

**Acquisition by VTech Holdings Limited of  
LeapFrog Enterprises, Inc.**

**Directions issued pursuant to paragraph 10 of the Interim Order  
made by the Competition and Markets Authority pursuant to  
section 81 of the Enterprise Act 2002 (the Act) on  
19 September 2016**

- A. On 4 April 2016 VTech Holdings Limited (**VTech**) completed the acquisition of LeapFrog Enterprises, Inc. (**LeapFrog**) (the Acquisition). The Competition and Markets Authority (CMA) commenced its inquiry into the Acquisition on 27 April 2016 (phase1) and on 30 August 2016 referred the Acquisition for a phase 2 investigation pursuant to section 22 of the Act (the Reference).
- B. On 8 September 2016 the CMA made an Interim Order in accordance with section 81 of the Act for the purpose of ensuring that no action is taken pending determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which may be justified by the CMA's decisions on the Reference.
- C. The CMA now issues written directions under paragraph 10 of the Interim Order that, for the purposes of securing compliance with the Interim Order, VTech must appoint a monitoring trustee in accordance with the terms provided for in the Annex and shall comply with the obligations set out in the Annex.

Signed

**Philip Marsden**  
**Group Chairman**  
**19 September 2016**

## **Annex: Directions to appoint a monitoring trustee**

### **Interpretation**

In these Directions:

‘the Act’ means the Enterprise Act 2002;

‘CMA’ means the Competition and Markets Authority;

‘Directions’ means the directions issued under paragraph 10 of the Interim Order;

‘Interim Order’ means the interim order made by the CMA on 8 September 2016;

‘Leapfrog’ means LeapFrog Enterprises, Inc. a company incorporated in the USA whose global headquarters is at 6401 Hollis Street, Suite 100, Emeryville, CA 94608-1071;

‘the Leapfrog business’ means the business of Leapfrog and its subsidiaries carried on in the UK as at the Commencement Date;

‘Phase 1 Interim Order’ means the Interim Order made by the CMA commencing on 12 May 2016;

‘MT’ means the monitoring trustee appointed in accordance with the Directions;

‘the VTech business’ means the business of VTech Holdings Limited and all of its subsidiaries (with the exception of Leapfrog) carried on in the UK as at the Commencement Date;

‘VTech Holdings Limited’ means the company incorporated in Bermuda whose address is Clarendon House, 2 Church Street, Hamilton, HM11, Bermuda and whose corporate office is at 23<sup>rd</sup> Floor, Tai Ping Industrial Centre Block 1, 57 Ting Kok Road, Tai Po, New Territories, Hong Kong;

‘VTech’ means VTech Holdings Limited; and,

‘working day’ means any day of the week other than a Saturday, Sunday or any other day that is a public holiday in England.

Terms and expressions defined in the Interim Order have the same meaning in these Directions, unless the context requires otherwise.

### **Appointment**

1. VTech must appoint an MT in order to:

- (a) support the CMA taking any remedial action which may be required; and
  - (b) monitor compliance by VTech and all its subsidiaries with the Interim Order.
- 2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
- 3. VTech and all its subsidiaries must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of VTech and all its subsidiaries as set out in these Directions.

### **General**

- 4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
- 5. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging his or her duties under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
- 6. VTech shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
- 7. VTech must appoint the MT as soon as is reasonably practicable and in any event by 26 September 2016 and the MT will continue to act either until the CMA has finally determined the Reference (within the meaning of section 79 of the Act) or directs VTech that the MT is no longer required.
- 8. The appointment of a MT by VTech is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety; and
  - (a) the name of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by 26 September 2016 along with draft terms and conditions of appointment; and
  - (b) once the MT has been approved by the CMA and appointed, VTech must provide the CMA with a copy of the agreed terms and conditions of appointment.

## **Functions**

9. The functions of the MT will be to:
  - (a) ascertain the extent of compliance by VTech with the Phase 1 Interim Order and the Interim Order;
  - (b) assess the arrangements made by VTech for compliance with the Interim Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
  - (c) identify and supervise if necessary the arrangements made by VTech for ensuring compliance with the Interim Order;
  - (d) monitor compliance by VTech with the Interim Order; and
  - (e) without prejudice to the right of VTech to contact the CMA, respond to any questions which VTech may have in relation to compliance with the Interim Order, in consultation with the CMA.
10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including the monitoring of communications within and between the Leapfrog business and the VTech business, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by VTech and all its subsidiaries with the Interim Order.

## **Obligations of VTech**

12. VTech and all its subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
  - (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of the LeapFrog business, the VTech business and VTech as the MT may reasonably require; and
  - (b) the provision of such office and supporting facilities as the MT may reasonably require.

13. If VTech or any of its subsidiaries is in any doubt as to whether any action or communication would infringe the Interim Order, it is required to contact the MT for clarification.
14. If VTech or any of its subsidiaries has any reason to suspect that the Interim Order has or may have been breached, it must notify the MT and the CMA immediately and indicate what steps it has taken, or is taking or considering to take, to remedy the breach.

### **Reporting functions**

15. The MT is required to provide an initial report to the CMA no later than 5pm (UK time) on 10 October 2016 giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Interim Order, and including among other things:
  - (a) details of the extent of compliance with the Phase 1 Interim Order and the Interim Order;
  - (b) a description of the current arrangements made for the operation of the LeapFrog business and for the preservation of the assets required to operate the LeapFrog business; and
  - (c) recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide (or otherwise as required by the CMA) a statement to the CMA stating whether or not, in his or her view, VTech and all its subsidiaries has complied with the Phase 1 Interim Order and the Interim Order. At the same time, the MT must provide the CMA with a report setting out the following:
  - (a) the basis for the MT's view that the Phase 1 Interim Order and the Interim Order have or have not, as the case may be, been complied with and in particular whether:
    - (i) anything has caused him or her to be concerned as to whether VTech or any of its subsidiaries has complied with the Phase 1 Interim Order and the Interim Order, and if it has, whether those concerns have been resolved and why and if not, why not;
    - (ii) he or she has any remaining doubts or uncertainties as to whether VTech or any of its subsidiaries has complied with the Phase 1 Interim Order and the Interim Order; and

- (iii) anything that causes him or her to be concerned about a possible future breach of the Interim Order (whether deliberate or inadvertent);
  - (b) details of the performance of the LeapFrog and VTech businesses, including any factors that might indicate asset deterioration;
  - (c) whether appropriate steps are being taken to maintain the LeapFrog business as a going concern;
  - (d) the extent to which VTech and all its subsidiaries have cooperated with the MT in his or her task of monitoring their compliance with the Interim Order and details of any aspects of the cooperation of VTech or any of its subsidiaries that he or she considers could be improved;
  - (e) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of VTech and all its subsidiaries with the Interim Order and if there is anything that the MT considers would assist him or her in monitoring compliance;
  - (f) any current or anticipated requests for consent to vary the Interim Order; and
  - (g) the information he or she used to compile the report.
17. When providing reports to the CMA the MT must ensure that he or she does not disclose any information or documents to the CMA which VTech or any of its subsidiaries would be entitled to withhold from the CMA on the grounds of legal privilege.
18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Interim Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view; including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to VTech or any of its subsidiaries or to the LeapFrog business, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.