

ACQUISITION BY MENZIES AVIATION PLC AND MENZIES AVIATION INC. OF ASIG HOLDINGS LIMITED AND ASIG HOLDINGS CORP.

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that Menzies Aviation plc and Menzies Aviation Inc. (**Menzies**) and ASIG Holdings Limited and ASIG Holdings Corp. (**ASIG**) have ceased to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72 of the Act the CMA makes the following order addressed to John Menzies plc and Menzies (**Order**).

Title, commencement, application and scope

1. This Order commences on the commencement date.
2. This Order applies to John Menzies plc and Menzies.

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige John Menzies plc or Menzies to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of each of the Menzies business and the ASIG business until determination of proceedings

4. Except with the prior written consent of the CMA, John Menzies plc and Menzies shall not, during the specified period, take any action which might prejudice a reference of the Transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the ASIG business with the Menzies business;
 - (b) transfer the ownership or control of the Menzies business or the ASIG business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the ASIG business or the Menzies business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Menzies shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the ASIG business is carried on separately from the Menzies business and the ASIG business' separate sales or brand identity is maintained;
 - (b) each of the ASIG business and the Menzies business are maintained as a going concern and sufficient resources are made available for the development of each of the ASIG business and the Menzies business, on the basis of their respective pre-merger business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, either of the ASIG business or the Menzies business;
 - (d) the nature, description, range and quality of services supplied in the UK by each of the two businesses are maintained and preserved;
 - (e) except in the ordinary course of business for the separate operation of the two businesses:

- (i) all of the assets of each of the ASIG business and the Menzies business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of either of the ASIG business or the Menzies business are disposed of; and
 - (iii) no interest in the assets of either of the ASIG business or the Menzies business is created or disposed of;
- (f) there is no integration of the information technology of either of the ASIG business or the Menzies businesses, and the software and hardware platforms of the ASIG business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the ASIG business will be carried out by the ASIG business alone and for the avoidance of doubt Menzies will not negotiate on behalf of the ASIG business (and vice versa) or enter into any joint agreements with the ASIG business (and vice versa);
- (h) all existing contracts of each of the ASIG business and the Menzies business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of either of the ASIG business or Menzies business;
- (j) no key staff are transferred between the ASIG business and the Menzies business;
- (k) all reasonable steps are taken to encourage all key staff to remain with either of the ASIG business or the Menzies business, as relevant; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the ASIG business (or any of its employees, directors, agents or affiliates) to the Menzies business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the Transaction ultimately be prohibited, any records or copies (electronic or otherwise) of such

information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

6. John Menzies plc and Menzies shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Each of John Menzies plc and Menzies shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by John Menzies plc, Menzies and their subsidiaries with this Order. In particular, on the date two weeks after the commencement date and subsequently every two weeks thereafter (or, where this does not fall on a working day, the first working day thereafter) the Chief Financial Officer of John Menzies plc and the President and Managing Director of Menzies or other persons of John Menzies plc or Menzies as agreed with the CMA shall, on behalf of John Menzies plc and Menzies respectively, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. At all times, John Menzies plc and Menzies shall actively keep the CMA informed of any material developments relating to the ASIG business and/or the Menzies business, which includes but is not limited to:
 - (a) details of staff who leave or join the ASIG business and/or the Menzies business;
 - (b) any interruption of the ASIG business and/or the Menzies business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the ASIG business and/or the Menzies business including any substantial changes in customers' demands; and
 - (d) substantial changes in the ASIG business' and/or the Menzies business' contractual arrangements or relationships with key suppliers.
9. If John Menzies plc or Menzies have any reason to suspect that this Order might have been breached they shall immediately notify the CMA and any monitoring trustee that John Menzies plc and Menzies may be directed to appoint under paragraph 10.

10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. John Menzies plc and Menzies shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'ASIG' means, together, ASIG Holdings Limited and ASIG Holdings Corp.;

'the ASIG business' means the business of ASIG and its subsidiaries carried on in the UK as at the commencement date, and

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means 1 February 2017;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the CMA's decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'Menzies' means Menzies Aviation plc and Menzies Aviation Inc.;

'the Menzies business' means the business of John Menzies plc and its subsidiaries and Menzies and its subsidiaries carried on in the UK as at the commencement date;

'the ordinary course of business' means matters connected to the day-to-day supply of services by the ASIG business or the Menzies business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the ASIG business and the Menzies business;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the Transaction' means the transaction by which Menzies and ASIG will cease, or have ceased, to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Menzies business and the ASIG business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

ANNEX

Compliance statement for Menzies

I *[insert name]* confirm on behalf of *[Menzies/John Menzies plc][delete as appropriate]* that:

Compliance in the Relevant Period

1. In the period from *[insert date]* to *[insert date]* (the Relevant Period):
 - (a) *[Menzies/John Menzies plc][delete as appropriate]* has complied with the order made by the CMA in relation to the transaction on *[insert date]* (the **Order**); and
 - (b) *[Menzies'/John Menzies plc's][delete as appropriate]* subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by *[Menzies/John Menzies plc][delete as appropriate]* that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (i) lead to the integration of the ASIG business with the Menzies business;
 - (ii) transfer the ownership or control of the Menzies business or the ASIG business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the ASIG business and/or the Menzies business to compete independently in any of the markets affected by the transaction.
 - (b) Each of the ASIG business and the Menzies business have been maintained as a going concern and sufficient resources have been made available for the development of each of the ASIG business and the Menzies business, on the basis of their pre-merger business plans.
 - (c) No changes have been made to the organisational structure of, or the management responsibilities within, the ASIG business or the Menzies business, except in the ordinary course of business.

- (d) The nature, description, range and quality of services supplied in the UK by the two businesses has been maintained and preserved.
- (e) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of each of the ASIG business and the Menzies business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of either of the ASIG business or the Menzies business have been disposed of; and
 - (iii) no interest in the assets of either of the ASIG business or the Menzies business has been created or disposed of.
- (f) There has been no integration of the information technology of either of the ASIG business or the Menzies business, and the software and hardware platforms of the ASIG business have remained essentially unchanged, except for routine changes and maintenance.
- (g) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the ASIG business have been carried out by the ASIG business alone and, for the avoidance of doubt, Menzies has not negotiated on behalf of the ASIG business (and vice versa) or entered into any joint agreements with the ASIG business (and vice versa).
- (h) All existing contracts of each of the ASIG business and the Menzies business have been serviced by the business to which they were awarded, except to the extent novated, assigned or sub-contracted prior to the commencement date.
- (i) No changes have been made to key staff of either of the ASIG business or the Menzies business.
- (j) No key staff have been transferred between the ASIG business and the Menzies business.
- (k) All reasonable steps have been taken to encourage all key staff to remain with either of the ASIG business or the Menzies business, as relevant.

- (l) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the ASIG business (or any of its employees, directors, agents or affiliates) to the Menzies business (or any of its employees, directors, agents or affiliates), or vice versa; the Order permitting it where necessary for compliance with external regulatory and/or accounting obligations.
- (m) Except as listed in paragraph (n) below, there have been no:
 - (i) staff that have left or joined either of the ASIG business or the Menzies business;
 - (ii) interruptions of either of the ASIG business or the Menzies business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented them from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for either of the ASIG business or the Menzies business including any substantial changes in customers' demands; or
 - (iv) substantial changes in either of the ASIG business' or Menzies business' contractual arrangements or relationships with key suppliers;
- (n) *[list of material developments or state 'None.']*

- 3. *[Menzies/John Menzies plc][delete as appropriate]*and its subsidiaries remain in full compliance with the Order and will, or will procure that ASIG will, continue actively to keep the CMA informed of any material developments relating to either of the ASIG business or the Menzies business in accordance with paragraph 8 of the Order.

Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF [JOHN MENZIES PLC/MENZIES AVIATION PLC AND
MENZIES AVIATION INC.][*delete as appropriate*]

Signature

Name

Title

Date