

Anticipated acquisition by David Lloyd Clubs of 16 Virgin Active gyms

Undertakings given by David Lloyd Clubs Limited to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

Whereas:

- (a) David Lloyd Clubs Limited (**David Lloyd**) agreed to acquire the business and assets of 16 gyms from Virgin Active Limited (**Virgin Active**) on 19 January 2017 (the **Transaction**) by way of a business purchase agreement (**BPA**) such that David Lloyd and Virgin Active will cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) In its decision of 19 May 2017 (the **Decision**), the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Act that the Merger gives rise to a realistic prospect of an SLC in the supply of gyms in the local areas around Virgin Active Brighton and Virgin Active Clearview in Brentwood (ie between Virgin Active Clearview and David Lloyd Gidea Park) (the **SLC Gyms**, each an **SLC Gym**). The CMA did not find competition concerns in relation to any of the other overlaps;
- (c) Under section 22(1) of the Act the CMA has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is

reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (e) As set out in the Decision, the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation; and
- (f) The CMA considers that the undertakings given below by David Lloyd are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE David Lloyd hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

1 EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by David Lloyd, they are accepted by the CMA.

2 UNDERTAKING NOT TO ACQUIRE SLC GYMS

- 2.1 Subject to paragraph 2.2 below, pursuant to these undertakings, David Lloyd, or any member of the Group of Interconnected Bodies Corporate to which David Lloyd (**David Lloyd Group**) belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) an Interest in an SLC Gym; or
 - (ii) any Interest in any company carrying on or having Control of an SLC Gym (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of the David Lloyd Group of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the normal course of business, any of the assets of an SLC Gym;

- (b) shall procure that no employee or director of the David Lloyd Group for as long as they are an employee or director of the David Lloyd Group holds or is nominated to any directorship or managerial position in an SLC Gym or directorship or managerial position in any company or other undertaking carrying on or having control of the SLC Gyms without the CMA's prior written consent;
 - (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the SLC Gyms or any company or other undertaking carrying on or having control of the SLC Gyms; and
 - (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of the David Lloyd Group directly or indirectly acquiring the SLC Gyms or doing any of the things listed in sub-paragraphs 2.1(a), 2.1(b) and 2.1(c) above.
- 2.2 These undertakings shall apply to the David Lloyd Group (to the extent they remain a member of such group):
- (a) In respect of Virgin Active Brighton, for as long as the David Lloyd Group, operates the David Lloyd Brighton gym; and
 - (b) In respect of Virgin Active Clearview, for as long as the David Lloyd Group, operates the David Lloyd Gidea Park gym.

In each case, for a maximum period of 10 years following the Effective Date.

3 COMPLIANCE

- 3.1 David Lloyd shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings;
 - (b) or to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 3.2 David Lloyd shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and

(b) investigating potential breaches of the provisions of these undertakings.

3.3 David Lloyd shall procure that any member of the David Lloyd Group complies with these undertakings as if it had given them and actions and omissions of the members of the David Lloyd Group shall be attributed to David Lloyd for the purposes of these undertakings.

3.4 Where any Affiliate of David Lloyd is not a member of the David Lloyd Group, David Lloyd shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

4 PROVISION OF INFORMATION

4.1 David Lloyd shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

5 SERVICE

5.1 David Lloyd hereby authorises Linklaters LLP, whose address for service is One Silk Street, EC2Y 8HQ, London, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to David Lloyd, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).

5.2 Unless David Lloyd inform the CMA in writing that Linklaters LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on David Lloyd if it is served on Linklaters LLP; and service shall be deemed to have been acknowledged by David Lloyd if it is acknowledged by Linklaters LLP or such other nominee.

5.3 Paragraph 5.1 above has effect irrespective of whether, as between David Lloyd and Linklaters LLP or other nominees, Linklaters or other nominees has or continues to have any authority to accept and acknowledge service on David Lloyd's or any of its respective Subsidiaries' behalf.

5.4 No failure or mistake by Linklaters LLP or other nominees (including a failure to notify David Lloyd of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.

5.5 Any communication from David Lloyd to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

6 EFFECT OF INVADILITY

6.1 Should any provision of these undertakings be contrary to law or invalid for any reason, David Lloyd undertakes to continue to observe the remaining provisions.

7 GOVERNING LAW

7.1 David Lloyd recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.

7.2 In the event that a dispute arises concerning these undertakings, David Lloyd undertakes to submit to the courts of England and Wales.

8 TERMINATION

8.1 David Lloyd recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.

8.2 David Lloyd recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

9 INTERPRETATION

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

9.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

9.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

9.4 For the purposes of these undertakings:

“the Act” means the Enterprise Act 2002;

“Affiliate” a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

“Associated Person” means a person or persons associated with David Lloyd within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

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

“Business Purchase Agreement” means the agreement signed between the Parties on 19 January 2017;

“CMA” means the Competition and Markets Authority or any successor body;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“Control” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“David Lloyd” means David Lloyd Clubs Limited incorporated in England and Wales with company number 10565274 whose registered office is at The Hangar, Mosquito Way, Hatfield Business Park, Hatfield, Hertfordshire AL10 9AX;

“David Lloyd Brighton gym” means the David Lloyd gym, whose address is at Brighton Marina Village, Brighton, BN2 5UF;

“David Lloyd Gidea Park gym” means the David Lloyd gym, whose address is at Squirrels Heath Lane, Gidea Park, Romford, Essex, RM11 2DY;

“David Lloyd Group” means David Lloyd or any member of the Group of Interconnected Bodies Corporate to which David Lloyd belongs;

“Decision” means the CMA’s decision under section 22 of the Act dated 19 May 2017 in connection with the Transaction;

“enterprise” has the meaning given in section 129(1) of the Act;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“Subsidiary” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“SLC Gym(s)” means both or either of Virgin Active Brighton or Virgin Active Clearview;

“the Transaction” means the agreement for David Lloyd to acquire the business and assets of 16 gyms from Virgin Active, by way of the Business Purchase Agreement;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Virgin Active Brighton” means, together, land at Village Way, Falmer, Brighton BN1 9SG held under a lease dated 1 July 2008 and made between (1) Esporta PH Limited Liability Partnership, (2) Invicta Leisure (Brighton) Limited and (3) Esporta Group Limited registered at the Land Registry under title number ESX317176. The terms were varied by a deed of variation dated 13 July 2011 and made between (1) Esporta PH Limited Liability Partnership, (2) Invicta Leisure (Brighton) Limited and (3) EG01 Limited;

“Virgin Active Clearview” means, together, land at Little Warley Hall Lane, West Horndon, Brentwood CM13 3EN held under a lease dated 8 May 2006 and made between (1) Esporta PH Limited Liability Partnership, (2) Invicta Leisure (Brentwood) Limited and (3) New Esporta Holding Limited registered at the Land Registry under title number EX769240. The terms were varied by a deed of variation dated 13 July 2011 and made between (1) Esporta PH Limited Liability Partnership, (2) Invicta Leisure (Brentwood) Limited and (3) New Esporta Holding Limited. The lease was extended by a reversionary

lease dated 13 July 2011 and made between (1) Esporta PH Limited Liability Partnership, (2) Invicta Leisure (Brentwood) Limited and (3) New Esporta Holding Limited registered at the Land Registry under title number EX870412;

“Virgin Active Limited” means Virgin Active Limited incorporated and registered in England and Wales with company number 03448441 whose registered office is at 100 Aldersgate Street, London, EC1A 4LX; and

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

FOR AND ON BEHALF OF DAVID LLOYD

Signature

Name

Title

Date

DATE ACCEPTED BY THE CMA: