

## **Completed acquisition by Tulip Limited of Easey Holdings Limited**

### **Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (“CMA”) on 11 September 2017**

#### **Completed acquisition by Tulip Limited of Easey Holdings Limited**

We refer to your submission dated 1 September 2017 and further telephone conversations and emails of 4 September 2017, 6 September 2017, 7 September 2017, 8 September 2017 and 11 September 2017 requesting that the CMA consents to derogations to the Initial Enforcement Order of 11 September 2017 (“**Initial Order**”). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Tulip International (UK) Ltd, Tulip Limited, and any subsidiaries of Tulip Limited (together “**Tulip**”) are required to hold separate their business from Easey Holdings Limited and its subsidiaries (the “**Target**”) and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Tulip may carry out the following actions, in respect of the specific paragraphs:

#### **1. Paragraphs 4 and 5(a) – 5 (l) of the Initial Order**

In order to ensure: (i) the viability of the Target’s business and the exclusive use of the Target’s funds for bona-fide activities; and (ii) Tulip’s compliance with its regulatory and accounting obligations, the CMA consents to Tulip having certain authorisation rights with respect to the Target’s activities listed in Annex 1.

Tulip acknowledges the need for the Target to continue to operate in the normal course of business, and the authorisation rights are intended to relate only to the activities listed in Annex 1 falling either outside the normal course of the Target’s business and / or involving a party related to the management of the Target.

Should Tulip refuse any authorisation requested by the Target, Tulip will notify the CMA of the refusal in its next compliance statement.

Without the prior consent of the CMA, each authorisation right can only be exercised by the single individual at Tulip set out in Annex 1. This individual is not involved in day-to-day commercial decision-making in respect of Tulip's business operations.

This individual will obtain Target information necessary for the purpose of exercising the authorisation rights, and will therefore enter into a non-disclosure agreement ("**NDA**") in a form approved in advance by the CMA that governs their obligations to keep the relevant information confidential, not circulate that information more widely than is appropriate in the circumstances and only use the confidential information for the purposes it was received.

## **2. Paragraphs 4 and 5(a) – 5(l) of the Initial Order**

In order ensure that: (i) the viability of the Target's business is safeguarded and its funds used solely for bona-fide activities; (ii) the Target's business is maintained as a legally compliant going concern during the hold-separate period; and (iii) Tulip is able to comply with its relevant legal, financial, and reporting obligations as owner of the Target during the hold-separate period, the CMA consents to Tulip having certain monitoring rights with respect to the Target's activities as listed in Annex 1.

For these reasons, the CMA consents to the appointment by Tulip of two independent third parties to attend the Target's board and management meetings and to receive certain key reporting information regarding the Target, [X], as set out in Annex 2 (the independent third parties being the "**Independent Third Parties**").

Further, for the purpose of ensuring compliance with Tulip's relevant financial and reporting obligations, the CMA consents to the right of Tulip to access information required to verify the accuracy of warranties and indemnities given by [X] to Tulip under the sale and purchase agreement dated [X], as listed in Annex 1.

Without the prior consent of the CMA, each monitoring right can only be exercised by the limited number of named individuals at Tulip (or, as the case may be, the Independent Third Parties) that are set out in Annex 1. None of these individuals are involved in day-to-day commercial decision-making in respect of Tulip's business operations.

Each of those individuals with monitoring rights, including the Independent Third Parties, will enter into an NDA in a form approved in advance by the CMA that governs their obligations to keep the relevant information confidential, not circulate that information more widely than is appropriate in the circumstances and only use the confidential information for the purposes it was received.

**Annex 1**  
**CMA derogations**

No.	Derogation	Tulip personnel involved in derogation
<b>Authorisation rights</b>		
<b>1</b>	Authorisation rights over payments proposed to be made from the Target to any party related to the Target management.	[X]
<b>2</b>	Authorisation rights over any new contracts with any party related to the Target's management including:	[X]
	(i) Amendments to existing contracts or waivers over any provision; and	
	(ii) Employment contracts.	
<b>3</b>	Authorisation rights relating to non-ordinary course third party commitments, including:	[X]
	(i) Any payment above [X] made other than pursuant to an existing agreement between the Target and a third party.	
<b>4</b>	Authorisation rights over any new contract, or any amendment to an existing contract, that will:	[X]
	(i) Have a material impact on the Target business of [X] or more; or	
	(ii) Will be effective for a term of greater than [X].	

5	Authorisation rights over any new employees (including any new directors) hired by the Target, except (in the case of new employees) where such employees are hired to replace an existing employee on substantially the same terms.	[X]
<b>Monitoring rights</b>		
6	Monitoring rights over the Target's compliance with all relevant legal and regulatory obligations to which the Target business is subject (including the terms of the Initial Order), pursuant to which the Target will make monthly compliance reports to the relevant Tulip individuals.	[X]
7	Rights to access information required to verify the accuracy of warranties given by [X] to Tulip under the sale and purchase dated [X].	[X]
8	Monitoring rights required to ensure that the Target is being operated viably in accordance with pre-merger business operations and that Tulip is able to comply with its relevant financial / reporting obligations, including:	[X]
	(i) Attendance at board and other management meetings; and	
	(ii) A review of certain [X] reporting criteria as set out in Annex 2.	

## Annex 2

### Reporting criteria

#### Financial Information

[✂]

#### Management Information

[✂]