rendering charges over the last few years.

### **OFT view**

- 4.53 Transport is the most significant component of renderers' variable costs. The OFT has performed a correlation analysis between PDM's price increases and transport costs over the last year (see table 4.8). Transport costs and price appear to be closely correlated in that the increases in collection charges equate with the increases in transport costs. This is probably attributable to a combination of the implementation of the ABP regulations<sup>93</sup> and the significant increases in fuel costs since 2004.

**Table 4.8: Changes in PDM transport costs, April 2004-September 2005**

	April 2004	September 2005	Percentage change
PDM transport costs	£23.55	£34.76	+ 47.6 per cent

Source: Meat Trades Journal

<sup>93</sup> Explained in chapter 3.

4.54 The introduction of the ABP regulations had the following effects upon renderers:

- the need for dedicated vehicles and segregation for the various categories of animal waste
- the need to divert material to the plant which handles that category of material in order to maximise the value that could be obtained involving the transport of materials across longer distances
- the increase in the number of collection points necessitated by greater collections from supermarkets and butchers.

4.55 These circumstances increased the distance that materials had to be taken and imposed restrictions on the use of capacity, resulting in an increase in variable costs.

4.56 The increases in variable costs have been exacerbated by the rise in both energy and fuel costs (which one renderer has informed us accounts for 65 per cent of overall costs) over the last year as evidenced in table 4.9.

**Table 4.9: Changes in energy costs May 2004-September 2005**

Material	Percentage change in cost, May 2004-September 2005
Diesel	+ 18.54
Premium Unleaded	+ 16.97
Electricity	+ 38.0

Source: DTI Energy prices index

4.57 This information indicates that recent changes in rendering charges appear to be largely reflective of the increased costs of rendering activities.

## **Conclusions on rendering charges**

- 4.58 The evidence of published pricing information indicates that since around 2001, for all sizes of customer, there has been a marked decrease in PDM's and Forrest's prices despite rising variable costs. This appears to be predominantly attributable to increased competition stimulated by Pointon's increases in capacity.

## **The effect of regulatory change on competition**

- 4.59 Since the 1993 MMC report, there have been significant and far-reaching changes that have impacted upon the animal waste rendering industry.<sup>94</sup> All the renderers the OFT has spoken to in the course of its review have stressed the significant effects of the changes in regulation on their businesses and the industry more generally.

## **Categorisation**

- 4.60 In 2004 the category system was introduced which segregated all animal waste materials into specific categories based on veterinary classification.<sup>95</sup> Several customers have indicated that the categorisation system has restricted their choice of renderer as they are only approved to process certain types of materials. Renderers have responded to this by transferring a greater amount of materials to other renderers that have different categorisation or a more local plant.

## **The Over Thirty Months Scheme**

- 4.61 In the aftermath of the BSE crisis in order to cope with the demands of the OTMS, the UKRA devised a plan (the UKRA industry plan) of transfers of

---

<sup>94</sup> These changes have been discussed in chapter 3 and are summarised in Annexe C.

<sup>95</sup> See paragraph 3.15 for further details.

material between renderers (see chapter three for details). The plan sought to address the increased volume of materials which the industry was handling and the Government's requirement that plants processing OTM material be wholly dedicated to such materials. The consequence of this scheme was that a number of renderers processed OTMS material exclusively and transferred their general animal waste to other renderers.

4.62 In 2006, as the OFT approached the end of its review, the OTMS was replaced by the OCDS which has significantly reduced the volumes of raw material available for renderers as indicated in table 4.10.

**Table 4.10: Volumes of animal waste processed by renderers through Government slaughter schemes, 2001-07**

	Average 2001-05 (OTMS)	2006 (estimate)	2007 (estimate)
Volume of materials made available through government schemes (tonnes)	241,809	101,612	52,109

Source: DEFRA

4.63 The removal of this highly significant source of raw materials for renderers could therefore have a significant impact on the industry.

4.64 The views of renderers on the consequences of the end of the OTMS scheme are mixed. Some argue that the lost materials will be replaced by other sources.



One renderer has emphasised that they will gain the remnants of OTM cattle which will now be sent for slaughter. The OCDS will also mean that some material will continue to be provided through government contracts reducing the immediate effects on renderers.

- 4.65 Conversely, some renderers have indicated that the impact of the loss of OTMS materials will be substantial. Several have told us that they will have to seek abattoir and butchery materials which are presently collected by other renderers in order to continue their businesses. One renderer predicts that the effect of the change may be 'aggressive competition' between renderers as they seek to replace lost OTMS supplies. It will also force those renderers that have devoted themselves exclusively to OTMS work to seek alternative supplies of material from abattoir and butchery wastes in order to continue in business. One renderer has indicated that the loss of supplies is likely to lead to significant further consolidation in the industry.
- 4.66 The OFT recognises the significant impact of regulatory developments in this market over the last decade. However, due to the infancy of the OCDS, the effect of the reduction in raw materials from Government sources on competition in the market (and the undertakings) is presently unclear. As a result, the OFT will undertake to monitor developments in this market closely during the coming period.

## Conclusion

- 4.67 The OFT review has found that although PDM and Forrest remain the major renderers in each of the geographic markets their market shares appear to have decreased since 1993. Over the same period a number of the smaller rendering companies have significantly increased their rendering capacities allowing them to process greater volumes of materials and increase their market shares.
- 4.68 As the market is currently in a state of flux it would be inappropriate to make serious interventions in the absence of a clear picture or consensus on how it is likely to develop, particularly in the absence of any clear evidence of serious distortion to competition or likely damage to competition.

## 5 THE UNDERTAKINGS

### Introduction

- 5.1 This chapter draws on evidence discussed in previous chapters in order to assess the undertakings given by Forrest and PDM and whether, by reason of any change of circumstances, the undertakings are no longer appropriate. The obligations imposed by each of the undertakings and the OFT's recommendations are discussed below.<sup>96</sup>

### Pricing Undertakings

#### **Undertaking 1 (1) (a), 1 (1) (2), 2 - PDM undertakings, Forrest undertakings**

#### MMC conclusions and undertakings

- 5.2 The MMC investigated the pricing policies of both PDM and Forrest and concluded that both companies had engaged in discriminatory pricing, in that their prices and charges varied in ways which the MMC could not explain purely by variations in costs. These were considered to have preserved and exploited their dominant positions in their respective markets and forestalled competition by sometimes charging prices that, while generally not below cost, could not be matched by competitors.<sup>97</sup> In addition Forrest's profitability reflected higher charges and lower payments than would otherwise have been the case in a competitive market.<sup>98</sup>

---

<sup>96</sup> The full text of the undertakings is at Annexe A.

<sup>97</sup> MMC (1993), paragraphs 10.62 and 10.105.

<sup>98</sup> MMC (1993), paragraph 10.109. No such finding was made against PDM (paragraph 10.86).

- 5.3 The MMC emphasised that the pricing policies of Forrest and PDM had to be seen in the context of these company's positions in their respective geographic markets. They were much larger companies, with national scope and much greater financial strength, than their competitors. This made them less vulnerable to the loss of individual customers than the other, much smaller, renderers operating in that industry at that time, providing them with 'opportunities for discrimination between customers of different types and locations'.<sup>99</sup>
- 5.4 To remedy these concerns the MMC recommended that both companies should publish weekly a representative sample of prices and charges that it negotiated in the preceding week, in a form approved by the OFT.<sup>100</sup> Forrest and PDM agreed to this undertaking.
- 5.5 In addition, the Secretary of State for Trade and Industry asked the Director General of Fair Trading to seek an undertaking from both companies not to engage in discriminatory pricing. The final forms of undertakings that were agreed reflected the different circumstances of the two companies and the concerns of the MMC at that time.
- 5.6 For example, the MMC was concerned that PDM's discriminatory pricing practices were intended to protect its supplies when threatened by other renderers.<sup>101</sup> Therefore, PDM undertook not to engage in discriminatory pricing with the specific intention of harming a competitor.
- 5.7 Forrest, on the other hand, operated its plant on a continuous basis that provided the company with an incentive to seek extra tonnage by price discrimination.<sup>102</sup> As in the case of PDM, the MMC was concerned that targeted

---

<sup>99</sup> MMC (1993) paragraphs 10.61 and 10.103

<sup>100</sup> MMC (1993), paragraph 10.134.

<sup>101</sup> MMC (1993), paragraphs 10.61-62.

<sup>102</sup> MMC (1993), paragraph 10.104.

discriminatory pricing would foreclose the market. Forrest undertook not to engage in discriminatory pricing, unless it was required to keep its continuous processing plant in operation.

### Price discrimination

- 5.8 The OFT has received data on the pricing practices of PDM and Forrest. In order to determine whether price discrimination is a feature of the industry today, and whether it is targeted in a way that concerned the MMC in 1993, the OFT has attempted to replicate, as far as is appropriate and proportional, much of the MMC's analysis on pricing practices.<sup>103</sup>
- 5.9 As tables 5.1 and 5.2 indicate, there has been a wide range of per-tonne collection charges levied for the removal of animal waste by PDM and Forrest. This compares with the situation at the time of the MMC report where the highest price per tonne paid was several times more than the lowest price paid.<sup>104</sup> However, these figures have not been adjusted for factors which affect the price like transport distance from the rendering plant.

---

<sup>103</sup> The MMC's analysis is in appendix 6.1 of its report.

<sup>104</sup> MMC (1993), Appendix 6.1.

**Table 5.1: Initial ranges of collection charges for animal waste for PDM, 2003-04 and 2004-05 (£ per tonne)**

	Category one	Category two <sup>105</sup>	Category three
<b>2003-04</b>			
Low	[...]	[...]	[...]
High	[...]	[...]	[...]
Difference	[...]	[...]	[...]
Average	[...]	[...]	[...]
<b>2004-05</b>			
Low	[...]	[...]	[...]
High	[...]	[...]	[...]
Difference	[...]	[...]	[...]
Average	[...]	[...]	[...]

\*Negative prices mean customers are paid for the materials.

Source: PDM.

<sup>105</sup> Category 2 materials are non-poultry, and category 3 materials are best fat only.

**Table 5.2: Initial ranges of collection charges for animal waste for Forrest, 2003-04 and 2004-05 (£ per tonne)**

	Category one	Category two	Category three
<b>2003</b>			
Low	[...]	[...]	[...]
High	[...]	[...]	[...]
Difference	[...]	[...]	[...]
<b>2004</b>			
Low	[...]	[...]	[...]
High	[...]	[...]	[...]
Difference	[...]	[...]	[...]

Source: Forrest

5.10 While undertaking this analysis the OFT has encountered a number of difficulties which have prevented it from coming to firm conclusions on the incidence, nature and extent of price discrimination. These included:

- **The number of factors that can influence costs and prices** - both Forrest and PDM have outlined to the OFT that a very wide range of factors are taken into account when setting individual prices. These include the following.
  - Transport costs (for example fuel cost).
  - The volume of material.
  - The frequency of collections.

- The value of the waste materials (including estimated product yields).
- Energy costs for the rendering of the materials.
- The costs of complying with various regulations.
- Whether other services are provided (for example cleaning of containers).<sup>106</sup>

Forrest identified no fewer than 14 factors that influence the final price charged, which varies according to the customer's particular circumstances.

• **The significant regulatory changes in the market** – these factors have been complicated since the MMC conducted its analysis by the introduction of a number of regulations to reduce the potential transmission of BSE. These regulations have impacted on renderers' cost structures and made assessment of price discrimination more difficult than when it was conducted by the MMC. These have included increased inter-renderer trade, increases in collections from small and dispersed sites and the processing and handling restrictions introduced by the regulations. (see chapter three).

5.11 However, the MMC's principal concerns relating to price discrimination were the effect it would have on other renderers operating in the industry. The OFT has therefore carefully considered the views expressed by these renderers to assess whether the concerns raised by the MMC remain.

### Views of renderers

5.12 In 2001 the OFT investigated a complaint [...] that PDM had breached its undertakings by engaging in discriminatory pricing which was aimed at the elimination of a competitor. The OFT considered all invoices sent to abattoirs

---

<sup>106</sup> Some other factors were also mentioned. For example, Forrest told the OFT that its desire to operate at full capacity is one factor that is taken into account.

over the period between November 2000 and September 2001 and analysed the prices, income streams and costs of each of PDM's red meat rendering plants on a month-by-month basis. The OFT did not find any evidence that PDM had applied dissimilar conditions to equivalent contracts. The information obtained did not indicate that PDM had adopted a policy with the intention or effect of excluding a competitor. [...].

- 5.13 The OFT contacted [...] during the course of this review to obtain its views on the undertakings in general, and specifically whether PDM has engaged in discriminatory pricing. [...] emphasised that at present it believes that it can compete directly with PDM without the protection of the undertakings relating to price discrimination. [...] noted that this was a result of changes to PDM's behaviour and [...].
- 5.14 In the case of Scotland, Forrest's main competitor, Dundas Chemical, has emphasised that its increase in size and investment in capacity mean that it too is now able to compete effectively without concerns about potential price discrimination from Forrest.
- 5.15 The OFT also contacted a number of smaller renderers, of the type that the MMC were more concerned would be detrimentally effected by price discrimination. Only a small number of these companies responded to our information request. One renderer considered that PDM continues to have a significant amount of power in the industry deriving from its size and scale of operations. Another considered the undertakings have had some impact on reducing the strength of PDM and therefore have been a positive factor in the industry and should remain. One other smaller renderer also referred to PDM's ability to operate from a 'position of strength' compared to other parties in the industry. It emphasised that given the termination of the OTMS and the loss of volumes (see chapter four) it anticipated a period of 'aggressive competition' in the industry.



## Conclusions

- 5.16 The factors outlined above at paragraph 5.10, complemented by the regulatory changes in this industry, are a significant impediment to any assessment of the incidence and extent of price discrimination. In addition we have noted the views of other renderers. Although the larger renderers are not presently concerned about price discrimination (given changes in their capacities), some smaller renderers do remain concerned about the potential for price discrimination to impact upon their businesses (particularly in the light of the removal of OTMS which one small renderer believes will lead to aggressive competition in the industry). In the absence of specific available evidence that the structure of competition is being damaged by price discrimination, the OFT believes it would be unwarranted to commit further resources to work on price discrimination at the present time.
- 5.17 The OFT also notes that concerns in relation to price discrimination have been raised by this industry on an intermittent basis, with concerns expressed by parties in the early 1990's and subsequently between 2001 and 2003. We therefore cannot conclude that the absence of price discrimination concerns amongst larger renderers at this time means that concerns in this area have been eliminated. The OFT also notes that the circumstances which the MMC identified as making it possible for PDM and Forrest to price discriminate (almost nationwide supplies, their size relative to other renderers)<sup>107</sup>, although slightly diminished, remain the case today.
- 5.18 Given persistent historic concerns about price discrimination, the continuing likely market power of PDM and Forrest and the continuation of the features identified by the MMC as conducive to price discrimination,

---

<sup>107</sup> MMC (1993), paragraphs 10.61, 10.103

the OFT believes that these undertakings should remain in place as a complement to existing Competition law. The OFT will therefore not provide advice to the CC that these undertakings be varied, superseded or released. It will continue to monitor PDM and Forrest's compliance with these undertakings and conduct a further review in due course.

## Price information

- 5.19 The OFT has considered the effect of the requirement to publish pricing information. In order to ascertain the usefulness of this requirement, the OFT sought the views of customers on how the price information is used and the effect that it has had through a series of structured interviews with them (see paragraph 4.3 for further information on the process used to gauge customer views).
- 5.20 Customers have mixed views on the content and usefulness of published pricing information. Several customers argued the published prices were not useful, although there was not a clear consensus among these customers as to why. Explanations included:
- renderers do not engage in price negotiation therefore information to facilitate negotiation is of limited use
  - that the categories in the Meat Trades Journal<sup>108</sup> are inappropriate and do not reflect the effects of changes in regulation (for example categorisation of materials) – one customer also felt that the categories are too generic to be used effectively
  - that the methodology employed to calculate prices is unknown and the trustworthiness/accuracy of the figures is questionable.
- 5.21 Conversely, several customers found the published pricing information useful. One rendering customer informed the OFT that the prices in the Meat Trades

---

<sup>108</sup> For red meat these were best fat, other fat, bones, hard offal, soft offal and specified risk material, for poultry these were poultry carcasse and offal.

Journal had been particularly useful in increasing price transparency in the industry. A number of other customers submitted that trend information in the Meat Trades Journal provides a useful insight into changes in the market which can be used to assist in the negotiation of prices. One customer indicated that published pricing information of the price reductions of PDM between 2001 and 2003 had provided them with information they could use to extract a better price from their existing renderer and had spread the benefits of lower prices wider throughout the market than would have been the case in its absence.

### Views of renderers

- 5.22 As was the case with customers, renderers' views on the price information undertakings were mixed. PDM submitted that the published prices were not used by customers as the basis for negotiation and that they should, therefore, be released from them. Pointon also argued that the published pricing information played no role in the determination of prices.
- 5.23 Conversely, some smaller renderers had different views. One renderer whilst holding no strong views about the undertakings stated that its customers do refer to the prices published in the Meats Trade Journal. Another considers that the undertakings have had some impact on reducing the strength of PDM and therefore are a positive factor in the industry that should remain.
- 5.24 In Scotland, Forrest claims that customers in price negotiation actively use the published price information. It argues the price discrimination undertakings should remain but that Dundas Chemical should be subject to them as well. Dundas Chemical does not consider the undertakings to be necessary: it is confident of being able to compete with Forrest on equal terms and that the prices published in the Meats Trade Journal are not very informative.

### OFT view

- 5.25 In monitoring the undertakings and in the course of this review, the OFT notes that the Meat Trades Journal information remains the only publicly available source of pricing information on the animal waste rendering industry. Given the

complexity of the pricing structure in the animal waste rendering industry, alongside the prevalence of negotiated charges, the OFT believes that the pricing information provides some useful information which could assist customers in negotiating prices. In addition, the information provides an effective means by which the OFT can monitor trends in pricing behaviour amongst the largest parties in this industry.<sup>109</sup>

- 5.26 The OFT therefore believes that these undertakings continue to enhance the transparency of pricing arrangements. The OFT will continue to monitor compliance with these undertakings and, if evidence is found in the future that alternative means of presenting this information is preferable, it will use its powers to change the form of the information displayed in pursuance to the undertakings.
- 5.27 The OFT also acknowledges the potential distortionary effect of publication of pricing data by individual parties in an industry, notably the potential for other parties to 'cluster' around that price, rather than effectively competing. The OFT is mindful of that point and will carefully monitor the situation for any evidence that this might be the case.

## **Remaining PDM undertakings**

### **Undertaking 1(b): Conditional purchases**

#### **MMC conclusions and undertakings**

- 5.28 In 1985, as part of its investigation in the matter of the existence or the possible existence of a monopoly situation in relation to the supply of animal waste in Great Britain, the MMC investigated allegations that PDM had exploited its position as the dominant renderer of low grade material by refusing, or threatening to refuse, to collect such material from abattoirs unless it could also

---

<sup>109</sup> Except for butchers and supermarkets whose prices are set out in a tariff.

have their more valuable higher grade waste. PDM stated, at the time, that it had never refused to collect low grade material and it would not do so in the future. In the absence of specific evidence of PDM engaging in this practice the MMC made no recommendations.<sup>110</sup>

- 5.29 Despite this, undertakings were given by PDM to the effect that it would not engage in this practice in the future. The MMC did not address the issue of conditional purchasing in its 1993 report. However the undertaking was included substantially unchanged in the undertakings agreed in 1995 as PDM had no objections.

### Evidence

- 5.30 The OFT notes that no specific evidence was provided to the MMC during its investigation in 1985 (or any significant mention of the issue in the 1993 report) to indicate that PDM engaged in conditional purchasing.<sup>111</sup> In addition, in the course of this review, PDM has provided evidence of it collecting low grade materials without also receiving higher grade materials. PDM has reiterated that it does not, and never has, engaged in the practice of conditional purchases.
- 5.31 As we noted in chapter three, the value of end products has declined and become less significant to renderers than it was in 1993. The value of these end products was largely determined by the grades of materials used with higher grade materials yielding higher value end products. As the ability to sell end products has decreased in the aftermath of the BSE crisis, the grade of materials handled has become less important, as a significant amount of material is disposed of or 'downgraded' (see footnote 51) to be processed with another category thus reducing its value. This change in the market has reduced the likelihood that PDM would engage in conditional purchasing based on grading of

---

<sup>110</sup> MMC (1985), paragraphs 9.47-9.48

<sup>111</sup> MMC (1985), paragraph 9.48

animal waste by reducing its incentives to do so. Given regulatory changes, including categorisation, the bases for these concerns have largely fallen away.

### Views of third parties

- 5.32 None of the renderers that responded to the OFT consultation expressed a view about the continuation of this particular undertaking<sup>112</sup> and none indicated that PDM engaged in conditional purchasing. The OFT is aware of no complaints from customers relating to conditional purchasing over the course of the last decade. One customer of animal waste expressed the view that the conditional buying undertaking should be retained in order to exercise a constraint on PDM, although it did not suggest that PDM had engaged in this practice.
- 5.33 The Chapter II prohibition in the Competition Act 1998 (CA98) and Article 82 of the EC Treaty prohibit abusive behaviour from undertakings in a dominant position. If a dominant firm in the market for animal waste rendering made the collection of one form of waste conditional on the supply of other categories of waste which was exclusionary (that is if it was structured in such a way that had the effect, or likely effect, of removing or weakening competition from existing competitors, or establishing or strengthening barriers to entry, thereby removing or weakening potential competition) it may breach one or both of these

---

<sup>112</sup> Other than one competitor's belief that all undertakings should be retained.

competition laws. In the event of an infringement the party could be subject to significant financial penalties.<sup>113, 114</sup>

## Conclusions

- 5.34 The OFT believes that the change in end product values constitutes a change in circumstances since the undertakings were given and that by reason of that change the undertakings are no longer appropriate. The OFT has not received any complaints that PDM have engaged in this practice since the undertakings were given. Given these changes, the OFT believes that PDM should be released from the undertaking. If a dominant firm engages in this practice with the effect of restricting competition, this could be subject to action under the Chapter II prohibition of CA98.

### **Undertaking 3: Acquisitions**

#### MMC conclusions and undertakings

- 5.35 In 1985, the MMC noted that PDM's growth was achieved largely through the acquisition of small animal waste rendering and collection businesses. It concluded that although PDM's policy must tend to diminish competition in the rendering industry it found no evidence that PDM had pursued a deliberate policy

---

<sup>113</sup> OFT 402, December 2004 , Abuse of a Dominant Position: understanding competition law, and OFT (1999), Assessment of Individual Agreements and Conduct, OFT Guidance 414.

<sup>114</sup> Section 18(2(d)) of CA98 states that a practice which affects trade within the UK may be considered an abuse if it involves *'making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts'*. Therefore, if PDM held a dominant position in the market, the conduct of the type prohibited by the undertakings could be in breach of CA98 and, potentially, Article 82. In the event of any such breach of CA98 (or Article 82) the OFT could impose a fine of up to 10 per cent of the company's turnover. In addition there is a possibility that third parties who have suffered damage as a consequence of an abuse could bring claims for damages.

of eliminating competition and no evidence that the policy had been to the detriment of abattoirs that were PDM's customers.<sup>115</sup> It suggested that because of PDM's market share, any further acquisitions of animal waste rendering and collection businesses could be referred for investigation under the merger provisions of the FTA. The MMC suggested that, if any such acquisition proposed, consideration should be given to the question of whether it merited investigation because of PDM's already dominant position in the market.<sup>116</sup>

- 5.36 In order to facilitate this PDM undertook to notify the OFT at least one month before the date on which PDM acquires any animal waste enterprise.<sup>117</sup>
- 5.37 In 1993, the MMC found that PDM had failed to fulfil its undertakings as it had acquired the goodwill of 12 animal waste enterprises without pre-notifying the OFT.<sup>118</sup> It concluded that this failure to notify had deprived the OFT of the ability to intervene with measures to protect competition in rendering. It recommended that PDM should be prevented from acquiring all or any part of an animal waste enterprise unless the OFT approve the acquisition, in advance, as being in the public interest.<sup>119</sup> PDM gave an undertaking to that effect in 1995.

### Compliance with the Undertaking

- 5.38 PDM has informed the OFT that it has acquired a number of companies involved in food processing, pet food and edible fats production since it gave the undertaking in 1995.<sup>120</sup> We have investigated PDM's acquisitions and joint

---

<sup>115</sup> MMC (1983) paragraphs 9.26-9.28

<sup>116</sup> MMC (1985) paragraph 9.62

<sup>117</sup> MMC (1993) Appendix 1.2, paragraph 3.

<sup>118</sup> MMC (1993) paragraph 10.70

<sup>119</sup> MMC (1993) paragraph 10.141

<sup>120</sup> A complete list of these acquisitions can be found at Annexe E.



ventures and can find no indication that PDM has acquired an animal waste enterprise since PDM gave the undertakings in 1995.

- 5.39 PDM has assured us that **'it has not, directly or indirectly purchased all or part of any enterprise engaged in the rendering or the collecting of animal waste since February 1995'**. It has told us that it has had the opportunity to acquire other animal waste operations (and provided examples of this) but felt that the pre-notification procedure would be too costly.
- 5.40 The OFT has considered one allegation put to us by a consumer that PDM had acquired a collector business in the South East of England without notifying and gaining the approval of the OFT. The OFT considered this allegation and found that although PDM trades with the company involved we could find no indication that it had acted in breach of its undertaking.

#### Effectiveness of the undertaking

- 5.41 PDM believes that further acquisitions would make it more efficient. It has emphasised that **'no business would be purchased for the sole purpose of simply gaining additional volumes of supplies'**.
- 5.42 As noted at in chapter three the rendering industry has become increasingly consolidated over the past decade. As a result of this the opportunities to acquire smaller companies, of the type which PDM have historically been involved in purchasing, have been significantly reduced.

#### Views of third parties

- 5.43 None of the renderers which responded to the OFT consultation expressed a view about the continuation of this particular undertaking. One customer of PDM said that this undertaking acts as a constraint on PDM and should be retained.

## Compatibility with Competition law

5.44 PDM's share of supply (see chapter four) would make it likely that future acquisitions of the type envisaged by the undertakings given following the 1993 MMC report qualify for OFT consideration under the merger provisions of the Enterprise Act 2002 (EA02)<sup>121</sup>. Any acquisition by PDM that amounts to or will amount to a merger situation for the purposes of the merger provisions of the EA02 which, the OFT believes, will or may be expected to result in a significant lessening of competition within the animal waste rendering market would have to be referred to the Competition Commission for further investigation pursuant to the OFT's duties under section 22 or 33 of EA02.<sup>122</sup>

## Conclusions

5.45 The OFT believes that the reduction in the number of small renderers has reduced the scope for PDM to return to a policy of expansion by incremental acquisition. The OFT believes that the changes in the structure of the market constitutes a change in circumstances since the undertakings were given and that by reason of the change the undertakings are no longer appropriate. In the future, PDM's share of supply in the animal waste rendering market would make any future acquisitions of enterprises active in this market likely to qualify for OFT consideration under the merger provisions of the EA02. Therefore we conclude that this undertaking is no longer appropriate and recommend that PDM be released from it.

---

<sup>121</sup> Thus, the share of supply of services test set out in section 23(4)(b) EA02 would be met.

<sup>122</sup> Under section 22 EA02, the OFT has a duty to make a reference to the Competition Commission if it believes that it is or may be the case that (a) a relevant merger situation has been created, and (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services. Section 33 sets out a similar duty with respect to anticipated mergers that, if carried into effect, will or may be expected to result in a substantial lessening of competition.

## Undertaking 4: Accountancy information

### MMC conclusions and undertakings

- 5.46 In its 1993 report, the MMC concluded that the published accounts of PDM were distorted by the financial relationships it had with a number of other subsidiary and related companies, notably PDM Transport and PDM Services.<sup>123</sup> The MMC concluded that the arrangements in place meant that the publicly available accounts of PDM gave an incomplete impression of PDM's overall profitability and financial position. By disclosing only part of its profits in its publicly available accounts the MMC considered that PDM was less likely to face pressure from customers to improve prices for raw materials or to alert potential new entrants to the profitability of rendering. The MMC also considered that the authorities were left in ignorance of PDM's true financial performance.<sup>124</sup>
- 5.47 The MMC concluded that these arrangements constituted facts which operated or may have been expected to operate against the public interest<sup>125</sup> and recommended that PDM should file certain information with the OFT and make the information available for public inspection. The information filed with the OFT should also include information about any payments made by PDM, its directors, managers, proprietors, agents or related parties to any other person involved in animal waste or related industries. The accounts should be audited by an auditor approved by the OFT.<sup>126</sup>

---

<sup>123</sup> Some of which were unlimited companies that did not have to file accounts at Companies House.

<sup>124</sup> MMC (1993) 10.84-10.87

<sup>125</sup> MMC (1993) 10.118(d)

<sup>126</sup> MMC (1993), paragraph 10.142-10.145

5.48 PDM undertook to provide certain financial information to the OFT within nine months of the end of the company's accounting year, together with a report from the company's auditors. It further undertook to make the information available to anyone who requests to see it. PDM also agreed to provide an unaudited consolidated profit and loss account in respect of the first half of each financial year.

## Evidence

- 5.49 PDM has submitted the required accountancy information to the OFT in the timescales required since the undertakings were given.<sup>127</sup> The accounts have been signed off by the approved auditors each year in compliance with the undertakings. Our analysis of the accounting information indicates that PDM have provided the required level of detail in relation to its accounts and have satisfied the requirements of the undertaking.
- 5.50 PDM has informed us that no company or individual has ever requested a copy of the enterprise accounts compiled under the undertakings. Similarly no organisation has approached the OFT over the last three years to request this information.
- 5.51 PDM have emphasised that the preparation of the accounts is a time consuming and costly exercise.
- 5.52 PDM has undergone significant changes in the structure of its business since 1993 to reflect the changed market in which it operates. The unlimited companies referred to in paragraph 5.46 above no longer trade. Prosper de Mulder Limited now operates as a holding company for all of

---

<sup>127</sup> There was some delay in the submission of accounting information in the mid 1990's at the time of the BSE crisis, but PDM sought and gained OFT approval for delays in these submissions.

the group's activities,<sup>128</sup> reflecting a desire to reduce the difficulties of customers dealing with different parts of PDM with different corporate names.<sup>129</sup> PDM's published statutory accounts therefore represent the complete consolidated accounts of the PDM Enterprise. PDM believes that this will increase the financial transparency of much of PDM's operations.

### Views of third parties

- 5.53 No renderers or customers have told us that they have used PDM's enterprise accounts in the manner that the MMC expected. Indeed one third party told us that they use only PDM's published accounts to assess PDM's profitability, rather than accounts produced and made available under the undertaking.

### Conclusion

- 5.54 The OFT believes that this change in PDM's accounting policies to integrate its operation into a holding company for all of its activities and the closure of PDM Transport and PDM Services constitutes a change of circumstance since the undertakings were given and that by reason of the change they are no longer appropriate. In the absence of these undertakings, the undertakings relating to the appointment and role of auditors (undertakings 11b and 12) and certain references in undertaking 10 should also be removed.

---

<sup>128</sup> Frazer Butchers, and its subsidiary Chettles, which operate PDM's poultry business were the last parts of the PDM operation to be incorporated into the group structure. As of April 2006 it has been a wholly owned subsidiary of PDM (although some final valuation issues are being determined).

<sup>129</sup> PDM has traditionally operated through a number of organisations reflecting its development through acquisition. These included John Knight (Animal by-products) Limited, Granox Limited, De Mulder and Son Limited, J L Thomas and Co Limited and Frazer Butchers Limited.

## Undertakings 5-8: Gut rooms

### MMC conclusions and undertakings

- 5.55 Larger abattoirs often have a 'gut room' where pet food materials and other high value by-products are separated from the remainder of the carcass before it is sent for rendering. Although some abattoirs operate their own gut rooms, some contract them out to specialist gut room contractors. In both 1985 and 1993 the MMC found that PDM operated a number of abattoir gut rooms.
- 5.56 In 1993, the MMC concluded that PDM had breached all parts of the undertaking given as a consequence of the 1985 MMC report relating to the financing of gut room operations. The MMC concluded that the breach of the undertaking operated and may be expected to operate against the public interest.<sup>130</sup> It recommended that PDM set up a separate limited company to operate gut room services and run it at arm's length from its other activities. If, within three months after the MMC report, it failed to satisfy the OFT that gut room contracts were being run at arm's length or if PDM breached any of the undertakings it had given in relation to its gut room operations, the MMC recommended that PDM should be compelled to dispose of its gut room business to a purchaser approved by the OFT.<sup>131</sup>
- 5.57 PDM established a separate subsidiary in 1994, PDM Abattoir Services Limited, to carry out all of its gut room operations separately from the remainder of its business.
- 5.58 PDM subsequently undertook to carry on gut room activities separately from the remainder of the business, ensuring no cross subsidies, and to provide various pieces of financial information to the OFT.

---

<sup>130</sup> MMC (1993), paragraph 10.118

<sup>131</sup> MMC (1993), paragraph 10.139-10.140

## Evidence

- 5.59 PDM has informed the OFT that PDM Abattoir Services Limited (Abattoir Services) ceased trading in March 2001.<sup>132</sup> Although the company was not formally dissolved until September 2004, Abattoir Services was dormant and conducted no gut room business between March 2001 and September 2004. This fact is confirmed by Abattoir Services' published accounts between 2001 and 2004. PDM therefore has no current interest in the gut room business. No other renderer, to our knowledge, engages in gut room activities.
- 5.60 The OFT has been informed by PDM that the change in value of animal by-products has led to abattoirs and specialist meat processors conducting gut room operations. This is because abattoirs must now pay a charge for the removal of a significant proportion of animal waste products. This situation can be compared to 1993 when abattoirs could expect a payment for the majority of animal waste. This had led to abattoirs seeking to derive greater value from animal carcasses by extracting greater volumes of higher grade materials which can then be sold for pet food and technical uses, rather than sending them to be disposed of by renderers. We have been informed by one renderer that this has led to many abattoirs directly operating their own gut rooms.

## Views of third parties and conclusions

- 5.61 No third party has commented on PDM's gut room operations.
- 5.62 We believe that PDM's disposal of all of its gut room operations and the dissolution of Abattoir Services, the company to which the undertakings relate, constitute a change in circumstance since the undertakings were given and that by reason of those changes that they are no longer appropriate. The OFT recommends that PDM be released from this undertaking.

---

<sup>132</sup> Information provided by PDM.

## **Undertaking 9: Market Harborough plant**

### **MMC conclusions and undertakings**

- 5.63 PDM acquired the Market Harborough plant in 1991 when it purchased the rendering business of Croda International plc (Croda) and took out a lease on the site.<sup>133</sup> It discontinued operations at the site in February 1992 and mothballed it for future use when necessary. The MMC concluded that competition might be increased if the plant was acquired by another renderer, and recommended, in order to diminish the adverse effects of the discriminatory pricing finding<sup>134</sup>, that it should be disposed of to a purchaser unconnected to PDM and approved by the OFT. If no purchaser could be found the plant should be decommissioned and the machinery sold by public auction to an entity unconnected with PDM.<sup>135</sup>
- 5.64 PDM auctioned the plant and equipment in October 1994 with the main rendering equipment being sold to a rendering company in the Republic of Ireland. The building which housed the rendering plant continued to be owned by Croda but remained unused. PDM subsequently undertook to ensure that none of its companies would hold any interest in the plant or influence the running of it.

### **Evidence**

- 5.65 The part of the plant owned by Croda was subsequently sold to Pears, another renderer and competitor of PDM, which now operates a mammalian rendering plant from the site.

---

<sup>133</sup> Prosper de Mulder Ltd and Croda International plc: a report on the merger situation (Cm 1611, August 1991)

<sup>134</sup> Which had been identified by the MMC as something that operated or may operate against the public interest MMC Cm 2340 (1993), paragraph 10.118(a)

<sup>135</sup> MMC (1993), paragraphs 10.136-10.138,



5.66 We have used Companies House data to investigate if there are any linkages between PDM and Pears of the type prohibited by the undertaking. We can find no evidence that PDM holds any interest or influence in Pears operations or that any PDM director holds a managerial position within the company. PDM have also explicitly assured the OFT that that is the case. Although the companies trade OTMS material between one another, we can find no evidence that PDM has any influence over the activities of Pears of the sort regulated by the undertaking.

### Views of third parties

5.67 Some third parties within the meat processing industry believe that PDM and Pears do not operate entirely separately of one another. However no evidence has been provided to substantiate that view.

### Compatibility with Competition law

5.68 Moreover, PDM's share of supply of the animal waste rendering market would be likely to trigger the application of the merger control provisions of the EA02, were they to gain such an interest in future.

### Conclusion

5.69 The OFT believes that the acquisition of the Market Harborough plant by J G Pears, a significant renderer with no links to PDM, constitutes a change in circumstances since the undertakings were given and that by reason of the change that the undertaking is no longer appropriate. In addition this undertaking does not materially enhance the merger provisions of the EA02. Therefore we recommend that PDM should be released from this undertaking.

### Conclusions on Undertakings

5.70 The OFT has found that the undertakings given by Forrest and the parts of the undertakings given by PDM on certain pricing issues remain appropriate, in the

absence of a relevant change in circumstances to the market. Therefore it will provide no advice to the CC to vary, revoke or supersede these undertakings.

5.71 The OFT however has found relevant changes that have occurred in the market which constitute a change of circumstances such that other undertakings are no longer appropriate. A description of the specific changes for each undertaking is explained above. We also note that in some cases alternative, and preferable, methods to address the concerns in the undertakings are available which support the removal of these undertakings. We therefore recommend that PDM should be released from the following undertakings:

**Undertaking 1 (1) b** – conditional purchases

**Undertaking 3** – acquisition of animal waste enterprises

**Undertaking 4** – accountancy information

**Undertakings 5-8** – gut room operations

**Undertaking 9** – Market Harborough plant

**Undertaking 10** – consequential amendments to remove references to issues in removed undertakings

**Undertaking 11b** – provision of information by auditors

**Undertaking 12** – appointment of auditors

# ANNEXES

---

## A The Undertakings

### PROSPER DE MULDER

#### Part I: Conduct of the PDM Enterprise

##### Price discrimination and conditional purchases

1. – (1) The company will not, and will procure that no PDM Undertaking will:

(a) in acquiring Animal Waste of comparable quality, in comparable quantities and in comparable market conditions, discriminate in the prices it pays, or the charges it makes for collection, with the intention of harming the interests of a competitor or

(b) purchase or collect, or offer to purchase or collect, any grade of Animal Waste from any person on condition that such person supplies or will supply Animal waste of a higher grade to any PDM undertaking.

(2) Without prejudice to the generality of paragraph (1) (a) above there shall be taken to be an infringement if, within six months of any PDM Undertaking losing a contract to a competitor any PDM Undertaking enters into a contract with a customer of that competitor at a price which is discriminatory within the meaning of that paragraph.

##### Publication of price information

2.– (1) The company will ensure that there is published in each edition of the Meat Trades Journal, the information set out in the first schedule. The information shall be compiled in respect of each week ending on a Sunday, and shall be published not later than 14 days from the end of each such week.

(2) The Director General may require the use of a different form of information or another publication.

### **Acquisition of animal waste enterprises**

3. The Company will not directly or indirectly acquire Control of the whole or part of an Enterprise engaged in rendering or collecting Animal waste unless the Director General has informed the Company in writing that in his opinion the acquisition of Control operates, or may be expected to operate, in the public interest.

### **Accounting information**

4. – (1) The company will prepare consolidated accounts for the PDM Enterprise:
- (a) which comply with all the requirements of the Companies Act 1985 (as amended) in relation to their compilation;
  - (b) in relation to which paragraph 55 (5) of Schedule 4 to the Companies Act 1985 (directors' discretion to exclude certain information) shall not apply;
  - (c) which include a segmental analysis distinguishing between the activities of red meat waste rendering, poultry waste rendering, gut-room operation and other business and which record in respect of each segment:
    - (i) turnover
    - (ii) an appropriate measure of volume
    - (iii) operating profit before interest and tax
    - (iv) net assets (the value of which will, where necessary be apportioned between each segment according to the best estimates of the directors of the Company)
    - (v) the number of employees, and

- (vi) the manner in which revenues, costs, assets and liabilities have been calculated and apportioned between each segment, and
  - (d) which show full details of any payment made or financial assistance given by a PDM undertaking, its directors, managers, proprietors, agents or related parties to any person engaged in the Animal Waste or any related industry.
- (2) For the purposes of paragraph (1) (d) above 'financial assistance' includes:
- (a) financial assistance given by way of gift,
  - (b) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver,
  - (c) financial assistance (other than trade credit extended in the ordinary course of business) given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when in accordance with the agreement any obligation of another party to the agreement remains unfulfilled, or by way of the notation of, or the assignment of rights arising under, a loan or such other agreement, or
  - (d) any other financial assistance given by a person the net assets of whom are thereby reduced to a material extent or who has no net assets.
- (3) The accounts prepared under paragraph (1) need not contain information relating to any PDM undertaking:
- (a) which falls within that description only because it is Controlled by an officer of a body corporate within a Group containing the Company,
  - (b) with which, during the accounting period in question no PDM Undertaking has entered into or performed a contract, and

(c) to which no PDM Undertaking has during the period in question been at any time indebted.

(4) The Company will ensure that a copy of the accounts prepared under paragraph (1) above shall:

(a) be sent to the Director General within nine months of the end of the Company's accounting year, together with a report from the Company's auditors to the effect that the accounts give a true and fair view of the PDM Enterprise as if it were a Group, and

(b) be published by being made available on demand to anyone who requests a copy after the accounts have been sent to the Director General under sub paragraph (a) above.

(5) The company will, within three months of the mid-point of its accounting year, deliver to the Director General an unaudited consolidated profit and loss account in respect of the first half of that year for the PDM Enterprise, and will make copies available as provided in paragraph (4) above.

## **Part II: Gut-room contracts**

### **Separate conduct of gut-room activities**

5. The Company will ensure that:

(a) no PDM Undertaking other than PDM (Abattoir Services) Limited operates a gut-room in an abattoir; and

(b) PDM (Abattoir Services) Limited carries on no business accept the operation of gut-rooms in abattoirs.

### **Monthly and annual statements**

6. – (1) The Company will ensure that:

(a) there is prepared each month, in respect of each gut-room operated by PDM (Abattoir Services) Limited, a statement in the form set out in the second schedule or such other form as the Director General may specify,

(b) there is sent to the Director General each year:

(i). within three months of the end of the relevant accounting period, a statement in which the twelve monthly statements are summed to give an annual total and a report on the matters described in paragraph (2) below, and

(ii). within nine months of the end of the relevant accounting period, a similar statement, together with a report from the auditors to the effect that it has been properly prepared, is consistent with the audited accounts of PDM (Abattoir Services) Limited, and can be reconciled with the monthly statements.

(3) The report under clause 6 (1) (b) (i) above shall propose for the current year, having regard to the matters listed in paragraph (3) below:

(a) a Standard Yield, being the estimated output of saleable product derived from each tonne of Animal Waste supplied to PDM Undertakings from gut-rooms, and

(b) a Standard Processing Profit, being an estimate of the profit per tonne of Animal Waste supplied to PDM Undertakings, from gut-rooms, which would ensure a fair return from the processing of such waste.

(4) The matters to which regard is to be had under paragraph (2) above are

(a) the yield of product, particularly fat, achieved in the previous accounting year,

(b) the rate of return on capital on an estimated net replacement cost basis in that year,

(c) the tonnages processed in that year, and

(d) any matters which can reasonably be anticipated to be relevant in the current year.

(4) The Director General may make such alterations to the proposal as he sees fit, and if he notifies an altered Standard Yield or Standard Processing Profit to the Company those figures shall be used for the purposes of the calculation under clause 7(3) below instead of those proposed.

### **Accounting principles**

7. (1) The following principles shall be used in preparing the statements under clause 6 above.

(2) There shall be shown as income on the gut-room statement:

(a) all revenue received from persons other than PDM Undertakings for the products of the gut-room business,

(b) where products are supplied to another PDM Undertaking,

(i) in respect of products other than Animal Waste, an amount equivalent to their market price, and

(ii) in respect of Animal Waste, an amount for each tonne calculated under paragraph (3) below.

(3) The amount shown under paragraph (b) (ii) above shall be calculated for each month in the following manner:

(a) take the gross revenue per tonne received from the sale of products obtained by processing Animal Waste,

(b) Apply to that figure the Standard Yield so as to produce an estimate of the contribution to such revenue of each tonne of Animal Waste acquired in the month in question from the gut-room,



(c) deduct the Standard Processing Profit for each tonne, and the expenditure, per tonne, of the PDM enterprise in the previous month on:

(i) the processing of Animal Waste, no account being taken of the cost of purchase or transport, and

(ii) overheads and office costs, except those attributable to activities other than Animal Waste processing and gut-room operation.

### **Making, pricing and performance of contracts**

8. – (1) The Company will ensure that within twenty four hours of the offer of a price for a gut-room contract there is supplied:

(a) to the abattoir, written confirmation of the terms offered, and

(b) to the Director General, an estimate of the monthly income and expense in respect of each gut-room set out in the form required by clause 6 on the principles of clause 7.

(2) The company will ensure that PDM (Abattoir Services) Limited will not:

(a) enter into or offer a price for any gut-room contract unless, on the basis of reasonable estimates, the total revenue expected to accrue from the performance of the contract exceeds the total expected direct and indirect costs attributable to the entry into and performance of the contract, or

(b) conduct its affairs in such a manner that there is a cross-subsidy:

(i) from one gut room to another, or

(ii) from any other PDM Undertaking to PDM (Abattoir Services) Limited;

(3) For the purposes of paragraph (2) above:

(a) revenue and costs shall be estimated in accordance with the principles for the preparation of statements under clause 7; and

(b) each gut-room shall be considered separately for the purpose of assessing cross-subsidy, whether or not other gut-room are operated by PDM Undertakings for the same abattoir operator.

### **Part III: The Market Harborough plant**

9. – (1) The company will ensure that no PDM undertaking will directly or indirectly:

(a) hold any interest in the Market Harborough plant,

(b) hold any interest carrying an entitlement to vote at meetings of a company which holds an interest in the Market Harborough plant, or permit any director or employee to hold a directorship of, or managerial position in, such a company, or

(c) participate in the formulation or making of, or influence, or attempt to influence the policy of any person with respect to the carrying on of any business relating to the Market Harborough plant.

(2) In this undertaking 'the Market Harborough Plant' means the plant consisting of Animal Waste processing machinery situated at the premises formerly leased by the Company at Gallow Hill, Market Harborough, Leicestershire, on 25 October 1994.

### **Part IV: Interpretation and General**

#### **Interpretation**

10. – (1) In these undertakings:

'Animal' includes any bird, but does not include any fish except insofar as fish are included in butchery waste,

'Animal Waste' means animal material which is acquired for processing in rendering plants,

'The Company' means Prosper De Mulder Ltd,

'The Director General' means the Director General of Fair Trading,

'Group' means a group consisting of a parent company and its subsidiary undertakings, both terms being construed as they are for the purposes of Schedule 5 to the Companies Act 1985 (which relates to the preparation of group accounts),

'The PDM Enterprise' means all the PDM Undertakings,

'PDM Undertaking' means the Company, any body corporate within a Group containing the Company, any Enterprise Controlled by any officer of any such body corporate, by any of the persons referred to in paragraph 4.7 of the Report or by any Associated Person of any person described in this definition.

'Standing Yield' and 'Standard processing Profit' have the meanings given them by clause 6(2)

'The Report' means the report by the Monopolies and Mergers Commission on the Supply of Animal Waste in England and Wales and in Scotland (Cm 2340, September 1993),

(2) Expressions used in these undertakings have the meaning which they bear in the Fair Trading Act 1973: in particular the following expressions have the meaning ascribed to them by the sections indicated:

Associated Person – section 77 (4),

Control – section 65 (3),

Enterprise – section 63 (2).

## **Information**

11. The Company will ensure that:

- (a) the Director General is provided with such information as he may reasonably require from time to time to monitor compliance with these undertakings, and
- (b) the auditors of any PDM Undertaking will respond fully, promptly and directly to such inquiries as the Director General may make of them.

### **Auditors**

- 12. For the purposes of the accounts and statements described in clauses 4 and 6 the Company will:
  - (a) appoint only such auditors as are approved by the Director General, and
  - (b) ensure, if the Director General so requires by three months' notice in writing, that such registered auditors as he may specify are appointed in their stead.

### **Replacement of 1986 Undertakings**

- 13. The Undertakings given by the company to the Secretary of State on 9 May 1986, shall cease to have effect on 1 February 1995, these undertakings shall take effect on that day and:
  - (a) the first publication of price information (clause 2 ) shall take place on 2 February 1995,
  - (b) the first accounts (clause (4)) shall be sent to the Director General by 31 December 1995,
  - (c) the first half-yearly, unaudited, account (clause 4 (5)) shall be sent to the Director General by 31 December 1994,
  - (d) the first statements (clause 6) shall be sent to the Director General by 30 June 1995 and the first audited statement by 31 December 1995

**Animal waste schedule: Prosper De Mulder Ltd**

**Averages – all abattoirs week ending**

<b>ABATTOIR SIZE</b>	<b>10 – 50 TONNES PER WEEK</b>	<b>OVER 50 TONNES PER WEEK</b>	
<b>Average £/Tonne</b>	<b>Change on week (£/T)</b>	<b>Average £/Tonne</b>	<b>Change on week (£/T)</b>

**RED MEAT**

Best fat

Other fat

Bones

Hard offal

Other offal

SBO

**POULTRY**

Carcass

Offal

Feather

**ALL SPECIES**

Blood

**Averages – Region: -**

<b>ABATTOIR SIZE</b>	<b>10 – 50 TONNES PER WEEK</b>	<b>OVER 50 TONNES PER WEEK</b>	
<b>Average £/Tonne</b>	<b>Change on week (£/T)</b>	<b>Average £/Tonne</b>	<b>Change on previous month (£/tonne)</b>

**RED MEAT**

Best fat

Other fat

Bones

Hard offal

Other offal

SBO

**POULTRY**

Carcass

Offal

Feather

**ALL SPECIES**

Blood

**Monthly gut-room statement**

**ABATTIOR: MONTH ENDED**

<b>UNITS</b>	<b>PRICE</b>	<b>INCOME</b>
	<b>(£)</b>	<b>(EXPENSE)</b>

**Headage income / (Expense)**

Cattle	ea.
--------	-----

Pigs	ea.
------	-----

Sheep	ea.
-------	-----

**Total headage:**

**Sales to third parties**

Sheep gut (runners)	Kg.
---------------------	-----

Pig gut (runners)	Kg.
-------------------	-----

Pig pancreas	Kg.
--------------	-----

Pigs maws	Kg.
-----------	-----

Spleens	Kg.
---------	-----

**Total third-party sales**

**Inter-company sales / (charges)**

Best fat	Kg.
----------	-----

Other fats	Kg.
------------	-----

Offal	Kg.
-------	-----

SBO Kg.

Other rendering materials: Kg.

**Total rendering materials:**

Tripes ea.

Manifolds ea.

Beef udders ea.

Reeds ea.

Sheeps paunches ea.

**Total other materials:**

**Operating expenses third-party:**

Wages men

National Insurance

Laundry

Water

Waste disposal

Transport

Depreciation

**Inter-company:**

Transport



Overheads

**Total operating expenses:**

**NET PROFIT / (LOSS):**

**AVERAGES FOR MONTH: .....**

Abattoirs serviced

Total material rendered

Protein meal yield

Oils/fats yield

Transport costs p/tonne

## **William Forrest and Son**

### **Price discrimination**

1. (1) The Company will not, in making contracts for the acquisition of similar quantities of Animal material for processing in rendering plants, in comparable conditions, discriminate in the prices it pays or the charges it makes for collection.  
  
(2) There shall not be taken to be an infringement of paragraph (1) above if the Company is able to show that the material in question was acquired in the reasonable expectation that it was needed for the efficient operation of a continuous operating plant, and that it was more efficient to keep the plant operating than to discontinue production.  
  
(3) 'Animal', for the purposes of this undertaking includes any bird but does not include any fish except insofar as fish are included in butchery waste.

### **Publication of price information**

2. (1) The Company will ensure that there is published, in each edition of the Meat Trades Journal, the information set out in the schedule; the information shall be compiled in respect of each week ending on a Saturday, and shall be published not later than 14 days from the end of each such week.  
  
(2) The Director General of Fair Trading may require the use of a different form of information or another publication.

### **Information**

3. The Company will ensure that the Director General of Fair Trading is provided with such information as he may reasonably require from time to time to monitor compliance with these undertakings.

**Animal waste schedule: William Forrest and Son**  
**Payments or charges in £/tonne Week ending**

ABATTOIR	0-20 TONNES		20-50 TONNES		50 +
	TONNES				
SIZE					
RED MEAT	AVERAGE	per cent	AVERAGE	per cent	AVERAGE
	£/TONNE	CHANGE	£/TONNE	CHANGE	£/TONNE
per cent		ON WEEK		ON WEEK	
CHANGE					
ON WEEK					
Best fat					
Other fat					
Bones					
Hard Offal					
Soft Offal					
SBO					

**AVERAGES FOR MONTH: .....**

- Abattoirs Serviced
- Tallow yield
- Bonemeal yield
- Transport costs p/tonne, p/mile

## **ANNEXE B: REPORTS BY THE MMC ON ANIMAL WASTE**

B.1 The MMC have prepared two reports on the animal waste rendering industry. Their findings are summarised below.

### **A report on the supply of animal waste in Great Britain (Cmnd. 9470), 1985**

- B.2 That report considered the rendering of red meat waste across Great Britain. It concluded that PDM provided an effective and reliable waste disposal service to the meat industry and that its activities did not unduly pollute the environment.<sup>136</sup>
- B.3 The MMC noted that PDM had pursued a policy of acquisition of smaller rendering and collecting business in order to expand its business. This growth and acquisition policy tended to diminish competition in the rendering industry. However the MMC found no evidence that PDM had pursued a deliberate policy of eliminating competition and that its acquisition policy had not been to the detriment of abattoirs.<sup>137</sup>
- B.4 It found that PDM had used its powerful position to respond aggressively to competitors seeking its raw material sources by offering unreasonably high prices.<sup>138</sup> The MMC found that PDM was able to use profits generated in certain areas of the country, where competition was weak, to outbid competitors in other areas, accepting a loss if necessary. The evidence further suggested that PDM had reacted to losses, or threatened losses, of customers by engaging in price wars on occasions of its own choosing and against selected competitors, one at a time.<sup>139</sup>

---

<sup>136</sup> *Animal Waste*, MMC (1985). Para: 9.10-9.13

<sup>137</sup> *Animal Waste*, MMC (1985). Para. 9.26-9.28

<sup>138</sup> *Animal Waste*, MMC (1985). Para: 9.34

<sup>139</sup> *Animal Waste*, MMC (1985). Para 9.34

- B.5 The MMC also investigated PDM's gut room policy and concluded that its attitude to pricing was similar to that as in rendering and that cross subsidisation was likely to be anti-competitive as it may lead PDM to pay prices that a competing gut room operator was unable to match.<sup>140</sup>
- B.6 The MMC concluded that PDM's pricing policy, in relation to both gut rooms and rendering was designed to exploit or maintain its monopoly position and restrict competition in rendering and operated against the public interest.<sup>141</sup>
- B.7 The MMC found that PDM's profits were not excessive.<sup>142</sup>

### **Recommendations**

- B.8 The MMC recommended that PDM should give an undertaking that it would not offer or enter into any gut room contract without having established that the gut room contract would be profitable. There should also be no cross-subsidisation between gut room businesses and other parts of the company's business or between individual gut room operations.<sup>143</sup>

### **Further Suggestions**

- B.9 The MMC suggested that if any further acquisitions by PDM of renderers or collectors were proposed, consideration should be given to referring these for investigation because of PDM's already dominant position in the market.<sup>144</sup>

## **A report on the supply of animal waste in England and Wales and in Scotland (Cm 2340), 1993**

---

<sup>140</sup> *Animal Waste*, MMC (1985). Para 9.42

<sup>141</sup> *Animal Waste*, MMC (1985). Para: 9.44

<sup>142</sup> *Animal Waste*, MMC (1985). Para 9.50- 9.51

<sup>143</sup> *Animal Waste*, MMC (1985). Para. 9.45, 9.60

<sup>144</sup> *Animal Waste*, MMC (1985). Para 9.62

- B.10 The Director General of Fair Trading referred this market for investigation again in 1992, this time the MMC were asked to deal separately with England and Wales, and Scotland and to include poultry waste. The MMC's findings were published in September 1993.

## Findings

- B.11 The MMC found that PDM processed 69 per cent of animal waste for rendering in England and Wales (including 64 per cent of red meat waste and 80 per cent of poultry waste). Forrest processed 71 per cent of red meat waste acquired for rendering in Scotland (all poultry waste produced in Scotland which requires rendering is processed in England). It concluded that the limited amount of materials transported across the border meant that the markets were separate and operated independently of one another.<sup>145</sup>

## England and Wales

### Pricing

- B.12 The MMC's main concerns related to PDM's pricing policies, which it found had changed little since the 1985 report. It noted that it had found instances where PDM had taken contracts at a loss, notably during the 1992 price war, but concluded that this had fallen short of predatory pricing in the cases which they investigated.<sup>146</sup>
- B.13 PDM were found to engage in discriminatory pricing, setting charges/payments which were unrelated to cost differences, and had made significantly lower charges or paid significantly higher prices when another renderer had bid for PDM's customers, sometimes pricing at a loss on contracts. The MMC concluded that these pricing practices squeezed PDM's

---

<sup>145</sup> *Animal Waste*, MMC (1993), Para. 10.37

<sup>146</sup> *Animal Waste*, MMC (1993), Para. 10.53

smaller competitors and restricted competition in rendering in England and Wales.<sup>147</sup>

- B.14. The MMC also remarked that there seemed to be generally little competition between renderers for supplies and noted that PDM had said that it did not generally compete for other renderers' supplies.<sup>148</sup>

### The 1986 undertakings

- B. 15 The MMC found that PDM had failed to fulfil its obligations to carry out the accounting and budgeting arrangements regarding gut room operations (mentioned above). PDM had been cross subsidising its gut rooms making it difficult for any competitor to match and therefore restricting competition in this area.<sup>149</sup>

- B.16 PDM also failed to pre-notify the OFT of the acquisition of 12 small rendering companies which deprived the OFT of information which could have enabled timely intervention to protect competition in rendering.<sup>150</sup>

### Accountancy

- B.17 The MMC concluded that PDM's financial results were not sufficiently transparent and distorted by the activities of unlimited companies which depressed the profits of the companies which did file accounts. This prevented customers and other renderers from having access to information which could have been used to redress the market dominance exhibited by PDM.<sup>151</sup>

---

<sup>147</sup> *Animal Waste*, MMC (1993), Para.10.54-10.62

<sup>148</sup> *Animal Waste*, MMC (1993), Para. 10.59

<sup>149</sup> *Animal Waste*, MMC (1993), Para. 10.67-10.68

<sup>150</sup> *Animal Waste*, MMC (1993), Para. 10.71

<sup>151</sup> *Animal Waste*, MMC (1993), Para. 10.87

## Scotland

### Pricing

- B.18 As with PDM, Forrest were found to have engaged in discriminatory pricing by making charges/payments which were unrelated to cost and that Forrest had made lower charges or paid higher prices when another renderers had bid for its supplies. This had the effect of squeezing its smaller competitors and restricting competition in rendering in Scotland.<sup>152</sup>

### Profitability

- B.19 The MMC found that Forrest exhibited a higher level of profitability than would have been the case under more competitive conditions and believes that the position would be likely to continue into the future.<sup>153</sup>

## Recommendations

### England and Wales

- B.20 The MMC recommended that PDM should be required to publish, on a weekly basis, a representative sample of prices and charges it had negotiated in the preceding work in order to give customers greater information.<sup>154</sup> In addition it recommended that PDM should be compelled to dispose of its moth-balled plant at Market Harborough to a purchaser approved by the OFT.<sup>155</sup>
- B.21 The MMC also made detailed recommendations relating to PDM's management of its gut rooms. If the OFT were not satisfied that they were run on an arms lengths basis, or if any aspect of the undertaking were

---

<sup>152</sup> *Animal Waste*, MMC (1993), Para. 10.98-10.105

<sup>153</sup> *Animal Waste*, MMC (1993), Para. 1.109

<sup>154</sup> *Animal Waste*, MMC (1993), Para.10.133

<sup>155</sup> *Animal Waste*, MMC (1993), Para.10.137



breached, PDM should be required to dispose of these operations to a purchaser approved by the OFT.<sup>156</sup>

B.22 PDM should be prevented from making any acquisitions unless the OFT has approved it as being in the public interest.<sup>157</sup>

B.23 The MMC further recommended that PDM should file consolidated accounts for the whole of the PDM enterprise, which should include detailed segmented information about its operations.<sup>158</sup>

## Scotland

B.24 The MMC recommended that Forrest should be required to publish weekly a representative sample of prices and charges which it has negotiated in the preceding week in order to provide more information to customers and place a restraint on the company's excess profits.<sup>159</sup>

---

<sup>156</sup> *Animal Waste*, MMC (1993), Para. 10.139-10.140

<sup>157</sup> *Animal Waste*, MMC (1993), Para. 10.141

<sup>158</sup> *Animal Waste*, MMC (1993), Para. 10.142-10.145

## ANNEXE C: THE MAJOR REGULATORY CHANGES AFFECTING THE ANIMAL WASTE RENDERING INDUSTRY AND THEIR EFFECTS SINCE 1996

DATE	REGULATION	IMPACT
15 Feb 1996	Legislation requiring dedicated lines for processing Specified Bovine Offals (high risk material) is imposed.	Additional costs for renderers - transport and re-direction of material - establishing dedicated lines.
16 Mar 1996	Ban on tallow exports as part of ban on exports of all bovine products - Commission Decision 96/239.	Market for tallow collapses.
16 Mar 1996	Ban on tallow exports as part of ban on exports of all bovine products - Commission Decision 96/239.	Substantial loss of market for MBM.
29 Mar 1996	Ban imposed on the use of any mammalian-based MBM for all livestock and horse feed.	Substantial loss of market for MBM.

<sup>159</sup> *Animal Waste*, MMC (1993), Para. 10.146-10.148

1 April 1996	Government support to meat industry starts.	Maintenance of charges/payments for collection of raw materials at pre-crisis levels.
28 Feb 1998	Government support to meat industry ends.	Increase in collection charges to reflect continuing loss in MBM market and very poor market for tallow.
1 Apr 1999	Introduction of Animal By-Products Order 1999, which revoked Animal By-Products Order 1992 (as amended). Brought into force all EU rules on disposal of animal 'waste'	Additional requirements for record keeping. Repealed by the animal by products regulation 2003.
1 Jan 2001	Ban on the use of all animal protein, including poultry meal and feather meal in livestock rations throughout the EU.	Initially the ban was a temporary measure, but decisions have yet to be taken as to whether some animal proteins can again be incorporated into feed rations. Result - further loss of markets for animal proteins.
2004	Application of the Animal By-Product Regulations (1774/2002)	Comprehensive rules covering the transport, storage, processing and use of animal by-

---

throughout the EU. Enforcement powers in England provided by a Statutory Instrument (Animal By-Products Regulation) and parallel legislation in Scotland, Wales and Northern Ireland.	products. Change in authorisations procedure and strengthened hygiene and segregation rules.
---	--

---

Source: Adapted from a UKRA table

## **ANNEXE D: THE RENDERERS**

### **Introduction**

D.1 This annex considers the renderers which operate in Great Britain and provides a brief description of their activities. Although the size of the companies is referred to in this section our analysis of market shares can be found in chapter four.

### **England and Wales**

#### **Prosper de Mulder**

D.2 PDM is a family owned private company that has been involved in animal waste rendering since 1926. It started to expand its operations, between 1970 and 1981, through the acquisition of 50 businesses involved in animal waste.<sup>160</sup> As in 1993, PDM is the largest rendering company operating in England and Wales.

D.3 In 1993, the PDM Group consisted of a group of companies without a single holding company. Since then it has adopted a divisional structure with Prosper de Mulder Limited functioning as a holding company for the organisations within the group.

D.4 Alongside rendering it has significant interests in pet food, food manufacturing and renewable power generation. Over the last decade partially as a reaction to the regulatory changes which have affected the industry, rendering as a proportion of PDM's turnover has declined as it has increasingly diversified its operations.

D.5 PDM operate from a number of plants, spread throughout England (see map 3.4 for details), each plant specialises in certain categories of materials as demonstrated in the table D.1 below, but also processes downgraded higher category material. PDM is able to provide a service across most of England

---

<sup>160</sup> MMC (1993), paragraph 4.10

and Wales (not including North Eastern England and West Wales) and covering all categories of material.

**Table D.1: Categories of materials processed at PDM facilities, 2004**

Plant	Category of material processed <sup>161</sup>
Widnes	Category one, OTMS
Exeter	Category one
Nuneaton	Category two
Silvertown, London	Category three
Nottingham	Poultry

Source: PDM

### J Pointon and Sons

D.6 J Pointon and Sons (Pointon) was formed from Gilberts By Products Limited, a small renderer which accounted for 5 per cent of red meat rendering in 1993.<sup>162</sup> It currently operates from a single facility in Cheddleton, Staffordshire and can render all categories of red meat.

D.7 Pointon has informed us that it has invested significantly in increasing its rendering capacity through changing its processing from single batch to continuous rendering. As a result it has increased its rendering capacity fivefold over the last decade and processes a significantly larger share of material than its predecessor did in 1993. It is approved to handle and process the complete range of red meat materials and provides a collection service throughout England and Wales.

<sup>162</sup> MMC (1993), Table 2.4

## J G Pears

D.8 J G Pears is a relatively new entrant to the animal waste market. In 1993 it was engaged solely in the collection of animal waste from abattoirs. Since that time it has acquired the rendering business of Smith of Hyde, when it exited the rendering industry. It also purchased a plant in Market Harborough from which it processes red meat materials. In addition to red meat processing it conducts poultry processing at Newark and Drinkstone, Suffolk. Pears is authorised to process all categories of material from across England and Wales.

## Other Renderers

D.9 A number of smaller renderers also operate throughout England and Wales. They operate from single sites and have more limited processing capacities. We have been informed that several of these companies have increased processing capacities significantly since 1993 (discussed further in chapter four). Table D.2 gives details of the largest of these renderers, the categories of material processed and the principal geographical areas of the country in which they operate.

**Table D.2: The other major renderers in England and Wales**

Renderer	Materials	Principal geographical area of Operation
Alba Proteins	Category three Poultry and feather	England and Wales, Southern Scotland
A Hughes	Category two Mammalian	Eastern England and Midlands
Canterbury Mills	Only OTMS material	
Dundas Chemical	Category one and two Mammalian	North of England

Harrison Poultry	Category three Poultry	North West and Midlands
Omega Proteins	Category one and two Mammalian	North of England
Peninsular Proteins	Only OTMS Material	
P Waddington	Category two Mammalian	North of England and Midlands

Source: DEFRA and renderers

## Scotland

### William Forrest and Son (Paisley) Limited

- D.10 Forrest is a long established rendering company which was established in 1865. When the MMC reported it formed part of Hillsdown Holdings in 1993. In 1997, along with a number of other Hillsdown subsidiaries, it was subject to a management buy out. The new management reconstituted these acquisitions as the Argent Group.
- D.11 At present Forrest forms part of the Argent Energy and produces materials largely for biodiesel and renewable energy production. Its principal operation remains rendering animal waste. It continues to be the largest rendering company in Scotland.
- D.12 Forrest operates from a single plant near Motherwell, using a depot at Lochgelly in Eastern Scotland to consolidate collections. The company is approved to process category one and two materials, and downgrades category three materials to one of the lower categories for processing. As in 1993 it does not engage in poultry waste rendering.

### Dundas Chemical (Mossbank) Limited

- D.13 Dundas Chemical operates from a single plant in Dumfriesshire, and is the other major rendering company in Scotland. In 1993 Dundas Chemical held a



market share of 11 per cent.<sup>163</sup> Over the last decade it has invested significantly in its processing facility to increase its rendering capacity. As a result it has been changed from a low volume batch production method to a continuous processing method capable of handling increased volumes of materials.

- D.14 Unlike most renderers in Great Britain, the company operates a cross border business, collecting materials from both Southern Scotland and Northern England. It is approved to process category one red meat waste materials and downgrades higher category materials to process them.

---

<sup>163</sup> MMC (1993), paragraph 2.24

## **ANNEXE E: PDM ACQUISITIONS AND JOINT VENTURES SINCE 1995**

### **Companies acquired and joint ventures formed**

[...]

PDM have also informed us about other acquisitions, in the form of some tangible assets and/or goodwill. These involved only the food industry, mainly fats and dry goods distribution.

[...]

Source: PDM

## **ANNEXE F: LETTER TO THE COMPETITION COMMISSION OF 8 MARCH 2007 CLARIFYING THE OFT FINDINGS AND RECOMMENDATIONS ON ANIMAL WASTE.**

Dear [...]

Thank you for your letter of 7 February 2007, in which you conveyed the Remedies Standing Group's ('RSG') request for clarification of the OFT's recommendation on the animal waste undertakings, in particular the impact that regulatory changes have had on the OFT's findings on the price discrimination and price information undertakings.

The OFT notes from the letter that the RSG emphasises the importance of regulatory change in the OFT concluding that the price discrimination and price information undertakings should remain in place. While regulatory changes were a factor, there were a number of other factors which the OFT considered which led to our conclusions. These are referred to in paragraphs 5.15 to 5.18 of the OFT report and are considered in more detail below. You also postulate that, if, in the absence of these changes, the OFT would have recommended release, the changes should not affect that recommendation. However, as a matter of approach, the OFT, during a review, does not, as such, attempt to separate out hypothetical situations, such as the absence of regulatory change but considers the circumstances of the market as a whole at the time of the review.

The OFT notes the comments of the RSG that the regulatory changes which have occurred in the industry would have reduced the incentives for discriminatory pricing. The OFT does not necessarily believe this to be the case. Whilst it is correct that the uses of the end products have been significantly restricted, there remains scope for both Prosper de Mulder ('PDM') and William Forrest & Son ('Forrest') to engage in discriminatory pricing by applying dissimilar prices to equivalent transactions; renderers, for example, can and indeed do charge different customers different prices for the collection of equivalent categories of material, although the OFT did not find any indication that this was done with the intention of eliminating

competitors. In addition, as described below in the consideration of wider market features, a number of factors could indicate that concerns about price discrimination may continue to arise in the future.

In addition, it is crucial for the RSG to understand that many industry stakeholders, particularly renderers (but not including PDM and Forrest which have co-operated fully with our enquiries), have been very tight lipped on these matters, and it is fair to say, have shown a reluctance to co-operate with the OFT's requests, despite repeated efforts. The OFT has thought long and hard about how it might gain further relevant information which would have aided an assessment of price discrimination and has pursued various avenues of inquiry. However, the OFT has concluded that there is no clear way of finding out more at this time, particularly against the current regulatory backdrop. The OFT does not intend to carry out any further work in this area since we believe we have exhausted these lines of inquiry such that we are unlikely to receive further useful information and that further information received (if any) would not justify the additional costs involved. Further investigation would also reduce industry certainty over the conclusions of this review with potentially detrimental impacts on the industry parties involved. Of course the CC is free to make such further inquiries as it may think necessary before reaching its final decision

I hope the following will further assist clarity on the conclusions which the OFT reached. As indicated above the conclusions on these undertakings are not due to the assessment of the impact of regulatory changes alone, but also to market features which the OFT identified during the review. The factors which influenced the OFT's conclusions are described in more detail below.

### **Regulatory Change**

On regulatory issues, as was emphasised by all industry parties which the OFT consulted during its review, there have been a number of significant regulatory changes which have fundamentally impacted on the operation of the rendering industry in the United Kingdom (described in chapter 3 of the OFT report) since the Monopolies and Mergers Commission ('MMC') reported in 1993. The particular regulatory changes which influenced the OFT's views on the price discrimination and price information undertakings were the

impact of the **Animal By Products Regulations** and the termination of the **Over Thirty Months Scheme ('OTMS')**, and its replacement by the **Older Cattle Disposal Scheme ('OCDS')**, which differs from the OTMS.

In order to assess whether PDM and Forrest were complying with their obligations in the undertakings not to price discriminate with the intention of harming a competitor, the OFT gained a significant amount of pricing information from both PDM and Forrest from between 2003 and 2005.

However in conducting the analysis of this information the OFT encountered a particular difficulty in that this period coincided with the passage and implementation of the **Animal By Products Regulations 2003**. These regulations had a significant impact on the animal waste rendering industry (a full description of their specific impacts can be found in paragraph 3.16 of the OFT report) through the introduction of the detailed categorisation system for animal waste.

This system led renderers to change historic patterns of processing, by transferring material to other plants, required them to serve a much wider range of customers (including commencing collections from a much wider range of retailers) and required them to segregate different categories of material. One renderer informed the OFT that this has impacted its costs structure (particularly transport costs) by forcing it to redirect significant amounts of material to other plants.

As the price discrimination analysis involved comparing pricing information from 2003-4 (covering some of the period before the implementation of the regulations) with 2004-5 (after the regulations took effect) the OFT was unable to be sure that the results gained were not reflective of the effect of changes in the regulatory environment.

In addition to the direct impact of these regulations, many of the renderers which the OFT contacted emphasised that the removal of the OTMS and its replacement by the OCDS in the later stages of the review was also likely to have a significant impact on the rendering industry. This would occur as a result of a significant reduction of volumes provided to the industry through

government operated schemes (from an average of over 240,000 tonnes per year between 2001-5 to less than 53,000 tonnes per year in 2007).<sup>164</sup>

In addition to this (as described at paragraphs 4.61-4.66 of the OFT report) this would mean a breakdown in the arrangements between renderers to process material on each other's behalf. As noted in paragraphs 4.64-4.65 the diversity of views amongst renderers as to the impact of this change resulted in significant uncertainty as to how these changes would impact upon the market and how it would operate into the future.

In addition the OFT noted in paragraph 4.13 of its report that the market share figures for PDM, in particular, were significantly affected by the transfers of material to other renderers which had occurred as a result of the OTMS. According to PDM's own estimates, as the volume of materials it transferred to other renderers declined after 2000 (when volumes available through the OTMS started to decline) its market share of red meat rendering in England and Wales increased from [...] in 2000 to [...] in 2004.

The OFT was therefore unclear about PDM's market share, particularly what its market share would be when it started to process material which had been transferred to other renderers since the implementation of the OTMS. This prevented us from coming to a view as to the exact extent of PDM's market power, as evidenced by its market shares, and its ability to engage in discriminatory pricing in a way that might have adverse effects.

The OFT, however, does know that it continues to have an important share of the market and that it retains the market lead. This suggests a strong possibility that it would still be in a position to price discriminate in a way that might adversely affect the market.

### **Wider Market Considerations**

In addition to the regulatory issues, the OFT also indicated in the report (at paragraphs 5.15 to 5.18) that there were other factors which militate against

---

<sup>164</sup> The 2007 estimate was provided by the Department of the Environment, Food and Rural Affairs.

the release of PDM and Forrest from the price discrimination and price information undertakings at the present time. The factors which were relevant were:

- The persistence of the factors which the MMC noted that enabled PDM and Forrest to price discriminate between customers (almost nationwide supplies, their size relative to other renderers, though in some ways diminished, still remain features of this market).<sup>165</sup>
- Concerns about discriminatory pricing have been raised by this industry on an intermittent basis, with concerns expressed by parties in the early 1990's and subsequently between 2001 and 2003. The OFT could not conclude that the absence of price discrimination concerns amongst larger renderers at this time means that concerns in this area have been eliminated.
- The concerns expressed to the OFT about the potential for price discrimination to develop into the future by some of the smaller renderers which the OFT contacted. As you will be aware the primary concern of the MMC in relation to price discrimination was ultimately the impact that it would be likely to have on smaller renderers with more localised operations.<sup>166</sup>

The combined impact of these market considerations, together with the regulatory changes, identified above, meant that the OFT could not be sufficiently certain that circumstances had changed sufficient to advise that the parties be released from the price undertakings.

---

<sup>165</sup> MMC 1993, Animal waste: A report on the supply of animal waste in England and Wales and in Scotland. Report Cm 2340. paragraphs 10.61 and 10.103.

<sup>166</sup> MMC 1993, Animal waste: A report on the supply of animal waste in England and Wales and in Scotland. Report Cm 2340. paragraphs 10.61 and 10.103.

These concerns did not arise in the case of the other undertakings where specific market features meant that there had been a sufficient change in circumstances which mean that they are no longer appropriate.

## Transparency

The OFT also noted that the pricing information provided in the Meat Trades Journal remains the only publicly available source of pricing information for most customers (with the exception of some retail customers who receive tariffs). PDM has clearly indicated to us that in the absence of the undertakings it would be unlikely to continue to provide this information. This would mean that customers would not be able to access any suitable, transparent pricing information in what remains a relatively impenetrable and complex area where prices are ultimately dependent on a wide range of factors and cost inputs (see paragraph 5.10 of the OFT report for further details). This would reduce a customer's ability to challenge renderers' prices with reference to clear, readily understandable, pricing information.

Whilst the OFT concluded that not all customers found this information useful, it is noteworthy that some customers do use this information as part of the negotiating process, a point which Forrest has clearly acknowledged (paragraph 5.24 of the OFT report).

In the light of these comments the OFT believes that there is no evidence to indicate that the remedy is not working and indeed it appears to increase the level of pricing transparency in the market and provide useful information to customers.

The OFT was also conscious of the limited administrative burden that the price discrimination and price information undertakings has on the companies involved weighted against the potential detriment which might return to the market in their absence.

Given the combination of regulatory uncertainty, the persistence of certain features which the MMC had raised concerns about and the apparent continued usefulness of the undertakings, the OFT could not be sufficiently certain that circumstances had changed sufficiently to advise that the parties be released from the price undertakings. Instead we concluded it would be



circumspect to review these undertakings at an appropriate point in the future after the impact of the regulatory changes in the market becomes clearer. This contrasts with other undertakings on which the OFT made specific recommendations to release because it was clear they had by virtue of a change of circumstance become largely redundant.

### **Barriers to evidence gathering/proportionality**

The OFT did consider seeking yet further information from both PDM and Forrest, as well as other industry parties, to establish with greater certainty any continued persistence of price discrimination.

The OFT has limited information gathering powers relating to information from parties which are not subject to the undertakings.<sup>167</sup> The OFT did not consider it proportionate to make further requests of customers and competitors about price discrimination at this time. There was no reason to think such further action would bring forward any new information and there was no obvious information to be requested which the OFT had not already asked for which had not been forthcoming. We were also conscious of both the burden this would place upon the rendering industry and that such further work (which the OFT did not anticipate bearing new fruit) would extend the period of uncertainty in the industry as to the results of this review. [...]. Had the OFT established that useful information was likely to be forthcoming, taking such a step may have been reasonable. In the circumstances it was not considered it would be reasonable.

---

<sup>167</sup> The undertakings require Forrest and PDM to provide information to the OFT to assist with monitoring of the undertakings.