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Business, Innovation and Skills
Committee

Mergers, acquisitions and takeovers: the takeover of Cadbury by Kraft

Ninth Report of Session 2009–10

*Report, together with formal minutes, oral and
written evidence*

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The Business, Innovation and Skills Committee

The Business, Innovation and Skills Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Innovation and Skills. On 5 June 2009, the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills become the Department for Business, Innovation and Skills. On 1 October 2009 the Business and Enterprise Committee was renamed the Business, Innovation and Skills Committee to reflect that change. The Committee retained the same membership as the Business and Enterprise Committee.

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Summary

The Kraft takeover of Cadbury has proved to be an event which is likely to shape future public policy towards takeovers and corporate governance. It was marred particularly by the controversy over Kraft's statements regarding the future of Cadbury's Somerdale factory which was earmarked for closure. Kraft's initial indications that it would keep the factory open, which it reversed after gaining control of Cadbury, heightened the public's feelings of mistrust towards Kraft. Our Report scrutinises its handling of the closure of the Somerdale factory, sets out Kraft's future plans for Cadbury and considers the wider implications of takeover policy in light of Kraft's actions.

We are disappointed that Irene Rosenfeld, the Chairman and CEO of Kraft Foods Inc. did not give evidence in person. Her attendance at our evidence session would have given an appropriate signal of Kraft's commitment to Cadbury in the UK and provided the necessary authority to the specific assurances Kraft have now given to the future of Cadbury.

We conclude that Kraft acted both irresponsibly and unwisely in making its original statement that it believed that it could keep the Somerdale factory open. By doing so, Kraft has left itself open to the charge that either it was incompetent in its approach to the Somerdale factory or that it used a "cynical ploy" to improve its public image during its takeover of Cadbury. Its actions have undoubtedly damaged its UK reputation and has soured its relationship with Cadbury employees.

Kraft will now have to invest significant time and effort into restoring its reputation and regaining the trust of the public, its UK workforce, Government and ourselves. Kraft gave us a number of undertakings in respect of the future of Cadbury, which we set out in this Report. These commitments are now in the public domain, and therefore will be subject to close scrutiny over the next few years. We recommend that the Department for Business, Innovation and Skills monitors Kraft's compliance with its undertakings, and particularly those relating to Cadbury's world class Research and Development facilities.

In the wider public policy context, we express our concern that the takeover of Cadbury by Kraft was ultimately decided by institutional investors motivated by short-term profits rather than those investors who had the company's long-term interests at heart.

We welcome the Government's focus on the issue of 'short-termism' in decision-making on the future ownership of UK companies, and its efforts to engage with institutional fund managers as part of the process. We also welcome the fact that the Government and the Takeover Panel are considering a review of the rules and legislation governing takeovers in the UK. However, any review should not be a disguise for protectionism against foreign takeovers. It needs to address all takeover activity, whether entirely domestic or by foreign companies, to ensure that such activity is conducted in the best interests of the UK economy.

We encourage our successor Committee to take up where we have left off and conduct a detailed inquiry into these important issues and into the role of shareholders and managers of companies more generally. It is time to reconsider many aspects of corporate governance.

1 Introduction

1. Normally, our programme of work is focused on scrutinising Government policy. Occasionally we need to widen that focus in order to respond to unforeseen events. The takeover of Cadbury by Kraft, and the manner in which it was conducted, provoked a strong public reaction and has proved to be an event which is likely to shape public policy in the future. We therefore believed that it was important for us to consider the matter. The purpose of this Report is to present the evidence that Kraft gave to us on its plans for Cadbury and comment briefly on a number of proposals which have been put forward to reform the regulation of takeovers as a result of Kraft's acquisition of Cadbury.

2. On 12 January, before the takeover was completed, we took oral evidence from Professor Christopher Bones, Henley Business School; Jack Dromey, Deputy General Secretary and Jennie Formby National Officer, Food and Drinks Sector from Unite the Union; and Ian Lucas MP, Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills. At the time both Cadbury and Kraft were prevented by the City Code on Takeovers and Mergers from discussing the details of their respective positions in public and therefore did not give evidence.

3. Despite strong resistance to the bid, Cadbury's board capitulated a few days after we held our January evidence session. On 19 January Cadbury recommended Kraft's offer to its shareholders. Kraft received formal acceptance of its offer on 2 February and concluded the takeover.

4. At the start of its bid for Cadbury, Kraft announced its intention to keep open Cadbury's factory at Somerdale, which Cadbury had previously earmarked for closure.¹ On 9 February, after the takeover had been completed, Kraft announced that it was no longer able to deliver on that intention.² This reversal provoked a public outcry. We therefore decided to hold a second evidence session with senior representatives from Kraft to put its future plans for Cadbury under the spotlight.

5. On 16 March we took further evidence from Unite the Union and from Marc Firestone, Executive Vice President, Kraft; Trevor Bond, President, Cadbury, Britain & Ireland and Richard Doyle, HR Director, Cadbury, Britain & Ireland. We had extended the invitation to give evidence to Irene Rosenfeld, Chairman and Chief Executive Officer of Kraft, an invitation she declined to accept. Marc Firestone explained that Irene Rosenfeld was unable to attend because our evidence session clashed with a Kraft Board meeting in the United States.³ However, it was pointed out to Marc Firestone that the date of the session was arranged at Kraft's convenience,⁴ and had originally been planned for the beginning of March. We have subsequently received a letter from Irene Rosenfeld confirming that she endorses the content of the evidence given by Marc Firestone.

1 Kraft's Takeover Proposal document, 7 September 2009

2 BBC News, *Cadbury's Bristol plant to close*, 9 February 2010

3 Q 166

4 Q 167

6. Notwithstanding the seniority of Marc Firestone's position within Kraft, we strongly believe that Irene Rosenfeld herself should have given evidence before us, not least because the statements regarding Somerdale's future—its re-opening and then its closure—were made and announced by her. Irene Rosenfeld's attendance would have given an appropriate signal of Kraft's commitment to Cadbury in the United Kingdom and provided the necessary authority in respect of the specific assurances offered to us during our evidence session.

2 The closure of Cadbury's Somerdale factory

Background

7. The Somerdale Factory is seventy-five years old and began production when JS Fry & Sons merged with Cadbury and subsequently moved its business from Bristol to the Somerdale factory in Keynsham, near Bristol.⁵ On 3 October 2007, Cadbury announced its plans to close the factory with the loss of 500 jobs.⁶ Production at the factory would be transferred both to the company's Bournville plant in Birmingham and, by 2010, to a new plant in Poland. The latter would produce some, if not most of, the brands made at Somerdale including Curly Wurly, Fudge, Turkish Delight, Fry's Chocolate Cream and Cadbury's Mini-Egg.⁷

8. On 7 September 2009, Kraft announced that it believed it could reverse Cadbury's decision to close the factory. Irene Rosenfeld, Chairman and Chief Executive Officer of Kraft, stated that:

Our current plans contemplate that the UK would be a net beneficiary in terms of jobs. For example, we believe we would be in a position to continue to operate the Somerdale facility, which is currently planned to be closed and to invest in Bournville, thereby preserving UK manufacturing jobs.⁸

9. Even before the takeover, Unite the Union which represents a large proportion of the Cadbury workforce, expressed doubt about the authenticity of this pledge. Jennie Formby, National Officer, Food and Drinks Sector of Unite, explained:

I have been very disappointed by the fact that Kraft has persisted in repeating what appear to be assurances to the people in Keynsham which, as far as I can see, are very hollow. It has said it wants to keep a manufacturing facility in Keynsham. I have asked what that means [...] There is no meat on the bones at all. It has said continually that it does not know enough about it; it does not know how it is configured inside. We have said that surely a company of its experience has an idea of what it looks like inside because there are lots of things in the public domain. The reality is that there is no intention to come and save the jobs.⁹

In January, Professor Bones highlighted the fact that Kraft had reneged on similar promises in the past—most notably a promise to keep open Terry's factory in York when it acquired Terry's in 1993:

5 BBC archives, *Fry's chocolate factory is not about to be bombed, A letter from 1940*

6 Cadbury Press Release, *Cadbury Trebor Bassett Proposes Restructuring of UK Chocolate Manufacturing*, 3 October 2007

7 The Independent, *Strike threat over Cadbury's plans to move to Poland*, 13 November 2007

8 Kraft's Takeover Proposal document, 7 September 2009

9 Q 63

whilst all good intentions are spoken about in the process of an acquisition the track record intriguingly for Kraft was to shut the Terry's of York factory and move production—surprise, surprise—to Poland. Therefore, I do not look at the acquisition commitments perhaps with a great deal of credibility in terms of the comments made for the long term, but I appreciate that this time the circumstances may be different.¹⁰

10. On 9 February 2010, one week after the takeover was finalised, Kraft announced that it would not be able to keep open the Somerdale factory. Irene Rosenfeld declared that:

In our recent talks with Cadbury senior management, it became clear that it is unrealistic to reverse the closure programme, despite our original intent to do so. While this is a difficult decision, we have moved quickly to end any further uncertainty.¹¹

11. Following the announcement, Kraft faced a barrage of criticism. Unite accused Kraft of “a cruel manipulation”, describing the earlier commitment as a “cynical ploy” to gain favour for the bid.¹² Lord Mandelson, who had met Irene Rosenfeld, was also unimpressed with the way in which the announcement was managed:

A week ago [Irene Rosenfeld] would have known what announcement would be made, barely six days later. It would have been more honest if it had been more straightforward and straight dealing with the company and the workforce and also with the Government if she had told me what their intentions were.¹³

Kraft's explanation to the Committee

12. We questioned Marc Firestone, Executive Vice President, Kraft Foods Inc., on the rationale and the evidence which underpinned both the initial announcement that Kraft believed it could keep open the Somerdale factory and Kraft's subsequent reversal of that announcement.

13. He explained that in September 2009 Kraft believed that it could keep open both the Somerdale factory and the factory in Poland to service Cadbury's existing production requirements and Kraft's expanding production needs in Europe:

When we envisioned the combined manufacturing network of Kraft and Cadbury, we believed that we would be in a position to maintain production in Somerdale in the UK while also taking advantage of the new facilities that we did know Cadbury was building in Skarbimierz in Poland [...] Our capacity requirements were growing tremendously.¹⁴

He argued that:

10 Q 2

11 The Independent, *Kraft to close Cadbury factory near Bristol*, 10 February 2010

12 BBC News, *Dismay at Cadbury's closure plans*, 10 February 2010

13 BBC News, *Dismay at Cadbury's closure plans*, 10 February 2010

14 Q 232

the combined manufacturing footprint, the growth expectations that we had independently, the growth expectations that we had for the combined company, would in fact support the two facilities, one operating in the UK to service this market—Somerdale—and one operating in Poland to service Central and Eastern Europe.¹⁵

14. Marc Firestone asserted that this was a “rational business plan” and that the factors he set out “remain valid today”.¹⁶ He went on to explain that Kraft reversed its intention after the takeover had been completed because only then did it learn that Cadbury had transferred specialised machinery to the Polish factory which could only be used for producing certain chocolate products aimed at the UK market:

What we did not know was while the bid was progressing Cadbury was simultaneously operating Somerdale and installing tens of millions of pounds of equipment in Poland; equipment that is specific to their brands. That is not a customary process. They engaged in a process of what is called “parallel running”. While Somerdale was producing products, they were bringing on line in Poland the same products in parallel at tremendous cost. Normally when companies switch over from one factory to another they will build up stock in one and then open the other. During exactly the same time as our bid all of these tens of millions of dollars of new machinery specific to products such as Curly Wurly and others were going into the factories in Poland. No amount of resources would have given us access to a physically secured site that was operating in a confidential manner. Sir, I have seen it myself.¹⁷

However, he acknowledged that there were a significant number of factors that were unknown to Kraft at the time it made public its intentions:

What we were not aware of were the plans for the internal structure of the building. We were not aware of the status of the machinery going into that facility. We were not aware of the products that Cadbury was designing to make in that facility.¹⁸

15. Despite those unknown facts, Marc Firestone believed that Kraft had carried out significant research on the Polish factory:

Sir, we did Google it. We had satellite images of it and what those could only show was the exterior of the facility, they could not show the enormous investment in bespoke equipment that Cadbury was putting into that plant. It was confidential, and I believe Richard [Doyle] and Trevor [Bond] will back me up that that was not known to us or knowable to us publicly.¹⁹

16. When asked why Kraft chose to make its statement about Somerfield without first gathering firm evidence to prove the feasibility of the proposal, Marc Firestone asserted

15 Q 232

16 Q 232

17 Q 238

18 Q 256

19 Q 240

that Kraft had a “sound basis for believing we would be in a position to operate Somerdale and we made that statement in that way.”²⁰ He continued to assert that Kraft had acted responsibly:

We made the statement based on sound commercial logic and are terribly disappointed that we are not able to carry on, first, as I said earlier, because the workers were disappointed but, second, it was not what we had hoped commercially. Purely from a commercial perspective we indeed wanted to be able to use the greenfield facility in Poland for our existing requirements for Kraft’s large chocolate business in Central and Eastern Europe. We had a sound commercial reason for that, but that is not possible because unbeknownst to us while the bid was progressing equipment was going into the Polish factory.²¹

17. Marc Firestone did, however, acknowledge the damage that this had done, both to Kraft’s reputation in the United Kingdom and to its relationship with the Cadbury workforce. He expressed regret over how the situation had been handled:

I would like to take this opportunity before this Committee, to Parliament, Unite and my colleagues to say we fully understand that for over two years employees and colleagues at Somerdale had been through a closure process and that our statement of 7 September that [...] created uncertainty about the plans and on 9 February, when we announced that we would be unable to carry forward, hopes and expectations were dashed, as I said earlier, and we are terribly sorry about that. I personally am terribly sorry about that. I was asked earlier what role I had. I was there in the room when that statement was drafted and I do sincerely, personally, express my apology that we have created that uncertainty and we are not able to carry forward with that.²²

18. We are unimpressed with Marc Firestone’s explanation of the events surrounding the closure of the Somerdale factory. Kraft’s lack of knowledge about the advanced state of the Polish factory should have inspired caution, not least because public information readily available to the company had clearly stated that the Polish plant factory would be ready in 2010.²³ Furthermore, we find it curious that Kraft decided to highlight the future of just one of Cadbury’s 64 manufacturing sites located across the world.²⁴

19. We believe that Kraft acted both irresponsibly and unwisely in making its original statement that it believed that it could keep Somerdale open. A company of Kraft’s size and experience ought simply to have acted with better judgement. By making its announcement and the subsequent reversal Kraft has left itself open to the charge that either it was incompetent in its approach to the Somerdale factory or that it used a “cynical ploy” to cast a positive light on Kraft during its takeover of Cadbury. We can neither prove nor discount either conclusion. We are aware of speculation in the press

20 Q 238

21 Q 241

22 Q 231

23 October 2007; The Independent, *Strike threat over Cadbury’s plan to move to Poland*, 13 November 2007; FCO article, UK in Poland, *Cadbury’s chewing gum factory in Skarbimierz*, 18 February 2009

24 <http://www.cadbury.com/ourcompany/ourbusiness/ourbusinessunits/Pages/default.aspx>

that the Takeover Panel is examining this issue. We would expect this to be the case; such serious questions deserve the detailed scrutiny that only the Panel can give.

20. What is clear is that Kraft's actions in respect of Somerdale has undoubtedly damaged its reputation in the United Kingdom and has soured its relationship with Cadbury employees. It will now have to invest significant time and effort into restoring both.

3 Kraft's undertakings in respect of Cadbury

21. In our oral evidence session on 16 March, the Kraft management team set out its plans for the future of Cadbury. In this section we set out the undertakings given by that team. Most of those undertakings we can only note at this stage, Kraft's commitment to them will only be judged over time. However, Kraft's handling of its intentions in respect of Somerdale prohibit us from taking these undertakings at face value which is why we believe that Kraft's undertakings should be monitored by the Department for Business, Innovation and Skills.

Brand Management

22. Trevor Bond, a long-standing Cadbury employee and soon to be given responsibility in Kraft for leading all European markets, confirmed that Cadbury products would continue to be managed from the UK.²⁵ He also confirmed that Cadbury's brand names would not change under Kraft:

We have no plans to rename Cadbury Creme Eggs or Cadbury Dairy Milk into anything else; those are great brands that our consumers love, that our factories in the UK produce to a really high standard, and we intend to keep on providing consumers and customers with the products and the brands that they love.²⁶

This message was reaffirmed by Marc Firestone:

It is absolutely our plan to preserve the identity of the brands themselves as well as the identity of the company itself. We have heard questions about Bournville and the flags and the signs and so on. It is absolutely our intention that Cadbury will remain the name on the building; that Cadbury will remain the name on the flag.²⁷

23. Trevor Bond also confirmed that Dairy Milk would continue to be produced in the UK and that there were no plans to transfer abroad production of other products currently made in the UK.²⁸

24. We note Kraft's undertakings to continue to manage Cadbury from within the UK and that Dairy Milk and Cadbury's other products currently produced in the UK will continue to be produced here.

25 Q 175

26 Q 174

27 Q 176

28 Q 177, Q 182

Undertakings for jobs

Somerdale workforce

25. After announcing that it would not be keeping the Somerdale factory open, Kraft stated that it would honour Cadbury's previous undertakings including terms and conditions given to Somerdale workers affected by the closure.²⁹ Unite told us that Cadbury's senior management had informed the Union that Kraft would uphold those pledges made to the workforce by Cadbury.³⁰ Richard Doyle, HR Director, Cadbury, Britain & Ireland of Kraft, noted that as well as the severance packages available to employees, there was a Jobcentre facility on the site available to them and Cadbury had also undertaken a significant amount of on-site retraining for the employees.³¹

26. We note the fact that Kraft will honour Cadbury's undertakings given to the Somerdale workforce.

Cadbury workforce

27. In November 2009 Irene Rosenfeld stated that Kraft's "current plans contemplate that the UK would be a net beneficiary in terms of jobs".³² However, at the time, neither Unite nor the Government were able to extract any specific assurances or details from Kraft. In our first oral evidence session on 12 January, Jennie Formby, Unite's National Officer for Food and Drink told us:

We have asked for very specific guarantees. We have said that whatever we may think about Kraft taking over Cadbury and the way Cadbury operates at the moment clearly the people we represent are the workers, so if Kraft says that strategically it is very important and it will grow and develop the business, expand the markets and so on, fine; get on with it, but if that is the case it should have the confidence to give our members guarantees that it will not be making compulsory redundancies, that sites will not be shut, that the pension scheme will be saved, that terms and conditions will be safe and so on. Kraft has said that it cannot give us any such guarantee.³³

She also told us that both Cadbury and Kraft argued that the Takeover Code prevented them from discussing anything that would be deemed price sensitive, which included details of future plans for the workforce.³⁴ However, Jack Dromey, Unite's Deputy Secretary General, provided us with examples of where companies engaged in takeovers had sought early positive engagement with the Union:

We can give you two examples: one was Jaguar Land Rover where the prospective buyers—and there were a number—the union was able to meet with each one of

29 BBC News, *Cadbury's Bristol plant to close*, 9 February 2010

30 Q 131

31 Q 290

32 Kraft's Takeover bid document, 7 September 2009

33 Q 53

34 Q 50

them and talk to each one of them about their intentions for the future and guarantees for the future. Another example is TNT Logistics, when that was disposed of. It is not true that the takeover code stops you from having constructive discussions; it is just that Kraft sought to hide behind the takeover code.³⁵

28. Unite also asserted that even after the conclusion of the takeover, there had been little contact between senior management from Kraft and workers:

Mr Firestone has very recently, but only very recently, visited the Somerdale plant to talk to the shop stewards, but several weeks too late as far as we are concerned and certainly as far as our members are concerned there. Other than that, Kraft executives have been seen walking around the Bournville site.³⁶

29. Marc Firestone wished to provide clarity on the future of the Cadbury workforce and confirmed that there would be no compulsory redundancies amongst manufacturing employees for the next two years. He also added there would be no further plant closures in the UK:

First, I will say that we can commit that for a period of at least two years there will be no further closures of manufacturing facilities in the United Kingdom. I can also commit that, beyond any programmes which I have mentioned which have already been negotiated and announced for at least two years, there will be no further compulsory redundancies of manufacturing employees in the United Kingdom.³⁷

30. This commitment only extends to Kraft's employees within manufacturing. Redundancies in Cadbury's finance, legal and communications departments have already been announced,³⁸ and Marc Firestone was unable to give any further assurances about Kraft's headquarters in Cheltenham. He explained that Kraft would not need multiple facilities for administration and was currently in consultation about its administrative footprint.³⁹

31. We are disappointed that while there has been frequent contact between Unite the Union and Kraft's UK human resource team, Kraft's American senior management have yet to engage in any meaningful dialogue with the Union. We believe that it is vital that Kraft's senior management from the US meet representatives from Unite the Union and the workforce as a matter of urgency in order to start to restore trust.

32. We note Kraft's assurances that there will be no further compulsory redundancies amongst manufacturing employees and no additional plant closures in the UK for the next two years. However, a guarantee for a longer period would have been welcome. We strongly believe that it would be in both Kraft's commercial interests as well as the UK's national interest for Kraft to regard the existing manufacturing plants in the UK as long-term investments which require sustained investment to remain competitive and

35 Q 136

36 Q 123

37 Q 297

38 The Guardian, *Unions square up to Kraft to demand pay rise for Cadbury workers*, 4 March 2010

39 Qq302-303

at the leading edge of technology. Theoretically the undertakings given in respect of Dairy Milk guarantee the future not only of Bournville but also of Chirk, near Wrexham and of Marlbrook in Herefordshire, which supply the ingredients. However, we note the lack of a specific guarantee about the future of these two plants and we ask the Government to invite Kraft to provide further clarification of their intentions and to put the reply in the public domain.

Pensions

33. There have been a number of press reports voicing concern about the future of Cadbury's pensions under Kraft. Before the takeover, Cadbury was undertaking a consultation on pensions.⁴⁰ Following the takeover, the *Daily Telegraph* reported on 5 March 2010 that:

Kraft Foods is preparing to close the British confectioner's final salary pension scheme to new members, increase contributions from staff and cut up to 150 jobs. Kraft is due to unveil the findings of a long-running consultation into the future of Cadbury's pension scheme later this month. A spokesman for the US company admitted yesterday that the final salary scheme was "more than likely to be closed to new members" as he warned that pension schemes "have to be sustainable".

Reports in the local media near Cadbury's Bournville base suggested pension contributions could almost double but the spokesman said any potential increases would be gradual: "They will be phased in over time," he said. "They're not going to double overnight." Cadbury is known to have been considering the future of its pension scheme and while a formal consultation was opened in January, talks began some months before. The outcome of the consultation has yet to be formally decided and talks are "ongoing", the spokesman said.⁴¹

34. In an open letter to members of the Pension Fund, Kraft Foods and the Trustees of the Cadbury Pension Fund stated that:

Kraft Foods would like to take this opportunity to reassure you that the decision by the shareholders to accept Kraft Foods' offer has not undermined the security of your pension and that the Trustees and Kraft Foods are focused on protecting the pensions of all members.⁴²

35. Richard Doyle, a long-standing Cadbury employee and now Human Resources Director of Cadbury UK & Ireland within Kraft, is also a trustee of the Pension Fund. He told us that senior management in Kraft had given the Trustees a commitment to supporting pension arrangements, though there may well be ongoing changes to the pension scheme in order to make it affordable:

40 The Daily Telegraph, *Triple blow for Cadbury staff from Kraft deal*, 5 March 2010

41 The Daily Telegraph, *Triple blow for Cadbury staff from Kraft deal*, 5 March 2010

42 Joint letter to members of the Cadbury Pension Fund from Kraft Foods and the Trustees of the Cadbury Pension Fund

Kraft have been very clear that the way in which [the pension fund] will be dealt with and managed will be exactly the same as how Cadbury would have interacted on that, with a very clear commitment to supporting pension arrangements going forward. On the subject of the benefits themselves, we had engaged like the vast majority of UK businesses in looking hard at how we ensure the [...] pension arrangements [...] are sustainable and affordable in the long term. That does mean that we, Cadbury, have announced some changes and are in the process of consultation [...] Kraft have been very clear in committing to maintaining accrued benefits to date and to supporting the changes which Cadbury had already started to communicate both with the trustees and employees.⁴³

36. We both note and welcome Kraft's acceptance of its obligation to support Cadbury's existing pension arrangements.

Research and development

37. Cadbury funds significant scientific research expertise which is based at the University of Reading. The Reading Science Centre comprises Reading Scientific Services Limited (RSSL) and R&D team working for solely Cadbury. When RSSL was established in the late 1980s, its function was to provide technical out-sourced solutions for Cadbury and some other companies. However RSSL now conducts analysis, consultancy, product development and training work more generally for the food and drink, pharmaceutical, healthcare and consumer goods industries. It has also built a strong reputation for its work on allergen management and testing, investigating food contamination and training. RSSL still remains a wholly owned subsidiary of Cadbury.⁴⁴ Cadbury also has a chocolate innovation team based in Bournville which focuses on the production of chocolate.

38. Marc Firestone praised Cadbury's R&D capabilities:

Cadbury has excellent research and development capabilities in the UK and other countries, including at Reading, and we are committed to maintaining Reading. Much of what Reading does is actually for third parties, and it is a fascinating business model where they do work for pharmaceutical companies and non-competing food companies, and I am hopeful that business model remains because it is an excellent way for our own people to gain insights from other industries.⁴⁵

He also expressed his commitment to ensuring that RSSL remain in the UK:

We are committed to it—I want to be careful because I do not think anybody could ever say “in perpetuity”, but from what we have seen so far we certainly intend to maintain that operation, subject to the third party contracts. But, yes, Reading is something we see fitting very well. They do terrific research there, they have a very energetic, enthusiastic group of people, doing all sorts of great work on chocolate

43 Q 322

44 Food Manufacture, *Kraft visits Cadbury's research firm*, 8 February 2010

45 Q 297

and other products which services the worldwide chocolate business for both companies.⁴⁶

39. We note Kraft's commitment to maintain Cadbury's R&D facilities in the UK. We also note Mr Firestone's careful use of words and that there is no specific commitment to the current level of employment and world class skills in R&D at the centres of excellence at both Reading and Bournville. We invite Kraft to reflect on the reputational consequences for their company in the UK of not honouring the spirit of Mr Firestone's assurances and warm words. We ask the Government to invite Kraft to clarify its intentions and to put its response in the public domain.

Cadbury's philanthropy and corporate social responsibility

40. Cadbury's support for the community, its patronage of the Cadbury Foundation and commitment to Fairtrade⁴⁷ means that it enjoys an excellent reputation for pursuing goals of corporate social responsibility alongside corporate success. During our evidence session with Kraft we tested Kraft's commitment to those goals.

Fairtrade

41. One of Cadbury's most notable achievements in the area of corporate social responsibility in recent years has been to make Dairy Milk a Fairtrade product. In March 2009, Cadbury announced that Dairy Milk was to be certified as Fairtrade in the UK and Northern Ireland.⁴⁸ In August 2009 it announced that Dairy Milk would also be Fairtrade in Australia, New Zealand and Canada.⁴⁹

42. Cadbury sourced its cocoa from Fairtrade farmers in Ghana.⁵⁰ On its website, Cadbury set out its relationship with the Cadbury Cocoa Partnership:

In January 2008, the Cadbury Cocoa Partnership was established in partnership with the United Nations Development Programme, local governments, farmers and communities. This ground-breaking partnership aims to secure the economic, social and environmental sustainability of around a million cocoa farmers and their communities in Ghana, India, Indonesia and the Caribbean. Over ten years £45 million will be invested through the partnership to improve farmer incomes, develop communities and build partnerships. In January 2009 Cadbury announced that the Cadbury Cocoa Partnership was now active across 100 Ghanaian communities, marking the 100th anniversary of cocoa trading with Ghana.⁵¹

46 Q 298

47 Fairtrade is a charitable organisation which promotes better prices, decent working conditions, local sustainability, and fair terms of trade for farmers and workers in the developing world. By requiring companies to pay sustainable prices (which must never fall lower than the market price), Fairtrade addresses the injustices of conventional trade, which traditionally discriminates against the poorest, weakest producers. It enables them to improve their position and have more control over their lives.

48 The Independent, *Cadbury adopts Fairtrade source*, 4 March 2009

49 Cadbury's Press Release, *Fairtrade Cadbury Dairy Milk goes global as Canada, Australia and New Zealand take Fairtrade further into mainstream*, 25 August 2009

50 The Independent, *Cadbury adopts Fairtrade source*, 4 March 2009

51 <http://www.cadbury.com/ourresponsibilities/cadburycocoapartnership/pages/cadburycocoapartnership.aspx>

43. Kraft confirmed that it would uphold Cadbury's commitments to Fairtrade which were that:

- Dairy Milk will continue to be Fairtrade in the UK and Northern Ireland and in three more markets, Canada, Australia and New Zealand by early 2010;
- Green & Black's (which is owned by Cadbury) will move its entire range to Fairtrade by the end of 2011.⁵²

In addition, Marc Firestone emphasised Kraft's ongoing commitment to the Cocoa Partnership. He told us that Kraft would "absolutely stand behind" the Cocoa Partnership as well as "all the other existing agreements".⁵³ He explained that Kraft also had existing commitments with the Rainforest Alliance, a similar body to Fairtrade:

We have existing commitments and arrangements with Rainforest Alliance and what we have to do is find a time when those could be synchronised. There are long-term supply agreements with both companies, so it is not a matter of switching one to the other, or vice-versa; it is a matter of making sure they are both equally responsive to concerns about the environment, about the workers in the field and about social development.⁵⁴

44. However, Professor Bones told us in January that Cadbury's commitment to Fairtrade went further in terms of social responsibility than Kraft's commitment to the Rainforest Alliance:

The difference between the two models that strikes me is that Cadbury has a social perspective so its adoption of Fairtrade for Dairy Milk has increased those product sales as a whole by 25% in this country. It has taken Fairtrade from being relatively on the margin to right at the centre; it has added a huge amount of Fairtrade turnover in any category. Fairtrade guarantees a minimum price; the Rainforest Alliance does not but tries to encourage sustainable markets. That is the difference. Both are very creditable approaches. If you look at Cadbury you see it going one step further in terms of its belief about responsibility but some would argue that it is not necessarily a huge step further.⁵⁵

45. We note the commitment by Kraft to continue Cadbury's support for the Cocoa Partnership and uphold Cadbury's undertaking to extend its use of Fairtrade. Any dilution of Cadbury's commitment would reflect very seriously on Kraft's reputation and integrity.

52 Qq-326-327

53 Q 330

54 Q 331

55 Q 17

The Cadbury Foundation and Community Investment

46. A significant part of Cadbury's philanthropic legacy is its support for the Cadbury Foundation which gives grants to projects and partner organisations, mainly in the fields of education and employment.

47. Cadbury provided the following list of objectives regarding community investment:

- Contribute 1% pre-tax profit for Community Investment year-on-year;
- Encourage at least 25% of our employees to volunteer in the community;
- Encourage the inclusion of community objectives in the development of people, brands and reputation; and
- Build on partnerships to help address social, economic and environmental concerns.⁵⁶

In 2008, Cadbury in the UK contributed £1,225,409 in community investment and achieved an overall goal of contributing 1% pre-tax profit. This contribution included employee time, cash donations, gifts-in-kind and a small amount of management costs.⁵⁷

48. Kraft confirmed that it would uphold Cadbury's existing agreement to support the Cadbury Foundation. Marc Firestone told us that:

On Friday I confirmed personally to the Foundation that we are confirming their funding. They fund in three-year cycles and they had a pre-existing funding proposal for 2010, 2011, 2012. I personally informed them that we would continue that.⁵⁸

In that vein he told us that Kraft was committed to Cadbury's programme of community involvement:

What I can definitively commit to is that Cadbury's charitable activities, its community involvement and other things it has been doing for over a hundred years, will absolutely continue and I hope grow.⁵⁹

He went on to highlight the fact that volunteerism was also part of Kraft's ethos, and gave the example of Kraft's week of "volunteerism" last October in which over 10,000 employees took part.⁶⁰

49. We welcome the announcement that Kraft has confirmed the funding arrangements for the Cadbury Foundation for the next three years. We also note Kraft's undertaking to adhere to Cadbury's commitments for community investment. We look forward to seeing how Kraft will maintain and build upon Cadbury's heritage of philanthropy both during the initial three-year period and beyond.

56 Cadbury, *Community Investment in the UK 2008*

57 Cadbury, *Community Investment in the UK 2008*

58 Q 334

59 Q 338

60 Q 334

The Fry Club

50. The Fry Club started off as a sports and social club for its Somerdale employees and now has over 15 sports and entertainment sections ranging from skittles to football and netball to drama.⁶¹ Its website now reports that “with a period of transition due with the closure of the nearby Cadbury chocolate factory the Fry Club is getting ready to move into a brand new state-of-the-art facility within the next few years”. Marc Firestone confirmed that Kraft was fully committed to the Fry Club and that it was working with the community and the council to find the best possible use for the Somerdale site.⁶² In addition, Kraft is committed to rebuilding the Fry Club on the Somerdale site.⁶³

51. We welcome the commitment given by Kraft to rebuild and maintain the Fry Club at Somerfield.

The Environment

52. In 2007, Cadbury’s total CO₂ emissions were around 818,686 tonnes.⁶⁴ Cadbury had committed to achieving an absolute reduction in net carbon emissions of 50% by 2020. It was also committed to reducing its packaging and food waste. In the UK and Australia, Cadbury had been working with government-supported projects such as WRAP (the Waste and Resources Action Programme) and had signed up to the Courtauld Commitment in the UK.⁶⁵ Supporters of WRAP are committed to use better design to cut packaging waste by 2009, make absolute reductions in packaging waste by 2010 and identify ways to tackle food waste.⁶⁶

53. With regard to reducing CO₂ emissions, Kraft stated: “we will maintain the same aggressive intention as Cadbury’s target of [reducing net carbon emissions by] 50% by 2020.” Kraft also stated that it would uphold Cadbury’s commitments to reduce packaging and food waste.⁶⁷

54. We note that Kraft intends to uphold Cadbury’s commitments to the environment.

Conclusion

55. The Kraft takeover of Cadbury has been marred particularly by the controversy over the closure of Somerdale and has heightened the feelings of mistrust in which Kraft is held. Kraft now faces a significant challenge to restore its reputation in the United Kingdom. Our evidence from Kraft did, however, give some welcome clarity on Kraft’s intentions for brand management, the Cadbury workforce and the many philanthropic activities for which Cadbury is rightly admired. These commitments—

61 Fry club website, <http://www.fryclubconference.co.uk/>

62 Q 288

63 BBC News, *Cadbury’s Bristol plant to close*, 9 February 2010

64 Corporate Social and Responsibility Fact sheet 2007–08—environment and climate change

65 The Courtauld Commitment is a voluntary agreement aimed at improving resource efficiency and reducing the carbon and wider environmental impact of the grocery retail sector.

66 Corporate Social and Responsibility Fact sheet 2007–08—environment and climate change

67 Ev 56

which have been personally endorsed in writing to us by Irene Rosenfeld—are now in the public domain, and therefore will be subject to close scrutiny over the next few years. If Kraft is serious about restoring its reputation in the United Kingdom, it is vital that it delivers on all of them. Any back-tracking from these commitments, or any evidence that support management and other functions, especially Cadbury’s world class Research and Development, are indeed being transferred to the United States would be a serious breach of trust. We recommend that the Department for Business, Innovation and Skills monitors Kraft’s compliance to these commitments. If it is serious about them, Kraft will have nothing to fear from such scrutiny.

4 Government intervention

Short-termism in the market: the Kraft experience

56. The Kraft takeover of Cadbury highlighted the pivotal role played by institutional investors in large takeovers. During this inquiry, both Unite the Union and Professor Bones, from Henley Business School, argued that the Kraft takeover of Cadbury was driven by investors who had no interest in the long-term future of the company. As Jack Dromey, the Deputy Secretary General of Unite put it, the future of Cadbury was decided by “hedge funds in the form of boys wearing red braces who move in to make a quick buck at the time of a British icon’s vulnerability.”⁶⁸

57. In his written evidence, Professor Bones argued that the basis of short-termism lay in the structure of share-ownership with intermediating stakeholders, namely fund managers having shorter term horizons than the individual shareholders whom the fund managers represented:

This possible mis-alignment between the interests of the ultimate stakeholders in whose long-term interests the firm should be run, and those of the ‘intermediating stakeholders’, who may hold shares on their behalf for shorter term motives may result in a less than ideal outcome.

The obvious example of intermediating stakeholders would be fund managers (whether principal traders, pension fund managers or mutual funds). These intermediate stakeholders buy, hold, and sell stocks not only for reasons of changes in their underlying value, but also for shorter term motives—either bonus arrangements or, more professionally, because they have need for liquidity to finance other investments (or to cover other needs for cash) [...]. Long term stakeholders would of course prefer to continue to hold the stock until its value rose again, but they would be overruled by the short term interests of the intermediating stakeholders.⁶⁹

Professor Bones believed this to be a failure in the market because there was every chance that “the price agreed by those who will act on behalf of the ultimate owners of the company (i.e., the individual investors, insurance policy owners and pensioners/prospective pensioners) will not represent by a long way that which would be agreed in a perfectly informed market.”⁷⁰

58. Both Lord Mandelson and Ian Lucas MP, Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills, indicated that the Government was already taking steps to encourage fund managers to act with a longer term perspective in mind.⁷¹ Lord Mandelson told us that he had initiated discussions with institutional

68 Q 39

69 Ev 50

70 Ev 50

71 Q 69, Oral Evidence given by Rt Hon Lord Mandelson, First Secretary of State, Pat McFadden MP, Minister of State, Department for Business, Innovation and Skills; HC 299–i, 19 January 2010, Q 8

shareholders “about how their decisions and behaviour can be linked to long-term interests and value of the companies in which they have holdings”.⁷² Ian Lucas also told us that concerns about short-termism were being considered as part of a review undertaken by Sir David Walker⁷³ which “raised important issues relating to the opportunities for institutional investor engagement in the long-term interests of UK companies.”⁷⁴

59. Furthermore, Ian Lucas highlighted the fact that the Institutional Shareholders Committee was also developing a new Code with the aim of providing good practice for institutional investors when engaging with the UK-listed companies in which they invest.⁷⁵ That consultation is due to finish in mid-April with the results published shortly afterwards.

60. The issue of ‘short-termism’ in takeovers has recently been given far more prominence by Lord Mandelson. In his speech to the Mansion House he expanded on this theme:

In recent years, the UK Government has carried out a number of significant reforms to encourage the right kind of long-termism among company directors not least the directors’ duties in the 2006 Companies Act. We need an equivalent long-termism among company owners, especially institutional shareholders. These company owners need to combine short term activism on company strategy with long term commitments to the development of the companies they own.⁷⁶

61. In putting forward this view, Lord Mandelson returned to the case of the Kraft takeover of Cadbury:

In the case of Cadbury and Kraft, it is hard to ignore the fact that the fate of a company with a long history and many tens of thousands of employees was decided by people who had not owned the company a few weeks earlier, and probably had no intention of owning it a few weeks later.⁷⁷

62. We are deeply concerned by reports that the takeover of Cadbury by Kraft was ultimately decided by institutional investors motivated by short-term profits rather than those investors who had the company’s long-term interests at heart. As a template for takeovers, this is not in the interest of UK companies or the UK economy.

63. We welcome the Government’s focus on the issue of ‘short-termism’ in decision-making on the future ownership of UK companies, and its efforts to engage with institutional fund managers as part of the process. However, we are sceptical about the extent to which informal engagement alone can instigate any fundamental change in

72 Oral Evidence given by Rt Hon Lord Mandelson, First Secretary of State, Pat McFadden MP, Minister of State, Department for Business, Innovation and Skills; HC 299–i, 19 January 2010, Q 8

73 The Terms of Reference of the Walker Review of Corporate Governance of UK Banking Industry which was completed in November 2009 including looking at the role of institutional shareholders in engaging effectively with companies and monitoring of boards.

74 Q 69

75 Q 82

76 Lord Mandelson’s Mansion House Speech, 1 March 2010; <http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=411720&NewsAreaID=2>

77 Lord Mandelson’s Mansion House Speech, 1 March 2010

institutional shareholder behaviour, in particular where there are financial incentives for fund managers and others to act in the short term.

Possible areas for reform

64. In his speech to the Mansion House, Lord Mandelson set out a number of options for reform of regulations governing mergers and takeovers. These options included:

- Raising the voting threshold for securing a change of ownership to two-thirds;
- Lowering the requirement of disclosure of share ownership during a bid from 1% to 0.5% so companies can see who is building stakes on the register;
- Giving bidders less time to “put up or shut up” so that the phoney takeover war ends more quickly and properly evidenced bids must be tabled;
- Requiring bidders to set out publicly how they intend to finance their bids not just on day one, but over the long term, and their plans for the acquired company, including details of how they intend to make cost savings;
- Requiring greater transparency on advisors’ fees and incentives; and
- Requiring all companies making significant bids in this country to put their plans to their own shareholders for scrutiny.⁷⁸

65. In its written submission, Unite added to that list. It recommended:

- An extension of TUPE protections to cover mergers and takeovers by share transfer; and
- The right for workers’ representatives to negotiate protection of investment, jobs and terms and conditions.

66. The Union also argued in favour of a reform of shareholder rights to restrict voting rights to those shareholders who had owned shares for at least a year at a time of any bid.⁷⁹ Ian Lucas MP pointed out that companies are already empowered to give preferential status to long-term shareholders under the Companies Act 2006:

Many of the things that have been done in terms of giving preferential status to long-term shareholders could take place now in the UK under the Companies Act 2006, but the situation is that companies decide not to introduce that form of provision within their articles of association. The powers are there already. The issue is not so much to do with whether the legislative framework exists; it is more a matter of culture. One of the interesting aspects of UK businesses is that we tend to have a broader shareholder base than, say, companies in Germany.⁸⁰

78 Lord Mandelson’s Mansion House Speech, 1 March 2010

79 Ev 54

80 Q 88

67. The CBI agreed broadly with Lord Mandelson's recommendations but made the point that raising the voting threshold from 50.1% to two thirds of the shares might not by itself make much difference if the bid was recommended and, if it was not, the aggressor could fire the board, unless the rules for directors' appointments were also changed.⁸¹ On the other side, representatives in the City have warned that the Government should not intervene in the Code. One said:

If there was a politicisation of the code, it would be a disaster. The fact we have a Code policed by practitioners instead of civil servants is one of London's last remaining strengths as a financial centre. The Code has proved itself time and again to work very well, and the panel has been shown in the past to be able to adapt to best practice.⁸²

68. We also note that the Takeover Panel is conducting a consultation on reform of its Takeover Code. That consultation is due to close on 21 May 2010.⁸³

69. We welcome the fact that the Government is considering a review of the rules and legislation governing takeovers in the United Kingdom. We also welcome the current consultation by the Takeover Panel on its City Code on Takeovers and Mergers. Such consideration of the underlying issues must not be seen as protectionism against foreign takeovers but as seeking to ensure that all takeover activity, whether entirely domestic or by foreign companies, is conducted in the interests of the UK economy.

Public interest test and additional conditions

70. Under the current legislation, the Secretary of State for Business, Innovation and Skills may only intervene in takeovers by foreign companies in very specific circumstances. There are presently three public interest considerations specified in the Enterprise Act 2002 as legitimate bases for Ministerial intervention. These are:

- national security;
- media plurality, quality and standards; and
- the stability of the UK financial system.⁸⁴

It is also possible for the Government to intervene in mergers that fall under the EC Merger Regulation; generally being those larger merger cases that affect trade in more than one EC member state. European law currently specifies two grounds on which public interest interventions are possible: public security (equivalent to national security) and plurality and quality in the media.⁸⁵

81 The Times, *Britain must decide whether to welcome allcomers*, 3 March 2010

82 The Financial Times, *Prospect of stiffer rules for buying UK groups*, 25 February 2010

83 <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201001.pdf>

84 Ev 48

85 Ev 48

71. Professor Bones argued for “far greater specificity of the intentions of [the] potential acquirer regarding strategic assets of national importance” and that the “commitments the acquirer would be prepared to make in terms of identified strategic assets” should also be considered.⁸⁶ He also recommended that while Government intervention should not be aimed to “stop the deal going through” there would be benefits gained from it imposing conditions on an acquisition, regarding the protection of strategic assets (skill bases and centres of R&D).⁸⁷ He pointed out that in strategically important sectors such as energy, foreign owners were controlled through regulators such as Ofgem, but by contrast, there was no equivalent regulation covering manufacturing, in particular over what foreign owners could or could not do with assets of strategic importance.⁸⁸

72. Ian Lucas MP confirmed that a power to attach conditions relating to the relocation of manufacturing and Research and Development during any takeover would be “part of the debate.”⁸⁹ However, in supplementary evidence he told us that broadening the intervention criteria to include the national interest would require legislative change:

Any proposed new consideration to be specified in the Enterprise Act would need to be approved by a resolution of each House of Parliament. In addition, if it was to be relied upon also in European merger cases, it would need clearance by the European Commission. They would have to be satisfied that the consideration was legitimate and compatible with the objectives of the European Treaty, in particular in relation to the free movement of capital.⁹⁰

73. Lord Mandelson remained unconvinced that providing Government with the power to intervene in the public interest was either necessary or desirable. He feared that:

in those circumstances a government’s judgment and intervention could be too exposed to political lobbying and short-term populist pressures which are unable to make an assessment of long-term growth and value that might come from the move. It might give rise to capricious decision-making of one sort or another, depending on the ministers and their official advisers, and it can lead to a loss of transparency and a loss of predictability which at the moment makes the current UK regime open to investors from which, I just underline, we benefit a great deal.⁹¹

In his Mansion House speech, Lord Mandelson added that “Britain benefits from inward investment and an open market for corporate control internationally. A political test for policing foreign ownership runs the risk of becoming protectionist and protectionism is not in our interests.”⁹²

86 Q 7

87 Q 12

88 Q 16

89 Q 89

90 Ev 48

91 Oral Evidence given by Rt Hon Lord Mandelson, First Secretary of State, Pat McFadden MP, Minister of State, Department for Business, Innovation and Skills; HC 299–i, 19 January 2010, Q 13

92 Lord Mandelson, Mansion House Speech, 1 March 2010

74. Any reform of takeovers in the United Kingdom has to recognise that foreign direct investment is of great benefit to the UK economy. We agree with the Secretary of State that an extension of his powers to intervene would come with a risk that the takeover process would be determined by political lobbying rather than economic fundamentals. However, we believe that the Government should consider how other countries act to protect key national assets while at the same time retaining a liberal investment climate. In particular, it should consider how aspects of Research and Development which are in the United Kingdom's national interest may be protected in the event of foreign ownership.

75. While we have not taken sufficient evidence at this stage to enable us to come to a view on the merits or otherwise of extending the powers of intervention by the Secretary of State, we strongly believe that this issue should be considered as part of the wider debate on takeover regulations.

Conclusion

76. The takeover of Cadbury by Kraft has highlighted a number of important issues in respect of the way in which foreign takeovers of UK companies are conducted. It has been the catalyst for a wider debate, both in Government and in the City, about how takeovers are conducted. In highlighting the Kraft takeover of Cadbury, we have contributed to that debate which now needs to continue, and with urgency. Time does not allow us to consider the wider proposals for reform in detail but it is clear that the Companies Act 2006 has not resolved these major issues in corporate governance. We urge our successor Committee to consider this Report as a starting point from which to conduct a detailed inquiry into these important issues and into the role of shareholders and managers of companies more generally. Recent experience of the behaviour of boards and shareholders in situations ranging from the fall of RBS to the Kraft acquisition of Cadbury indicate that it is time to reconsider many aspects of corporate governance.

Conclusions and recommendations

Attendance by witnesses

1. Notwithstanding the seniority of Marc Firestone's position within Kraft, we strongly believe that Irene Rosenfeld herself should have given evidence before us, not least because the statements regarding Somerdale's future—its re-opening and then its closure—were made and announced by her. Irene Rosenfeld's attendance would have given an appropriate signal of Kraft's commitment to Cadbury in the United Kingdom and provided the necessary authority in respect of the specific assurances offered to us during our evidence session. (Paragraph 6)

The closure of the Somerdale factory

2. We believe that Kraft acted both irresponsibly and unwisely in making its original statement that it believed that it could keep Somerdale open. A company of Kraft's size and experience ought simply to have acted with better judgement. By making its announcement and the subsequent reversal Kraft has left itself open to the charge that either it was incompetent in its approach to the Somerdale factory or that it used a "cynical ploy" to cast a positive light on Kraft during its takeover of Cadbury. We can neither prove nor discount either conclusion. We are aware of speculation in the press that the Takeover Panel is examining this issue. We would expect this to be the case; such serious questions deserve the detailed scrutiny that only the Panel can give. (Paragraph 19)
3. What is clear is that Kraft's actions in respect of Somerdale has undoubtedly damaged its reputation in the United Kingdom and has soured its relationship with Cadbury employees. It will now have to invest significant time and effort into restoring both. (Paragraph 20)

Kraft's undertakings

4. We note Kraft's undertakings to continue to manage Cadbury from within the UK and that Dairy Milk and Cadbury's other products currently produced in the UK will continue to be produced here. (Paragraph 24)
5. We note the fact that Kraft will honour Cadbury's undertakings given to the Somerdale workforce. (Paragraph 26)
6. We are disappointed that while there has been frequent contact between Unite the Union and Kraft's UK human resource team, Kraft's American senior management have yet to engage in any meaningful dialogue with the Union. We believe that it is vital that Kraft's senior management from the US meet representatives from Unite the Union and the workforce as a matter of urgency in order to start to restore trust. (Paragraph 31)
7. We note Kraft's assurances that there will be no further compulsory redundancies amongst manufacturing employees and no additional plant closures in the UK for

the next two years. However, a guarantee for a longer period would have been welcome. We strongly believe that it would be in both Kraft's commercial interests as well as the UK's national interest for Kraft to regard the existing manufacturing plants in the UK as long-term investments which require sustained investment to remain competitive and at the leading edge of technology. Theoretically the undertakings given in respect of Dairy Milk guarantee the future not only of Bournville but also of Chirk, near Wrexham and of Marlbrook in Herefordshire, which supply the ingredients. However, we note the lack of a specific guarantee about the future of these two plants and we ask the Government to invite Kraft to provide further clarification of their intentions and to put the reply in the public domain. (Paragraph 32)

8. We both note and welcome Kraft's acceptance of its obligation to support Cadbury's existing pension arrangements. (Paragraph 36)
9. We note Kraft's commitment to maintain Cadbury's R&D facilities in the UK. We also note Mr Firestone's careful use of words and that there is no specific commitment to the current level of employment and world class skills in R&D at the centres of excellence at both Reading and Bournville. We invite Kraft to reflect on the reputational consequences for their company in the UK of not honouring the spirit of Mr Firestone's assurances and warm words. We ask the Government to invite Kraft to clarify its intentions and to put its response in the public domain. (Paragraph 39)
10. We note the commitment by Kraft to continue Cadbury's support for the Cocoa Partnership and uphold Cadbury's undertaking to extend its use of Fairtrade. Any dilution of Cadbury's commitment would reflect very seriously on Kraft's reputation and integrity. (Paragraph 45)
11. We welcome the announcement that Kraft has confirmed the funding arrangements for the Cadbury Foundation for the next three years. We also note Kraft's undertaking to adhere to Cadbury's commitments for community investment. We look forward to seeing how Kraft will maintain and build upon Cadbury's heritage of philanthropy both during the initial three-year period and beyond. (Paragraph 49)
12. We welcome the commitment given by Kraft to rebuild and maintain the Fry Club at Somerfield. (Paragraph 51)
13. We note that Kraft intends to uphold Cadbury's commitments to the environment. (Paragraph 54)

Conclusion

14. The Kraft takeover of Cadbury has been marred particularly by the controversy over the closure of Somerdale and has heightened the feelings of mistrust in which Kraft is held. Kraft now faces a significant challenge to restore its reputation in the United Kingdom. Our evidence from Kraft did, however, give some welcome clarity on Kraft's intentions for brand management, the Cadbury workforce and the many philanthropic activities for which Cadbury is rightly admired. These commitments—which have been personally endorsed in writing to us by Irene Rosenfeld—are now

in the public domain, and therefore will be subject to close scrutiny over the next few years. If Kraft is serious about restoring its reputation in the United Kingdom, it is vital that it delivers on all of them. Any back-tracking from these commitments, or any evidence that support management and other functions, especially Cadbury's world class Research and Development, are indeed being transferred to the United States would be a serious breach of trust. We recommend that the Department for Business, Innovation and Skills monitors Kraft's compliance to these commitments. If it is serious about them, Kraft will have nothing to fear from such scrutiny. (Paragraph 55)

Short-termism in decision-making

15. We are deeply concerned by reports that the takeover of Cadbury by Kraft was ultimately decided by institutional investors motivated by short-term profits rather than those investors who had the company's long-term interests at heart. As a template for takeovers, this is not in the interest of UK companies or the UK economy. (Paragraph 62)
16. We welcome the Government's focus on the issue of 'short-termism' in decision-making on the future ownership of UK companies, and its efforts to engage with institutional fund managers as part of the process. However, we are sceptical about the extent to which informal engagement alone can instigate any fundamental change in institutional shareholder behaviour, in particular where there are financial incentives for fund managers and others to act in the short term. (Paragraph 63)

Review of takeover regulations

17. We welcome the fact that the Government is considering a review of the rules and legislation governing takeovers in the United Kingdom. We also welcome the current consultation by the Takeover Panel on its City Code on Takeovers and Mergers. Such consideration of the underlying issues must not be seen as protectionism against foreign takeovers but as seeking to ensure that all takeover activity, whether entirely domestic or by foreign companies, is conducted in the interests of the UK economy. (Paragraph 69)
18. While we have not taken sufficient evidence at this stage to enable us to come to a view on the merits or otherwise of extending the powers of intervention by the Secretary of State, we strongly believe that this issue should be considered as part of the wider debate on takeover regulations. (Paragraph 75)

Conclusion

19. The takeover of Cadbury by Kraft has highlighted a number of important issues in respect of the way in which foreign takeovers of UK companies are conducted. It has been the catalyst for a wider debate, both in Government and in the City, about how takeovers are conducted. In highlighting the Kraft takeover of Cadbury, we have contributed to that debate which now needs to continue, and with urgency. Time does not allow us to consider the wider proposals for reform in detail but it is clear that the Companies Act 2006 has not resolved these major issues in corporate

governance. We urge our successor Committee to consider this Report as a starting point from which to conduct a detailed inquiry into these important issues and into the role of shareholders and managers of companies more generally. Recent experience of the behaviour of boards and shareholders in situations ranging from the fall of RBS to the Kraft acquisition of Cadbury indicate that it is time to reconsider many aspects of corporate governance. (Paragraph 76)

Appendix

Letter from the Chair to Irene Rosenfeld, Chief Operating Officer and Chairman, Kraft Foods Inc. (25 March 2010)

You will be aware that Marc Firestone gave evidence before my Committee on Tuesday 16 March. At that meeting Mr Firestone gave us a number of commitments regarding Kraft's future plans for Cadbury.

As you were unable to attend our evidence session it would be helpful, as the head of Kraft, if you could confirm that the commitments given by Mr Firestone are Kraft policy and that you stand by his testimony. This would confirm to us that we have absolute clarity on the future of Cadbury.

My Committee hopes to agree a Report on the matter on Tuesday 30 March. It would therefore be helpful if I could receive your response by Monday 29 March.

I apologise for the short notice of this request but I am sure that you appreciate that with a general election looming, we are under a very tight timetable.

I would very much like the opportunity to discuss your plans for Cadbury, in person, in the next Parliament.

I thank you for your cooperation in this matter.

Letter from Irene Rosenfeld, Chief Operating Officer and Chairman, Kraft Foods Inc. to the Chair of the Committee (29 March 2010)

Thank you for your recent letter. We welcomed the opportunity to give evidence to the Committee.

As Marc Firestone stated in his evidence, he appeared at my request and with authority to give commitments on behalf of the company. Therefore I am, of course, happy to endorse his testimony.

I hope this letter reaches you in time to fit in with your timetable for drafting the Committee's report.

Formal Minutes

Tuesday 30 March 2010

Members present:

Peter Luff, in the Chair

Roger Berry

Mr Brian Binley

Mr Michael Clapham

Miss Julie Kirkbride

Ian Stewart

Mr Anthony Wright

Draft Report (*Mergers, acquisitions and takeovers: the takeover of Cadbury by Kraft*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 76 read and agreed to.

Summary agreed to.

A paper was appended to the Report as an Appendix.

Resolved, That the Report be the Ninth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Written evidence was ordered to be reported to the House for printing with the Report.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till a time and date to be fixed by the Chair.]

Witnesses

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** First Joint Report of Committee's on Arms Export Controls

** First Joint Report of Committee's on Arms Export Controls

Oral evidence

Taken before the Business, Innovation and Skills Committee on Tuesday 12 January 2010

Members present

Peter Luff, in the Chair

Roger Berry
Mr Michael Clapham
Mr Lindsay Hoyle
Miss Julie Kirkbride

Lembit Öpik
Ian Stewart
Mr Anthony Wright

Witness: **Professor Christopher Bones**, Henley Business School, gave evidence.

Q1 Chairman: Professor Bones, welcome to this one-off evidence session which has the title “Company takeovers, mergers and acquisitions” but whose context is Kraft’s bid for Cadbury which has prompted our interest in a subject to which politicians have given much attention over the years. We are very grateful to you for coming before us at our request. You are an academic who takes an interest in these issues but you also have a close personal interest in the affairs of Cadbury. It may be helpful if we first invite you to explain your involvement with and interest in Cadbury.

Professor Bones: Clearly, I am a former employee of Cadbury Schweppes, as it then was. I stepped down in 2004 to take my current job as head of the business school. I am still a shareholder in Cadbury Schweppes. I have 5,000 shares and I am a deferred pensioner so I have an interest in this.

Q2 Chairman: When I invited you to participate in this session I did not know that, but I think it will help rather than hinder the Committee. It gives them a perspective which they will find very valuable. Perhaps I may say how grateful I am for your thoughtful and helpful written evidence. As a West Midlands MP myself I look at the specifics of Cadbury and ultimately the general underlying principles which may also be important in the future. In your paper you argue that the closure of Cadbury’s plants in Birmingham and Sheffield would have a wide and damaging effect on manufacturing in those areas and, I might add, to some of the agricultural interests in that locality. Can you expand on the specific concerns for the wider manufacturing base?

Professor Bones: Manufacturing for any international business is now a matter of cost and management control. Inevitably, particularly for those companies that can manufacture in different countries decisions are made that offset cost alongside the skill and expertise. Cadbury’s strategy has been to maintain skill bases in Birmingham and Sheffield, the former around its chocolate production and the latter around its sugar activity, and it has built a need for critical skills in engineering, manufacturing, planning, procurement and so on in both areas. They took the strategic decision to step away from production in the Bath

factory because of the scale of investment required to bring it up to modern standards and felt that that production could be done elsewhere—Poland—for cost reasons whilst protecting the expertise base in the West Midlands and South Yorkshire. Cadbury is not in the top 25 employers in the West Midlands but probably about 1% of the workforce is engaged in Cadbury and its related activities such as tourism. They are mainly in production/manufacturing and the global head office where procurement and so on take place. One is looking at a sizeable strategic investment. They have probably put a few hundred million pounds into Bournville over the past 10 to 15 years, so it is a substantial investment site. My concern is two-fold. If in fairness perhaps a lower performing, some might say a nil growth, conglomerate is to come in and through a leveraged acquisition buy a successful British business clearly for that conglomerate the solution will be about taking out cost, not growing the business better and faster. It is quite obvious from Cadbury’s figures this morning that their own efforts are quite substantial. I cannot see the growth claimed for the acquisition. If it is about cost then the manufacturing, research and skills base in the UK comes under threat again because it is easier to take cost out in a foreign market than in a domestic market. Kraft would understand that just as much as anybody else. I have fears for manufacturing generally. I have said in my written evidence that whilst all good intentions are spoken about in the process of an acquisition the track record intriguingly for Kraft was to shut the Terry’s of York factory and move production—surprise, surprise—to Poland. Therefore, I do not look at the acquisition commitments perhaps with a great deal of credibility in terms of the comments made for the long term, but I appreciate that this time the circumstances may be different.

Q3 Chairman: The existing legislative framework under which the Department, Competition Commission and OFT act is laid down very clearly and defines some strategic interests that can be taken into account when mergers are being considered in specific sectors, for example defence and the media. Those provisions have been used in the defence sector on a number of occasions. Is it possible to take

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any kind of formal legislative account of strategic manufacturing and skills when major companies are subject to takeovers? Is that a sensible approach?

Professor Bones: I respond in two ways. This is not an anti-market rant. Ultimately, the market, imperfect as it is, is the best mechanism we have for allocating resources efficiently, so this is not about “You shouldn’t” or “You can’t”. But where a bid is made for a successful unit, as opposed to a failing one—in this case it is intriguing that we see a successful company under pressure—if that company has assets that are of critical importance to the future growth of the United Kingdom, which this one does particularly in research and development, for example my own university campus at Reading and in engineering critical mass certainly in the West Midlands, there should be provision for the Government to impose conditions on such an acquisition should it go through. I do not believe it should intervene on whether or not the company is acquired because that is a decision for shareholders, subject to them having a say, but we could ask for conditions to be placed on the investment to protect skills and the long-term requirements of the UK economy.

Q4 Chairman: Would that require new legislation?

Professor Bones: As I said in my written evidence, it depends on how you define the national interest. I suspect it would require some interpretation of the current regulations. It may well require legislation but I am not an expert on the law.

Q5 Chairman: You do not believe that the possible disadvantages of what will be seen by some as a protectionist move would outweigh the advantages of the protection of the R&D and manufacturing base?

Professor Bones: Perhaps you could argue that it is a more sophisticated way of thinking about national champions. I do not believe that national champions as a strategy is a particularly good one; it is protectionist, but there are national skill requirements and a critical mass of skills and capabilities particularly in the knowledge economy where we wish to compete successfully and where the Government could say to a particular company that it is happy for it to acquire another company but it will impose some conditions. It may be that if you want cost savings you will not get them from that bid; you will continue to protect and invest. I do not believe that is an unfair intervention in the market, and perhaps it would make an acquiring company think carefully about the sort of offers and pricing it is prepared to put in front of owners.

Q6 Mr Hoyle: I am in favour of that if it protects jobs and investment. What happens if the company then says that the liabilities are so great that it cannot make a profit and wants to close it down? What do you do? Presumably, that is the end of the story. For all the best written words in the world, it is meaningless.

Professor Bones: It could be. I suspect that you would have to impose some kind of time constraint or limit and say that over a certain period you would expect x or y . Inevitably, all regulation has difficulty. If we are saying that in the national interest we want to invest in the future of the schools base of this country, for which government and opposition parties argue strongly, then in terms of public policy to have platforms to protect that investment is a worthwhile ambition.

Q7 Lembit Öpik: Turning to research and development, you have already touched on the fact that Kraft’s formal documentation regards that as a potential area for cost reduction. You also highlight concerns about the damage this could do to the national interest. You appear to argue strongly that certain requirements should be put in place for takeovers of companies listed on the London Stock Exchange where strategic interests are to be taken into consideration. How could that be done in practice without destroying the freedom of the market?

Professor Bones: You can probably think of doing three things. The first is to make sure that in any acquisition or bid there is far greater specificity of the intentions of potential acquirer regarding strategic assets of national importance. What is left unsaid in these documents is always far more interesting than what is said, and a lot is left unsaid. For a start, they should tell us more. Second, one could look at what commitments the acquirer would be prepared to make in terms of identified strategic assets. Third, maybe one could impose some sort of time requirement. One could say that from the UK’s perspective this is so important that they would be expected to maintain it under the current plans assuming performance continues at the same level, to go back to Mr Hoyle’s point. I understand that if a business starts to fail you have to do something about it. That is not what I am arguing. What is intriguing about this acquisition is that it is about acquiring a profitable business, so it is not a fire sale. It is performing well, so why would an acquirer want it?

Q8 Lembit Öpik: There is the specific example and the strategic macro point. What you say sounds good if you have great negotiators but government is not very good at doing that, which is why we end up wasting a lot of money quite frequently. How can you have a reliable mechanism to achieve that? Sooner or later even the best strategy has to be translated into action?

Professor Bones: Ultimately, you have to leave it to the market to decide. It is very difficult for any bureaucracy to intervene in the transaction. It really must be of monumental importance to the state. What you do is change the way bids are made and the requirement for detailed information and put far more of your intention into the decision process. I think that allows a far greater degree of transparency in decision-making by share owners than currently

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exists. It is very difficult to make a decision at the minute apart from just price, but there are many other levers for making those decisions.

Q9 Lembit Öpik: First, would that not make it less attractive to be in the London Stock Exchange? Second, would it not also reduce the value of companies because of the extra restrictions compared with what might be happening in Hong Kong or Singapore?

Professor Bones: I am not an expert on European M&A legislation. If it were possible to apply this logic to assets owned within the United Kingdom then clearly you would not make it a listing issue; it would be a matter of deciding whether or not to operate here. I suspect that as long as you are non-discriminatory you might well be able to argue a case for it.

Q10 Roger Berry: Obviously, other countries face similar problems from time to time. What is the experience of other countries in dealing with this? Is there good practice elsewhere that you would recommend? What lessons can we learn from looking at what others have done?

Professor Bones: I am not sure there are great examples of success. If one looks at the United States companies can acquire for themselves huge amounts of protection from poison pill strategies through to protective administration. The laws of acquisition in many individual states are somewhat more stringent than they are in the United Kingdom. If you believe that inward investment is as important as outward investment you have to live with having one of the most open markets in the world, which we have. I do not argue for our market to be restricted somehow, but I think at the minute there are market failures in this country which mean that people can exploit a merger and acquisition for their own interests more so than in other places. I think it is about improving the transparency of the process in this country. I have not done any empirical research, but on a superficial level there is no reason to say it is better in France or Germany.

Q11 Roger Berry: Is greater transparency enough?

Professor Bones: It is transparency in the decision-making process. I deal with it in the last chunk of my written evidence. I believe that what gets in the way is the fact that the owners of the capital employed in any enterprise are not the people who make the decision as to whether or not it stays in their ownership. Since deregulation and Big Bang we have created a series of intermediating stakeholders. I believe that is where the issue of transparency lies.

Q12 Lembit Öpik: Whilst it is a laudable ambition it is optimistic to expect a government or state bureaucracy to apply what you have said. The Secretary of State can intervene even now in public interest cases that are specifically defined as national security, media plurality and the interests of maintaining the stability of the UK's financial

system. To test the specific example, is there any aspect of the Cadbury takeover which falls under any part of that definition?

Professor Bones: It depends on how far you stretch national security and national interest. I believe that to maintain potentially for security a world-class food science institution within the United Kingdom is rather important to the long-term interests of the country. Therefore, if the Secretary of State chose to do so the Government might be able to argue for some degree of protection or ring-fencing of it from any synergy or cost-cutting exercise done by the potential acquirer. I do not believe there is a reason for intervening to stop the deal going through; that is not really where I am. I am much more concerned about the consequences of changes of ownership to strategic assets which are still important but less obviously so as opposed to defence, if you like.

Q13 Lembit Öpik: You do not believe that we need to amend the definition to include the Cadbury example in a more specific way?

Professor Bones: I think there is an argument to amend that definition when it comes to strategic skills identified for the long-term economic and financial wellbeing of the country. Food and agricultural science is one of the things that could come within that.

Q14 Lembit Öpik: To do what you describe means effectively introducing a small element of command economy into the free market. One can talk about it in a theoretical, hopeful sense but there must be some kind of mandate from the state to impose this in an explicit way which would alter what would otherwise happen. Do you believe that is feasible?

Professor Bones: I certainly would not argue it as a general principle, but there are times when the State needs to set parameters and imperatives. We face three major crises in this country over the next 10 to 15 years one of which is food production and security and improving agricultural performance in the context of climate. Losing a world-class research centre from these shores in that area as a result of a commercial transaction strikes me as somewhat unfortunate.

Q15 Lembit Öpik: It is either a principle, ie it is strategic, or it is not; if not, it is tactical. How can you do this in a tactical way without introducing this into the market in a random fashion?

Professor Bones: One must take a strategic view of 10 to 15 years ahead and what is really critical for the UK's security. I believe there are not very many of those things above defence but food security strikes me as one that is pretty essential.

Q16 Chairman: I looked at some press cuttings back in 2006 when we considered the takeover by various foreign companies of P&O, ports, Thames Water, BAA, BOC, Corus, the London Stock Exchange, Liverpool and West Ham Football Clubs and Scottish Power. For various reasons a lot of those were strategic. One could argue that the energy generation industry is even more strategic than food.

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What has changed? Have we already gone too far or are there still sufficient industries under British control that it is worth being concerned about them?

Professor Bones: I do not think it is an issue of control. If at the end of the day the management of enterprise A believes that having access to foreign-owned capital is a way to develop, say, better energy supply in the United Kingdom I do not believe there is a problem in principle at all. The issue is: where these assets are strategically important in the United Kingdom can or should Government take a view about key decisions associated with those assets and apply conditions on ownership or some kind of review of ownership whenever it thinks these are important? We do this in energy through the regulatory authority. The Government regulates a lot of foreign capital through Ofgem so we have a mechanism in place, and the same goes for water. In manufacturing, services and so on very often we do not have regulators and we do not need them, but if with an unregulated industry there are strategic assets can or should the Government apply some conditions about how those assets are taken forward by the new owners? It is not about “You can’t own it”; that is not the appropriate response.

Q17 Mr Clapham: To turn to business practices, you make the point that Cadbury is a very successful business. You also highlight the ethical stance and responsibility in business that Cadbury brings to the market. How does that contrast with Kraft, for example? If we look at how they operate in the market what are the differences between Kraft and Cadbury? On the ethical side, one sees Cadbury’s Cocoa Partnership in Ghana which was launched in 2008. Is there anything of that nature in the way that Kraft operates?

Professor Bones: In fairness to Kraft, one looks at the Rainforest Alliance which is its coffee equivalent. Its cocoa-based business is smaller in comparison whereas coffee is one of its major products. Looking at Kraft’s website, its decision to support the Rainforest Alliance is an example of being community-minded and working as a responsible organisation. It is a market-driven mechanism to try to build sustainable supplies, a sustainable supply chain and to invest in sustainable communities. That is very creditable and is very similar to the Cocoa Partnership that Cadbury has initiated. The difference between the two models that strikes me is that Cadbury has a social perspective so its adoption of Fair Trade for Dairy Milk has increased those product sales as a whole by 25% in this country. It has taken Fair Trade from being relatively on the margin to right at the centre; it has added a huge amount of Fair Trade turnover in any category. Fair Trade guarantees a minimum price; the Rainforest Alliance does not but tries to encourage sustainable markets. That is the difference. Both are very creditable approaches. If you look at Cadbury you see it going one step further in terms of its belief about responsibility but some would argue that it is not necessarily a huge step further. Kraft does some creditable things.

Q18 Mr Clapham: That social perspective is enormously important. When we look at the Kraft takeover of Terry’s and what happened following that it appears that Kraft gave certain undertakings but they were not adhered to. Is it fair to say that the way in which Kraft is likely to operate in the market is that it does not have the same kind of responsibility with which Cadbury operates; it does not appear to have the same ethical underpinning?

Professor Bones: I would put it this way: the drivers for a business listed on a US stock exchange with quarterly reporting and a constant demand for revenue and margin improvement are much more short-term than the drivers for a business listed on a European stock exchange. One can see in the management and business practices of the different listings how much tolerance and acceptance there is of the longer-term and perhaps a more responsible viewpoint. If one operates under tighter constraints one finds it more difficult to justify a drift away from sustainability or investment in communities than perhaps other organisations. I do not think it would be fair to say it is a particular mindset in Kraft or Cadbury. One is a child of the system in which it operates and Kraft operates in a very different system and in its own way.

Q19 Mr Clapham: But it brings the child of the system into the UK market. There lies the real problem because if it is to be short-term it means that possibly it will move on very quickly. We may well see the cost base move and consequently we shall lose that kind of research and development at the University of Reading.

Professor Bones: In this session I am just as worried for the shareholders of Kraft as I am for the shareholders of Cadbury. One just has to look at Warren Buffett’s intervention a couple of week’s ago to understand that Kraft itself has growth problems. Its share owners are not convinced that feeding the executive ego, if you like, for a big acquisition is the right thing to do. The worrying thing is that these sorts of things quickly become about personalities rather than whether or not it is the right thing to do. One need look only at RBS’s acquisition of ABN Amro and the battle of the titans as between various chief executives to realise how these things take root. I am with Buffett. I do not believe that it is in Kraft’s interests to acquire this particular business for a price that is much more than it bid, and clearly if you look at the results this morning it is not in the interests of Cadbury’s shareholders to accept the price that is currently on the table. At that stage one might say that it is time to walk away. The problem is the fuelling of all of this by advisers, investment banks and so on. *The Times* made a calculation based on figures sourced from Reuters for the last year that fees of about £600 million could be spent in this takeover battle on advisers, lawyers, investment banks and other people regardless of whether or not this happens. One of my big worries is that the Cadbury brand will end up taking on the costs of its own acquisition and defence which could run even closer to £1 billion plus the interest on leverage funds used to acquire it—even if Kraft put in more cash

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which it does not have today. What will that do to a profitable business and therefore to the cost base? It is not about Kraft's way of managing it; I think it is about the consequences of what it is doing which potentially puts its own business as well as Cadbury's at risk.

Q20 Mr Clapham: Cadbury is a successful company and the shareholders of both companies would perhaps be better looked after were Cadbury able to continue as a prosperous company in the UK.

Professor Bones: I think it was KPMG who did a piece of work about seven or eight years ago which showed that 80% of hostile takeovers failed to deliver the case that was put to shareholders to justify the price paid. The 20% that delivered the case, succeeded because they were underpinned by factors such as common cultures, a common understanding and so on. Until I left Cadbury's its track record was that 80% of its acquisitions met or bettered the business case. That is because Cadbury has never conducted a hostile acquisition. Its latest acquisition was Green & Black's which came to Cadbury and asked to be taken over. It asked to be taken over because Cadbury had values; it had a belief in brand, it understood what Green & Black's stood for in terms of responsibility and ethical sourcing, but could give the manufacturing, procurement and distribution scale—Green & Black's is now taking on America very strongly—in order to build the Green & Black's brands, so it would invest in it long-term. As to Kraft and Cadbury, having worked for one and looked carefully at the other their cultures are very different; their way of operating is so different; their business conscience and approach are different. Particularly with the leverage involved this cannot be anything other than a potential disaster as opposed to a potential success whatever price is paid for it. This is not an issue of government policy, but it does say something about how we educate business managers. They really do not understand that to waste share-owner money on a potential ego trip, (for that is what they have done in this bid) is a serious issue.

Q21 Ian Stewart: Successive governments have bought into the concept of a shareholder democracy. You have argued that the reforms have given the decision-making power to a small number of fund-holders which is not necessarily in the interests of many shareholders. We live in a market economy. Any economic system has strengths and weaknesses. You have raised concerns about the different roles of the shareholders and middlemen in relation to takeover decisions. What can be changed to ensure that the interests of the individual investor are protected? I believe that earlier you were keen to say something about that. This is now your opportunity.

Professor Bones: Perhaps I may go back to Adam Smith because there is an important principle here to do with investors. When Smith wrote his original text he talked about the invisible hand in the market. Quite often that has been hijacked by neoclassical or monetarist economists who say that the logic of the

invisible hand is that one therefore leaves the market alone. The invisible hand was the guiding social and political principle behind investment decisions; in other words, despite the return that could have been offered to Scottish bankers more often than not they chose to invest in Scottish or local opportunities even though the returns perhaps were financially not as great. One could say that if only RBS had done that it would have been fine. What is really interesting about it is that what Smith noted, and is still true today, is that the real investor, the owner of the capital, does not make an entirely financial decision. If you ask ordinary share owners about transaction A or transaction B quite often regardless of price there will be other reasons for keeping the shares or some of them. Smith picked this up. Obviously, he could not measure it and he called it "the invisible hand". I believe that as a result of the rise of intermediating forces the invisible hand has become the invisible incentive. For stakeholders the invisible incentive is the way they run the funds, the cash they need, the profitability target and potentially the trigger of bonus payments which would lead to decision A as opposed to decision B; in other words, they are not acting for my long-term capital interests but perhaps for their long-term and sometimes short-term gain. It is a completely different interest from that of the share owner. In a market economy—again, this is not an attack on the market—this strikes one as a market failure and therefore the Government could consider putting some constraints on the funds to make sure they consult the owners of the capital before they act on their behalf. For most fund managers it is not their capital; it is not their skin in the game but my skin and yours. For pension funds it is quite easy to do it because you can say that if a pension fund hold block A in company B then the trustee should be consulted on how the shares or number of votes it holds should be cast. There are trustee mechanisms in place today for pension funds that can easily be engaged to do that. The other thing Government must do is consider democratising funds and requiring the fund management company to consult the owners of the capital when a decision has a pecuniary benefit to the fund management company itself, which accounts for quite a lot of decisions. I believe there is a role for Government in the market in terms of structuring funds, not to intervene in the actions of the market but to say to it that it will act properly so that the real owners of the capital have their say. You can see, therefore, fund managers casting three votes: a percentage for yes, a percentage for no and a percentage for abstaining, as they are entitled to do today. I do not believe that you would not have to change the law for them to do that.

Q22 Ian Stewart: Do you argue that we are not concerned with just the qualitative aspect of the decision-making and what we need is for Government to look at regulation?

Professor Bones: I am not a great believer in over-regulating anything, but this is an area where there is a surprising lack of regulation. I am not surprised

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because these funds and their impact have mushroomed over the past 30 to 40 years. In the old days of a stock-holding company if we were shareholders of company A we would all turn up in the room and cast a vote. For most large corporations the annual general meetings are a bit of a joke. The annual general meeting vote may go against a remuneration report but millions of shares cast by 10 investment fund managers in favour of it gets it through. I am saying that is not in the best interests of capitalism or the market economy in this country.

Q23 Ian Stewart: In your view what department should lead on that? Would it be the Department for Business, Innovation and Skills or HM Treasury?

Professor Bones: It is a business ownership issue. If you have a department that looks after the interests of good governance in business it should pay attention to how the real owners of the capital employed by that business are engaged in decisions about that business.

Q24 Ian Stewart: Have you had any discussions with either Department about these issues or shareholder rights?

Professor Bones: I have submitted my opinion on the matters of principle to officials in the Department for Business, Innovation and Skills and not surprisingly it is very similar to the written evidence you have in front of you.

Q25 Ian Stewart: You have given us your views about potential regulation and to which department you think that should relate. If the free market is to be maintained as you wish it to be can any reasonable protections be given to listed companies on the London Stock Exchange so that they remain listed in the UK rather than move to other stock exchanges? That appeared to be your concern earlier.

Professor Bones: In some ways it is a consequence of the globalisation of everything. Ultimately, business will globalise as well. I do not believe there is anything other than very unsubtle and ultimately unhelpful regulation that can be put in place to protect LSE-listed companies over and above other organisations, hence my earlier comment on the research and development side. There are things that Government can do which are perhaps more sophisticated and challenging.

Q26 Ian Stewart: Do you argue that rather than heavy-handed regulation for the LSE and so on labour market development issues like training and skills can play an important role in this area?

Professor Bones: Yes. I am surprised by the public policy gap in terms of the pronouncements of legislators and others who say that the supply side in the economy is as important as the demand side and yet do not think of the consequences of economic transition which will happen inevitably in relation to things like strategic skills and opportunities for training and development. We are at risk of potentially de-skilling Britain. Whether you put 50%

or 80% through university will not make a hoot of difference. What is important is that there is skilled, challenging and well remunerated employment available to people with skills and good education. We are banging people through university at the minute. As someone who sits in one of Europe's top business schools it is really difficult to see where a lot of our graduates will go over the next few years if fewer and fewer opportunities exist for really skilled people. Thinking about the demand side and what one does in the market to protect it is as important as thinking about the supply side.

Q27 Mr Hoyle: You state in your memorandum that, "The ultimate irony for any government would be the sight of the corporate banking team at RBS or any other government-owned institution being paid multi-million-pound bonuses for funding the acquisition of a UK company by a US conglomerate at a price that failed to reflect real market value with an outcome that damaged the long-term interests of the UK economy." Those are very strong words, and I totally agree with them. To push it along a bit, quite rightly you criticise the role of RBS. Effectively, it is a state-owned bank—we can all agree on that—and it is providing funds for a takeover. Do you think the Government should intervene as the virtual owner of RBS to stop it facilitating Kraft's takeover in the bid for Cadbury?

Professor Bones: As to Kraft's bid for Cadbury, the involvement of a taxpayer-owned bank in supporting a less than successful global conglomerate to buy a successful British company is surprising. I am particularly surprised that the Government as the main representative of the taxpayer shareholder in RBS has not said to RBS that now it owns the bank—it did not want to do so and would probably like to get rid of it at some point soon—it will operate not just for short-term profitability but for the long-term interests of the United Kingdom. I do not believe there is any shame or problem with the major shareholder saying that to the bank and then getting the bank to respond with an investment policy that meets its profitability targets but at the same time supports British businesses. I just do not understand why we have not done it.

Q28 Mr Hoyle: The suggestion is that we bring morality into banking?

Professor Bones: It is not morality. Perhaps you bring in exactly what Smith said: you bring back to banking the invisible hand.

Q29 Mr Hoyle: I do not disagree with you. There is a role there and RBS ought to think about what it is doing. At some point there is more to life than profit. We are talking of the future of UK jobs, R&D and so on. We can go through all of that. Would not the issue be that it would only go to another bank, so is it not the case that a British-based bank which gives a profit to the taxpayer is not allowed to do it but we are quite happy for a foreign bank to increase profits for its shareholders?

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Professor Bones: The answer is: yes, as has always been the case. I just think it is remarkable that where we have the opportunity to leverage the banking sector we do not take it to build the economy. Whilst leaving it for others is fine, I think that to make it that much more difficult to do these sorts of things is a perfectly legitimate government ambition where it tries to protect what it sees as jobs and productivity in the UK.

Q30 Mr Hoyle: Do you believe that in part this takeover has been created by Cadbury itself because the demerger of Schweppes has made it more attractive? It has put profit in the bank and invited companies round the world to take it over? Is it Cadbury's own failure that has caused it?

Professor Bones: Cadbury has been under pressure from its major share owners for some time to dispose of its soft drinks business which, if you exclude the United States, owned only 3% of the world market as against Coke and Pepsi that own 20% to 30% each. But it was ultimately Cadbury Schweppes' poison pill equivalent because it was a very difficult thing to have and it put a number of big predators at bay. Clearly, by doing what its intermediating stakeholders wanted to do, which was to get rid of the drinks industry, it created a lot of value for those people in the short-term, but that value is now not reflected in continuing share price growth. It has since focused on confectionery. It is a very good commercial company. If you want my personal opinion, a share owner in Cadbury would be much better served by a link with Hershey than with Kraft. Hershey owns in perpetuity all of Cadbury's production licences from its products in the United States in the early 1980s when it had to get out in a hurry or go bust. Frankly, if one is looking at the interests of Cadbury one will say that to get back control of its US brands is much more attractive to management and a much better proposition for Cadbury's share owners than to become part of a processed food conglomerate.

Q31 Mr Hoyle: Basically, I believe that Cadbury is the good guy and Kraft is the bad guy, so we are on the same side. You go on to say that the US conglomerate is not a very successful one and Kraft is perhaps a failing company. If that is so do you think RBS ought to fund Cadbury to do a reverse takeover of Kraft and sell off the failing company? Would that make sense?

Professor Bones: I do not think Cadbury is an expert in processed foods and it probably should avoid it at all costs.

Q32 Mr Hoyle: That is why you would sell it off.

Professor Bones: I do not believe Kraft is a failing company; it is just not a very strongly performing company. It is a company that has all the trappings of the US conglomerate up to and including the corporate jet.

Q33 Mr Hoyle: There is a big saving there, is there not?

Professor Bones: If I were Irene Rosenfeld I would look to my own margins and costs before grabbing something else in order to improve my growth figures. If I were a Kraft shareholder I would insist on that. As to funding, the challenge for RBS is that according to the CBI there are a lot of British businesses—here I agree with the director general—looking and applying for but failing to get funds for jobs, investment, expansion and capital investment. Frankly, if I was an RBS shareholder, which is why I pick on RBS as a taxpayer-owned bank, I would be looking to use those assets to build Britain's recovery from recession which is pretty slow at the minute.

Q34 Roger Berry: Referring to the final paragraph of your memorandum just quoted by my colleague, I do not find this situation strange at all. You have said repeatedly that you believe by and large the market should be allowed to operate, but there are two quite distinct issues here, are there not? In a sense you are rolling them up into a rather nice final paragraph. One issue is takeover policy; the other is the role of banks. Do you agree that getting the takeover policy right is the issue and in a sense whether or not RBS is involved in this is a sideshow? If there is an opportunity for RBS to make money you would advocate that banks should be allowed to do so. In the final paragraph are you not moving the issue away from the key point which is takeover policy? I will take swipes against RBS like the best of them; they deserve quite a lot, but that is not the issue here. The issue is takeover policy, is it not?

Professor Bones: I think it is an interesting side issue though a related one. The core issue, to which the Committee may wish to return in some detail, is that it appears to me the distance that has been created between the owners of capital and the stewards of it, ie the managers of an enterprise, and therefore the lack of communication and mutual interest is a fundamental shift in the capitalist structure over the past 50 to 60 years which is starting to put at risk whether the joint stock company is a sensible solution for capital ownership. Ultimately, it is a bit of a farce because the real owners of the capital do not get to cast the votes. For most big stock-holding companies there is a little oligarchy at the top that casts a lot of votes and has a lot of power. That strikes me as a much more fundamental issue for policy than some of the specifics around Cadbury/Kraft. If you can get the rights of ownership right so owners can say, "This is my capital and I want a say", you create the grounds for a successful share-owning and property-owning democracy with real accountability. At the moment in my view the stewards are getting off lightly and a lot of middle people are making a lot of money.

Q35 Roger Berry: But do not those who own RBS, whether it is the state or individuals, benefit from that or any other bank making money out of takeovers?

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Professor Bones: Indeed; the Exchequer benefits from RBS making money out of takeovers, but in the long-term does the British economy benefit from some of these actions?

Q36 Lembit Öpik: Given Roger Berry's question and the real world, the Government has said that basically it is looking after RBS until it can stand on its own two feet again. In order to do what you describe the Government would have to do something extra: to start using its stock in RBS to guide social or economic policy. Leaving aside the

political discussion, is it practical for the Government to do that without directly contradicting its own objectives, ie rehabilitating RBS and giving it back to the private sector?

Professor Bones: The success of the Co-operative Bank and the co-operative movement generally over the past few years is probably an example of why it might be in the long-term interests of private sector banking to think more about social and political issues than just short-term profit.

Chairman: That is a subject for another time but it is a fascinating one. Thank you very much for that very helpful discussion.

Witnesses: **Mr Jack Dromey**, Deputy General Secretary, and **Ms Jennie Formby**, National Officer, Food and Drink Sector, Unite the Union, gave evidence.

Q37 Chairman: Thank you for coming in for this important evidence session. Most members of the Committee know very well who you are but for the record could you introduce yourselves?

Mr Dromey: I am Jack Dromey, Deputy General Secretary of Unite.

Ms Formby: I am Jennie Formby, National Officer for the Food and Drink Sector.

Mr Hoyle: I am a member of Unite.

Chairman: A number of members of the Committee are also members of Unite: Mr Wright, Ian Stewart and Roger Berry.

Q38 Lembit Öpik: You have heard what passed in the previous session. What are your main concerns about the proposed takeover of Cadbury?

Mr Dromey: May I make two brief preliminary points?

Q39 Chairman: I understand that you would like to make an opening statement. I am sorry; my memory is playing tricks.

Mr Dromey: As was said earlier, we have a microcosm and macrocosm. First, Cadbury is a world-class British success story. It is efficient and effective and has proven products; it is part of our national heritage and it has an admirable tradition of philanthropy. It is now being put at risk by decisions being made in a boardroom in Illinois by a company whose debt has gone from £6 billion in 2006 to £18 billion in 2008. It is now taking on a facility for an additional £5.5 billion in order to achieve the takeover of Cadbury. Our fear is based upon the history of Kraft. Cadbury will be an irresistible target for cost-cutting and asset stripping to free up capital to reduce debt. The history of Kraft in this country is a sorry one, including the promises made to our union over Terry's which, sadly, is now history. Second, this morning I listened to a very interesting interview with Roger Kerr, the Chairman of Cadbury. He spoke about shareholder capitalism. It was said in the previous evidence session that no-one challenged the fact that we live in a market economy. I was never one of those who advocated the nationalisation of the top 200 monopolies. But it simply cannot be right that in the way the market

works good companies can be subject to predatory bids that put at risk the real economy and the public interest with no regard for workers, local communities and suppliers. Instead of responsible shareholder capitalism what we have now at its most obscene is nanosecond trading and, in relation to Cadbury, hedge funds in the form of boys wearing red braces who move in to make a quick buck at the time of a British icon's vulnerability. A long-term approach on the part of shareholders is absolutely essential. Perhaps we shall come to this later on. We welcome the debate that has been generated, including that by Lord Mandelson, about what you do in practical terms for the wider and longer-term but in the here and now keep Cadbury British.

Chairman: I have to stop you because you are anticipating all of our questions. That is why generally I do not allow witnesses to make opening statements. You have ripped through the first three or four questions. I will give Lembit Öpik and Mr Hoyle an opportunity to cover them in detail.

Q40 Lembit Öpik: To provoke you further, are your concerns specific to Kraft about which you have made comments or are they about preserving the independence of a UK company? If there was another food company in America or China that had a better reputation than Kraft's as you perceive it would you be making the same points?

Ms Formby: It is always interesting to be with my colleague because he steals most of my thunder and the points I intend to make. I shall try to cover what he has not covered so far. This is an area where we agree very strongly with Cadbury. Cadbury was not for sale and it is not for sale now because of all the things that Professor Bones has covered in a fascinating way in his evidence earlier. In our view it is not good for it to be taken over by anybody. He made reference to Hershey. Hershey may be a better fit than Kraft but the reality is that there is no need for Cadbury to be taken over by anybody. It is an extremely profitable, stand-alone company; it has shown organic growth of about 6% for the past four years; it makes tremendous profits; and it provides very high-quality and highly skilled jobs. The attitude and approach to the workforce who are a

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key stakeholder in any company is on the whole positive. Of course there are elements where we disagree. It would be very unusual if that was not the case, but in general there is nothing about Cadbury to suggest it should be taken over by anyone else. We share all the points made by Professor Bones about the very serious potential risks to all stakeholders, whether it is the shareholders, workforce, suppliers or the local communities, which are key, if anyone takes over this company.

Q41 Mr Hoyle: Quite rightly, Mr Dromey, you have pointed out the finance vultures wearing red braces who are there just to make a quick buck. British jobs do not matter and they will just take their cut. You referred to seeing Lord Mandelson. Was it one of those meetings to provide tea and sympathy but no action or one where you believed the government was willing to take steps to protect British brands, profitable companies, good employers and huge R&D? Going back to a comment by the Chairman, we have seen water and energy companies go; Liverpool and Manchester United have gone. The big difference is that you cannot move those abroad whatever happens, whereas in this case this could spell the end of a great brand name like Cadbury.

Mr Dromey: My colleague was at the meeting with Lord Mandelson.

Ms Formby: Certainly, Lord Mandelson showed interest in developing further the arguments we raised. In any meeting of that nature time was of the essence so we did not have an opportunity to have a detailed discussion on some of the key points, particularly trying to ensure that the regulations provided a voice for workers and the rights of employees to have full disclosure of information, which has been very frustrating to Unite in representing Cadbury's workers throughout the process. Those are matters we very much want to explore together with a number of other elements to which my colleague will refer later. There was certainly an indication of interest. There was less than a sympathetic response to our views about the involvement of RBS, but I agree that to some extent that is another issue. The key point is that the Kraft takeover of Cadbury highlights the situation.

Q42 Mr Hoyle: Do you believe that he would really review the laws governing takeovers?

Mr Dromey: As to the immediate situation, he used some rather interesting words about the court of public opinion and the need for the proposed takeover to be judged not just by the immediate interests of stockholders but by the long-term interests of the country. On the wider point, he has said—we welcome it—that real issues arise that now need to be looked at very seriously. The background to this is the shock to the system over the past couple of years. First, we are looking at new financial architecture; second, there is a welcome debate led by Lord Mandelson on the need for industrial activism and the rebalancing of the economy with more not less real financial engineering. Therefore, real issues arise. If one is serious about going down that path as Professor Bones said how does one

ensure that strategic national industrial and manufacturing interests, with all of the associated skills, are properly protected in Britain?

Q43 Mr Hoyle: I understand that. Obviously, the meeting took place. You have said that he will look at what you ask for. To get a feel for what happened at that meeting, do you really believe that some positives will come from it? In the end we have a great brand name, an ethical company that is very profitable and is getting on with its business, and yet there are vultures flying round the world picking up good companies that do the right thing by their workers. What could you wish for in a review of legislation on takeovers? What is the one thing that you believe would make a real difference to stop it happening?

Mr Dromey: In the here and now what we want is for a predator not to take over successful British companies. Looking to the longer-term, I believe this has generated a very welcome debate. A number of issues may arise at the next stage. This is the single biggest one from our point of view. There is also the role played by government. But from the point of view of workers Cadbury is a classic example. We have 3,000 members there; they are good men and women who have invested their lives in the company. There is a total lack of transparency. We need to look at how we strengthen information and consultation rights; how workers are able to express a view as to their future and crucially how guarantees can be given in the process and we do not have the cloak of secrecy that it is said the Takeover Panel demands. We simply reject that view.

Q44 Chairman: In this debate we have had Professor Bones' academic view about the breakdown of the joint stock company model with the divorce of ownership from control, which I believe raises very important questions about the future of free markets and capitalism. Lord Mandelson has been hinting that he shares all these concerns for quite a few months. He told the *Wall Street Journal* in September that he had "started to become concerned that over a lengthy period of time, certainly not overnight, UK manufacturing could be a loser", and he also said things in December and last week which indicated that he believed that to be the case. I want to push you not on the employee issues which Ian Stewart will deal with but the ownership issues. Have you expressed views or heard any from Lord Mandelson to suggest that the comments he has been trailing in this debate have any substance behind them, or is it the case that nothing is actually happening in the department to explore these very interesting concerns?

Mr Dromey: They are very interesting concerns. The shock to the system is now causing a fundamental rethink. The statements being made by Lord Mandelson are very welcome. The direction of travel including the emphasis on industrial activism is also very welcome but, to be absolutely frank, if it comes to tackling these problems and preventing predatory takeovers we have yet to see effective action by Government. Therefore, the question raised by this

Committee's inquiry, which is welcome, is: in practical terms what should government do both in terms of strengthening the rights of workers but also acting at the strategic level, which perhaps we shall come to shortly?

Q45 Chairman: We may not do so. You heard Professor Bones talk about the kinds of conditions that might be imposed on major manufacturing companies with large research and development bases in the UK of strategic importance to the economy. For example, he argued that Cadbury's research facilities were of strategic importance on the grounds of food security. Do you believe that is a route that the Government should look at in more detail?

Mr Dromey: Yes, I do. Professor Bones' evidence was very interesting. We have a very substantial membership in the food industry. The supply chain for that industry has a million-plus workers.

Q46 Chairman: It is a much bigger part of our manufacturing base than people sometimes realise.

Mr Dromey: That is absolutely right. It includes many world-class centres of excellence. It is very important to our economy generally, in particular certain regional economies. One can do a number of things. The amendment of the criteria in terms of the ability of government to make a strategic intervention has already been touched upon. I do not want to repeat what has been said earlier. I believe that is absolutely right. It is interesting that this debate is not taking place just in Britain. First, Angela Merkel has already acted on this front to say that the German Government needs the ability to make strategic interventions to protect the best long-term interests of the real economy. She put it in the particular context of not wanting Chinese state company takeovers on the one hand or sovereign wealth funds on the other acting as predators of successful German companies. Second, it is interesting to look at the French experience and their approach. There is shareholder democracy but they have a greater emphasis on takeovers. There are weighted votes for those who are long-term shareholders. To make the obvious point, that would make it very difficult for the boys with red braces in hedge funds to move in to make a quick killing. Third, Belgium and Holland allow companies to have articles of association that do not prevent takeovers but focus the debate on whether they are in the best strategic long-term interests of the enterprise. If we are to have this debate at the next stage—we warmly welcome the fact that the good Lord Mandelson has opened up the debate and this Committee is now focusing on this important area—we need to move beyond general statements, however welcome they are, to ask: what in practical terms can we do? Government has the ability to make the market work better in the best long-term interests of the country.

Q47 Miss Kirkbride: Can anything be done now to stop this happening because it seems to me that a lot of what you are talking about requires legislation?

Mr Dromey: It is true that one would require legislation in certain respects at the next stages. First, the power of advocacy by government is very important. The stronger the statements in support of a good British company the better. Second, it would not be a bad thing if the phone was picked up to ask RBS what the hell they think they are doing.

Q48 Ian Stewart: The assistant general secretary of Unite, Len McCluskey, has made public statements on behalf of the union.

Mr Dromey: That is correct.

Q49 Ian Stewart: In one statement he concludes: "We must see off the Kraft bid and any others which do not have this company and its workforce's best interests at heart, and we must persuade our government and regulators to act fast so that healthy UK businesses cannot again fall prey to finance vultures." I want to press you on the role the union has played and the attitude of its members and then my colleague Mr Clapham will ask about your relations with government. Mr Hoyle asked you about his earlier. What do your members feel about this bid?

Ms Formby: The overwhelming majority of the workers are very concerned about the bid. The matter has been somewhat confused by statements from Kraft in relation to the Somerdale plant, implying that effectively it would come over the horizon on a white charger and rescue that plant from closure. Somerdale in Keynsham is due to close later this year with its production being transferred to Poland. That was referred to earlier by Professor Bones. Kraft said that it would like to keep a manufacturing facility in Somerdale, not that it would guarantee to save the jobs or anything like that. We have tried to get more information out of them and their response has simply been to say that they cannot say anything more because they do not know enough about the company to say what they would do at Somerdale or anywhere; they do not really know much about Cadbury at all, which is slightly surprising. There was a little ambivalence among the people at Somerdale but the overwhelming majority if not all of the employees on all of the other sites are vehemently opposed to it. They have seen what Kraft has done elsewhere. Rather than see Kraft as a terrible US company that comes in to attack it just for the sake of rhetoric, we need to look at what it has been forced to do to service its debt. The reality is that over the past 10 years Kraft has made 60,000 redundant and closed over 30 sites. That is a fact associated with carrying significant debt. However positive and good may be the intentions of any employer—Kraft has clearly stated positive intentions toward all of the UK sites and has said it intends to maintain manufacturing, investment and everything else—there comes a stage when there is an irresistible imperative to cut costs. Once you have cut costs in marketing, sales, R&D and everything else in the way we are so concerned about in terms of transporting all of that over to Illinois the soft option is to look at other things like closures,

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offshoring and outsourcing. Kraft has outsourced tremendous amounts of real core stuff, such as Fig Newton cookies, of which I had never heard before. Fig Newton is an iconic brand in the States. That has been offshored to Mexico. We also have real concerns about the sorts of companies that are implied in this third-party outsourcing work. I am sure that if Kraft were here they would say we were making a tremendous leap in expressing concern about the closure of all these sites and redundancies because they have said they have an intention to maintain manufacturing in the UK, continue to invest et cetera. They had no intention to close Terry's of York and made very strong statements to that effect, but it is not there any more; its production is in Poland.

Q50 Ian Stewart: You have given the Committee your analysis of the situation and the views of your members. What direct discussions has the union had with Cadbury and Kraft?

Ms Formby: To be blunt, we have had great difficulty in talking to either company. We have tried to get disclosure of more information and they have said the takeover code prevents them from talking to us in detail about anything that potentially could be deemed to be price-sensitive. In this situation just about everything is price-sensitive. We have seen the shares of both companies go up and down on a daily basis. We have been pretty much kept in the dark. I have had several conversations with Kraft and a meeting with its senior management, but they have not said anything to us that is not in the public domain.

Q51 Ian Stewart: In a recent press release Kraft said that it was unable to give any assurances about jobs, employment and conditions.

Ms Formby: Yes.

Q52 Ian Stewart: Has there been any progress since then?

Ms Formby: Nothing at all.

Q53 Ian Stewart: Is that the situation you describe?

Ms Formby: We have asked for very specific guarantees. We have said that whatever we may think about Kraft taking over Cadbury and the way Cadbury operates at the moment clearly the people we represent are the workers, so if Kraft says that strategically it is very important and it will grow and develop the business, expand the markets and so on, fine; get on with it, but if that is the case it should have the confidence to give our members guarantees that it will not be making compulsory redundancies, that sites will not be shut, that the pension scheme will be saved, that terms and conditions will be safe and so on. Kraft has said that it cannot give us any such guarantee.

Mr Dromey: To return to the cloak of secrecy, you can imagine what it is like at the sites concerned where people ask the whole time what is happening. The answer is that we do not know. If we are looking at the approach in future that must be tackled. There are some interesting precedents from the past. For

example, we have deployed people who have then signed confidentiality clauses to be part of a big assessment process on the one hand or have handled very sensitive information relating to pension funds on the other. We simply do not accept this. Where there is a will there is a way to ensure that workers' voices are heard. At the moment we are effectively knocking on a closed door because of the way the Takeover Panel works.

Q54 Ian Stewart: My colleague Mr Clapham will ask about the union's view as to what government can do to address that situation. Before we turn to that, can you give the union's opinion about the potential effect on local economies and communities in Birmingham and Sheffield if the concerns you have expressed about factory closures become a reality?

Ms Formby: The potential impact could be devastating. We have already heard how important Bournville is to the surrounding area, and the Bassett site in Sheffield is just as important. They are in areas that have been hit time and again by job losses, closures and so on. The West Midlands has a whole list of companies that have failed or have shed jobs. There will be an extreme impact on both areas and other sites. There are sites all round the UK that provide feedstocks and so on for manufacturing. We also have Wrexham in Wales which is not a massive area of employment. There are also sites in Devon and Worcester.

Mr Dromey: First, there are very big supply chains. Second, if you look at the two regional economies although there has been a decline in car manufacturing in the Midlands and engineering in Sheffield food is still a success story in both and looms large in the thinking of, say, the regional development agencies.

Q55 Ian Stewart: Are you putting it to the Committee that whilst the initial thrust of the union's approach is to protect its members and their employment conditions by implication its campaign is also to protect the interests of workers and companies in the wider community?

Mr Dromey: It is two sides of the same coin: we want to protect members' interests but also the public interest in the real economy and regional economies in particular which are threatened by what Kraft might do.

Q56 Mr Clapham: Mr Dromey, I hear what you say about the changes in Europe, for example in Belgium, Holland and Germany, and the way it looks at strategic intervention to make the market work better. What do you believe can be done in practical terms? Do you believe it is possible to have legislation or regulation that would guard against an acquiring company going back on undertakings that it has given? Ms Formby referred to Terry's. We know what undertakings were given in relation to Terry's and yet Kraft just turned its back on the undertakings it gave. Is it possible to have legislation that would force an acquiring company to stick to its

undertakings? I do not know whether this was discussed with Lord Mandelson and, if it was, what kind of response he gave.

Ms Formby: We did not have time to go into detail about the various things we wanted to look at. One matter we talked about, which we discussed with Cadbury who said it was unable to deal with it under the rules of the Takeover Panel, was reaching agreement with us on guarantees of jobs and terms and conditions. We believe that that should be looked at to see how we can ensure that workers are not sacrificed in this situation. It is extremely important that we start to look at that. There are a number of things that my colleague has been discussing.

Mr Dromey: One requires a combination of factors. If one took the German approach towards the protection of strategic interests, or the Belgian and Dutch approach towards articles of association to compel a more sensible debate about the best long-term interests of the company, and if one also had enhanced rights for workers in terms of their ability to be consulted and be part of the process when talking of guarantees for the future, would it necessarily mean that in every circumstance all would be well? It is like TUPE. The unexpected can arise; there may be what is called an ETO reason and suddenly protections afforded are no longer there because of circumstances that have arisen, for example the collapse of a particular company, marketplace or whatever. Having said that, can one ensure that guarantees given are honoured? If one lays down the right framework one can do so.

Q57 Mr Clapham: Presumably, the union is now considering taking this up formally with government.

Mr Dromey: That process has already commenced. We are very keen to feed into the next stage of the dialogue on these issues that has been initiated as a result of the discussions with Lord Mandelson but sparked off by what happened in Cadbury.

Q58 Mr Clapham: Do you believe it is likely to result in a situation where there will be more information and greater consultation? Is that likely to develop from the current scene where Kraft now threatens Cadbury which is a very prosperous and successful company?

Mr Dromey: We live in an era where there is demand for transparency and freedom of information. I think that increasingly across the political spectrum dare I say to have a situation where workers are kept in the dark is viewed as unacceptable. In some cases three or four generations of good people have worked in the same plant. It is simply wrong that today all of this can go on in Illinois boardrooms or the trading floors of hedge funds in this country.

Q59 Mr Wright: What discussions have you had with the American trade unions and people who actually work in Kraft itself?

Ms Formby: We have had discussions through the IUF, the global union federation, and with the European craft unions who themselves are very

concerned about any takeover of Cadbury because they can see that the pain they have suffered for decades in terms of job cuts and closures of sites will only increase as the debt goes up. There is absolutely no appetite for this among the craft trade unions; they share our view that they do not want Kraft to take over Cadbury.

Q60 Mr Wright: So, there is concern among the workforce in the States as well?

Ms Formby: Yes, and in Europe where they have a lot of members.

Mr Wright: With debt soaring potentially to £22 billion or £23 billion no one is safe.

Q61 Ian Stewart: You were in the room when Professor Bones gave evidence. You will recall that he was against heavy-handed regulation in relation to markets, but he did suggest that there were some labour market development factors like skill standards that could be used. Would the union be in favour of that kind of approach?

Mr Dromey: Without hesitation. I thought Professor Bones' presentation was a very interesting one. The question then is: how do you do it? You need to move beyond saying this is desirable to ensuring that public policy guarantees those outcomes. Without repeating everything I have said, that is why the role of government to protect strategic interests is so important. The current criteria enable that to happen but in very limited circumstances. We believe there is a strong argument in favour of expanding that. There is a welcome debate being led by Lord Mandelson and BIS on the need for much greater industrial activism in future as we rebalance our economy in the 21st century.

Q62 Mr Hoyle: We can see from this that in the UK 6,200 jobs are put at risk in future because Bertie Bassett will be produced in Krakow and maybe Cadbury's cream eggs will be made in Belarus or whatever. But we do not know the number of jobs that feed into the Cadbury's operation in the UK that could be at risk. Do you have a feel for how many thousands of jobs could be put at risk in that area?

Mr Dromey: Interestingly, there was a plant in Scotland in respect of which we did some work together with the Scottish Government and Scottish Enterprise. That company had 600 people working in the plant but 8,000 people depended on that plant in the Scottish economy because of the nature of the supply chain. It varies depending on the product one is talking about but it is a ratio of at least four to one. Incidentally, there is also an issue of definition as to where it ends. There are those directly employed in the supply chain and others employed in logistics, for example transport all the way down to the butcher, baker and candlestick maker whose livelihoods depend on the plants in the communities concerned.

Q63 Roger Berry: I want to ask about Keynsham. A good number of your members at Keynsham fought very hard against the closure of that site. Obviously,

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a number of them are my constituents. It is quite right to say that there has been speculation in the local media that conceivably the Kraft takeover may be of some advantage to Keynsham. Can you give us your view of the implications for the Keynsham site of the Kraft takeover so there can be no misunderstanding about the union's view on this?

Ms Formby: It is essential to be clear about it. I have been very disappointed by the fact that Kraft has persisted in repeating what appear to be assurances to the people in Keynsham which, as far as I can see, are very hollow. It has said it wants to keep a manufacturing facility in Keynsham. I have asked what that means. Does it mean that Kraft will reverse the decision that Cadbury has made to close the site? Will Kraft keep it open? The answer is that, no, it wishes to maintain a manufacturing facility. What does that mean for jobs in the future? Does it mean that if Kraft reopens it it will have directly employed people on the site, or will it outsource it somewhere else? The answer is that it intends to keep a manufacturing facility in Keynsham. There is no meat on the bones at all. It has said continually that it does not know enough about it; it does not know how it is configured inside. We have said that surely a company of its experience has an idea of what it looks like inside because there are lots of things in the public domain. The reality is that there is no intention to come and save the jobs but effectively it may want to use it for something else in future. But it is very difficult to say; it is not obliged to say anything to us, and it will not say anything to us. I believe that what Kraft has said not just once but several times to give false hope to Keynsham is very unfair to people who have been through several years of uncertainty and who are in some instances in despair.

Q64 Roger Berry: Mr Dromey, you have said that one thing the Government should do is pick up the phone and speak to RBS. I agree with everything else you have said on this issue. I believe in that takeover policy. What do you believe would happen if the Government did phone RBS and say it should pull out of it? What happens next?

Mr Dromey: I am the first to acknowledge that the power of Government under the current public policy framework is constrained. What is so welcome about this Committee's debate is that we are looking at how we change that for the future so we have no more Cadburys. But in the here and now to use Lord Mandelson's words if the judgment of the court of public opinion is that this takeover is not in the best long-term interests of Britain then at the very least the phone should be picked up and Government should say it believes RBS should put those long-term interests first and not be associated with a predatory bid. I know it is a controversial point. There is no guarantee that RBS will necessarily heed that advice, but it is no bad thing for such advice to be given to what is effectively a state-owned bank.

Q65 Roger Berry: In the court of public opinion many of us believe that lots of things should be done about those responsible for RBS's actions in the private sector. If I was the Government I would make that phone call. The story would then be that the Government had responded to the crisis, the unions had achieved a victory—you demanded that someone phone RBS—but, not wanting to be brutally frank about this, in all honesty it would not make any difference to the possibility of a takeover by Kraft. Is not playing the RBS card really a token demand? It is the easiest thing for the Government to say that it will do that and it and the union get some credit, but I do not believe that it will save any jobs in Cadbury.

Mr Dromey: There is no magic wand. What the Government has said thus far is welcome. Anything it can do it should do. I agree that the big issue then is the future. Where do we go from here in terms of ensuring that we do not have Cadbury after Cadbury? In the here and now support from Government and anything it can say and do are very welcome indeed.

Q66 Roger Berry: Do you have any evidence that there would not be another bank out there that would not provide the same facilities? Clearly, as everyone has said in the financial sector there is a lot of money to be made out of a takeover.

Mr Dromey: As things work at the moment that is absolutely right, but it is anomalous that effectively we have a state-owned bank not acting in the public interest. I agree with you. I do not wish to place too much emphasis on this other than to say that it would be very well received by our 3,000 members in Cadbury. The stronger the support we get the better because they are very concerned about their future.

Ms Formby: Ironically, Kraft had a relationship with Cadbury going back decades and did not tell them anything about their intentions. Cadbury found out about it when the announcement was made.

Q67 Chairman: Is there anything else you would like to say to us? I say it with hesitation knowing your articulate nature.

Mr Dromey: The approach of the Committee is very welcome. There is an immediate situation affecting people about whom we care a great deal and communities and the country. The Committee is absolutely right to focus upon the wider and longer term and we hope that will help carry forward the crucial debate into the future.

Q68 Chairman: One hopes that institutional shareholders might listen and invest in the long-term future of the UK and have a care about the future of British manufacturing industry more generally.

Ms Formby: We shall be circulating our own defence document to all Cadbury shareholders tomorrow. We will ensure that the Committee has a copy of that.

Chairman: That is helpful. Thank you very much indeed.

Witness: Ian Lucas MP, Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills, gave evidence.

Q69 Chairman: Welcome to the Committee. I know that you have sat through the other evidence sessions and you want to make a short opening statement, with the emphasis on “short”.

Ian Lucas: Indeed, and I undertake so to do. The Government believes that long-term investment provides the best basis for progress by a successful company and that shareholders should take a long-term view of a company’s prospects when making investment decisions. We believe such decisions should have regard to the interests of employees and the tradition and reputation of the company or business concerned. In a takeover companies should be transparent in setting out their vision and long-term plans and shareholders should make their decisions on the basis of those plans. The culture of long-termism predated the discussions we are now having concerning Kraft and Cadbury; indeed, it formed the foundation of the Companies Act 2006 and the reviews undertaken by Sir David Walker and Sir Christopher Hogg which have raised important issues relating to the opportunities for institutional investor engagement in the long-term interests of UK companies. Government has initiated consultation by the Financial Reporting Council on the new investor security code. Tomorrow Lord Mandelson will be hosting a round table of investors, fund managers and companies to consider these important issues. I shall also attend.

Q70 Ian Stewart: In our briefings it has been pointed out to the Committee that the terms “mergers”, “acquisitions” and “takeovers” are sometimes used interchangeably but there are slight differences between them. In this session we have been briefed on the role of the Competition Commission, the Office of Fair Trading *et cetera*. What we are keen to know now is the role of the Department and the Secretary of State. For the record, can you give a brief explanation of the role that your Department and the Secretary of State in particular play in overseeing mergers and takeovers? In addition, what powers does the Secretary of State have?

Ian Lucas: The overriding principle is that these matters are dealt with at arm’s length. The Takeovers and Mergers Panel deals with the mechanics of the takeover process and monitors and supervises it. If competition issues arise from that the Office of Fair Trading and Competition Commission will investigate and make recommendations arising from it. It is only in limited circumstances that the Secretary of State for Business, Innovation and Skills will intervene. At present those circumstances are limited to national security, issues relating to media ownership and also those cases where the functioning of the economy is severely prejudiced. The position of the Secretary of State is limited.

Q71 Ian Stewart: Would “national security” include the circumstances described earlier by Professor Bones? In his evidence, which I believe you heard, he said that issues such as the skills base are a matter of national interest and therefore national security.

Ian Lucas: I believe there is a distinction between national security, which is quite narrowly defined, and the national interest or the strategic interest of the economy about which Professor Bones was speaking. Everyone would accept that if what Professor Bones suggested was implemented it would be a change to existing policy.

Q72 Ian Stewart: Perhaps some would wish that change to take place. What do you say about the role of the Secretary of State?

Ian Lucas: The role of the Secretary of State is limited at the present time. Clearly, in the present case there has been a very vigorous debate which has been heightened in the public appreciation by the existence of the Cadbury/Kraft issue; in other words, this was happening before November last when Kraft made its bid. Since my appointment in June I have had meetings relating to long-termism in the economy. It is something that we are very interested in promoting in the context of investment decisions. Part of that is the key relationship as between shareholders and investment managers and the business. We have been working with bodies like the Institutional Shareholders Committee on its code of practice to try to promote a more long-term approach. It is against that backdrop that the present bid has come to public notice.

Q73 Ian Stewart: As I understand it, there are certain tests in relation to turnover and share of supply that would automatically kick in given the normal structure you describe but that the Secretary of State has powers to intervene should there be a concern about certain processes that do not meet those tests. What powers does the Secretary of State have?

Ian Lucas: My understanding is that the competition issues would be investigated by the Competition Commission on the recommendation of the Office of Fair Trading. That is as far as possible dealt with at arm’s length in order to facilitate transparency and a process that is not subject to political whim. The Secretary of State has said that Cadbury is dear to our hearts and is a great British institution but it is an individual case. When we talk about the rules we must understand that they will affect not just this individual case but all other investment decisions, including inward investment decisions by companies from outside the UK. We must also recognise that there are occasions when inward investment is of great benefit to the UK economy. In short, we must not throw the baby out with the bathwater. There is a very important issue here about long-term investment and investment in the future of British industry. It is important that we have a debate about that in the present context, but we need to look at the full picture.

Q74 Ian Stewart: Is it right that if the Secretary of State considers there is a finding of an adverse public interest he can issue special intervention notices to enable those structural bodies to address an issue like this?

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Ian Lucas: I am not clear what specific intervention notices you are talking about. I spoke about the three categories that would justify intervention, two being national security and media ownership. To broaden it would involve a change in policy. One would need a resolution of the House and also, as I understand it, a reference to the European Commission. It would be a big step but it would be one that obviously the Government could take.

Q75 Mr Hoyle: That is the key, is it not? Is the ministerial team frustrated that it does not have those powers or happy not to have them?

Ian Lucas: The ministerial team is very conscious that there is an issue relating to long-termism and investment. That is why the debate with institutional investors has been initiated and we believe it is very important that shareholders engage much more closely than they have done to date with business and industry when they make decisions about whether to support the Kraft bid or the line taken by Cadbury's management. We are concerned to address whether we can improve the process so that the long-term interests of the UK economy can be better served than at the present time.

Q76 Chairman: I do not want to be critical but the form of words you used perhaps did not quite express the point as you intended. To make it clear, you said that the Secretary of State would intervene when the functioning of the economy was severely prejudiced. That probably implies the financial system itself rather than other aspects of the economy. Is that right?

Ian Lucas: The grounds for intervention relate to the operation of the financial system, not the broader functioning of the economy.

Q77 Chairman: You heard what Professor Bones said earlier about the importance of research and development in food manufacture in the UK but that food security could be a ground for national security interest. Does the legislation currently allow food security to fall within the definition of national security?

Ian Lucas: That suggestion has not been made to me before and I believe would go beyond the current understanding.

Q78 Chairman: The reason I ask is that last week one of your colleagues in the Cabinet, Hilary Benn, said that we had to pay greater attention to food security. I happen to agree with him very strongly and welcome what he said. Although I accept that Cadbury's chocolate may not be seen as an essential part of our food security there are lots of other things as well and research and development and support for the agricultural base provided by Cadbury is also part of the food security question. I fully accept that you cannot give me an answer to that question at present, but do you believe that the "national security" test as the law currently stands could be stretched to encompass food security or would it require legislative change?

Ian Lucas: I am not sure it would require legislative change. I certainly believe that it would be a step which would have to be considered by resolution. If by "legislative change" you mean secondary legislation then it would certainly be a novel step and an extension of policy.

Q79 Chairman: It would be helpful if when you have talked to your officials after this session you could seek further clarification. I was interested by what Professor Bones said. I had not previously considered that helpful comment. If after this session you believe that your words are not sufficiently precise or there is more you want to add we would welcome a letter just to clarify the situation on this narrow question.

Ian Lucas: I will certainly do that.

Q80 Chairman: I just want to push you a bit on where the Government stands. We have been debating long-termism and short-termism for decades; it is one of the oldest debates in the British economy and so there is nothing new about it. I highlighted some bids back in 2006 where long-termism and short-termism played a part. Cadbury is only the latest example of cases on which this debate focuses. When the Secretary of State said in September in his interview with the *Wall Street Journal* that he was concerned about the impact of these decisions on manufacturing and told the *FT* in December, "If you think that you can come here and make a fast buck you will find that you face huge opposition from the local population . . . and from the British Government", what did he mean specifically? What form would that opposition take because it looks to me like a short-term decision?

Ian Lucas: I think the form of the opposition would be that we consider any decision not being made in the long-term interests of the UK is one that we would not support.

Q81 Chairman: What does that mean? What would be the manifestation of that support?

Ian Lucas: We have to be clear about the fact that the Government has taken the very broad policy decision not to intervene in individual takeover bids unless there are very specific grounds, on which we have already touched, to justify it. That is why it is important to emphasise that we cannot base our general policy on individual cases. Hard cases make bad law.

Q82 Chairman: But the quote by Lord Mandelson in December was specifically about this takeover. He also said last week that "investors should expect to brave the court of public opinion if they are motivated only by short-term profit." All of these are great words for which I have a good deal of sympathy. You said in your opening statement that there was to be a round table session tomorrow. Is that the public manifestation of what Lord Mandelson said in September and December and last week or was it already planned?

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Ian Lucas: The project relating to long-termism may be something that has been established for some time, but the initiatives to which I referred was the decision by the Institutional Shareholders Committee to have a new code of practice relating to engagement between shareholders, fund managers and business. That and the decision to refer to the Financial Reporting Council the terms of the new code of practice are novel decisions taken in the past few months. They predate this particular issue but reflect the view that where the Department sees market failure it may take steps to intervene. That is part of what the process is all about. We consider this may be a case where there is market failure and we want more long-termism and we are taking specific actions to develop that.

Q83 Chairman: This is a case or issue where you may see market failure?

Ian Lucas: The issue is one of market failure. Insufficient long-termism may in our view be a characteristic of market failure.

Q84 Chairman: I do not want to put words into your mouth. I understand you are constrained as to what you can say about this particular bid, but are you saying that this particular bid may represent market failure?

Ian Lucas: I make very clear that because of my ministerial position I cannot talk about this specific case, but if a decision is made on the basis of short-termism alone and that is clearly at variance to the long-term interests of a company and industry that could be a market failure.

Q85 Chairman: To be clear, the comments by Lord Mandelson that I quoted earlier suggested he was considering a review of the law governing takeovers and looking at shareholder and other issues as well. Is a formal review going on?

Ian Lucas: No, but one of the phrases Lord Mandelson has used is that he is initiating a debate on the matter. That is not something we have had just as a result of his comments but it has been spurred on by those comments. I believe that across the political spectrum and indeed into other areas there is an appetite for this debate to take place. It is an important debate for the future of UK industry.

Q86 Chairman: We have been having this debate for two or three decades; it has peaks and troughs.

Ian Lucas: I believe this is a peak.

Q87 Chairman: You heard what Professor Bones said about the possibility of attaching conditions to takeovers relating to, for example, the relocation of manufacturing, research and development and training. Is that an issue you are looking at or is it a new idea?

Ian Lucas: Professor Bones did refer in general terms to a number of proposals. The issue is: what specifically would be workable if one decided that that was an avenue down which we wanted to go? I have had discussions with investment managers on issues such as this and they talk to me about the

deterrent effect that specific proposals would have. Let us not run away from the fact that this is a difficult issue. If there were an easy solution all of us would have come up with it.

Q88 Chairman: You heard Mr Dromey talk earlier about what European competitors or colleagues were doing to protect their industries. I was interested in that and meant to ask him for a more formal note on it. It struck me that he might have done some research on it and I could have informed myself of it. It suggests that there are European countries doing things in this area and possibly we could do things ourselves.

Ian Lucas: We could indeed do things ourselves. Many of the things that have been done in terms of giving preferential status to long-term shareholders could take place now in the UK under the Companies Act 2006, but the situation is that companies decide not to introduce that form of provision within their articles of association. The powers are there already. The issue is not so much to do with whether the legislative framework exists; it is more a matter of culture. One of the interesting aspects of UK businesses is that we tend to have a broader shareholder base than, say, companies in Germany.

Q89 Chairman: Is the Government prepared to consider the idea of attaching conditions to the relocation of manufacturing, R&D and so on?

Ian Lucas: That is part of the debate we are talking about.

Q90 Chairman: When will this debate be concluded? An election is coming up and that gets in the way of a lot of things at present.

Ian Lucas: We have a meeting tomorrow when we shall discuss issues. I have been talking about these sorts of issues with institutional investors for the past two to three months, so it is happening at this time.

Q91 Chairman: Will the Government make a formal statement about its conclusions on this debate?

Ian Lucas: We will keep the Committee informed as to the progress of the discussions.

Chairman: I think that is a "no".

Q92 Mr Clapham: When we look at the aspect of research and development we see that Cadbury has developed a very successful research arm. It employs 200 workers. The Chairman asked what we might be able to do to ensure that continues. One consequence of the movement of research and development tends to be the loss of the anchor. R&D tends to anchor down industry. Is there anything we can do to ensure that the research and development facility developed by Cadbury remains here?

Ian Lucas: One thing we can do related to the supply side is ensure that the nature of the research and development that takes place in the UK, and the reason why Cadbury is the successful company it is,

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remains because of the quality of the research and development that we offer at the present time. In certain cases that is the reason why companies come to the UK and make inward investment. They want to benefit from our research and development. It is very often a reason why British companies are more attractive than others. We want to make sure that those skills and capabilities within a company are not transferable because we want the quality of the research here to be better than anywhere else. That is why the Department focuses heavily on sustaining and developing strong science and research within our universities. In my role I should like to do more to develop links between universities and business to anchor that research and development within the UK.

Q93 Mr Clapham: In the debate that is to take place how we can keep research and development in the UK will be a crucial part of the discussions. Currently, we face a situation where if this takeover comes about that R&D facility could easily move so that all the benefits from research and development you have just explained are lost. There may be little we can do about that in this particular takeover bid, but for the future is it something that you are looking at very seriously in the sense of having some kind of regulation of or guarantee by overseas companies that takeover UK companies to ensure we retain research and development facilities?

Ian Lucas: I think it is very difficult for Government to impose conditions on companies that invest as to the future conduct of their business in the UK. We have talked about investment by companies from overseas which may be very negative as far as the UK is concerned, but we should also recognise that there are other examples in the automotive sector. BMW Mini is an inward investment into a British company that has had very positive benefits for the company and the product and has led to a positive outcome. We are having this debate because these are difficult issues. I believe we must look at both sides of the coin and recognise that if we constrain an outside investor in the decision he makes about the long-term future of the business in which he is investing that may be a deterrent to investment in the UK. When we weigh whether we want to impose the type of constraints you have indicated we have to think about what the consequences might be.

Q94 Mr Clapham: I appreciate that it is a difficult situation, but one hears that our competitors, the Dutch, Germans and Belgians, are already looking at how they might make their market mechanisms work better. If there were to be developments that we did not adopt it could affect competitiveness, could it not? Is this likely to be part of the debate so that we move from over-indulgence of the financial market to the manufacturing market but do so in the context of making it work better?

Ian Lucas: This takes us back to the issue of shareholder engagement. I think that individual shareholders and institutional shareholders need to look at things in the longer term.

Q95 Mr Hoyle: Obviously, what we are seeing is protectionism by European competitors to look after their industry, so it is important that the debate you are now having comes to fruition very quickly if we are to save what is left of British UK manufacturing. To go on to R&D, what discussions have taken place between your Department and Defra, because this could have a major implication for agricultural science and where we need it to be in future? At the same time, the big debate is about the security of food supply within the UK.

Ian Lucas: Do you mean as it relates to this particular bid?

Q96 Mr Hoyle: To Cadbury.

Ian Lucas: I cannot give you that information now.

Q97 Mr Hoyle: To generalise it, have discussions taken place with Defra?

Ian Lucas: I cannot give you an answer to that now; I will have to let you know. I would be surprised if there had not been discussions but I am not personally aware of them.

Q98 Mr Hoyle: It is not that you are constrained from speaking about it; you just do not know?

Ian Lucas: I am not aware.

Q99 Mr Hoyle: Obviously, food security and R&D are very important in agriculture. We could end up losing this as part of the takeover by Kraft. Do you share my concerns on that?

Ian Lucas: Clearly, both R&D and food security are important issues. This is an aspect that has been raised by the Chairman and is an interesting one that I shall look into after this session.

Q100 Mr Wright: Turning to shareholders' rights, you have said that shareholders should take a longer-term view when investing. The reality is that when offers such as that from Kraft are on the table it is out of the hands of the shareholders; it is the fund managers who will take the decision. Do you agree with Professor Bones' argument that shareholders and fund managers have different objectives?

Ian Lucas: They should not have because the fund manager works for the shareholder. I believe that the shareholder should make that relationship clear.

Q101 Mr Wright: Surely, the fund manager will take a view on the value of the offer rather than the long-term prospects of the company?

Ian Lucas: Not necessarily, because it may be that the long-term return on shares is better if the fund manager takes a long-term view. The issue of long-termism is related to the period over which one looks at value. There may be a short-term benefit in selling at a particular time, but it may be that over a longer period the benefit is to retain the shareholding. It is

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important that the shareholder who owns the shares makes clear his or her wishes relating to the role of the fund manager.

Q102 Mr Wright: The chairman of Cadbury has said that the offer by Kraft undervalued the company. If Kraft came back with another offer, say an increase of 20% or 30%, fund managers and probably the chairman of Cadbury might well say that it is in their interests to accept it because it is a financial incentive rather than a longer-term commitment by shareholders who may well take the view that it is far better to invest in what is a profitable company?

Ian Lucas: The fund manager should act in the financial interests of the shareholder rather than his own personal interest. I am a solicitor, albeit I do not practise. If I acted on behalf of a client I would not act in my own personal interest. It is important that the shareholder makes clear that it is his or her interest that is taken into account. In the particular example of Cadbury there will always be a level at which a bid will be accepted as I believe Professor Bones says in his written evidence to the Committee, so in his mind it is a question of price, not principle.

Q103 Mr Wright: There are obviously two areas of interest here: BIS and the Treasury. What discussions have you had with the Treasury on these issues?

Ian Lucas: There have certainly been discussions with the Treasury. The Walker review is Treasury-led but clearly is closely linked to this debate and formed part of the discussion I had with institutional shareholders recently. It is very much an issue that we need to deal with in conjunction with the Treasury.

Q104 Mr Wright: Will that form part of the round table discussions tomorrow?

Ian Lucas: Yes, it will.

Q105 Mr Wright: In terms of the Government's responsibility do you believe it has a role to play in standing up for shareholders against large fund managers, or is that something we should leave well alone?

Ian Lucas: I believe Government needs to make clear to shareholders that they should be running the show. In the context of this particular bid, which is a very high profile, controversial one, it can only be in the interests of us all that shareholders take an active interest in the bid and the instructions they give to the fund managers.

Q106 Mr Wright: Last month in a press statement Lord Mandelson stated that "he would continue to take a very close interest in whether shareholders played a full part in corporate governance, and whether they took a long-term view of their responsibilities as shareholders." I take a very close interest in Norwich City but I do not turn up to every match. What do you think he meant by "take a very close interest"?

Ian Lucas: I think it means making clear the role of the shareholders and its importance and the level of control they have in terms of indicating to the people they have asked to deal with their shareholdings what they want. The more we promote that with shareholders and encourage them to take a longer-term view the better it will be not just for UK Plc but shareholders themselves.

Q107 Roger Berry: Why should what is in the interests of shareholders necessarily be the long term?

Ian Lucas: It is difficult not to touch on Cadbury but that company has particular characteristics, culture and history within the UK and it is a long-term project. We need to look as a whole at the UK economy and recognise that any business requires sustainable investment.

Q108 Roger Berry: There is a strong case for looking at the long term from the point of view of the economy. My question was: why should shareholders look at the long-term view? I do not have any shareholdings but if I did I would be looking at making as much money as possible. I assume that is what people who buy bits of paper try to do. There is absolutely no reason on earth why they should be committed to the long term. Getting fund managers to do what shareholders want them to do is not the same as ensuring there is investment in the long-term interests of the British economy.

Ian Lucas: But if every individual shareholder took a short-term view overall the long-term functioning of the economy would suffer because there would be a lack of long-termism.

Q109 Roger Berry: Exactly! The financial crisis is an example of that. I genuinely do not understand the idea that the long-term interests of the economy are guaranteed by focusing on what shareholders want to do because they, like everybody else, will look at the short, medium and long-term. If it is in their interests to make more money by focusing on the short term they will make decisions based on that, will they not? Therefore, it is not a solution to the problem simply to say, "All power to shareholders!"

Ian Lucas: The present capitalist system in the UK operates on the basis that shareholders are given the prime role in making decisions relating to share investment in companies. That is the position as set out under the Companies Act 2006. That is the capitalist system which has been broadly accepted as the basis upon which companies should operate. Even though you may not hold shares—we do not pry too much into Members' finances—clearly any investment, whether it be in pensions and issues of that nature, is part of the broader economy. I would encourage any individual to be interventionist, if you like, in the way his or her money is invested in terms of linking into the UK economy. It may not be precisely in the form of shares; it may be an investment in some other form, but I think that to

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make clear to fund managers what one wants to see in terms of the investment of one's own money is a very healthy development.

Q110 Roger Berry: I think the Government is right to say that an example of market failure is one where there is failure to address the long-term interests of the economy or business, but I do not understand and you have not yet explained to me how giving greater power to shareholders will secure that outcome. If the solution of the problem of short-termism is more shareholder power I simply ask: how does that greater power address the problem? I genuinely do not understand how it does so.

Ian Lucas: If everyone operated on a short-term basis then the performance of those shares as part of the broader economy would be less good than if everyone acted on a long-term basis.

Roger Berry: That is the way markets work and that is an example of market failure.

Chairman: Encouragingly, I disagree with Roger Berry on this point. Different shareholders take different views. In the case of one shareholder perhaps his daughter is getting married next month and he would not mind maximising the capital value of his shares so he can get out when he is ahead and fund the wedding. Others will save for the long term and want investment income over a longer period. They are not interested in an instant capital gain but want a steady dividend flow. We are speaking now indirectly about shareholders in Cadbury. I am sure the MPs' pension fund invests in Cadbury's shares. I would like it if the trustees of the fund wrote to whoever manages the fund and told them not to sell the shares to Kraft and that to secure the long term we should stick with Cadbury. Our pension scheme is a funded one which often people do not recognise. For me the long-term interest is served by not selling those shares. How far down can you drive that? You talk all the time about the shareholder, but as we have heard from Professor Bones the vast majority of shares are held by a handful of institutions that never ask the individuals whose money is being used by them what their interests are. Quite often in the short term they maximise performance to get a good rating and league table next year in the *Sunday Times* or whatever it is. There is always short-term pressure on the managers of these funds and, unlike Roger Berry, I believe that if you give the shareholders as best you can a greater say the result may be imperfect but it will be better than the current arrangement. Is that the kind of issue that the Government is looking at?

Q111 Ian Stewart: In line with the Chairman's comments, with which I agree, are you not also arguing that if shareholders are more active in the decision-making process informed decisions are better than ill-informed ones?

Ian Lucas: As a general rule, informed decisions are better than ill-informed ones. We are engaging with institutional investors and fund managers in the

process I described earlier to try to find a way to make UK fund managers invest more on a long-term basis.

Q112 Chairman: Will you look at Professor Bones' specific suggestion that they should consult with the people on whose behalf they hold and vote those shares, that is, a block for, a block against or a block abstention depending on the wishes of the shareholders? Is that an interesting idea to explore?

Ian Lucas: It is an idea. If the company decided that that was what it wanted to do it could do that already; it is not prohibited by present legislation.

Q113 Chairman: Could we not oblige fund holders to consult with those on whose behalf they act? As a holder of a PEP and ISA at present I have no way to express my view and tell the manager of those how to behave.

Ian Lucas: If we were to oblige companies to do that it would be a policy change that would probably require legislation. I believe that 40% of stock exchange investment comes from overseas companies which is a relevant matter that also needs to be considered.

Q114 Roger Berry: You said that the role of the Secretary of State in all this was somewhat limited. One thing he could do on behalf of the taxpayer is pick up the phone to RBS which is owned by the state and say he does not wish the bank to be engaged in helping with a takeover bid. That would be simple and straightforward, would it not, so why not do it?

Ian Lucas: When RBS was in receipt of taxpayer funding it was made absolutely clear that the business was to operate at arm's length from Government and that was the basis on which it was operated. I understand that Kraft has had a long-term relationship with the Royal Bank of Scotland. If the Secretary of State were to do that not only would he contradict the policy outlined previously in general terms for one individual case but also interfere in a previous relationship between RBS and Kraft. Arguably it could also be said that in doing that he would be making a judgment on the merits or otherwise of the bid. I think that would be a very difficult course for any Secretary of State to take.

Q115 Roger Berry: All Governments have their stated policies including dealing with matters at arm's length. They appear to spend a lot of time in meetings with chief executives of companies and people like that. What do they talk about if they are not saying what they believe it would be a good thing for those companies to do? Surely, there could be a nod and wink in the direction of RBS that this is frowned upon. Is that not possible?

Ian Lucas: I do not think a nod and a wink is an appropriate way to deal with it. I talked earlier about the importance of transparency in these arrangements and the need for a structured procedure to be followed in what is a very intense period when takeover proposals are put forward. It is important we have rules, that everyone is clear

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what those rules are and that when the position becomes difficult we do not immediately veer away from them. If we have a very uncertain system it may lead to less investment in UK business.

Q116 Roger Berry: I appreciate that present policy is that Government would not use its shareholding in a bank to elicit a particular response to a hostile takeover of a UK company, but is that an area of policy that the Government might consider revisiting?

Ian Lucas: I do not think our policy would be determined on the basis that the company was not a UK business in the way you have described it. We do not want to intervene in specific instances and cases unless there is a reason for doing it in line with pre-existing policy.

Q117 Roger Berry: Are you saying that you would not want a publicly-owned financial company to be one of the instruments of intervention but you would do it in some other way?

Ian Lucas: If we wanted to intervene then it would not be appropriate to do so in contradiction of Government policy by using the method you have described.

Q118 Chairman: I know it is a difficult time for ministers in terms of what they can say when a controversial bid is in process. I have a note that you want to refer to a particular matter. If that is the case I happily give you the opportunity to do so.

Ian Lucas: I want to make clear that I have made an error. The round table meeting of investors is on Thursday, not tomorrow.

Chairman: It makes all the difference! I cannot help noting there is a certain irony in the fact that whilst RBS may be paying for Kraft's acquisition Cadbury is being advised by Goldman Sachs, Morgan Stanley and Union Bank of Switzerland. There seem to be rather different criteria in operation in this bid. Thank you, Minister. We look forward to seeing what happens.

Tuesday 16 March 2010

Members present

Peter Luff, in the Chair

Roger Berry
Mr Brian Binley
Mr Michael Clapham
Mr Lindsay Hoyle

Miss Julie Kirkbride
Lembit Öpik
Ian Stewart

Witnesses: **Mr Jack Dromey**, Deputy General Secretary, and **Ms Jennie Formby**, National Officer, Food, Drink and Tobacco Sector, Unite the Union, gave evidence.

Q119 Chair: Mr Dromey and Ms Formby, welcome back to this Committee for a second time during this inquiry into mergers, acquisitions and takeovers, particularly now in the context, as we spoke last time, of the Kraft takeover of Cadbury. It is a bit otiose but can I ask you to introduce yourselves for the record?

Mr Dromey: I am Jack Dromey, Deputy General Secretary of Unite.

Ms Formby: I am Jennie Formby, I am National Secretary for Unite's Food, Drink and Tobacco Sector.

Chair: On behalf of several members of the Committee can I say there are members of the Committee, of course, who are members of Unite, the Union as well.

Ian Stewart: Proudly.

Q120 Chair: I was going to ask you the opening question but actually I think you want to make an opening statement. My question is, really, the question that enables you to make that statement. What are your main concerns?

Mr Dromey: Can I, first of all, thank you personally, and this all-party Committee, for carrying out this inquiry. The Cadbury workers are deeply grateful. Cadbury was born out of great philanthropic traditions; sons and daughters have followed granddads and grand-mums into Cadbury. These are people who have over generations built a world-class company, and their view is that they have now suffered a double outrage: first, that they should be taken over—a successful British company—by a debt-laden American multinational and, second, 42 days on from the takeover, no-one has yet to sit down with them and tell them what the future holds for them. They see the Kraft executives from afar in the factories but the Kraft executives have not spoken to them. Where is Irene? To be frank, Chair, Kraft's cheesy smiles on YouTube are not enough; what Kraft owes to the workforce is sitting down with them and giving them guarantees for the future. There are two things in particular we want to focus on today: first, precisely that. If it was wrong in the long-term interests of the company and wrong in the national interest that Cadbury was taken over by Kraft we want to hear today that Kraft will give guarantees for the future of no site closures, no compulsory redundancies and that pensions and terms and conditions of employment will be protected for at least an initial five-year period.

Second, Chair, in the words of John Flavin, the senior union representative at the Bournville factory, where Cadbury was born, we want to see a Cadbury's Law so that never again can a successful British company be taken over in this way—a hostile bid by a multinational. Therefore, we are proposing a mergers and takeovers commission which will act in the best long-term interests of the company as well as workers being properly consulted, under law, properly protected, under law, and able to negotiate protections with the incoming company, under law, so that we do not have the farce that we have had thus far of Kraft hiding behind and Cadbury hiding behind the takeover code. If everyone else can protect their interests—banks and pension funds—why not the workers? Thank you, Chair.

Chair: Thank you. I did say to you when you came in that we are trying to keep this opening session down to about half-an-hour to get Kraft on as quickly as possible. I think you understand that. In that spirit, can I invite Mick Clapham to ask his question?

Q121 Mr Clapham: Jennie, I remember when we met on the 12th you did express some scepticism about the actual Kraft approach. One of the things that has really caused a great deal of concern is the Somerdale factory. Cadbury having made the decision they were going to close Somerdale, along come Kraft which gives you the impression that they are going to keep it open. Do you feel that they misled you?

Ms Formby: Can I echo what my colleague, Jack Dromey, has just said in thanking the Committee for the opportunity to come and speak to you again. In particular, because it has given me the opportunity, for the first time, to meet anyone from Kraft, in the form of Mr Firestone, and that has been very welcome, to have that opportunity, since they have taken over Cadbury.

Q122 Mr Hoyle: They have been that available?

Ms Formby: That is how available they have been.

Mr Hoyle: Marvellous.

Q123 Chair: I was interested in what Mr Dromey said on this. He said he has seen Kraft executives from "afar"—that was the word he used, I think. Which Kraft executives are you aware of, at a senior level, having visited major plants?

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Ms Formby: Mr Firestone has very recently, but only very recently, visited the Somerdale plant to talk to the shop stewards, but several weeks too late as far as we are concerned and certainly as far as our members are concerned there. Other than that, Kraft executives have been seen walking around the Bournville site.

Q124 Chair: What level of executive?

Ms Formby: I am not too sure who the executives have been, to be honest, because they had Cadbury management minders with them and were not in direct contact with the workforce.

Mr Dromey: When I was there last Friday, the representatives locally were told by Cadbury's management that these are senior guys from Kraft, and the representatives at Bournville said: "Can we speak to the senior representatives from Kraft?" and they were told no.

Q125 Chair: Just to be clear (I am sorry, Mick, I interrupted), Ms Rosenfeld has visited no UK plant at present, as far as you are aware, of Cadbury?

Ms Formby: Not to my knowledge.

Mr Dromey: Unless she has come at the dead of night when there are no workers there, no.

Ms Formby: I am sorry, I did not answer your question, I was getting there but I have not answered the question. I think, in response to that, absolutely, it is not just the workforce who has been misled; it is the whole of the British public and, of course, the Government who has been misled about Somerdale. I do not want to pretend that the closure of Somerdale is a shock; of course that was planned for some considerable period of time, and Mr Bond, who is here today, was one of the key architects of that decision, so I have no doubt you will be asking him about that. It is not actually revisiting the initial decision that is of importance in this; it is the fact that Kraft very cynically not just gave the impression but said they had every intention of keeping the site open. Right from the very first day that they announced their intention to bid, way back at the beginning of September when this statement was first made, I got in contact with Kraft, with Mr Richard Johnson who was the European Corporate Affairs Director, to say: "Look, I can't see how you can possibly keep the site open, so please don't make promises, please don't raise the hopes of people who have been, really, going through hell for the last two-and-a-half years knowing that they are going to lose their jobs and their community is going to suffer and everything else, unless you really can genuinely tell us how you intend to keep the site open." That was the theme that I visited several times after that, both in letters and in the one opportunity I had to meet people from Kraft during the bidding process, when we met Mr Johnson and their Mergers and Acquisitions Director, Tom Dillon, and their European HR Director. At that time, again, I said: "What is your intention for Somerdale? You know that the employees are going between March and June", and so on, and that things are pretty much finished in Poland, and of course all of the information about the progression

of the government investment in Poland in the factory that is there and the construction work is the subject of regular updates that you can access on the internet, so they would have had the ability to get this information out. "So how are you proposing to keep the site open because we assume you are not going to just reverse the decision of Cadbury?" They were not willing to make any commitments whatsoever, so we continued to say: "Please don't make the statement unless you actually intend to keep it open." We never believed that they had an intention to do that, but the statement was repeated over and again in their media statements that they made, by their UK Managing Director, by Irene Rosenfeld on several occasions, and, indeed, to Lord Mandelson as well. I think you get the picture.

Mr Dromey: Just to add very quickly: a proud workforce in a proud community had their hopes raised and their hopes then dashed. It was utterly cynical to pretend that they were going to reprieve the factory if they did not mean it. We, as a union, would never mislead workers in that way; Kraft should never have done that.

Chair: Can I just encourage my colleagues and our witnesses, we have got another 20 minutes, so short questions and answers.

Q126 Mr Clapham: What we can see is that it seems to have been a ploy at a time of the bidding to actually encourage, shall we say, a particular response from the workforce.

Ms Formby: Absolutely. Sadly (and I say sadly because I think it has had a devastating impact on the individuals), significant numbers of people believed it. I have to say, if you look back at Kraft's history, it is not the first time they have done this. They did this when they took over Freia Marabou in Norway and made commitments to keeping sites open, and then they closed sites, got rid of products and got rid of workers. It is a history that goes back over many years of laying people off and closing sites. It is something I made reference to when I gave evidence on the 12th.

Q127 Mr Clapham: In terms of the industrial relations atmosphere now in the plants, has it really soured industrial relations to the extent that Kraft is no longer trusted?

Ms Formby: It is very difficult to talk about industrial relations as far as Kraft is concerned because, of course, the main industrial relations are conducted through people who are existing Cadbury management. There has always been a reasonably good relationship with the existing Cadbury management, and of course we have Richard Doyle here today who is one of the key figures who we liaise with, but if you are asking me what is the workforce's view of Kraft, they are very cynical and they are very, very concerned, particularly when already they are seeing in Kraft in Banbury that the company has only recently announced that they want to slash terms and conditions for new employees. That is being seen across the whole of the existing and new Kraft workforce as the company already looking at cutting terms and conditions as

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they have already cut jobs in head office functions to start paying off the debt—something we were very concerned about.

Q128 Mr Clapham: Do you find it odd that it does not appear that they have made any intention of meeting with the union? Does that suggest that they may be about to introduce a totally new culture? I say that because if one looks at situations where we have seen the Americans come at the helm of an industry, such as for example, British Coal and MacGregor, we saw a totally different culture introduced. Is that your feeling; that they may well introduce a totally different industrial relations culture?

Mr Dromey: I have been involved for 25 years in takeovers, sometimes disposals, acquisitions, privatisations and there is an iron law: those who are committed to making it work meet you quickly; those who have got a game plan that they do not want to tell you about take their time. What is so good about the Committee calling Kraft to account today is to ask Kraft for straight answers to straight questions: will you close plants? Will there be compulsory redundancies? Will terms and conditions be safe? Crucially, will you invest to make a success of that iconic British brand which is Cadbury's?

Q129 Mr Hoyle: Very quickly, would it be right and fair to say that this is a management of Kraft that is remote, aloof, smug but, worst of all, duplicitous?

Ms Formby: I think you have summed that up perfectly, Lindsay; certainly in terms of the way in which we perceive them at the moment, because we have the lack of any kind of personal relationship with Kraft, it is very difficult to say anything other than that, that is certainly the perception that our members have of that. I hope you are wrong.

Q130 Mr Hoyle: I hope to be proved wrong.

Ms Formby: I guess time will tell and we will find out after today whether there is going to be anything that is any different from that.

Q131 Roger Berry: I have a number of constituents who have given a lifetime to Somerdale. Can I ask a very specific question about what redundancy pledges have Cadbury made to the workforce, and has Kraft confirmed or not that they are going to confirm those pledges?

Ms Formby: There has not been any question that those pledges are going to be changed and the company has confirmed that they will continue to pay the redundancy packages that are part of the agreement.

Q132 Roger Berry: Apart from redundancy commitments, have any other pledges been made in relation to the workforce?

Ms Formby: There is a whole raft of measures that are what you would expect in these circumstances, in terms of looking at alternative jobs and so on, and helping people in the job market.

Q133 Roger Berry: Kraft has confirmed it will stand by all the previous pledges made by Cadbury?

Ms Formby: We have had that confirmed by senior Cadbury management who are now Kraft management.

Roger Berry: Thanks. That is all I want at this stage, Chairman.

Q134 Mr Binley: A very quick one: Professor David Bailey has made it clear that Kraft's reason for changing their mind, which was that they did not know, is totally untenable in a bid of this kind.

Mr Dromey: Absolutely.

Q135 Mr Binley: That suggests that Ms Rosenfeld was either totally dishonest or totally incompetent. Which do you think?

Mr Dromey: Can I put it in a slightly different way? No company like Kraft buys a company like Cadbury's without having a very clear idea what they intend to do. There is no question but that what Kraft did was completely to misrepresent the situation over Somerdale because they knew they would have a tough time taking over Cadbury and they wanted to send a message which was: "Don't worry, all will be well with us. The first thing we will do is to reprieve the Somerdale factory". It was utterly cynical—utterly cynical—to pretend that they were going to do that which they had no intention of doing. Within seven days, Brian—seven days—of 2 February the announcement was made; they broke their word to the workers of Somerdale. Outrageous.

Q136 Ian Stewart: As you are aware, we are going to question Kraft management later, so we just want to get some of your views about how things have gone in relations between the union and Kraft and Cadbury up to date, and I have got a couple of questions about that. Then I want to move back, Jack, to what you were already indicating about the serious questions that union members want answering for the future, if you do not mind. Can you, first of all, tell me: did the lifting of confidentiality restrictions under the takeover code make any difference to the openness of your discussions with Kraft?

Ms Formby: As far as the discussions that we had with Kraft and, indeed, with Cadbury during the takeover process, effectively there was nothing that was disclosed to us at the times that we had conversations which was not in the public domain already. Both companies said that they were unable to talk to us about anything that could potentially be price sensitive (and just about everything was price sensitive) because they were forbidden to by the Takeover code and, therefore, there was virtually nothing that was disclosed to us which was not already well-known and in the public domain.

Mr Dromey: That is not the case. That is not the case in other takeovers. We can give you two examples: one was Jaguar Land Rover where the prospective buyers—and there were a number—the union was able to meet with each one of them and talk to each one of them about their intentions for the future and

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guarantees for the future. Another example is TNT Logistics, when that was disposed of. It is not true that the Takeover code stops you from having constructive discussions; it is just that Kraft sought to hide behind the Takeover code.

Ms Formby: Absolutely. Can I just add to that? I was with a company just last week, Unilever, who are in the process of taking over part of Sara Lee, and they have told us that it is not because the trade unions want consultation that they are engaging in consultation, it is because they believe it adds value to the takeover if they have full engagement with the workforce from both companies. They insist on doing that because they believe it is good business practice as well as, of course, very positive industrial relations.

Ian Stewart: Jack, your proposal earlier that there should be a mergers and—

Chair: I think we will leave that line. We have got your memo and we can absorb the contents. Thank you for that. It is something we will reflect on, I promise you. Can we concentrate on Cadbury/Kraft today.

Q137 Ian Stewart: The proposal you were saying earlier, though, would that cover issues like this, if there was a mergers—

Mr Dromey: Yes, it would. Incidentally, I share the Chair's view, which is that the immediate priority is the guarantees for the future. Six thousand Cadbury workers are waiting to hear what Kraft executives will say to this Committee shortly. All I would say is for the future we must never again allow, in our economy, successful British companies to suffer the fate that Cadbury suffered; a predatory bid by a multinational company, not in the best long-term interests of either the company or the country. Never again.

Q138 Ian Stewart: I am going to ask you a couple of questions now about terms and conditions and your concerns for the future. It does not matter that you may have to repeat yourself; that is useful to us to help it sink in so we can ask the questions later. Jennie, you passed comment about the union's view about commitments already given about jobs and job losses for the future. At this point, have you had any indication of any numbers in relation to future jobs or job losses?

Ms Formby: Not at all. Really, the only commitment, if you would like to call it that, are the assurances that Irene Rosenfeld gave via the media that they would be a net importer of jobs to the UK. However, the company has so far not been prepared to give us any of the guarantees that we asked for throughout the takeover process, which was that there would be no compulsory redundancies, there would be no site closures, that terms and conditions would not be eroded, and so on. Effectively, summing that up, we were saying: "Look, we want guarantees from you that the workers will not pay the cost of the takeover". Although we do not think it is a good idea for the takeover to happen for any number of reasons if, ultimately, one business decides to take over another, it should not be at the

expense of the workforce. That is what we are very concerned about and why we are continuing to seek that.

Q139 Chair: That manufacturing job guarantee was given in part on the back of transferring jobs from Ireland back to the United Kingdom again?

Ms Formby: No, there was no indication given as to what was going to happen to Ireland because when we tried to have the conversation and say: "What is your view about how you are going to do all these various things?" the answer that was given back to us in the one meeting we had with Kraft was: "We don't know enough about the company to be able to give you any information."

Mr Dromey: They knew enough about the company to buy it, but they cannot give any guarantees for the future. Ian, to be frank, warm words and cheesy smiles are not enough; it is those cast-iron guarantees. Forgive me if I stress it again: what the workers want to hear is that factories will not close; that there will not be compulsory redundancies; that their pensions are safe; that their terms and conditions of employment are safe, and crucially will Kraft invest to make a success? We do not want to go on seeing Irene on YouTube; what we want is for her to sit down with the workers and give those guarantees.

Chair: We have got that message loud and clear.

Q140 Ian Stewart: I did not even need to ask you to repeat it Jack, you anticipated it. Just one last question on this stuff. How have Kraft responded to the union's demand for an above-inflation pay rise for 6,000 Cadbury staff? Have they responded?

Mr Dromey: No.

Ms Formby: Can I say, to be fair on that, the first point is that there was a media report about what the pay claim was likely to be, which was not founded on anything other than speculation. A pay claim has been submitted but that is something that is not the subject—

Q141 Ian Stewart: It is up for negotiation?

Ms Formby: It is up for negotiation. We have not had any discussion on that.

Mr Dromey: Of course, workers want to defend their living standards but, to be frank, right now their priority is they want factories and jobs. That is their priority.

Q142 Mr Binley: Has Kraft informed you about whether or not it intends to adhere to Cadbury's commitment to the community, including continuing to contribute to the 1% pre-tax profit for community investment and encouraging at least a quarter of the employees to volunteer in the community? Cadbury has always been a very, very community-based company with a very high ethical code. That is what worries me as a businessman about all of this. Have they made any commitment in that respect?

Ms Formby: There has certainly been no commitment that has been formally given to us as a trade union. I am sure that that has been discussed

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at local level, in particular, at Keynsham. The last time I asked anybody from Cadbury what their position was going to be in terms of leaving some kind of community legacy, which certainly Cadbury had been discussing during the period of talks about the closure of Somerdale, the answer was: "Well, we are not quite sure what we are going to do as far as that is concerned". However, we have not had any particular commitment as far as the specifics that you are talking about there. Again, of course, that is something that we are very concerned to make sure is long-lasting and ongoing.

Q143 Mr Binley: Kraft seems to want us to believe that they are a most incompetent company who did not do their research properly. Surely, they would have researched this element of the Cadbury heritage, would they not?

Ms Formby: I would have thought that is a question that I will be interested to hear you put to the management when their witnesses come to the table.

Mr Dromey: We are keen to preserve and build upon those great philanthropic traditions. You are right, Brian, there is a simple truth: how you treat workers is crucial to the quality of the product they produce or the service that they provide. One of the great things about Cadbury and the reason why you have these remarkable, long-service employees, for generation after generation, is there was a distinct ethos that brought people to Bournville and to the other factories. We do not want to lose that in 21st century Britain.

Q144 Mr Binley: I understand that totally. Can I just ask: does the foundation itself, do you know, have any inkling of how they might continue to support it or not?

Ms Formby: I cannot answer that at all, at the moment, no.

Q145 Mr Binley: No inkling at all? These questions are important for the Cadbury people.

Mr Dromey: They are very important because I have been closely associated with the foundation on many projects over many years (all-party initiatives, by the way) and it is an excellent foundation that has done excellent work for 100 years.

Mr Binley: Thank you very much.

Chair: Do any of my colleagues want to ask any other points before we wind up?

Q146 Miss Kirkbride: You said a number of times this morning that it is quite wrong that this bid should go ahead, and that it certainly should not be allowed in the future. You will be very well aware that the £11 million that the Unite union gives to the Labour Party has been much in the news just recently. I wonder if you can tell us what your members get for it.

Mr Dromey: Forgive me saying this, Julie, but I think that certain issues should be above politics.

Q147 Miss Kirkbride: Some should, but it is £11 million.

Mr Dromey: I am here on behalf of Cadbury workers of all persuasions in all parts of the country. I welcome this all-party Committee acting on behalf of Parliament to call Kraft to account. I just think that to get involved in party political squabbling on a day like this—forgive me if I say this—is simply not appropriate. Simply not appropriate.

Q148 Miss Kirkbride: You have been sitting there telling us that this bid should not be allowed to go ahead, and that it should not definitely ever be allowed to go ahead in the future, which has quite significant implications for the way the stock market might work, so I think it is perfectly relevant to say that, as you give the Labour Party a very significant sum of money, your members might like to know, after 13 years, what they have got for it, or what they might get in the future.

Mr Dromey: Can I make just two quick points? First of all, on behalf of the union, we want the Government to go further than it has gone thus far. Let me make that absolutely crystal clear. I thought that Peter Mandelson's speech the Monday before last was a welcome step in the right direction that directors should be custodians not auctioneers of companies, the notion of two-thirds mechanisms for shareholders, and only those who are long-term shareholders able to vote, I thought it was a welcome step in the right direction. I do not believe that, in itself, it would have stopped Cadbury's being taken over by Kraft, and so therefore, Julie, unashamedly, we are arguing for that new mergers and takeover commission which can act in the long-term interests of a company and in the national interest. The other point is this: what Cadbury workers all over the country want, right now, is Parliament to be on their side, calling Kraft to account. I think, therefore, that what is important is that we have a unity of approach across Parliament; all parties working together. I do not want to divide anyone along political lines on something as important as the future of Cadbury's and Cadbury workers.

Chair: It is one minute past eleven; I said we would do half-an-hour.

Q149 Mr Hoyle: I think you have touched on a lot about mergers in the future maybe. This Committee, would you agree, ought to look at that as a possibility?

Mr Dromey: Yes.

Mr Hoyle: Also, do you think we ought to extend it around TUPE on mergers?

Chair: I do not want to go into bigger policy issues, I am sorry, in view of the time. It is a very important question Lindsay has asked. The Committee does intend to produce a report after this evidence session pointing a way forward, so these are longer-term issues, which I think are hugely important.

Q150 Mr Binley: I have already said that I believe in ethical business, and have done all my business life, so I share your deep concern in terms of this takeover bid. The final straw came when Franklin Templeton, a large US mutual fund, swung their vote. That is the simple fact of the matter. Forgive

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me, as a Brit, I am a slightly suspicious about that. Do you have any evidence at all of any previous relationship between Kraft and Franklin Templeton?

Mr Dromey: No I do not. What I do know is that taxpayers' money was used through the Royal Bank of Scotland, on the one hand, and we had this grotesque sight of the hedge funds—these boys in red braces from Mayfair—on the other hand, buying up a quarter of the shares so that Cadbury could be taken over by Kraft. I think what happened, Brian, to be frank, it stunk. That is why we have said repeatedly today that here and now our big priority is the Cadbury's workers; those good men and women who deserve a secure future. However, lessons have got to be learnt from this. That is why we have tabled with you today what I hope, Chair, you will find a helpful memorandum with proposals that also address the issue of consultation and the

protecting of terms and conditions of employment. Why is it that everyone else was able to act to protect their interests in this process but the workers were helpless spectators? It was absolutely wrong, and it should never happen again. What the Cadbury's workers have said that they would like part of their legacy to be "Never Again".

Q151 Chair: What impressed me about the evidence you have given today is you are highlighting occasions where good practice has been followed in takeover bids, to the success of both parties. Thank you for commenting on Jaguar Land Rover, in particular, in that regard.

Mr Dromey: Yes.

Q152 Chair: Thank you. I think that is the half-hour, and we are very grateful to you.

Mr Dromey: Thank you, once again, Chair. It is deeply appreciated.

Witnesses: **Mr Marc Firestone**, Executive Vice-President, Kraft Foods Inc, **Mr Trevor Bond**, President, Cadbury Britain & Ireland, and **Mr Richard Doyle**, HR Director, Cadbury Britain & Ireland, gave evidence.

Q153 Chair: Gentlemen, thank you for coming for this session, which is an important session for the Committee and for Cadbury's employees, as you know. Unusually, I am going to start by making an opening statement. I understand Mr Firestone needs to make one for his own reasons as well. I want to say this: we have asked you to come before us to provide some much needed clarity on Kraft's takeover of Cadbury. You heard what the Union has said about the lack of clarity just now. I hope that for all of us, including members of my Committee, this is not an opportunity to "grandstand"; the matters before us are far too serious for that, because they affect a very large number of British workers. This is an opportunity for you to set the record straight, which I hope you will seize, and to reassure your new workforce in public, and the general public itself, the Government and ourselves, that one of the UK's outstanding and most respected companies is indeed safe under your ownership. Of course, two of you have been very closely involved in that company for many years. Your company's U-turn on the Somerdale plant, in particular, has made that far more difficult, as I think you realise. Indeed, I would say it has done great reputational damage to Kraft. We will expect you to provide clear, accurate and honest answers to all our questions, and I would remind you of Kraft's corporate philosophy (you have made some bold statements about the way you run your business): "We inspire trust, we are open and inclusive, we tell it like it is and we believe we can make a delicious difference everywhere." We expect you to live up to those statements in giving evidence and, I should warn you, if we are unhappy with your evidence today we will not hesitate to call you back before the General Election for a further session. I should also warn you that misleading this Committee is a serious contempt of the House of Commons. Bearing in mind the reputation you have

rightly or wrongly acquired over Somerdale that is an issue I want to emphasise to you. What I always do as well at the beginning of a session is ask people to introduce themselves. It is more than usually important on this occasion because we do not know exactly what role you play in the company, and I think we need to know that. If I may, I will begin with Mr Doyle, if he can just explain what his role has been and will be in the future.

Mr Doyle: Yes, of course. Thank you very much. My name is Richard Doyle; I am the Cadbury Britain & Ireland Human Resources Director. I also have responsibility for our 2012 Olympic programme and I am also a trustee of the Cadbury Foundation, which was mentioned earlier, and a trustee of the Cadbury Pension Fund.

Q154 Chair: In future your role will be?

Mr Doyle: We are in a process at the moment whereby I will have clarity, along with many of our colleagues, in the next month or so.

Mr Bond: My name is Trevor Bond; I have been in Cadbury for 23 years now. I started in Bournville many, many years ago, and I have done a variety of roles around the world, mainly in the UK but also in Asia and in the States. More recently I have been the Managing Director of our business across Britain and Ireland, the Cadbury business that is, and I am about to take up an appointment in the new organisation in Kraft Europe heading up all markets in Kraft Europe, including the UK but obviously including France and Germany as well.

Q155 Chair: I am correct in saying that you were the public voice of Cadbury on 3 October 2007 when the Somerdale plant closure was announced.

Mr Bond: Yes, Richard and myself, and my leadership team, were the ones who shaped the proposal and then announced that as well.

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Q156 Chair: You took the decision and announced it, personally.

Mr Bond: Yes.

Q157 Chair: Thank you very much.

Mr Doyle: It is probably worth mentioning, I have been in the business for 21 years and certainly Trevor even longer.

Mr Bond: That is why he looks so much younger than I do!

Mr Firestone: Good morning, Chairman, my name is Marc Firestone and I am Executive Vice-President with Kraft Foods. I report directly to Ms Rosenfeld. I was part of a team that worked with her and the Board of Directors on the Cadbury transaction, and I am also responsible going forward for many of the areas, including the Foundation and contributions, in which the Committee and Unite and others are interested. If I may say very quickly, Sir, we do want to be able to answer all the questions that you have and, just as a technical matter, I want to say that under SEC rules if we make forward-looking statements—

Q158 Ian Stewart: What is SEC?

Mr Firestone: I am sorry, Sir; the US Securities Exchange Commission. In order to answer fully, if we give forward-looking statements or non-GAAP financial measures there will be reconciliations or limitations on our website. It is a technical point. The key point is I appreciate very much the privilege of being here today to answer all of your questions.

Q159 Chair: Thank you. Can I just ask you: are you primarily a lawyer or a public relations man?

Mr Firestone: Sir, I am responsible for a group that includes law, compliance, corporate affairs, community involvement as well as the corporate secretary, so my executive responsibilities span those areas, and I spend a lot of my time with the Board and Ms Rosenfeld.

Q160 Chair: We are pleased that a senior manager of Kraft has come to this evidence session but we are disappointed, I think, that we have not got someone, perhaps, who had a more direct hand in the actual decisions in the past and going forward in the future. Ms Rosenfeld has chosen not to come, Michael Osanloo is quoted a lot in the press and he is not here, and Nick Bunker, who was VP and MD of Kraft in the UK has also been quoted extensively. I have not seen your name quoted before now. Can you please explain to us why we should be content with you as a witness?

Mr Firestone: Yes, Sir, I was directly involved in the preparation and planning phase of this acquisition. I was directly involved in either drafting or reviewing many of the documents to which Ms Formby and others have referred, and on an ongoing basis I have direct oversight for community involvement and charitable contributions as well as the statements that you read earlier about inspiring trust, and so on. Those are areas for which I am responsible. Trevor, Richard and I, on a day-to-day basis, are the ones who look after much of what the Committee is

interested in, which is, clearly, what is the future of Cadbury? Will it be the great company it has been in the past under Kraft's stewardship? Ms Rosenfeld asked the three of us to be here so that we could talk with you as directly as we can about the day-to-day details.

Q161 Chair: Who, for Kraft, will take the decisions in the future about the structure of the new business in the United Kingdom? At what level will that be taken? Which individual will have lead responsibility?

Mr Bond: We will have, as we have in Cadbury, a board of management. That board of management will be for the combined UK business. Nick Bunker, the person you referred to earlier on, has just been appointed to that role. Nick and his leadership team will make those decisions. Nick, in our new structure, will report in to me.

Chair: We will judge your suitability as a witness by the answers you give us, but we do have severe reservations that we have actually got someone who is responsible more for the image of the company and the legal compliance of the company than actually serious management decisions about its future. We will find out whether that concern is justified or not as we ask our questions.

Q162 Ian Stewart: Mr Firestone, you made reference to that US body. You do understand, though, that the US structures and laws do not stop you from giving honest answers here today, which will be on the public record?

Mr Firestone: Yes, Sir, absolutely, and I made reference—

Q163 Ian Stewart: The second question is: what you missed out in answer to the question about who made the decisions in the past is you did not say that you were involved in the direct decision-making. Were you involved in making those decisions or were you only involved in all the things that you stated to this Committee?

Mr Firestone: I was involved in making decisions as part of the team and under the direction, ultimately, of our Board of Directors related to this transaction. So, yes, Sir, I was.

Q164 Lembit Öpik: Can I therefore assume, Mr Firestone, that we can take your position as the official corporate position in terms of the answers you give? You would not later on want to say those were comments made in a personal capacity? You are authorised to speak for the company today?

Mr Firestone: Yes, Sir. I want to emphatically emphasise that I am here at the request of our Chairman in order to address the serious concerns that Unite has expressed, that this Committee and the members of the public have expressed. So, yes, Sir, absolutely.

Q165 Mr Binley: Just for the record, could you tell us why Ms Rosenfeld did not come?

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Mr Firestone: As I said, Mr Binley, Ms Rosenfeld thought that the three of us are best placed because the questions, having heard the prior testimony especially, are far-ranging and they relate to a lot of details on which we are directly responsible on a day-to-day basis, and she has the deepest respect for this body and wanted to be sure that a panel before you was able to answer your questions.

Mr Binley: Let me ask a supplementary, because she could have come and you could have been here as well. That is normal for people in this situation. Why did that not happen? I, quite frankly, consider it a sizeable discourtesy and I bet many members of the workforce of Cadbury do as well.

Q166 Chair: Just a rider on Brian's question. The President of Toyota went before the US Congress. So although we have no powers to summons Ms Rosenfeld we would greatly have preferred that she was here.

Mr Firestone: Yes, Sir, I understand that, and I sincerely hope that the three of us, as Mr Luff said, will prove our worthiness as witnesses in answering your questions. By point of reference, Ms Rosenfeld is actually in our Board of Directors meeting today, but the key point, as you said, on whether we are the right witnesses is whether we are able to answer your questions.

Q167 Chair: Just to point out, we organised the session around your convenience not ours, to accommodate your wishes.

Mr Firestone: Yes.

Q168 Mr Hoyle: On that point, I am sorry that you have been sent as an apologist for Ms Rosenfeld. The worry is that I think it is total disregard for this House of Commons that she has not come today. The fact is she should be here supporting you and being upfront and, maybe, at the same time, just happen to have visited a Cadbury's plant. Do you not think that would have been important today?

Mr Firestone: Mr Hoyle, Ms Rosenfeld—

Q169 Mr Hoyle: Do you think it would have been important to visit Cadbury's and meet the workers, meet the unions, meet this House?

Mr Firestone: I think it is very important that Ms Rosenfeld, I and all of the people from Kraft get to know well all of our new colleagues from Cadbury. We are doing that, we will continue to do that and I can assure you, Sir, she has deep respect for the United Kingdom and the Parliament.

Q170 Mr Hoyle: Why are you the apologist here today then?

Mr Firestone: I am here, Sir, to answer your questions. There was a series of questions that are very important ones and I want to be able to answer those and I will answer them.

Chair: I think we have made the point.

Q171 Mr Hoyle: I think you have got our message.

Mr Firestone: I have, Sir, yes.

Q172 Chair: The substantive question I would just like to ask is: which senior members from the American side of Kraft have visited which Cadbury facilities in the UK? Has Ms Rosenfeld visited any and have you yourself visited any? Has Mr Osanloo? What has been the programme of visits to see Cadbury's facilities in the UK?

Mr Firestone: A number of us have been visiting. Although there has been a huge amount of discussion about the Kraft/Cadbury acquisition it is only six weeks ago that we actually took control. It is hard to believe but it is only since 2 February that we actually took 50%, and in that time we have been doing as much as we can. I have been having the opportunity to visit facilities; I had the privilege of seeing Bournville and other facilities, and look forward to doing so with many of my other colleagues, many of whom have visited.

Q173 Chair: Ms Rosenfeld has not yet visited a single UK facility?

Mr Firestone: I do not believe she has been to one yet, no, Sir.

Mr Binley: Here we are with three experts. We are delighted that we have experts. Our concern, however, is that the information you gathered on Cadbury beforehand seems to be very vague and not very professional. The reason given was that you could not possibly know about Somerdale. Why now should we accept your expertise when you ask us to believe that you had not done your homework before?

Q174 Chair: I think I will let that question hang in the air and let the answers you give persuade us, because we need to make some progress. Brian makes an important point. The structure of questioning is some questions about your overall approach to the Cadbury brand in the UK, then some questions about the Somerdale closure, in particular, and then questions about the future for the business in the UK. That is the basic structure of our questions today. Let me begin with some general questions about your plans for the brand. How do you view the brand in the UK now, and will you be changing the branding of any products? I think, for example, of when Nestlé took over Rowntree that brand soon disappeared.

Mr Bond: We have been in the UK for many, many years with a great heritage. I am a Birmingham boy and I am very proud of the work that we have done in the communities and with our brands more broadly. We have no plans to rename Cadbury Creme Eggs or Cadbury Dairy Milk into anything else; those are great brands that our consumers love, that our factories in the UK produce to a really high standard, and we intend to keep on providing consumers and customers with the products and the brands that they love.

Q175 Chair: Will those brands continue to be managed from the UK as well?

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Mr Bond: As I have mentioned before, Nick Bunker will head up our UK and Ireland business. He will be based, as his leadership team will be based, in the UK. As such, the brands and the assets and the people will be managed out of the UK.

Q176 Chair: One of the strengths of the UK economy is our expertise in brand management. Will Kraft take the opportunity to transfer some brand management of other products to the UK?

Mr Firestone: Yes, Sir. Cadbury has a remarkable history of success in brand management, brand development. I would like to reaffirm what my colleague, Trevor, said, it is absolutely our plan to preserve the identity of the brands themselves as well as the identity of the company itself. We have heard questions about Bournville and the flags and the signs and so on. It is absolutely our intention that Cadbury will remain the name on the building; that Cadbury will remain the name on the flag. We were interested in this company because it is a remarkable company with a tremendous heritage and a great future, and so I can assure you that we will learn a lot at Kraft from Cadbury. In response to your question, Sir, yes, we will certainly look for many opportunities to learn from them in terms of brand management and brand development for other Kraft products.

Q177 Chair: Can I ask a specific question about one product, perhaps the iconic Cadbury product, which has a constituency relevance to me. Will Cadbury's Dairy Milk continue to be produced in the UK?

Mr Bond: Yes.

Q178 Chair: It will. For how long?

Mr Bond: For as long as our consumers are delighted by the taste and the product that we produce.

Q179 Mr Binley: Forgive me, Chairman, that simply is not good enough for the workforce. I recognise that business has its ups and downs—by golly, we have just been through them—but what is the intention of the company with regard to the manufacturing of this particular brand?

Mr Bond: We have been producing Cadbury Dairy Milk in Bournville for over 100 years. It is certainly my firm intent to continue to produce it in the years to come. As I have mentioned, I am a life-long Cadbury employee and my role in our new Kraft organisation is to make sure that Kraft get the full value from their acquisition but to bring the brands and the people in Cadbury into the Kraft organisation.

Q180 Mr Binley: Is it Kraft's intention to continue producing, rather than your good self?

Mr Bond: I am now Kraft. I work for Kraft, as do all colleagues in the UK. So it is certainly Kraft's intention.

Q181 Chair: You have already transferred a good deal of production overseas, to Poland, particularly (and we will come to that in the Somerdale context later), so can we be sure about that assurance?

Mr Bond: We obviously need to make sure that our factories and facilities in the UK continue to do what they have done over many years, which is to get more and more efficient to produce at high quality and at lower cost. We have got a great track record with our workers of doing that, and we continue to do that with investment going forward.

Q182 Chair: Are there any other Cadbury products currently made in the UK that you are considering transferring overseas?

Mr Bond: Not at this moment in time.

Chair: How soon might that change? "Not at this moment in time" is not very long.

Q183 Mr Binley: It is not very reassuring, quite frankly.

Mr Bond: Obviously, we need to maintain competitiveness, as I have said before. We have been producing many, many products. To your point, Cadbury is a global business. We do produce, to your point, products in Poland for sale in the UK. We also produce many products in the UK for sale overseas; Cadbury Creme Eggs, for example, which is the icon of Easter, we are now selling in Australia. That is the nature of the business that we operate in. We are—Cadbury always has been—a multinational which sources from a variety of countries and sells into even more.

Q184 Lembit Öpik: I used to work in Proctor & Gamble and these sorts of big decisions were always based on very objective criteria, which were known within the company and were not really confidential. What are the criteria which you would consider in deciding whether you maintain production in this country or whether you would move it abroad?

Mr Bond: They are the economics of the decision, the quality of the product, the customer service—our ability to get product to our customers—and the taste profile of the products that we produce.

Mr Firestone: As well as, I would just add, consumer preference. Clearly, Kraft's interest in this company is because of its success and we want to preserve that success. That is, along with the other criteria that Trevor mentioned, very important.

Mr Doyle: We obviously take the human aspect of any decisions, as we have in the past. As Trevor said, he and I were very clearly responsible for the original decision around Somerdale back in 2007 and clearly the criteria Trevor has described, the human aspect, was a crucial part of that decision, and we did not take that decision lightly.

Q185 Lembit Öpik: Would it be possible for you to define "human aspect"? What do you mean by that exactly? Is it that you are concerned about what could happen to the staff and that, in itself, per se, is a criterion?

Mr Doyle: Yes, the communities in which those facilities operate, et cetera. Those are all aspects that we take very, very seriously.

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Q186 Chair: We will put those questions to the test, in the context of Somerdale, in a minute. We come to what is possibly the easiest question of the session (at least, I hope it will be the easiest). Cadbury's are currently sponsors of the 2012 Olympics. Will that continue to be the case and will it be under the Cadbury brand or the Kraft brand?

Mr Doyle: Yes. As I mentioned in my introduction, I am responsible for that area. The agreement with LOCOG (the London Organising Committee), for which we are a Tier Two sponsor, is for the Cadbury brand and that will absolutely continue. We have certainly been delighted by Kraft's response to our plans for the next two-and-a-half years and I think they are as excited as I and we all are within Cadbury in the UK for that sponsorship.

Mr Firestone: On behalf of Kraft, Sir, I can reaffirm that we are absolutely standing behind that commitment.

Q187 Chair: As Cadbury?

Mr Firestone: As Cadbury, yes.

Q188 Mr Hoyle: Mr Bond, you have made quite a big case about the history of Cadbury's, longevity of the brand—it is based in Bournville. Do you not believe the same was said to Terry's of York? Here we are, the famous Terry's Orange, a very famous Terry's brand—are you aware of it? A competitor.

Mr Bond: I am.

Q189 Mr Hoyle: It used to say "Terry's of York". Do you know what it says now? "Made in the EU". Why is that? Because it is made in Poland. The same promises, the same pledges, the same history took place by Kraft. The fact is the Vikings came to York and, as we all know, what the Vikings did was they were there to pillage. I can tell you now that Kraft went to York and did exactly the same; they pillaged and asset-stripped that company. Are you not worried about your future and the future of Cadbury's? Their word cannot be trusted?

Mr Bond: Certainly, in a takeover bid, and the takeover that we had was a hostile bid, certain things were said in the heat of the battle. The shareholders ultimately decided the future of the company, and that is obviously why we are here in front of you today. In terms of comparing Terry's to Cadbury, Terry's was a chocolate business in the UK with less than 5% share. Cadbury's has well over a 30% share. It is a very, very competitive market, confectionery, and we are in a much better and different place than Terry's.

Q190 Mr Hoyle: I have to say that is not quite good enough, is it, because the difference is that they went through this, we have seen how Kraft deal with people. They are ambiguous in all their statements. What worries me today is—we talk about longevity of the brand—you cannot give us longevity of the future of any plant in the UK. I think that is the problem. We have seen how Kraft behave, we have seen what happens; just because it is smaller does not make it better or easier for the people losing their jobs. Would you not agree?

Mr Firestone: I would agree with that, Sir. Perhaps I can add that we acquired the Terry's business in 1993 and the factory remained for 12 years. We did certainly do our best to maintain its competitiveness. In response to the earlier question about the criteria, I read with interest this *Going for Growth* report that talks about global supply chains and the reality of that in the business world, and with the case of Terry's it was just rational to move it out. However, I totally understand your point, Mr Hoyle, about the concerns that whether the economics dictate it or not there is the individual impact. When the Chairman says, in the third part, regarding the future, I will do my best to give you concrete (I believe the phrase "cast-iron guarantees" was used earlier) about the future of the various issues you mentioned.

Q191 Mr Hoyle: You can assure me that Terry's of Poland will not be copied and become Cadbury's of Poland?

Mr Firestone: I am not sure I understand the question.

Mr Hoyle: You are committed to Cadbury's being at Bournville and not in Poland? Can we have that assurance once and for all? Your long-term plan is to keep production in Birmingham. Yes or no? Long term. We do not want the ambiguity of the answers earlier of Mr Bond, whether somebody likes it or somebody supports the brand we will keep it there. What are your long-term views and plans for production in the UK? Let us have it on the record. Is it one year, three years, or nothing beyond? That is what you did with Terry's.

Q192 Chair: Lindsay, I think you have made your point.

Mr Firestone: Would you like to move to the future now, Sir?

Q193 Chair: Just answer that specific question about the future of the Bournville plant, in general terms, in answer to Mr Hoyle's question.

Mr Firestone: Bournville remains at the heart of the Cadbury business and we intend to maintain it, we intend to invest in it and we intend to ensure that it remains competitive.

Mr Hoyle: For Mr Firestone's benefit, I may not have quite put it right to him. Is your plan one year or three years in production in the UK? One year or three years?

Chair: We will ask these questions in more detail later. I will ask Mr Hoyle's questions to stay on the table and Julie Kirkbride will pursue that later on with you.

Q194 Miss Kirkbride: Just briefly on the business of Terry's, you said there that there was a rationale to move Terry's of York from York to Poland. Can you very briefly tell us what that rationale was and what kind of cost-savings you got out of it, so we can judge how tempted you might be in the future?

Mr Firestone: It was, as Trevor said, a very different situation from what we have now as an opportunity with Cadbury. Kraft in Europe, generally, has a very, very large chocolate business. I think one of the

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misperceptions about Kraft is, essentially, that we are an American cheese company; we are, in fact, one of the biggest chocolate companies in the world, owning Suchard and Toblerone, Milka, Freia Marabou and others. In the context of continuing to build our chocolate business, in 1993 we acquired Terry's of York and over the following 12 years, unfortunately, the business declined, the factory was an older one, we had made certain investments in it but the decision was taken, along the sorts of criteria that Procter & Gamble or other companies would use, that it did not have the scale to support its continued operation in York.

Q195 Mr Hoyle: Chairman, can I come in on that? Correct me if I am wrong, but in 1993 you paid £220 million for the plant—this small, tiny plant, you paid £220 million—so it must have been a good business. Then you swiftly set about moving the plant to Poland and, in fact, the redundancies started shortly afterwards with the plan to move to Poland. So let us not mislead us over 12 years; this was soon after the takeover. Is that correct?

Mr Firestone: As I understand, Sir, your question was when did we close it? I think we closed the factory 12 years later.

Q196 Mr Hoyle: When did you plan the move, and the move started soon after takeover? Is that correct?

Mr Firestone: I do not have that—

Q197 Mr Hoyle: I can give you the job losses if you wish.

Mr Firestone: I do not have the date in the early-1990s of the ramp—

Mr Hoyle: I think we can leave it at that. I think we both know the case.

Q198 Chair: The significance, you understand, is that Kraft's undertakings on Somerdale, reinforced by the experience of Terry's, creates an impression of a company that is less than straightforward with its future employees. That is the concern for us.

Mr Firestone: Yes, Sir.

Q199 Mr Binley: It is perhaps worth just helping Mr Firestone who, I understand, is from a different country, that the Vikings also raped as well. I suppose there might be just a little concern in that respect, but let me continue. In 2008 Cadbury's reported revenue growth of 8% and an increase in profitability margin from 10% to 12%, which, by any standards, is an impressive result, and I must say I would have loved my company, the company I founded, to have done so well. Does Kraft hope to improve on this performance, which was achieved during a recession? If so, by how much? How does Kraft's recent performance compare with Cadbury's? Three questions there.

Mr Firestone: As we set out in the offer documents (and I believe one of the suggestions is that companies have to provide a business plan and we did provide a business plan in our offer documents), we hope to provide an opportunity for both companies to grow in several ways. One is by

increased scale. As this Committee knows, the food industry, particularly on the retail side but also on the manufacturing side, is increasingly consolidating and increasingly competitive. We believe that by bringing these two companies together we can be a much more effective competitor.

Mr Binley: Three specific questions, Mr Firestone. Does Kraft hope to improve on this performance? I am sorry, this is business and we both know what we are talking about, the general objectives.

Chair: Brian, you were getting an answer to your question, if you let—

Mr Binley: I do not think I was, specifically. If you would be specific I would be grateful.

Q200 Chair: Mr Firestone, please continue.

Mr Firestone: I am sorry, Mr Binley; I thought I was answering your question.

Mr Binley: It did not impress me. I do not think you were. Let us carry on with the specific questions I asked. Would you like to be reminded of them?

Chair: I think the witness knows the questions, Brian.

Mr Binley: Okay, if you would give me the answers to those questions. I know your general strategy.

Q201 Chair: Brian, please give the witness a chance to answer the question.

Mr Firestone: Yes, we absolutely do intend, in the way that we have described before, to improve the business results of the combined company. There are opportunities for entering into new markets—very specific answers, Sir. The two companies are very complementary in their footprint around the world. Cadbury, for many, many years, has been very strong in India; Kraft has not. It gives Kraft an opportunity to enter India. By contrast, Kraft has been very strong in Brazil for many years, where Cadbury has not been present. We recently appointed as the head of our new combined Brazilian business a former Cadbury executive who will now have the opportunity to bring the Cadbury products into Brazil. Third, Sir, there are many opportunities in terms of channels where we are complementary; where Kraft is strong in one and Cadbury less so, and vice versa. Fourth, I would say (if I may add a fourth), innovation and technology, an area of interest to this Committee, is one where there is tremendous opportunity for sharing between the two companies that will make new products that will appeal to consumers, and the more consumers buy the products the more the businesses grow and benefit the workforce.

Q202 Mr Binley: I have a business too. I understand the general ethics and precepts of business. Let us now be specific, as I asked you to be. If you hope to improve their performance on the basis of new opportunities, what are your projections of how much that will be on the performance that Cadbury's achieve over the next five years? How much do you hope you will improve that performance? It is not a difficult question.

Mr Firestone: If the question is—

Q203 Mr Binley: I will take “don’t know” if you do not know.

Mr Firestone: Before I say I do not know I want to make sure if the question is: what would Cadbury as a free-standing company—I do not know because what we are talking about now is a combined entity, and Kraft has given public figures about the performance of the combined entity.

Q204 Mr Binley: So you have no projections for a five-year plan or anything of that kind?

Mr Firestone: We do but for the combined company.

Q205 Mr Binley: What are they then?

Mr Firestone: We are estimating 5% growth.

Q206 Mr Binley: Over the five years or 5% growth per annum?

Mr Firestone: Over, I believe it is, three years, but I will double-check. I will give you the specific figures we released recently.

Q207 Mr Binley: You really ought to know that.

Mr Firestone: Yes.

Q208 Mr Hoyle: What will happen after three years?

Mr Firestone: Sir, I do not think any company is really able to predict.

Mr Binley: I accept that.

Q209 Mr Hoyle: If you had closure plans you would.

Mr Firestone: Not necessarily, Sir. As Mr Binley has said—

Q210 Mr Binley: My third question, which is very specific to this whole issue, is: how does Kraft’s recent performance compare with Cadbury, like for like, in terms of the figures I gave you? Do you want me to repeat them?

Mr Firestone: No, Sir. I think that there are areas where Cadbury has had stronger returns and areas where Kraft has had stronger returns. One of the complications here, as you well know as a businessman, Sir, is we report on different financial accounting standards.

Q211 Mr Binley: I understand that.

Mr Firestone: So it is difficult for me to sit here and go through, line-by-line, our two annual reports. Cadbury has certainly had impressive business performance. Our proposition is not that it was a failing company at all; our proposition is that it is a strong company, but that going forward, as an independent, Cadbury, with \$9 billion in revenue, did not have nearly the future prospects that it does as part of a combined company with \$50 billion in revenue.

Q212 Mr Binley: Mr Firestone, Kraft is a heavily indebted company. What I am trying to get at is how much do you see Cadbury’s bailing you out—helping Kraft? How much of the decision was based on that premise?

Mr Firestone: This combination, Sir, again, is about an opportunity for growth. I will give you specifics on debt because I know that has been a concern, and I believe Mr Dromey referred to us as a “debt-ridden company”. One of the key criteria for us and for our Board of Directors in doing this transaction is that we maintain an investment grade credit rating. We were not going to put the investment grade status of Kraft at risk to do this transaction. We met that criterion, Sir. Our credit rating has been reaffirmed by the independent agencies as investment grade. We had \$19 billion of debt at the end of 2009. We recently did a bond offering for \$9.5 billion which traded very well and continues to trade well and, as all of you know far better than I do, the credit markets have been very difficult in recent years, and we were very pleased by the receptivity of the markets to that debt. Finally, Sir, in answer to your question, Kraft in 2009 had \$3.8 billion in cash flow, which we believe is more than ample to meet the debt that we have. This is not a situation where, as was said earlier, the workers are funding the acquisition; this is a situation where we had disciplined financial criteria for the deal from a financial perspective which we satisfied, and were of a standard that the Board insisted we meet.

Q213 Mr Binley: Kraft’s takeover document referred to an opportunity to realise pre-tax cost savings of at least £625 million annually. How are these savings going to be realised and how many jobs in Cadbury in the UK and elsewhere will be lost in pursuit of achieving those savings. Will there be any job losses in Kraft as a result of this takeover?

Mr Firestone: Those synergy savings were ones that were in the offer document and were verified in accordance with the Takeover Panel rules by Ernst & Young. They fell into three broad categories. The first was operations, and that was roughly \$300 million. By that, I mean opportunities for joint purchasing, procurement, logistics and other areas where by joining Cadbury with Kraft our enhanced scale gives us an opportunity. Second, there were savings in what we call G&A, or general and administrative, which are headquarters operations and we were very clear from the outset that there would be reductions at a headquarters level, that we would not necessarily need two teams of people, say, doing the accounts, and I think that is very common, so there will be savings there.

Q214 Mr Binley: How many jobs does that change into?

Mr Firestone: We are in the consultation process now and are going through that process to follow the best of both model. We are offering opportunities to people on both the Kraft and Cadbury side. There is no net number yet on that, that is in process. The third area of the synergy savings, as they were described, is in the area of marketing and selling. Again, that is more the efficiencies that come from scale.

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Q215 Mr Binley: Where will those jobs be based? Will they be based in the UK still? Will they be based in the States? That is an easy question to answer, Sir, with all due respect.

Mr Firestone: The marketing and sales will be based in the UK. We operate in a model much like other companies, including Procter & Gamble, where we do have certain central functions, but particularly the food business, particularly the chocolate business, much like wine, beer and others, is a very particular emotional product. It is critical that we have people in the country who understand the emotional attachment to taste. We will continue to have innovation here to understand what the British public wants in the products. We will continue to have marketing and sales people here in the UK because they understand the British public, just as we do in 150 countries around the world.

Mr Doyle: It is worth stressing that in the UK Kraft employ a very similar number of marketeers to the number we do. They are obviously operating in different categories as well as chocolate, but it is not dissimilar.

Q216 Mr Binley: However, you were arguing that one of the advantages was to internationalise Cadbury on a much greater scale. Your answer, therefore, concerns me in relation to the import to the British market, which I recognise is important. Your argument is that you are going to internationalise Kraft sales much more and that gives me some worry.

Mr Bond: I do not think there is a disconnect between the two answers. Just to get across the scale of the business: in Cadbury's business only 25% of global turnover was in the UK and Ireland, in every sense it was an international business. The Kraft Europe business alone is bigger than the Cadbury global business.

Q217 Mr Binley: I understand that.

Mr Bond: As Marc has been explaining, we have plenty of opportunities to use our route to market and sales and marketing opportunities in other parts of Europe, let alone other parts of the world, for the brands and capabilities that we have built in the UK.

Q218 Mr Binley: I have two more questions. What is the amount of new debt that Kraft had to take on in order to buy Cadbury? What will be the impact on Cadbury of the new debt? You have got to find it from somewhere.

Mr Firestone: As I said earlier, we recently did a bond offering of \$9.5 billion that was publicly announced. We believe that our cash flow is more than ample to satisfy that debt. Again, I would emphasise that this is a transaction about growth through Cadbury's brands and expertise and the combinations both locally and globally and not about taking assets out. I know that there have been concerns and people made metaphors earlier about Vikings and so on, but that is not the situation here. I understand that there have been many heartbreaking instances of takeovers. I have seen it in my own country, in America, where there were

takeovers and the acquired company was an empty shell within two years because a company comes in that is purely financially oriented, strips assets, sells off businesses and so on. I understand that is the concern and I assure you that is not at all our intention.

Q219 Mr Hoyle: Are you saying you have never done that?

Mr Firestone: We have not, Sir. We are what I would call a strategic investor. We have certainly made decisions that reduce employment and facilities, but those are hard decisions that every company has to make. What I am saying is we are not, to use the metaphor, going to be Vikings. I understand that is a powerful image and one that is directly opposite. We are here to grow brands. As I said, for over 20 years we have nurtured the Suchard brand which dates to the 19th century, the Freia brand and others. That is what this is about. It does not mean that, like any other company, we will not have to—

Mr Hoyle: Do you think that your former employees in York believe that? I just cannot believe this nonsense.

Chair: Brian is asking his questions at present.

Q220 Mr Binley: I have got one and a half more questions really. How much did the bid cost Kraft in terms of advisers, research and documentation? I want to know how good your research was. How much did the bid cost you? Here you are telling us that you did not know about Somerdale to the point where you could make a sensible decision, so costs in terms of the work you did before the bid are pretty important. Can you tell us that?

Mr Firestone: May I ask the Chair's permission to submit that in writing afterwards so that I can make sure the number is accurate because some of the fees have not come in.

Chair: Yes, thank you.

Q221 Mr Binley: Finally, did Kraft have any relationship of any kind whatsoever in the past with Franklin Templeton?

Mr Firestone: I heard that question earlier, Sir. Any contact we would have had with any investors was strictly in accordance with the Takeover Code. That means we were not in a position to reveal any non-public information that we did not subsequently reveal and all discussions had to be "policed", the word in the Takeover Code. I am not aware of any relationship that would have influenced their decision. Those funds all made decisions on their own.

Q222 Chair: I am afraid we are going to have to move on because we are running short of time.

Mr Firestone: I just would like to add one point in response to Mr Binley's question. The board of directors of Cadbury, which included six independent directors, unanimously recommended the bid. There is no doubt that was also an important factor in choices that shareholders made in whether to tender or not.

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Q223 Mr Binley: They had no choice, but never mind.

Mr Firestone: The fact is they did recommend the bid.

Chair: I want to turn now to Somerdale in Keynsham. This is really one of the reasons you are here today. It looks like a very cynical decision that was taken by Kraft to hold out the hope of keeping the plant open when Mr Bond himself knew from his long experience that it was absolutely impossible. Either you have been mendacious, cynical or incompetent in your assessment of the business, that is the question we have to satisfy ourselves on now.

Q224 Roger Berry: Mr Firestone, could you confirm whether the Takeover Panel is investigating Kraft for breaking the rules that call for bidders “to prepare statements with the highest degree of accuracy” and “not to make statements which . . . may be misleading or may create uncertainty”.

Mr Firestone: The Takeover Panel operates in accordance with procedures of confidentiality and I think it is appropriate to defer to them as to the status of their investigation, if any.

Q225 Roger Berry: Thank you. Could you remind the Committee of the statement in Kraft’s takeover proposal on 7 September last year in relation to Somerdale?

Mr Firestone: Yes, Sir. I would like to address Somerdale because that has obviously been a hugely controversial subject and a matter of tremendous concern and damage, as you said, Chair, to our reputation. It really involves three elements: our first statement on 7 September, our statement on 9 December that we would not be able to keep it open, and the future.

Q226 Chair: February.

Mr Firestone: 9 February, I am sorry, not to keep it open, and then the future. Before addressing the substance, and I will provide as much detail as the Committee requests, I just want to say we understand that we raised expectations and that we—

Q227 Roger Berry: Mr Firestone, I am very happy to let you reply in full but could you just remind the Committee what it was that Kraft actually said?

Mr Firestone: The actual text?

Q228 Roger Berry: The words. I seem to have forgotten them.

Mr Firestone: We believed we would be in a position to keep Somerdale open.

Chair: I have Ms Rosenfeld’s letter too.

Q229 Roger Berry: “. . . we would be in a position to continue to operate the Somerdale facility, which is currently planned to be closed . . .”.

Mr Firestone: Yes.

Q230 Roger Berry: Perhaps you would like to carry on with what you were saying.

Mr Firestone: I am sorry. You wanted the precise quotation.

Q231 Roger Berry: I did, for the record, yes.

Mr Firestone: That was the statement. The intent was as I have said. I would like to take this opportunity before this Committee, to Parliament, Unite and my colleagues to say we fully understand that for over two years employees and colleagues at Somerdale had been through a closure process and that our statement of 7 September that Mr Berry just quoted created uncertainty about the plans and on 9 February, when we announced that we would be unable to carry forward, hopes and expectations were dashed, as I said earlier, and we are terribly sorry about that. I personally am terribly sorry about that. I was asked earlier what role I had. I was there in the room when that statement was drafted and I do sincerely, personally, express my apology that we have created that uncertainty and we are not able to carry forward with that.

Q232 Roger Berry: Since you were there in the room and participated in the agreement of that statement, could you advise the Committee on what basis Kraft made that statement?

Mr Firestone: Yes, Sir, I can. One of the key points, as Trevor was saying earlier, is that there is a tremendous difference between Cadbury and Kraft in regard to scale. I hope later to have the opportunity when we talk about charities and foundations to talk about the tremendous similarities, but one difference is scale. When we envisioned the combined manufacturing network of Kraft and Cadbury, we believed that we would be in a position to maintain production in Somerdale in the UK while also taking advantage of the new facilities that we did know Cadbury was building in Skarbimierz in Poland. Allow me one statistic to indicate the difference in scale: for the prior three years our volumes of chocolate for Europe and Central and Eastern Europe had grown by 80,000 tonnes, that is incremental growth over the baseline. For point of reference, Bournville, one of the biggest chocolate factories in the world, has annual production of about 110,000 tonnes. Our capacity requirements were growing tremendously. We had what I would call a rational business plan which said we would be able to use the new factory in Poland that we knew Cadbury was building for whatever needs Cadbury had plus our own incremental capacity requirements to service Europe and Eastern Europe and thereby production in the UK at Somerdale for the UK. We also looked at other factors that are important to us and Cadbury as well—it is in their own analysis—of exchange rates, the pound to the euro to the Polish zloty. In fact, our concern about the exchange rates being at a disadvantage has remained the case fortunately or unfortunately depending on the side of the equation. I am not arguing one way or the other, I am just talking about the business reality. We believed that the combined manufacturing footprint, the growth expectations that we had independently, the growth expectations that we had for the combined company,

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would in fact support the two facilities, one operating in the UK to service this market—Somerdale—and one operating in Poland to service Central and Eastern Europe. That was the rationale behind the statement. Those factors remain valid today. What happened was unfortunate in that there were countervailing factors that I assure you we did not know and could not have known at the time. I understand the scepticism that greets that statement. I will do my best to explain what they were.

Q233 Roger Berry: Before you come to that part, Mr Firestone, and I do want to hear that very carefully, when you made that public statement on 7 September after you had done your analysis of the situation, can I be quite clear was that analysis the analysis of Kraft? Did you take any advice? Do you have advisers and, if so, who were they?

Mr Firestone: We obviously knew our own statistics and figures and production requirements and we had what was available to us from the public record about Cadbury. At the outset we had hoped this would be a friendly transaction in which both companies would negotiate everything from employment guarantees to charitable contribution, but that was not the case. We had access to our own data, we had what was publicly available. Our internal experts and our advisers on the transaction, the law firms, the banks and others looking at it, did look at the entire set of documents, as is customary and required, frankly, in any kind of UK takeover.

Q234 Roger Berry: So you are in a position to let the Committee know, if not now then subsequently in writing, who the advisers were who confirmed your view that making this commitment in relation to Somerdale was a perfectly reasonable thing?

Mr Firestone: Yes, Sir. We made a statement that we believed we would be in a position to keep the factory operational. We made that statement in good faith. I assure you that we acted in good faith. We had no desire to put something in there that we would not be able to fulfil, particularly given the consequences that were foreseeable and that I am experiencing today. Second, we had a reasoned basis for it. As I said, there were operational rationales that underlay this statement. Third, we had a reasonable basis to believe that we would be able to execute it. The public record from Cadbury indicated that the phase-down of Somerdale and the phase-up in Poland would run through the end of 2010 and into 2011. This statement came in September 2009, so we believed that there would be adequate time to undertake a change in the production in Poland and to change the course in Somerdale.

Mr Doyle: If I could just make a couple of points. The first point is clearly there was no dialogue between Cadbury and Kraft in the period from September through to the end of January and, therefore, no exchange of information. The plans that we had around Somerdale were very complex. The production is not planned to move from Somerdale to one factory but, indeed, three. Towards 30% of the volume moves to Bournville and

Bournville, therefore, receive production investment as a consequence, some of the production is moving to an extension of an existing Cadbury facility in Poland, and the remaining volume is moving to a greenfield facility for which in September, end of August, basically the walls and the ceilings were on but none of the equipment had been laid down. The majority of the planning of that equipment going into that facility has taken place in that period from September through to the current day. Those were things that clearly we had not put into the public domain, they were commercially sensitive, and we certainly would not and could not have shared those with Kraft.

Q235 Roger Berry: Are we seriously being asked to believe that Kraft, with all the skills, expertise and financial resources at its disposal for a takeover of this kind, could get this so spectacularly wrong by just making a mistake?

Mr Firestone: Sir, there were factors as Richard just said.

Q236 Roger Berry: What other mistakes might follow further down the line if this one was so badly judged?

Mr Firestone: I emphasise again that we had a commercial rationale for this statement and part two is why did we decide that we could not carry through with it.

Roger Berry: Before we come to that, why did you make the statement unless there was not absolutely cast-iron solid evidence for it? You knew presumably that a lot of people were going to have their expectations raised by that statement. Why did you make a statement without cast-iron evidence?

Q237 Mr Hoyle: Speculative.

Mr Firestone: Mr Hoyle said was it speculative—

Roger Berry: I am asking the questions, ignore him!

Q238 Mr Hoyle: I will ask the question. Was it speculative?

Mr Firestone: I am trying to be respectful and learning the etiquette here. I apologise if I am not answering in the right way. We wrote the statement as an expression of belief saying, “we believed we would be in a position . . .”. We did not make a cast-iron statement. Indeed, many people have criticised us for not having made a cast-iron statement. There has been testimony before this Committee that Kraft made no guarantees. There was interest, as there is today, in what our plans were for the UK market. We had a sound basis for believing we would be in a position to operate Somerdale and we made that statement in that way. What we did not know was while the bid was progressing Cadbury was simultaneously operating Somerdale and installing tens of millions of pounds of equipment in Poland; equipment that is specific to their brands. That is not a customary process. They engaged in a process of what is called “parallel running”. While Somerdale was producing products, they were bringing on line in Poland the same products in parallel at tremendous cost. Normally when companies switch

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over from one factory to another they will build up stock in one and then open the other. During exactly the same time as our bid all of these tens of millions of dollars of new machinery specific to products such as Curly Wurly and others were going into the factories in Poland. No amount of resources would have given us access to a physically secured site that was operating in a confidential manner. Sir, I have seen it myself.

Mr Binley: That is nonsense, with respect.

Chair: Let Roger ask his questions.

Q239 Roger Berry: Are you seriously suggesting that with the resources at your disposal you could not have checked on that?

Mr Firestone: Yes.

Q240 Roger Berry: Like getting on an aeroplane or Googling? Seriously, are you telling me that? It was so fundamentally important to your takeover bid, but you are claiming ignorance on a massive scale.

Mr Firestone: Sir, we did Google it. We had satellite images of it and what those could only show was the exterior of the facility, they could not show the enormous investment in bespoke equipment that Cadbury was putting into that plant. It was confidential, and I believe Richard and Trevor will back me up that that was not known to us or knowable to us publicly.

Q241 Roger Berry: So why did you make this statement? You know that the Takeover Code specifically requires companies in your position not to create uncertainty and not to give misleading statements. Do you now recognise in hindsight that you did give misleading statements and people were foolish at the time to applaud you for the opportunity this takeover gave to the workers at Somerdale?

Mr Firestone: We made the statement based on sound commercial logic and are terribly disappointed that we are not able to carry on, first, as I said earlier, because the workers were disappointed but, second, it was not what we had hoped commercially. Purely from a commercial perspective we indeed wanted to be able to use the greenfield facility in Poland for our existing requirements for Kraft's large chocolate business in Central and Eastern Europe. We had a sound commercial reason for that, but that is not possible because unbeknownst to us while the bid was progressing equipment was going into the Polish factory. I can see the looks of disbelief, Sir, but we had no access to this information any more than other companies have access to commercially sensitive information of other companies.

Q242 Roger Berry: You are right in observing that a lot of us find this difficult to believe. Can I try one more time? You knew about Cadbury's decision on Somerdale, you knew about Poland, you knew what the response would be to the statement you gave on

7 September. What possible reason could you have had for making that statement on 7 September without checking that it could be delivered?

Mr Firestone: We checked all available sources and those were all consistent with our statement. The statements publicly by Cadbury's top management about the timing, which forecast a 2010–11 switchover, did not say that the investments were going in at this magnitude during that period.

Q243 Chair: I have got some records in front of me. The Cadbury press release, which Mr Bond issued, says: "The closure will be from 2009–10". Is that correct, Mr Bond?

Mr Bond: That is correct.

Q244 Chair: So that is inconsistent with what Mr Firestone has just said?

Mr Bond: No. As Richard has just explained, it is quite a complicated transfer: the closure of Somerdale, towards one-third of the volume going to Bournville, two-thirds going to Poland across two different sites. To my statement there, certain of the sites already happened during 2009 but the factory that Marc is referring to is the one that was literally being built during the middle of last year and the machinery being installed towards the end of last year.

Q245 Chair: I am sorry, Roger, I have interrupted your flow, which I should not have done. I have got a *Telegraph* report in front of me from 11 September last year saying, "This week another tranche of Somerdale workers received letters detailing their departure". These plans were very, very public.

Mr Bond: Yes.

Mr Doyle: Yes. Just on that particular point, we have worked very hard on the Somerdale site to accommodate individuals' needs and own plans. Obviously it was a very difficult decision that we communicated in 2007, a number of people have been working to their futures and quite a large number of people are caught by the change in legislation around pension changes in April of this year and we have worked very hard to accommodate people who wanted to leave early. Anybody who has left to date has left voluntarily.

Q246 Roger Berry: With respect, that is not the point. There was an enormous amount in the public domain about the new plant in Poland, there is no two ways about it. Is not the fact that Kraft made the statement they did, notwithstanding what the Code says you should not do, in order specifically to create what anyone would expect, namely that those who worked at Somerdale would see this as a ray of hope and it would divide the opposition to Kraft's takeover of Cadbury? You do not have to be a PR whizz, you do not have to have done degrees into public relations management to know that would be the effect of that statement. Is that not the case, Mr Firestone?

Mr Firestone: It is not the case, Sir. We made the statement in good faith. There are two sets of dates, the dates related to Somerdale and the dates related

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to the full production in Poland, and the latter dates were much later. We made this statement in good faith.

Mr Hoyle: Can I just say the only other thing that has not been added here. Even the union, Unite, pleaded with you not to mislead the workers of this plant and you totally ignored what the union were saying to you and you misled them as well. Would you like to apologise on behalf of Ms Rosenfeld today to the workers?

Chair: Mr Hoyle has jumped ahead of my colleague, so I will let that question lie on the table.

Mr Hoyle: I am going, Chairman, but I just want to put it on the record would you like to apologise on behalf of Ms Rosenfeld?

Q247 Lembit Öpik: Returning to Mr Berry's line of inquiry, as I understand it you are telling me that Kraft's senior management did not know what anybody who followed the British press did know? Is that what you are telling us?

Mr Firestone: I do not think there was anything in the British press that described the state of the works in the Polish facility to the level of detail which we learned about after we first had access. I do not want anybody to think that I am saying we were not aware that Somerdale was being closed, of course we were aware of that. We were well aware of that and the timing, but what we were not aware of was Cadbury's plan in order to maintain customer satisfaction levels which involved massive investments in Poland far before the end of 2010 production turnover.

Q248 Roger Berry: If you did not know the state of the works why on earth did you make that statement?

Mr Firestone: Again, I can only say based on what we had read publicly our business rationale was consistent with what we believed to be the state of play. Indeed, when we made the statement the machinery had not, in fact, gone into the factory. It was wide open at that point in Poland.

Chair: So you guessed, that is the bottom line.

Q249 Roger Berry: You have just admitted you knew the uncertainty about the future.

Mr Firestone: Yes.

Roger Berry: Yet you made a statement that quite deliberately generated uncertainty which is contrary to the Code. Frankly, if the Takeover Panel did not immediately start investigating you after that statement they certainly should have done. How on earth could you make a commitment like the commitment you made on 7 September when you admit that basically you were winging it? This is extraordinary. You were treating people with enormous disrespect and misleading them and conning them into coming behind a view that said perhaps the Kraft takeover of Cadbury might not be too bad after all, which was what a number of people locally ended up saying for whatever reason. You must have known that would have happened. It is inconceivable that you did not know.

Q250 Lembit Öpik: Once again using my Procter & Gamble experience, and accepting what you have said for the sake of argument, which you can guess the Committee is somewhat sceptical about but let us say it is the case, I think in my old company people would have been managed out of the business for that, or fired to use an English phrase. What disciplinary processes have taken place or who has been fired for what would have been regarded as utter incompetence at the very least in my old company, a company which is very ethical and has certain similarities to Kraft?

Mr Firestone: Sir, when we made the statement we had every expectation that the facts were as we believed them to be at the time. Until the end of January we did not have access to the material new information that led to the decision that we would not be able to keep Somerdale operational. I cannot do more than tell you what happened.

Q251 Lembit Öpik: I do not like to talk across you, Sir, but I would like to say that if I had been responsible for buying Cadbury on behalf of Procter & Gamble and afterwards it turned out that there was this colossal absence of information which was going to completely change the actual outcome of the arrangements, I would not be working for Procter & Gamble any more. Has anybody been disciplined or fired as a result of what seems to me like a monumentally poor act of business?

Mr Firestone: No one has been fired, Sir. I will emphasise again that we are indeed sorry—Mr Hoyle has left—that we have created it. I have told you the facts as they were. With all sincerity, that was what we believed at the time. I have described what we learned after we had access to Cadbury. I have seen for myself the machinery that was put into these facilities unbeknownst to us and absolutely out of our reach short of techniques that were not available to us. It may be hard to believe, Sir, I can only tell you the facts as they were. The question about Somerdale is the future. There was a question earlier, "Does Kraft stand behind the programmes that are in place for the colleagues there?" Yes.

Q252 Lembit Öpik: Just to finish off. I have got many questions but I know I am only allowed this one. Therefore I am to understand that no one has been disciplined for what happened, but are you basically saying the reason this happened was because Cadbury either lied to you implicitly or simply withheld absolutely core information in terms of the takeover and the future?

Mr Firestone: I am saying that we did not have access to the information. During the process, to my knowledge, Cadbury never issued a public statement saying that our statement on Somerdale was ill founded. They made all sorts of statements about Kraft, some of which were fairly strongly worded, but I do not recall ever hearing a statement from Cadbury itself about Somerdale. During an unsolicited or hostile process they never provided us with any of these data, it was only after the recommendation and then some that we first got those data.

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Q253 Lembit Öpik: Do you feel misled by Cadbury and that is why this happened?

Mr Firestone: I do not feel misled by Cadbury, I feel that we did not have access to data that Cadbury had that shows the process of converting the production is not typical of what food companies normally do. I believe that Trevor and Richard will agree with me that it was not typical in Cadbury's history to do it that way.

Mr Doyle: As I said earlier, there was no dialogue between the two businesses as is very typical in a process such as this one.

Q254 Lembit Öpik: I used to be in human resources and I could never, ever have allowed this to happen. With any conscious or any ethical responsibility to my trade, let alone my company, I could never have allowed Kraft to believe what they did because I would have felt I was letting down the people I was the human resources manager for.

Mr Bond: To be clear, we were in a hostile takeover bid and, therefore, we were not able to exchange any data on Somerdale or any other parts of our business. If we had done so we would have been breaching the Code, so clearly we did not comment either publicly or to Kraft privately on any of the relationship regarding the Somerdale move.

Q255 Lembit Öpik: If you had done so it might have stopped the hostile takeover bid.

Mr Bond: We would not have been acting legally.

Q256 Mr Binley: You talked about the future, Mr Firestone, but I am afraid the future is going to be very blemished by the fact that many people think, and I am going to be perfectly frank here, that Kraft has lied. That is the truth of the matter in this country. Let me tell you why that belief is even more embedded in my mind than it was before you started. You would not tell me how much your researchers cost. Let me tell you, you should be on to them straight away to get your money back because either they did not give you the information that they should have done or you did not take note of the information. Let me talk about two particular things. You talk about knowing there was a building in Poland. What did you think it was going to be used for? Did you think it was going to be used for tennis courts? You knew very well what it was going to be used for and your people would have assessed immediately what was going to go into that building and they would have known. Secondly, you talk about the greenfield site and having information that you could not possibly have known. They would have needed planning permission for that in the public domain. Why did your researchers not have that? Unless you can give me truthful answers to those two questions I will not believe you and I do not think the British people or certainly Cadbury's workforce will believe you.

Mr Firestone: Sir, we were well aware of the facility and we were well aware of the building permits and the dimensions. That was clearly all public domain. What we were not aware of were the plans for the internal structure of the building. We were not aware

of the status of the machinery going into that facility. We were not aware of the products that Cadbury was designing to make in that facility. It happened after we made the statement. As of 7 September, if we had somehow got inside that building we would have seen an empty building and an empty building is one which, if the bid had gone friendly as we hoped, we could have jointly designed to meet Cadbury production needs and Kraft production needs. That was the state of the building when we made the statement. It was October, November, December that all of this machinery went into the building. I know you do not believe me, Sir, but those are the facts.

Mr Binley: I certainly do not. Okay, that is enough I think.

Q257 Miss Kirkbride: Just a quick one on this because, frankly, Mr Firestone, it is stretching the credulity of the Committee to accept your statements. I wonder if Mr Bond could just explain what was said earlier which was that Cadbury were doing this in secret and these new production facilities were being put in in secret. Is that true and how credible is it really that Kraft somewhere on the international confectionery grapevine did not actually know what you were doing?

Mr Bond: Clearly with a big move like this it is not something that we make public other than during the consultation process with our workers. It is vital for us that we secure customer service throughout the move hence, as Marc has explained, we have done a series of parallel runs. The move is really quite complicated. Towards a third of the production goes to Bournville and two-thirds go across two different sites in Poland. It is fair to say which products are going to which part of Poland is not publicly available information and it was not available for Kraft or anybody else to understand. All our machine suppliers are provided with confidentiality agreements and our workforce was obviously focused on doing the job they were asked to do both in Bournville in taking that new production and in Poland. It is a massive undertaking. On Marc's point, most of the machinery that moved into the new build, not the extension of our existing facility in Poland but the new build, happened in October, November of last year.

Q258 Miss Kirkbride: Was it credible to know which products were going to Poland and, therefore, to make some assumptions about what that meant in terms of the capacity that was being used there? Do we know which ones were going to Bournville and which of the two-thirds were going to Poland and, therefore, would it not have been a reasonable assumption to think, "Hang on, not big enough but might be going"?

Mr Bond: The point being, as we talked earlier about on, and I never thought I would be in front of a Select Committee talking about Curly Wurly, the Curly Wurly plant only makes Curly Wurly and, therefore, when we buy that machinery and install it, it has a big impact on the plans that Marc talked

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about from a Kraft point of view. Confectionery machinery is fairly specific to the product that is made and as soon as it is installed you cannot make anything else on it.

Mr Firestone: The other aspect that was unknown, and I will give an example of concrete evidence of confidentiality, is the following. Cadbury had the Wedel business in Poland which had two factories, one in Warsaw and one in Wroclawskie. We expected that as part of the EU anti-trust review process we would have to divest the Wedel business. We assumed and believed that both the Warsaw facility and Wroclawskie were primarily Wedel products. Cadbury made a confidential submission to the European Commission that, in fact, the Wroclawskie facility is 80% non-Wedel or UK production. That was a fact that was not known to us. It is a good indication of why it was in fact the case that there was a lot of confidential information. There was a confidential submission to the European Commission by Cadbury that had those data in it and the European Commission did not disclose those data to us until afterwards. The other point I would make is this is, as I said earlier, a disappointment to Kraft not only because people think we did not live up to our promise, not only because we disappointed the employees and colleagues in Somerdale, but also because we did, in fact, want to operate the combined manufacturing footprint, as I said, with Somerdale and the Polish facilities. It was what we wanted to do as a matter of business. I hope it helps at least a bit on credibility to say we wanted to do what we said we wanted to do and we are disappointed that we cannot for all the reasons I have mentioned.

Q259 Roger Berry: This is just a factual question. The very expensive machinery being installed in Poland, what was the cost of that?

Mr Bond: Tens of millions.

Q260 Roger Berry: How many tens of millions?

Mr Bond: Which plant over which timeframe?

Q261 Roger Berry: The things that Mr Firestone did not know about.

Mr Bond: Our Skarbimierz build in total was more than £100 million, I think.

Q262 Roger Berry: So there was £100 million of very expensive machinery being installed in Poland that Mr Firestone did not know about?

Mr Firestone: That was just in Skarbimierz and in the other facility there were other tens of millions.

Q263 Roger Berry: Earlier you said there was lots of confidential information that was not available. That was your phrase, correct?

Mr Firestone: Yes, there was important material confidential information.

Q264 Roger Berry: Lots of information not available?

Mr Firestone: Yes, Sir.

Q265 Roger Berry: Notwithstanding the Code on takeovers, you still felt you could issue a public statement in the name of your chief executive saying that your desire was to keep open Somerdale despite the fact, as you have said, there was lots of information that simply was not available to you. How responsible do you think that is?

Mr Firestone: As you said, Sir—

Q266 Roger Berry: Or how irresponsible do you believe that to be?

Mr Firestone: I will say I believe it was responsible because it was, as you said, our desire for the reasons I said. Our rationale that supported that statement remains valid. I mentioned the currency exchange rate, that remains valid. I mentioned our capacity requirements, that remains valid. I mentioned our desire to have UK manufacturing, that remains valid. What happened was the process just did not make sense after we learned the state of play of the transfer of the products to the other facilities.

Chair: I think we are going round in circles here.

Q267 Ian Stewart: Mr Firestone, in a hostile takeover there is no due diligence period but there has to come a point when in your bid to take over this company you start to become successful and start to get information. When did you first come to realise the situation about the Polish site?

Mr Firestone: At the end of January, shortly before 2 February. 2 February was day 60 under the Takeover Code rules. Shortly before that we began to receive information from Cadbury about the state of play between the two facilities and only over the succeeding days, especially after 2 February when we had exceeded the 50% threshold, did we have full access. What that enabled us to do was marry up the data from the Cadbury side with the data from the Kraft side and to assess as carefully as we could whether we should or could continue with Somerdale or not.

Q268 Ian Stewart: This is helpful to me. You got this information and this understanding at the end of January as you say.

Mr Firestone: Yes, Sir.

Q269 Ian Stewart: At what point did it become clear to Kraft that they actually could not carry out that commitment?

Mr Firestone: There was a discussion internally among the experts and the people who had met with Cadbury, the people who understood our manufacturing footprint, on 4 February when they reviewed what we had learned, they reviewed what the obstacles would be and they assessed the feasibility of going forward either (a) maintain Somerdale on full production, (b) look at alternatives to Somerdale production, or (c) other alternatives. They assessed those opportunities or not, as the case may be, and then on 5 February made a recommendation that we announced that we would not be able to maintain Somerdale.

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Mr Doyle: It is probably worth stressing that at that period of time as soon as we were able to talk together, as Marc says at the end of January into early February, Trevor and I and our colleagues at Kraft made it an absolute priority to make a decision to give the employees in Somerdale certainty. That was something they appreciated and was certainly something that Trevor and I, and our colleagues, viewed as an absolute priority, hence the speed at which we were able to get the decision.

Q270 Ian Stewart: When was that?

Mr Doyle: In that period as Marc has described from the end of January through to the point when I went to the site to communicate the decision on 9 February.

Q271 Ian Stewart: So when did the decision makers get to know that a conclusion had been reached at the end of January, or whenever, that this was not a goer to continue with the plans to try and keep the site open?

Mr Firestone: The internal decision makers?

Q272 Ian Stewart: Yes.

Mr Firestone: There was a decision among the team that was charged to look at it on 4 February that was presented on 5 February and the final decision was made on 5 February.

Q273 Ian Stewart: If a decision was made in the first week of February the understanding that it was not feasible would have come in January as you have pointed out, is that right?

Mr Bond: No, I think what we—

Q274 Ian Stewart: I am sorry, I am asking Mr Firestone.

Mr Bond: I am trying to give the context.

Q275 Ian Stewart: I will give you the opportunity to say whatever you wish to say, but could you just tell me from Kraft's point of view?

Mr Firestone: Yes, Sir. I believe it was on 31 January that we received materials from Cadbury that gave us internal information from Cadbury about the status of Somerdale, the transfer to Bournville and the transfer to Skarbimierz.

Q276 Ian Stewart: I think I have got that. Could you just tell me who is "us"?

Mr Firestone: Us?

Q277 Ian Stewart: When you say "we received", who is "we"? Who is "us"? Specifically name the people. Is it you? Is it the chief executive? Who are the decision makers?

Mr Firestone: Those are two questions. Who received the information was your first question.

Q278 Ian Stewart: Who knew about it?

Mr Firestone: A number of people knew about it.

Q279 Ian Stewart: For example, did the chief executive know about it?

Mr Firestone: She was briefed. The document first went to a gentleman named Tim Cofer, who is co-lead in integration with a gentleman named Mark Reckitt, who is a senior vice-president from Cadbury. This was high on the priorities. Once we believed the deal would go through, this was very high on the priorities. Mr Cofer requested information from Cadbury and it came in, a review process went forward and by 4 February there was a discussion.

Q280 Ian Stewart: We have heard all that. Could you stop there, please, because we have limited time?

Mr Firestone: Yes. I would like to talk about the guarantees.

Q281 Ian Stewart: The question I asked you was who knew about it and when did they know about it. I specifically asked you whether your chief executive knew about it at the end of January and I think you said yes to that.

Mr Firestone: I just want to be careful what we say because the chief executive knew that there were concerns expressed particularly from the Cadbury side about the feasibility of keeping Somerdale open.

Q282 Ian Stewart: Was she briefed?

Mr Firestone: She had an initial briefing. She asked for a complete review recognising the sensitivity.

Q283 Ian Stewart: Can I stop you there. That seems a logical process to me. You have made a commitment as a company and you have been criticised for it here today—I am not going back to that—but you were aware of potential criticism that may come to your company so you got to the point where you said you realised at the end of January the top decision makers realised something had to be done and then went on to describe a process over the next week but they realised that at the end of January, including your CEO. Why did your CEO not share that with Lord Mandelson when she met with him on 2 February?

Mr Firestone: What we heard was a high degree of scepticism from the Cadbury side and that was why we wanted to look at our own data. Cadbury obviously had made a decision two and a half years earlier and firmly believed that their decision was the right one, but they did not have our perspective necessarily of the combined manufacturing footprint so we wanted to look at the two. As others have said, including here, we needed to compare the two sets of data before making a final decision. We did not take the decision lightly essentially to reverse course. It was by 4 February that the two sides' experts had had the time to review the information and then make a recommendation on around 5 February to our CEO that it would not in fact be commercially feasible to maintain Somerdale.

Q284 Ian Stewart: Would your CEO have had any concerns about sharing that information with the Secretary of State here in the UK when she met with him on 2 February?

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Mr Firestone: I just want to be careful when I am answering the question. It was known that there was concern about the feasibility and we did not want to make a firm commitment. Again, we were publicly criticised for not being more definitive. We were not able to be more definitive at that point because it had become increasingly clear that we might not be able to keep Somerdale open.

Q285 Ian Stewart: One week later your company announced that it did not intend to keep Somerdale open.

Mr Firestone: Yes, we moved quickly.

Q286 Ian Stewart: Are you telling me that your chief executive was not in a position to understand what would happen a week later?

Mr Firestone: I am in a position to tell you we had not made a decision then, yes. We wanted to take a careful look. We wanted to act prudently but we wanted to act quickly.

Q287 Ian Stewart: Mr Firestone, can I just put this to you as concisely as I can. Your company made a commitment and you stand criticised in the UK for setting a hare running, as we call it here, deliberately to develop a better, more positive atmosphere for your company's hostile takeover. That is what you stand accused of, and that you misled workers, unions, the country and you are saying to us you did not understand at the end of January when you were reassessing that decision the importance of it and you did not think it was worthwhile at least sharing what you knew at that point, which was a week before the decision you say was made, with the Secretary of State?

Mr Firestone: Again, Sir, we had received information about Cadbury's plans and we made a decision on 5 February which we promptly communicated on 9 February. Ms Rosenfeld did not commit that we would, in fact, keep Somerdale open when she met on 2 February, if that was the question.

Q288 Ian Stewart: Let us leave that because there are other issues. What arises out of this, and you must accept this, Mr Firestone, is that your company, Kraft, have really taken a dent as to your integrity and, indeed, your honesty as a proper company in this country. Do you understand that? If you do understand it, you have apologised several times today but what actions are you going to take to reinstate your company's credibility?

Mr Firestone: Thank you for the opportunity. I absolutely do understand it. Kraft has existed for over 100 years and we have worked very hard to build a reputation for honesty. In the materials the Chair referred to, and I heard the laughter, I will emphasise I wrote myself in the materials to which the Chair referred that you can build a reputation for 100 years and lose it in a second. I take this personally with tremendous seriousness. That is why I have tried as best as I can to explain the technical details and I would like now to have just a minute to explain in response to Mr Stewart's question the future. For Somerdale I have reviewed in detail the

plans that are in place to help the colleagues there to find other positions, to have certification, to have other opportunities. Kraft 100% stands behind them. I have reviewed the plans that Cadbury had commissioned and submitted to Banes, the council there, for redevelopment of the site. We have not yet heard back. Kraft, and I personally, if that would be helpful, are fully committed to working with the community and the council to find the best possible use for the facility and the land. I am well aware of the Fry Club and its importance to that community. Kraft and, again, if it helps, I personally are fully committed to that. I have also heard very clearly the call for concrete, cast-iron guarantees about manufacturing and compulsory redundancies. I would state what Trevor and others in business understand, that facilities have to be competitive in order for a business to be successful.

Chair: I do not want to interrupt your flow but we want to go into some of these in a little more detail later.

Q289 Ian Stewart: We will come back to those.

Mr Firestone: I want to be very concrete about the future, but if this is not the time.

Chair: There are one or two other things that worry us and if we have not covered them all by the end you can tidy up with some things we might have forgotten. Roger, have you got your assurances on the Somerdale site that you wanted or do you want to ask some more questions?

Q290 Roger Berry: I think in relation to the Fry Club and the Somerdale site, given the time, I had better leave it at the answers we have had.

Mr Doyle: Representing the Cadbury side and the employees at Somerdale, those assurances that Marc has provided today have been communicated to employees in Somerdale. Excellent levels of support are being provided to them. We have a Jobcentre facility on the site available to them and we have been undertaking a significant amount of retraining for the employees on site. We are doing all of those things as well as the severance terms and the arrangements around leaving.

Q291 Roger Berry: It has been in the local press. The assurances that I understand have been given to the local MP, to Dan Norris, about the future of the Fry Club and the site, those assurances are still there?

Mr Doyle: Yes.

Mr Firestone: Cast-iron.

Chair: What I want to do now, bearing in mind we all agree that Kraft have suffered great reputational damage in the UK, is move quite briefly through some of the specific ways in which we think you could actually rebuild that reputation by dealing with some of the issues of concern to the UK and the workforce. I will ask Julie Kirkbride to ask about the Bournville site.

Miss Kirkbride: 150 redundancies have been announced in the legal, finance and communications departments, some of which are in Uxbridge, London and some in Bournville. I wonder if you could tell us why that is the case?

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Q292 Chair: I am sorry, I am going to be disciplined. Can we talk about Bournville only at this stage?

Mr Doyle: Marc explained earlier that when the acquisition was completed Kraft made it very clear that the corporate headquarters of the new combined business would remain in the US and, therefore, we very promptly started consultation with 150 corporate Cadbury's people. These are people who work for Cadbury plc who work in corporate roles covering functions like corporate finance, corporate legal, corporate treasury, corporate insurance, et cetera. The 150 is around about 50 people in Bournville and 100 people in our combined corporate headquarters and UK headquarters in Uxbridge.

Q293 Miss Kirkbride: Are there any other job losses planned at Bournville?

Mr Doyle: As I say, those are the job losses that pertain to the movement of headquarters. Within Bournville we have a manufacturing facility but we also have a significant office facility that supports the corporate headquarters I have described but also our Britain and Ireland business.

Q294 Miss Kirkbride: We know about the 150, can you elucidate on any further plans you have as to how the plan is going to be developed or where job losses might occur?

Mr Doyle: As we have alluded to we are currently investing around £30 million into the Bournville manufacturing facility. Kraft very quickly confirmed that should continue. This is off the back of investments in excess of 100 million over the last five years. We have been investing and continue to invest very heavily in the Bournville facility.

Q295 Miss Kirkbride: So you are very committed to maintaining the high value jobs in Bournville which, of course, is key for the West Midlands economy as well as the people whose jobs are those.

Mr Doyle: Bournville supports a range of different types of jobs from manufacturing employees to office-based employees. You will recall that we spent in excess of £20 million creating the very modern office environment in a 100-year-old heritage building in Bournville and that is a core part of that facility.

Q296 Miss Kirkbride: So we can be satisfied that you will keep the very well paid jobs in the new office block that you have just described as well as the manufacturing jobs and, although as important, nevertheless you want the spectrum of jobs, not just the lower end value chain at Bournville. I see that Mr Firestone is nodding. We can be guaranteed of that, can we, at Bournville?

Mr Firestone: There are two subjects here. I know that innovation, knowledge workers, avoiding "brain drain" is very important, and I have also heard from Ms Formby and Mr Dromey that there is a concern about manufacturing jobs. If you like I can address both of those in specific terms if this is the appropriate time.

Q297 Chair: Yes, that is fine.

Mr Firestone: As I was saying earlier, like any company we need to be competitive in our manufacturing. I will start with manufacturing because that was the first panel's concern. There are certain programmes that Richard can describe in detail that Cadbury has already negotiated with the unions and communicated to the employees. Obviously Somerdale's closure as a facility has already been announced. Because I have heard what Ms Formby and Mr Dromey said, I have heard what the Committee has said and I have read what the press has said, it is clear that our reputation requires action more than words. First, I will say that we can commit that for a period of at least two years there will be no further closures of manufacturing facilities in the United Kingdom. I can also commit that, beyond any programmes which I have mentioned which have already been negotiated and announced for at least two years, there will be no further compulsory redundancies of manufacturing employees in the United Kingdom. Those are statements that I believe are helpful in removing a cloud of uncertainty and creating an atmosphere where we truly do as Kraft want to regain the trust of our colleagues, of the Government, of the public and we look forward to a calmer period over the two years where we can move beyond the controversy and develop a stronger growth platform in the UK and globally. Unless there are questions there, I can talk about your other question which is knowledge workers. There is a substantial research and development base in the UK for both companies. It may not be well known but since 1967 Kraft has operated a research and development facility in Banbury. We are the second biggest coffee company in the world and that is our single global centre of excellence for coffee. That has been there since 1967; all of our coffee innovation and technology is in Banbury; it is a critical centre for us. Cadbury has excellent research and development capabilities in the UK and other countries, including at Reading, and we are committed to maintaining Reading. Much of what Reading does is actually for third parties, and it is a fascinating business model where they do work for pharmaceutical companies and non-competing food companies, and I am hopeful that business model remains because it is an excellent way for our own people to gain insights from other industries.

Q298 Chair: So that is a clear commitment to keep Reading Scientific Services Ltd at Reading.

Mr Firestone: We are committed to it—I want to be careful because I do not think anybody could ever say "in perpetuity", but from what we have seen so far we certainly intend to maintain that operation, subject to the third party contracts. But, yes, Reading is something we see fitting very well. They do terrific research there, they have a very energetic, enthusiastic group of people, doing all sorts of great work on chocolate and other products which services the worldwide chocolate business for both companies.

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Mr Bond: It is right that the Committee are concerned about that area, because a lot of the growth we have enjoyed in Cadbury has come from the ideas generated in the UK. We have seen the results we have been able to deliver from having the manufacturing assets and the research and development assets together, and that is obviously part of the attraction for Kraft in buying what they bought. So we are delighted with that commitment.

Q299 Chair: How important is the Chocolate Innovation Centre at Bournville?

Mr Bond: A big part of chocolate innovation is done in Reading, as Marc has explained, but also in Bournville, and we also have facilities elsewhere in the world. It is very much a shared facility. But a big part of it is done out of Bournville and many of our new products are based out of Bournville.

Q300 Chair: So you remain committed to innovation at Bournville as well?

Mr Bond: We are certainly committed to growing that product base out of the UK.

Mr Firestone: One distinction is that we will always want R&D capabilities—whether on the R side in Reading or the D side in Bournville—for the UK market, and then as we go forward we will see how best to use those technologies and technical capabilities for the worldwide market.

Q301 Ian Stewart: In the UK, our labour law means that there is a legal onus on companies to consult any union recognised for the purposes of bargaining at the earliest opportunity. The information you have just given this Committee, ie that you are prepared for example to have no compulsory redundancies across any of your UK outlets both Kraft and Cadbury for two years—

Mr Firestone: Manufacturing, yes.

Q302 Ian Stewart: Does that include the Kraft headquarters at Cheltenham?

Mr Firestone: I was trying to be very specific and talk about manufacturing. We have been very clear from the outset that we would not need the multiple facilities and, as the questions earlier—

Q303 Ian Stewart: Does that mean that Cheltenham will close?

Mr Firestone: No, we have not made a decision; we are in the consultation process to which you refer.

Q304 Ian Stewart: Did you convey that information you have just supplied the Committee with to the recognised trade union?

Mr Firestone: They are hearing it now in response to what—

Q305 Ian Stewart: I am sorry, Mr Firestone, you have to be very specific here. Passing information that is pertinent to collective bargaining under the laws of this land is not met by telling a Select Committee in Parliament; it is met by carrying out

your obligation to consult genuinely and meaningfully with the recognised trade union, in this case Unite. Have you done that?

Mr Firestone: No, Sir, but we absolutely will do so. It was clear that we were expected, I was expected, to come here with what was described as cast iron guarantees including in regard to manufacturing. I do not mean an effort to address that, to listen and respond, to subvert our legal duties which we will absolutely honour. I would be delighted to meet with anyone from Unite—Richard Doyle regularly does so—and we look forward to rebuilding a constructive conversation. I do not feel in being responsive we are being irresponsible. We are responding to what we have heard people are asking.

Q306 Ian Stewart: Do you not understand, Mr Firestone, that you as a company, Kraft, has been criticised for not carrying out your proper obligations in terms of collective bargaining with the recognised trade union, and that you do the company's reputation no good by not consulting properly and bargaining properly with the recognised trade union?

Mr Doyle: Could I just stress that—

Ian Stewart: Sorry, my question is to Mr Firestone as Kraft.

Chair: Mr Doyle has legal responsibilities.

Q307 Ian Stewart: I will come to Mr Doyle in a minute. I want to know Kraft's view.

Mr Firestone: I am not aware that Kraft has stood accused of breaching its collective bargaining duties, no, Sir.

Q308 Ian Stewart: You do understand that you, today, have given information which is pertinent to that collective bargaining process which you have not given to the recognised union?

Mr Firestone: Yes, Sir, but I thought that the expectation was we would come and say these things.

Q309 Ian Stewart: You wanted to say something, Mr Doyle?

Mr Doyle: I wanted to stress from my perspective, Kraft are under no legal or otherwise obligation to make the statements that Marc has made. I certainly see them as very positive to Cadbury employees in the UK within the manufacturing facilities. Clearly, we are and have been committed to on-going dialogue. I have certainly enjoyed over many years very positive relationships with Unite and with our employee representatives. I believe Kraft likewise have done so with respect to their Banbury facility which again has Unite recognition. There is an obligation to consult over changes—

Q310 Ian Stewart: Mr Doyle, stop there please. You, by speaking out, have taken the responsibility to yourself for these issues. Are you aware of your obligation to consult at the earliest opportunity in a meaningful way?

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Mr Doyle: I am absolutely aware of—

Q311 Ian Stewart: You do not consider this information which has been given today to be pertinent to those discussions?

Mr Doyle: Our obligations around consultation are where there are structural changes being made to the business. This is indeed giving a commitment there will be no structural changes to those manufacturing facilities over at least a two year period.

Chair: I think this is quite a narrow point.

Q312 Ian Stewart: Let me move on to some other terms and conditions issues. I have to tell you, I am left feeling today that whilst you, Mr Bond and Mr Doyle, quite sincerely, I am sure, believe that you have power to control your section of the Kraft company in Europe for the future—I do not question your sincerity—I am left feeling that you do not know what you do not know, in other words what Kraft have in mind for the future. That is why I keep referring to Mr Firestone when I want to know what Kraft thinks. I do not mean any insult or slight to either of you.

Mr Doyle: No.

Ian Stewart: What plans have Kraft for increasing the workforce outside of those jobs which may or may not be transferred from elsewhere in the UK into these companies? That will lead me on to more specific questions.

Q313 Chair: Specifically from Ireland, which we discussed with Unite earlier.

Mr Bond: As I have mentioned and as Marc has mentioned many times, this acquisition is about our growth prospects going forward. We in Cadbury have been very successful, and certainly in the UK Kraft have been very successful over the past few years, and with growth comes opportunities for all of us. We are committed to growing our business. That is what will make Kraft a successful business into the future; long-term growth prospects. So with growth comes opportunities for all colleagues.

Q314 Chair: Just pushing this Irish point, are you planning to move jobs from Ireland to the UK?

Mr Bond: Not that I am aware of, no.

Q315 Chair: There are no plans to shed—

Mr Doyle: No plans.

Mr Bond: Just as a point of clarification, we do manufacture products in Ireland which are sold in the UK and many products in the UK which are sold in Ireland. That relationship is going to continue.

Q316 Ian Stewart: Does Kraft concur with what has just been said?

Mr Firestone: To the best of my knowledge, yes, Sir.

Q317 Ian Stewart: That is a lawyer's answer if ever I have heard one!

Mr Firestone: I slipped once in almost two hours, I apologise. I beg the Chairman's indulgence.

Q318 Ian Stewart: I think some of you were in the room when Jack Dromey and Jennie were giving their answers to us?

Mr Firestone: Yes, Sir.

Q319 Ian Stewart: You will have heard Jack Dromey quite succinctly highlight several concerns of the union members, of your workers, in relation to job security, terms and conditions, pensions and so on.

Mr Firestone: Yes, Sir.

Ian Stewart: Would you now like to take the opportunity to tell us what plans you have to secure those or to alter them in any way?

Chair: I am conscious of the fact that you might fall foul of Mr Stewart's injunction not to enter into collective bargaining across the Select Committee table.

Q320 Ian Stewart: That is their choice, Chairman, not ours. Say what you wish to say.

Mr Firestone: I pause because what I thought would be a positive statement you have warned me may in fact be inappropriate but in the spirit of trying to be open and transparent --

Q321 Ian Stewart: Can I be clear with you, Mr Firestone? It is not inappropriate for any witnesses to give this Committee any information they wish to, my point was that it would have been more appropriate to actually have shared that with the trade union recognised for bargaining before you got here.

Mr Firestone: I understand that and I look forward to have the chance to have a conversation and for Richard to continue. One of the points which was mentioned was terms and conditions, and we said in our prior document that we would honour all existing contracts, and we will. One of the questions which came up was pensions—

Mr Doyle: Shall I take pensions because I am intimately involved in the pension changes both as a trustee and in my capacity as Human Resources Director. Obviously it is an area which is very important to all of our colleagues. Cadbury have operated occupational pension schemes, and outstanding ones at that, since 1906. Kraft have communicated jointly with the trustees of the pension fund and its entire membership to say they are very much looking forward to continuing the excellent partnership between Cadbury, as a sponsoring business, and the trustees in the Kraft world.

Q322 Ian Stewart: Can I stop you please, Mr Doyle. We know all the warm words stuff, we expect that, but could you cut it out just now and address the key issues? Are you going to maintain the pensions scheme, the final salary scheme, and how are you going to deal with the pensions deficit? These are the things which the workers and this Committee need to know.

Mr Doyle: Let us start with the pensions deficit. We, Cadbury, prior to Kraft's involvement, had been working on how we ensure that the UK pension scheme is affordable and sustainable into the future.

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There is an actuarial valuation due in 2010. The trustees of the pension fund, of which I am one, will engage with Kraft in the way they would have engaged with Cadbury around how we ensure that that deficit is dealt with over time. Kraft have been very clear that the way in which that will be dealt with and managed will be exactly the same as how Cadbury would have interacted on that, with a very clear commitment to supporting pension arrangements going forward. On the subject of the benefits themselves, we had engaged like the vast majority of UK businesses in looking hard at how we ensure the excellent pension arrangements we provide to our employees, Trevor and I included, are maintained but are sustainable and affordable in the long term. That does mean that we, Cadbury, have announced some changes and are in the process of consultation as we speak as to how we ensure those excellent pension arrangements remain fantastic benefits into the future but are affordable and sustainable. We have had positive reaction from our employees to those changes, we view them as measured, as reasonable, but they are very much in line with what all of our peers have done. We are now today one of only a handful of businesses who still have open, defined benefit plans. Kraft have been very clear in committing to maintaining accrued benefits to date and to supporting the changes which Cadbury had already started to communicate both with the trustees and employees well before this transaction had come on the scene, and that will continue.

Q323 Ian Stewart: You have heard the difference between the statement that Mr Firestone made today about no compulsory redundancies in manufacturing for two years, and the statement that Mr Dromey made, that the union was seeking commitments for five years. It is not for us to put ourselves in the place of either the employer or the trade union, but can you tell us when you expect to enter into discussions about these issues with Unite the union?

Mr Doyle: Trevor and I have a meeting next week with Jennie and the team. Jennie has been meeting on an on-going basis with myself and my team in the way you would expect. The primary point of contact between Unite and the business is through the Cadbury team that they represent and clearly now that I, Trevor and my colleagues are members of Kraft, that point of contact will continue. I hope and expect the nature of the relationship to remain positive as it has been for many, many years.

Q324 Ian Stewart: Mr Firestone, is it Kraft's intention to meet its obligations under UK law and to honour the agreements it has with Unite, the union?

Mr Firestone: Yes, it is absolutely our intention to comply with UK law and to honour existing agreements, yes, Sir.

Chair: We have about 10 minutes or so left and we have one whole area of questioning which we have not gone into yet. I am going to ask colleagues

asking these questions, particularly Lembit, to be telegraphic in their communication of questions please.

Q325 Lembit Öpik: It is a shopping list of things really and child's play compared to the rest of the session I think, depending what you say of course!

Mr Firestone: Yes, Sir.

Q326 Lembit Öpik: These are the kind of concerns that various people have raised with us and they are your social responsibilities and these sorts of things. Cadbury have made some very important announcements in our view about its commitment to and the extension of Fair Trade products. Will Dairy Milk be certified as Fair Trade in New Zealand, Australia and Canada as well as the UK and Ireland?

Mr Firestone: Yes.

Mr Bond: Yes.

Q327 Lembit Öpik: Will Green and Blacks move its entire range to Fair Trade?

Mr Bond: By the end of next year, yes.

Q328 Lembit Öpik: By the end of 2011?

Mr Bond: Yes. Short answers are all right, are they?

Chair: Yes. They are less open to interpretation, so they are welcome.

Q329 Lembit Öpik: There is no problem with that at all. A spokesperson from Kraft now states that Kraft looks forward, "to maintaining Cadbury's heritage in ethical sourcing". How are you going to maintain that heritage?

Mr Firestone: We will operate our combined supply chain in a way which meets the high standards of Cadbury and Kraft, whether through Fair Trade or other practices.

Mr Bond: It was news to me, for example, that Kraft are the biggest users in the world of Rainforest Alliance cocoa—Rainforest Alliance being a similar body to Fair Trade—and the biggest users of Rainforest Alliance coffee in the world as well. So I think there are similarities. There are differences between the two companies' approaches but they certainly have ethical sourcing within their roots.

Mr Firestone: We entered into a major partnership recently with the Bill and Melinda Gates Foundation on ethical sourcing, sustainable agriculture, which is very important and is something we can expand now that we are with Cadbury.

Q330 Lembit Öpik: Are you guaranteeing you will honour all the Fair Trade and also the Cocoa Partnership commitments made by Cadbury?

Mr Firestone: The Cocoa Partnership agreement we absolutely stand behind, and all the other existing agreements we stand behind. We have slightly different approaches, as there are in this area, and as we go forward we will look to see the best way to handle it.

16 March 2010 Cadbury/Kraft

Q331 Lembit Öpik: This is going well, and the “bonus for 10” is, will you plan to extend Cadbury’s Fair Trade commitments to Kraft and to other brands?

Mr Firestone: We have existing commitments and arrangements with Rainforest Alliance and what we have to do is find a time when those could be synchronised. There are long-term supply agreements with both companies, so it is not a matter of switching one to the other, or vice-versa; it is a matter of making sure they are both equally responsive to concerns about the environment, about the workers in the field and about social development.

Q332 Lembit Öpik: But you will not explicitly make a commitment to extend—

Mr Firestone: Cadbury to Kraft?

Q333 Lembit Öpik: The methodology, yes, and expertise.

Mr Firestone: No, because it is not to say it is not a good one, it is just we have our own existing commitments we want to honour.

Q334 Lembit Öpik: I think that is a fair response. Moving on from that, what is the future of the Cadbury Foundation, which is a very important historical element of all of this and one of the reasons Cadbury has such a great reputation? Does Kraft explicitly intend to increase the financial contribution to it? I am assuming you will at least maintain it.

Mr Firestone: On Friday I confirmed personally to the Foundation that we are confirming their funding. They fund in three-year cycles and they had a pre-existing funding proposal for 2010, 2011, 2012. I personally informed them that we would continue that. Much of their work is similar to ours, particularly volunteerism. Kraft had a whole week last October of volunteerism, with over 10,000 employees volunteering, so the Cadbury Foundation is very much part of the on-going company.

Q335 Lembit Öpik: You are committed to maintain it but not necessarily increase it?

Mr Firestone: There was a proposal they had already developed and that was on the table and we approved that. As we go forward, I am sure there will be ways to—

Mr Doyle: That is exactly right. We had a pre-existing proposal on the table with Cadbury, pre the acquisition, for funding—three-quarters of a million pounds a year, so a significant sum of money—and clearly Kraft had no hesitation from my point of view in endorsing that three year programme.

Q336 Lembit Öpik: So that is committed now?

Mr Firestone: Yes.

Q337 Lembit Öpik: Does Kraft intend to keep Cadbury’s community investment goal of contributing 1% of its pre-tax profits for Community

Investment year on year? This is where I think it is fair to ask the question “in perpetuity” because this has been one of the core values of Cadbury.

Mr Firestone: Of 1%?

Q338 Lembit Öpik: Yes, as I understand it. Perhaps your colleagues in Cadbury could confirm? Cadbury’s community investment goal was to contribute 1% of pre-tax profits and I believe you actually achieved that at Cadbury.

Mr Doyle: We exceeded that. It is a combination of money and valuation of people’s time and commitment.

Mr Firestone: The reason I paused is because I have seen different benchmarks, some of which are higher. What I can definitively commit to is that Cadbury’s charitable activities, its community involvement and other things it has been doing for over a hundred years, will absolutely continue and I hope grow. As to the specific structure, that is something we have to look at.

Mr Doyle: That Foundation money is a significant part of our total commitment.

Q339 Lembit Öpik: Rather than try to catch up with individual numbers, you are explicitly saying you will honour the level of contribution which was committed to by Cadbury before?

Mr Firestone: Yes, Sir, and financially as well, maintaining and continuing Cadbury’s reputation for community support and involvement.

Mr Doyle: Over 30% of our employees in the UK give up their time, work time, to get involved in a number of initiatives and support. We have had very positive interaction with our Kraft colleagues around this, they having very similar principles.

Mr Firestone: We are in the Dow Jones Sustainability Index, which is a very difficult thing as you know, to get into because you have to prove it, and we have very similar approaches to social responsibility and we intend to share practices between the two companies.

Q340 Lembit Öpik: I am hearing that you are confirming you will maintain the excellent voluntary programme as well?

Mr Firestone: The Chairman asked for telegraphic answers—yes.

Mr Bond: All these questions are good because what we have tried to do and have tried to set out today is to reduce the uncertainty, reduce the uncertainty for Somerdale, reduce the uncertainty for our colleagues in the current manufacturing sites and get on with what we have been doing over many, many years, which is to drive our business forward, to improve our productivity, to delight our consumers and to satisfy our customers. That is what we are in business to do, a hundred years ago today and in a hundred years’ time, so we are really keen, and hopefully we have helped today to set out on the record reducing the uncertainty and getting on with running our business.

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Q341 Lembit Öpik: Does that also apply to the carbon emissions commitment, because Cadbury committed to a 50% absolute reduction by 2020? Does that remain as a goal or commitment? If you are not sure, do not guess.

Mr Firestone: I will not. I was studying that and we have six specific quantitative goals for the Kraft family which are very similar but slightly different, so I do not want to guess. What I can commit to is very aggressive targets will remain for both companies.

Q342 Lembit Öpik: Could I ask, Chairman, that you write to us?

Mr Firestone: On carbon emissions?

Q343 Lembit Öpik: Yes. Cadbury's carbon goal was very specific, an absolute reduction in net carbon emissions of 50% by 2020. Cadbury's produce an awful lot of CO₂ because of the business they are in, so that is quite a lot of CO₂—818,686 tonnes of it in 2007.

Mr Bond: Mainly from the cows!

Mr Firestone: I can say we are equally committed to carbon emissions. Cadbury has taken a very large percentage over a longer time, our targets are for a lower percentage over a shorter time, so again it is just a matter of different approaches to a similar issue.

Q344 Lembit Öpik: Rather than having a long conversation now, I would be grateful if you could put it in the main response in correspondence afterwards.

Mr Firestone: Yes, Sir.

Q345 Lembit Öpik: Will you comply with Cadbury's objective to make absolute reductions in packaging and waste by 2010 and identify ways to tackle food waste as well? Bear in mind that is even in the event of growth Cadbury had committed to an absolute reduction in waste packaging—something I was very involved with in Procter and Gamble as well. Will you maintain that commitment?

Mr Bond: Certainly from a Cadbury's point of view, our hesitancy is that we are six weeks into an acquisition. From what I have seen so far of the Kraft work on packaging reduction, for example, I think it is very good. Back to the point, together we can be even stronger and we can have more scale over our suppliers and can be more creative in some of our solutions. On your point, the legacy Cadbury

business has made real progress on packaging reduction, and likewise the legacy Kraft business has as well.

Q346 Lembit Öpik: Maybe you could include the answer in the correspondence?

Mr Firestone: I would be delighted to send you a letter with the details because a lot of these are numbers we are still working through ourselves.

Mr Doyle: What is clear to Trevor and me, whilst clearly through the period of the hostile takeover there was a whole variety of emotions, as you can imagine, and we are still very much in the "getting to know you" phase, but it is very clear that Kraft's objectives and Cadbury's objectives in the areas you are describing have far more similarities than differences.

Lembit Öpik: Chairman, I will conclude by saying that we will take those as actual cast iron commitments, notwithstanding the letter which we discussed which will come later. Thank you.

Q347 Chair: Gentlemen, I think you expected some pretty tough questioning and you have had it. The damage to Kraft's reputation in the UK has been considerable and I think you have acknowledged this on several occasions, so I should give you an opportunity, is there anything else by way of positive comment you want to say at the end of this session before I close it?

Mr Firestone: I would reiterate that we are sorry to the people who were disappointed by the decision on Somerdale and express, on behalf of myself and the entire Kraft and Cadbury family, that we are committed to taking the actions that you have asked us to take in the future. We are committed to maintaining Cadbury's traditions and, more importantly, to carrying those in the future in a way that is to the benefit of our colleagues, to the scientists, to the employees and the management. We are very serious about that and we understand that in acquiring a British icon we also accept an enormous responsibility for how we preserve its heritage while keeping it competitive in the future. I look forward not only to discussing that but, more importantly, having tangible concrete evidence of that going forward. I thank you for giving us the chance to speak with you today.

Q348 Chair: Your bid has been a sensitive one, it has also triggered a whole review of mergers policy, and I think it is only fair to say I expect that this Committee in the next Parliament will be as interested in this matter and in this particular acquisition as it has been today. Gentlemen, thank you very much indeed.

Mr Firestone: Thank you.

Written evidence

Memorandum submitted by the Department for Business, Innovation and Skills

MERGERS: PUBLIC INTEREST INTERVENTION AND FOOD SECURITY

During our discussion at the committee hearing on Tuesday 12 January, members referred to the power Ministers have under the Enterprise Act 2002 to intervene in mergers on public interest grounds.

The reforms to competition and merger policy over the past two decades have focussed it on promoting competitive markets and applying a competition test. The 2002 Enterprise Act does however recognise that there are public interests which may not be adequately protected by the application of a competition test. It therefore includes a reserve power to allow some mergers to be examined additionally on the basis of their impact on the public interest.

There are presently three public interest considerations specified in the Enterprise Act as legitimate bases for Ministerial intervention. These are:

- national security;
- media plurality, quality and standards; and
- the stability of the UK financial system.

It is also possible to intervene in mergers that fall to be regulated under the EC Merger Regulation; generally being those larger merger cases that affect trade in more than one EC member state. European law currently specifies two grounds on which public interest interventions are possible: public security (equivalent to national security) and plurality and quality in the media.

While every case needs to be considered on its merits, it is not clear that wider interests such as the concern expressed by some Members at the hearing about food security would be considered to fall within the scope of any of the existing public interest considerations.

It is, of course, possible to specify additional public interest considerations. However, as the aim of the Act is to secure consumer interests through effective competition between enterprises, the policy intent was that the reserve power should be used sparingly to avoid inconsistency, uncertainty and a dilution of this aim.

Any proposed new consideration to be specified in the Enterprise Act would need to be approved by a resolution of each House of Parliament. In addition, if it was to be relied upon also in European merger cases, it would need clearance by the European Commission. They would have to be satisfied that the consideration was legitimate and compatible with the objectives of the European Treaty, in particular in relation to the free movement of capital. Anyone making a case for a new public interest consideration would need clear evidence that this power was necessary, meaning that the only way to achieve the relevant public policy objective was to be able to intervene in possible mergers, as opposed to adopting other measures such as, for example, appropriate sectoral regulation. It may be noted that where governments have previously sought to use the powers, available under merger control, to intervene in merger cases in the food sector that action has been blocked by the European Commission.

Further, merger control is a highly transparent process. Any decision to intervene and take action in relation to a proposed merger on public interest grounds is open to legal challenge. Even assuming a suitable public interest consideration had been specified that enabled intervention in a relevant merger, it would remain possible to intervene only where there was a defensible case for doing so. It would need to be a proportionate measure that was demonstrably necessary in order to achieve a specific public policy benefit.

I hope this helps clarify the position on this matter.

January 2010

Memorandum submitted by Professor Christopher Bones (Dean, Henley Business School)

CADBURY PLC: A PERSONAL VIEWPOINT ON THE ISSUES SURROUNDING THE FORMAL KRAFT OFFER

The approach by Kraft to acquire Cadbury plc generates five issues that have a potential public policy interest for the department for Business, Innovation and Skills. Whilst each individually may be acceptable consequences of a full and fair open market transaction the combination may well raise some issues of concern for government and policy makers in the area and potentially may stray into the much more controversial issue of the role of government-owned banks in merger and acquisition activities.

There is also a question as to whether those who will decide on the merits of any final and revised bid actually have the interests of the ultimate owners of the company in mind when they reach their conclusions.

The five issues associated with acquisition are:

1. *A further potential threat to the UK's manufacturing base*

Cadbury are committed to the long term development of their Birmingham and Sheffield production plants in the UK as part of a pan-European production network. Their announced closure of their Bath factory is nearly complete with many workers clear as to their financial and career futures. The Kraft commitment to keeping Bath is reported in the press as seen by Unions and Management alike as a PR ploy rather than a really well thought through proposition. Keeping it open would have inevitable consequences for manufacturing jobs in Birmingham a city where Cadbury's manufacturing activity keeps the requirement for skilled jobs at a critical mass attracting inward investment and maintaining an education and skills base. Any dilution could be damaging in the medium term for the supply of skills to other manufacturing organisations and for those areas continuing to attract inward manufacturing investment on the basis of available highly skilled labour.

A further concern for government is that Kraft approach their commitment to the Bath factory (or the ones in Birmingham or even Sheffield if they keep Bath open but need to take out costs) is the same as that they gave to Terry's in York: commit to keeping it open and then close it after a few years and a further review.¹

2. *A threat to the UK's science base and leading-edge research in GM and other food-related science areas*

Food security is coming to the forefront of the UK government's list of sustainability concerns and the UK's agricultural and food industries will have far more demanded of them over the next 10–20 years. This is already exercising many policy organisations and we are seeing calls from bodies such as The Royal Society for increased support for Agriculture and food research and teaching.

The Global Science Centre for Cadbury plc is currently on the campus of the University of Reading where they employ over 200 people of whom about 130 are highly skilled graduate staff in a range of research disciplines. This centre interacts with the University's world-renowned Food Science and Agriculture departments and through joint research and other activities has contributed to the creation of a centre of excellence for the UK which attracts research investment and international students from around the world.

R&D consolidation is identified in Kraft's formal documentation as an area for cost reduction in any merger and this could see all such activity transferred to the US into Kraft's own laboratories reducing the availability of funding for leading-edge food science research in the UK and reducing the availability of "knowledge economy" jobs in the UK in a core STEM subject of critical importance to national security.

The wider policy issue is could or should government intervene in a commercial transaction such as this where the national interest in terms of maintaining and building knowledge economy jobs or critical skills such as engineering, biological sciences, genetic engineering etc could be undermined through actions taken by a new owner, regardless of where they are from? There may well be an argument where a company, listed on the London Stock Exchange (and in good commercial health) is acquired by a competitor to require any purchaser to protect assets of that company which are of strategic importance to the UK including a centre of skills which are critical to our long term national security. I would define security here to embrace the concept of security based on economic stability which would require certain key skills to be developed and retained.

3. *A potential risk to the UK's international reputation as a centre of responsible and ethical business*

Cadbury plays a prominent role in building of the UK's reputation for ethical and responsible business in some areas of the world where the UK has a significant interest in maintaining and sustaining its economic and political influence. This has been maintained through its distinctive values and how these have been employed in day-to-day business practice in Sub-Saharan and Southern Africa, in Australasia, Asia and North America. In particular their commitment to ethical and sustainable practices in cocoa production and their endorsement of the Fair-trade movement are major symbols locally in Africa and world wide with consumers of a UK brand that stands for the business values the government has long espoused.

Cadbury has a long and creditable trading reputation with Ghana having set up the Cadbury Cocoa Partnership which invests for social good in that country.

¹ The York chocolate maker was bought by Kraft in 1993. Twelve years later the American food giant decided to close the factory with production being moved overseas to Poland where interestingly Cadbury has already indicated production is moving from Keynsham. The 27-acre plant still stands empty to this day. (ref BBC News http://news.bbc.co.uk/local/birmingham/hi/front_page/newsid_8426000/8426447.stm)

The prospect of Cadbury, known all over the world as the UK's chocolate, being run to the model of Kraft's approach to its consumer brands (for example its chocolate is not fair-trade, and they have rejected fair trade as a model for their coffee)² carries with it the risk that from supply to retailer the face of the UK is seen as less positively and this will impact more widely especially in areas of strategic importance to the UK such as India and Africa.

The wider issue here is that of the pressures for continually upbeat result outcomes of a quarterly reporting system imposed on companies with a US stock exchange listing as opposed to that of a bi-annual reporting structure in the UK putting pressure on responsible business behaviours that may take longer to pay-off than a very short-term focus on costs and profitability.

4. *Another global head office leaves the UK and another global business delists from the London Stock Exchange (LSE)*

Whilst this is a relatively minor issues in terms of jobs (yet we should remember these are highly skilled "knowledge economy" jobs) there is an issue for the UK I believe in losing another global business from its shores and in losing another branded goods business from the FTSE 100. Without UK organisations being able to access debt funding to the level Kraft has been able to fund it to acquire similar assets in other markets there is an increasing imbalance and possible further incentives for global financial operations to drift back across the Atlantic or to find alternatives in Europe, the Middle East and Asia.

5. *One of the funders of the takeover is the UK taxpayer*

Combined with a mix of the issues above, or indeed even potentially as the single biggest stand-out issue is any role for a major government-owned bank in providing debt funding for a formal hostile bid.³

The role of RBS as a major provider of funds for Kraft has already been highlighted as an issue by MPs in a meeting with the Secretary of State late last year. It goes without saying that in any formal bid battle the irony of a UK bank, 84% owned by the UK taxpayer funding the acquisition of an iconic UK company by a US conglomerate, and not a very successful one at that, will be fully and continuously debated in the media.

Given the shortage of funds being made available to UK business highlighted by the CBI's Director General in his new year message⁴ the big questions for policy makers has to be this : why aren't RBS funding UK businesses to develop and grow when the money they are putting up has come from UK taxpayers? What is it about this deal that makes it more attractive to RBS's managers than the legions of UK businesses looking for more working capital?

This last point raises the major policy issue on the role and motivation of fund managers and bankers in driving any potential deal through.

Whilst there would be no opposition in my mind to a deal, even given the combination of the top four issues above, were the price to reach a level where any rational seller believes it impossible to refuse an offer, there is every chance that the price agreed by those who will act on behalf of the ultimate owners of the company (ie, the individual investors, insurance policy owners and pensioners/prospective pensioners) will not represent by a long way that which would be agreed in a perfectly informed market.

This possible mis-alignment between the interests of the ultimate stakeholders in whose long-term interests the firm should be run, and those of the "intermediating stakeholders", who may hold shares on their behalf for shorter term motives may result in a less than ideal outcome.

The obvious example of intermediating stakeholders would be fund managers (whether principal traders, pension fund managers or mutual funds). These intermediate stakeholders buy, hold, and sell stocks not only for reasons of changes in their underlying value, but also for shorter term motives—either bonus arrangements or, more professionally, because they have need for liquidity to finance other investments (or to cover other needs for cash). These shorter term motives would be sufficient to encourage the sale (or purchase) of stocks even in circumstances where the stock was trading at below some assessed fair value—essentially a "fire-sale". Long term stakeholders would of course prefer to continue to hold the stock until its value rose again, but they would be overruled by the short term interests of the intermediating stakeholders.

² Kraft Web Site: "The standards for coffees to be certified sustainable by Rainforest Alliance or obtain the 'Fair Trade' mark are similar. However 'Fair Trade' provides a fixed minimum price for farmers, and as such, operates outside the normal trading system. By supporting Rainforest Alliance certified sustainable coffees, we help farmers reduce costs, gain efficiencies, improve quality and become more independent, self-sufficient and competitive within the existing market system as well as having access to a premium market." (<http://www.kraftfoods.co.uk/kraft/page?siteid=kraft-prd&locale=uken1&PageRef=2311&Mid=2311>).

³ RBS is one of nine banks that Kraft says are ready to lend a total of 5.5 billion pounds to finance a deal. Barclays and HSBC, which have not received direct capital injections from the government, are also on the list. <http://www.foxbusiness.com/story/markets/industries/finance/mps-try-stop-rbs-financing-kraft-deal-report/>

⁴ "Conditions at UK banks have improved significantly since the summer, with a sharp rise in their key capital ratios. But there could be more aftershocks to come from the global credit crunch; the process of regulatory reform has hardly begun; and the transition to more robust funding structures is likely to be both slow and expensive. In the meantime, net lending to companies is still shrinking, and business investment remains very weak." <http://www.cbi.org.uk/ndbs/press.nsf/0363c1f07c6ca12a8025671c00381cc7/9a73f81d376a8bb680257696003abaff?OpenDocument>

This would cause a fundamental conflict between the interests of the firm itself and those of the middle men—and one that could well result in the destruction of asset value, to the detriment of the stakeholders and the economy. The current liquidity and cash positions of such stakeholders, and the drivers of their own bonus plans may well come together to create such a negative outcome in this case.

Both this government and the previous one have committed themselves to the concept of a “share-owning democracy” where they encourage all citizens to invest as a form of accelerated saving for their future (particularly their old age) through individual or collective portfolios. Indeed this government has increased this involvement by insisting owners hold the managers of those businesses to closer account (for example through the voting on the remuneration report).

The irony of the deregulation of financial markets coupled with the explosion in collective investment vehicles for long term saving (including ISAs) is that we are even further from a real share-owning democracy than ever. Indeed with the power and influence of a small number of fund managers what reform has created is a share managing autocracy where the few make all the key decisions on behalf of the many, with no recourse to the views or interests of the many.

One final thought . . .

The ultimate irony for any government would be the sight of the corporate banking team at RBS or any other government-owned institution being paid multi-million pound bonuses for funding the acquisition of a UK company by a US conglomerate at a price that failed to reflect real market value with an outcome that damaged the long term interests of the UK economy.

DECLARATION OF INTEREST

Professor Bones worked for Cadbury Schweppes from October 1999 to December 2004 as Group Organisation Effectiveness and Development Director. He was responsible for change management, communications (including corporate communications for a period of time), leadership development, capabilities and skill development and knowledge management. He reported to the Board and was involved in its major business activities during that period, in particular the acquisition of Adams Inc. and the subsequent restructuring of the group organisation.

Professor Bones still holds c5,000 shares in Cadbury plc and is a deferred pensioner.

Professor Bones is Dean of Henley Business School at the University of Reading. As Dean he is a member of the Senior Management Board of the University, its Senate and its Council.

5 January 2010

Memorandum submitted by The Takeover Panel

EXAMINATION OF THE PRINCIPLES UNDERLYING MERGERS, TAKEOVERS AND ACQUISITIONS FROM THE PANEL ON TAKEOVERS AND MERGERS (the “Panel”)

INTRODUCTION

The Panel Executive understands that the Business, Innovation and Skills Committee is to hold an oral evidence session on 12 January 2010 on the principles underlying mergers, takeovers and acquisitions and Government policy in that area.

The Panel Executive is therefore providing this submission in order to summarise: the constitution of the Panel; the nature, purpose and scope of application of the City Code on Takeovers and Mergers (the “Code”); the approach of the Panel to the regulation of takeovers; and the General Principles and Rules set out in the Code.

THE PANEL’S CONSTITUTION

The Panel is an independent body, established in 1968, whose main functions are to issue and administer the Code and to supervise and regulate takeovers and other matters to which the Code applies in accordance with the General Principles and Rules set out in the Code.

On implementation in the UK of the European Directive on Takeover Bids (the “Directive”) on 20 May 2006, the Panel was designated as the supervisory authority to carry out certain regulatory functions in relation to takeovers pursuant to the Directive. The Companies Act 2006, which implemented the Directive, sets out the Panel’s statutory duties and powers.

The Panel comprises up to 35 members, including a Chairman (who is normally a senior QC) and up to three Deputy Chairmen, all of whom are appointed by the Panel on the recommendation of its Nomination Committee.

Panel members include senior individuals appointed by the following bodies:

The Association for Financial Markets in Europe (formerly the London Investment Banking Association);
 The Association of British Insurers;
 The Association of Investment Companies;
 The Association of Private Client Investment Managers and Stockbrokers;
 The British Bankers' Association;
 The Confederation of British Industry;
 The Institute of Chartered Accountants in England and Wales;
 Investment Management Association; and
 The National Association of Pension Funds.

Other members are appointed by the Panel and are drawn from senior practitioners in the market, major UK companies and the Trades Union movement.

Each Panel member is designated as a member of either the Hearings Committee (which deals primarily with questions of interpretation of the Code) or the Code Committee (which makes the Rules).

The day-to-day work of the regulation of takeovers is carried out by the Panel Executive, which operates independently of the Panel and comprises a mix of permanent staff and secondees from investment banks, law firms and accountancy firms.

The Panel is self-funded and receives no Government funding.

THE NATURE, PURPOSE AND APPLICATION OF THE CODE

The Code is designed principally to ensure that shareholders are treated fairly and are not denied the opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The financial and commercial merits of takeovers are not the responsibility of the Panel: these are matters for the companies concerned and their shareholders. Wider questions of public interest are the concern of government authorities in the UK and, in some circumstances, the European Union, through, for example, the Office of Fair Trading, the Competition Commission or the European Commission.

Thus, save for requiring certain levels of disclosure, the remit of the Code and the Panel does not extend to:

- questions of public policy;
- competition issues;
- the business and operational plans a bidder may have for a target company following a successful bid; or
- the commercial merits of a takeover.

The scope of the application of the Code is determined by the nationality and status of the offeree company. Broadly speaking, it applies to offers for UK, Channel Islands or Isle of Man registered public companies that are either traded on a regulated market in any of those jurisdictions or, if not so traded, that are considered by the Panel to have their place of central management and control in the UK, the Channel Islands or the Isle of Man. The Code does not generally apply to an offer for a non-UK company, even if made by a UK company (so, for example, the Code did not apply to the Royal Bank of Scotland's offer for ABN Amro). The Code also applies to offers for private companies in certain circumstances.

THE PANEL'S APPROACH TO REGULATION OF TAKEOVERS

The essential characteristics of the Panel's approach to takeover regulation are flexibility, certainty and speed. The Panel follows a principles-based approach to regulation which enables it to set high standards and to prevent circumvention of its requirements. The Panel Executive gives advice to parties to takeover bids and their advisers and makes rulings on matters of interpretation of the Code. The Panel deals quickly and pragmatically with matters which arise during takeovers and has flexibility to adapt its Rules to changing market conditions. This helps to ensure that bids are not delayed by tactical litigation, which could have the effect of frustrating the ability of shareholders to decide the outcome of an offer and extending the period of uncertainty for the company's management, employees, customers and suppliers.

Decisions of the Panel are binding but may be appealed to the Takeover Appeal Board, which is independent of the Panel.

THE GENERAL PRINCIPLES AND RULES OF THE CODE

The Code comprises six General Principles and 38 Rules, based on those Principles. The General Principles are expressed in broad general terms and the Code does not define the precise extent of, or limitations on, their application. They are applied in accordance with their spirit in order to achieve their underlying purpose.

The General Principles, which derive from the Directive, are as follows:

1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.
2. The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.
3. The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.
4. False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.
5. An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such consideration is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.
6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

The detailed Rules are extensive and not capable of an accurate summary in this short submission. However, by way of illustration, they cover matters such as:

- when a takeover approach has been made or is being considered for a company and there is rumour in the market or untoward movement in the target company's share price, an announcement of a "possible offer" is required so as to avoid the creation of false markets;
- when a possible or proposed offer announcement has been made, the company concerned enters an "offer period" and is then subject to certain restrictions. For example the target company cannot carry out transactions which would constitute "frustrating action" and be prejudicial to the potential offeror without the approval of its shareholders. In addition, dealings in its securities (and of the offeror, if it is offering securities) become subject to a heightened disclosure regime so as to facilitate transparency of ownership and voting control during an offer period;
- when a possible offer is announced, the target company may ask for a "put up or shut up" deadline to be imposed on the bidder, by which time the potential offeror must either announce a firm offer or state that it is not making an offer, in which case, it may not make a new offer for a period of six months;
- when a firm intention to make an offer is announced (as opposed to a possible offer) an offeror may not withdraw its offer or reduce its price save in very limited circumstances (such as a reference to the Competition Commission or European Commission);
- if an offeror buys shares for cash during an offer period, a cash offer must be made to all shareholders at the highest price paid in a specified period; offerors may not treat shareholders unequally by, say, offering shares to some and cash to others;
- the mandatory bid rule: any person who acquires interests in shares in a company carrying 30% or more of the voting rights of that company (or who increases an interest that is already between 30% and 50%) must make a cash offer to all other shareholders at the highest price paid for those interests in the previous 12 months;
- the requirement to make a bid if interests in shares of 30% or more are acquired cannot be circumvented by parties who act in concert to obtain or consolidate control of a company splitting the 30% limit between themselves; if a member of a concert party buys shares so that the concert party in aggregate goes through the 30% threshold, a bid must be made;
- during the course of an offer, documents published and announcements made must be prepared with the highest standards of care and accuracy. In particular, parties to an offer must not make statements which might mislead the markets; for example, if a party says publicly that it will not make an offer for a company, it is not permitted to change its mind within six months; similarly if a party says that it will not increase an offer, it is not permitted to change its mind and make a higher bid, except with the Panel's consent;
- in order to ensure that a target company is not exposed to an undue period of siege and that shareholders have sufficient time to consider an offer and the arguments for and against accepting it, once a firm offer is made, various timetable constraints apply and the offer must either be declared unconditional or lapse by no later than 60 days following the publication of the formal offer document;

- the contents both of offer documents (including information about the offeror’s intentions regarding the future business of the offeree company and its employees) and of documents giving the offeree board’s opinion (including its views on the effect of the offer on all the company’s interests) and advice from its independent advisers. Representatives of employees must be informed of the bid and their views must be appended to the offeree board’s opinion if received in good time before its circulation; and
- an offer may only be declared unconditional if the offeror receives acceptances of over 50% of the voting rights in the target company so that shareholders are in no doubt that the offeror would, on successful completion of its offer, have statutory control of the company.

5 January 2010

Memorandum submitted by Unite the Union

TAKEOVER REFORM⁵

A MERGERS AND TAKEOVERS COMMISSION TO ENSURE THE LONG-TERM INTEREST OF THE TARGET COMPANY

Currently in the UK no one involved in a bid is required to take account of the long-term interest of the target company including stakeholders and the wider interest of society. The outcome of the bid is decided by shareholders alone depending on the price of shares. Whilst shareholders want the highest price for shares, this can be directly against the company’s interest—particularly if it means being saddled with more debt.

A Takeover Commission would assess whether the bid is likely to enhance—or indeed damage—the target company’s economic and productive capacity in the long-term. Assessment could include for example impact on investment, employment, R&D, training, the economic case for the bid, comparisons of financial projections, and levels of debt and repayment schedules.

PROTECTION OF WORKERS’ ECONOMIC INTERESTS IN THE CONTEXT OF A BID

Currently there is no obligation to consult and the protection of workers terms and conditions afforded by TUPE does not apply. Thus we need:

- an extension of TUPE⁶ protections to cover mergers and takeovers by share transfer; and
- information and consultation must include full disclosure of business plans and all other relevant information pertaining to the bid and meaningful consultation on potential impact on employees.

Because a company may hide behind the Takeover Code we need:

- the right for workers’ representatives to negotiate protection of investment, jobs and terms and conditions.

Currently others can act to protect their interests from added risk of debt eg banks charging higher interest rates, pension funds—but not workers.

REFORM OF SHAREHOLDER RIGHTS

Reform of shareholder rights are needed so that only long-term shareholders who have owned shares for a year at the time that the bid is announced are able to vote on a takeover. Short-term share traders who buy shares solely to profit from a takeover process should not have a say. Lord Mandelson’s recent speech is a step in the right direction as, of course, directors should be “stewards rather than just auctioneers”. A takeover bid should require at least a $\frac{2}{3}$ majority shareholder agreement at a properly constituted EGM or AGM. This would also enable institutional investors to be held to account by their beneficiaries for their position on takeover bids.

EXAMPLES OF DIFFERENT APPROACHES TO TAKEOVERS ELSEWHERE

- Germany

Driven by concerns about predatory bids, in early 2009 Germany introduced new rules which can limit foreign ownership to a 25% stake. In addition Germany also has co-determination whereby management are appointed and supervised by a Supervisory Board which may consist of one third employee representatives.

⁵ This draws on TUC work on Takeovers and mergers.

⁶ TUPE requires information and consultation of the employees’ representatives on the potential implications of the takeover to terms and conditions of employment; protection of employees’ existing terms and conditions of employment the new employer can only vary them in limited circumstances; dismissals due solely or principally to the transfer will automatically be unfair unless the employer can show there was an economic, technical or organisational reason for the dismissal.

— Holland and Belgium

Under law, companies can have articles of association that make it more difficult for a predatory bid.

— France

In 2005, following concerns about a PepsiCo takeover of Danone, the French Government introduced a law requiring that an acquisition in a strategic sector is subject to prior approval by the Finance Minister. Other measures make a company less vulnerable to a hostile bid, for example, double voting rights for long term shareholders.

WHAT UNITE WANTS FROM KRAFT:

— Investment in the world-class Cadbury business.

— An urgent meeting at the highest level of Kraft management with CEO, Irene Rosenfeld with full disclosure of their business plan for each site in the UK and Ireland.

— Full explanation of why they made the statement they did about the future of Somerdale and misled the workers—and the public—despite being repeatedly urged not to do so from September 2009 because of the closure plans being so far advanced.

— Guarantees for the future of all UK and Ireland sites, including:

— No site closures in UK and Ireland for five years.

— A guarantee of no compulsory redundancies in the UK and Ireland for five years.

— A guarantee of no erosion of terms and conditions for five years.

— A guarantee of no diminution to pension benefits or increase in contributions for five years and a commitment that the company will fund any pension deficit.

— Full disclosure of all business and investment plans for each site and product category.

Unite believes that these are all reasonable expectations of a company of the size and resources of Kraft and would demonstrate a commitment to the former Cadbury workforce as well as providing reassurance for those workers that they won't pay for the takeover with their jobs and conditions.

16 March 2010

Response from Kraft Foods to follow-up questions from the Business, Innovation and Skills Committee

1. *Cost of bid to Kraft in terms of advisors, research and documentation*

As part of our acquisition of Cadbury, we paid approximately \$40 million in transaction related fees in 2009.

Fees incurred during 2009 are disclosed in Kraft Foods Form 10-K filing to the US Securities and Exchange Commission, 25 February 2010, and are not itemised according to individual elements of the transaction. Further fees will be incurred during 2010 which are not yet available.

2. *Names of advisors on the content and nature of public statements Kraft made before the takeover. What was the nature of their advice and how did it impact on decision to make statement about Somerdale?*

Kraft Foods was advised by Lazard & Co. Limited, Clifford Chance LLP, Deutsche Bank AG, Citibank Global Markets Limited and Brunswick Group LLP on the public announcement it made on 7 September 2009. The statement concerning Somerdale was included in that announcement. (For completeness, Ernst & Young LLP provided the report on cost synergies contained in that announcement.) Kraft Foods was advised that before making a statement of belief in a public announcement in the context of a takeover offer it had to genuinely hold the stated belief and have a reasonable basis for holding the belief.

Accordingly, Kraft tested the Somerdale statement against these criteria and concluded (for the reasons explained to the Committee by Mr Firestone on 16 March) that it could properly make that statement.

3. *Kraft's commitments to reducing net carbon emissions. Will Kraft retain Cadbury's commitment to an absolute reduction in net carbon emissions of 50% by 2020?*

We confirm Kraft's commitment to aggressively reducing CO₂ emissions. We will maintain the same aggressive intention as Cadbury's target of 50% by 2020 (roughly 4–5% per year). Kraft is on track to achieve its prior target to reduce by 25% between 2005 and 2011—a similar annual rate of reduction to the longer-term Cadbury goal. Kraft will adapt the reporting and measurement process to ensure consistency across the combined company in tracking progress. With both companies achieving similar results to date, we are confident and committed to Cadbury's original goal and intent.

4. *Kraft's objectives regarding packaging and waste. Will Kraft comply with Cadbury's objective to make absolute reductions in packaging waste by 2010 and identify ways to tackle food waste?*

Yes.

5. *Content and nature of communication with Unile before takeover was agreed. What did Unile tell you about Somerdale before the takeover was agreed?*

There were several contacts between Unile and Kraft Foods during the deal process before the offer was recommended by the Cadbury Board on 19 January 2010. Unile sought details from Kraft as to its plans for Somerdale, as Ms Formby said in her evidence to the Committee, and said that it would be unfair to raise the hopes of the workforce if no such details could be provided. Unile indicated some scepticism concerning Kraft's ability to keep Somerdale open. However, Unile did not tell Kraft that Kraft would not be able to keep Somerdale open, or give Kraft specific details from which Kraft could have reached that conclusion independently. On the contrary, Unile sought assurances and guarantees concerning Somerdale, privately and publicly, which Kraft was unable to give for the reasons explained to the Committee by Mr Firestone on 16 March.

Discussions with Unile will be taken forward by Richard Doyle, whose next meeting is due to take place on 25 March.

6. *Can we also have the profile of job losses from Terry's of York after it came under Kraft management in 1993 (see Q 195 of transcript)*

At the time we bought the Terry's business in 1993, around 1,350 people worked at the site. Over time, we implemented several projects to improve cost effectiveness and capacity utilization and we invested significant capital into plant upgrade and new equipment. This investment was considered proportionate to other Kraft Foods chocolate plants in Europe. However, volume declined between 2000 and 2004, driven mainly by reduced export sales of Terry's Chocolate Orange, and this together with the size and configuration of the site, resulted in a cost structure that was unsustainable.

A decision was taken to propose closure of the site in early 2004 and this was announced on 19 April. The closure plan was confirmed on 22 June 2004, following discussions with unions that concluded there was no feasible alternative proposal to continue making Terry's products in York. Closure was completed in the second half of 2005.

No production was transferred from York to other sites between 1993 and 2004.

7. *What are Kraft's financial projections for the next five years (eg revenue growth, profitability)? What are the financial projections for the Cadbury part of Kraft's business?*

Cadbury plc's results will be consolidated with those of Kraft Foods from 2 February 2010, onwards.

The combination of Kraft Foods and Cadbury is expected to provide the potential for meaningful revenue synergies over time from investments in distribution, marketing and product development. As a result, the combined company is targeting long-term organic net revenue growth of 5% or more (prior outlook was 4% or more).

The combined company is targeting accretion to earnings per share in 2011 of approximately \$0.05 on a cash basis, which excludes one-time expenses to achieve cost savings, expenses related to the transaction and the impact of incremental non-cash items such as the amortization of intangibles related to the acquisition. Over the long-term, the combined company is targeting EPS growth of 9 to 11% (prior outlook was 7-9%).

19 March 2010

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