

ACQUISITION BY HENDERSON RETAIL LIMITED OF PART OF THE MARTIN MCCOLL LIMITED PORTFOLIO

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 it is or may be the case that Henderson Retail Limited and a portfolio of stores owned by Martin Mccoll Limited (the Target Stores) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK);
- (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(2) of the Act the CMA makes the following order addressed to Henderson Wholesale Limited and Henderson Retail Limited (Henderson) (Order).

Commencement, application and scope

1. This Order commences on the commencement date: 7 December 2017.
2. This Order applies to Henderson.

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 Henderson 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 the Henderson and the Target Stores' businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Henderson 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 Target Stores' business with the Henderson business;
 - (b) transfer the ownership or control of the Henderson business or the Target Stores' business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Target Stores' business or the Henderson 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, Henderson shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Target Stores' business is carried on separately from the Henderson business and the Target Stores' business's separate sales or brand identity is maintained;
 - (b) the Target Stores' business and the Henderson business are maintained as a going concern and sufficient resources are made available for the development of the Target Stores' business and the Henderson 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, the Target Stores' business or the Henderson business;
 - (d) the nature, description, range and quality of goods and/or 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 the Target Stores' business and the Henderson business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Target Stores' business or the Henderson business are disposed of; and
 - (iii) no interest in the assets of the Target Stores' business or the Henderson business is created or disposed of;
- (f) there is no integration of the information technology of the Target Stores or Henderson businesses, and the software and hardware platforms of the Target Stores' 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 Target Stores' business will be carried out by the Target Stores' business alone and for the avoidance of doubt the Henderson business will not negotiate on behalf of the Target Stores' business (and vice versa) or enter into any joint agreements with the Target Stores' business (and vice versa);
- (h) all existing contracts of the Target Stores' business and the Henderson business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Target Stores' business or Henderson business;
- (j) no key staff are transferred between the Target Stores' business and the Henderson business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Target Stores' business and the Henderson business; 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 Target Stores' business (or any of its employees, directors, agents or affiliates) to the Henderson business (or any of its employees, directors, agents or affiliates), or vice versa, except

where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction 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. Henderson shall procure that each of its subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Henderson 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 Henderson and its subsidiaries with this Order. In particular, on 21 December 2017 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officers of Henderson or other persons of Henderson as agreed with the CMA shall, on behalf of Henderson, provide statements to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. At all times, Henderson shall, or shall procure that the Target Stores shall, actively keep the CMA informed of any material developments relating to the Target Stores' business or the Henderson business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Target Stores' business or the Henderson business;
 - (b) any interruption of the Target Stores' or Henderson 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 Target Stores' or Henderson business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Target Stores' or Henderson business's contractual arrangements or relationships with key suppliers.

9. If Henderson has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Henderson 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. Henderson shall comply in so far as it is 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;

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

'commencement date' means 7 December 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 decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'Henderson' means Henderson Wholesale Limited, company number NI000068 and Henderson Retail Limited, company number R0000035;

'the Henderson business' means the business of Henderson and its subsidiaries but excluding the Target Stores' business, carried on as at the commencement date;

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

'McColl' means Martin Mccoll Limited, company number 298945

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by the Target Stores or Henderson and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the Target Stores into Henderson;

'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 Target stores' means the stores operated at the following addresses, together with all assets purchased pursuant to the Sale and Purchase Agreement between Henderson and McColl dated 16 November 2017:

- 35 Main Street, Bangor, County Down;
- Unit 5, The Throne Centre, 252 Whitewell Road, Newtownabbey, County Antrim;
- 2-5 Abbots Cross, Doagh Road, Newtownabbey, County Antrim;
- 39-42 Church Street, Tandragee, Craigavon, County Armagh;
- 5 Dunclug Shopping Centre, Ballymena, County Antrim ;

'the Target Stores' business means the business carried on at the Target Stores as at the commencement date;

'the transaction' means the transaction by which the activities of the Henderson business and the activities of the Target Stores business have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Henderson business and the Target Stores' business;

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

Alba Ziso, Assistant Director, Mergers

Compliance statement for Henderson Wholesale Limited

I [insert name] confirm on behalf of Henderson Wholesale Limited (Henderson Wholesale) that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Henderson Wholesale has complied with the Order made by the CMA in relation to the transaction on 7 December 2017 (the Order).
 - (b) Henderson Wholesale's 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 Henderson Wholesale 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 its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Target Stores' business with the Henderson Wholesale business;
 - (ii) transfer the ownership or control of the Henderson Wholesale business or the Target Stores' business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Target Stores' business or the Henderson Wholesale business to compete independently in any of the markets affected by the transaction.
 - (b) The Target Stores' business has been carried on separately from the Henderson Wholesale business and the Target Stores' business' separate sales or brand identity has been maintained.
 - (c) The Target Stores' business and the Henderson Wholesale business have been maintained as a going concern and sufficient resources have been made available for the development of the Target Stores' business and the Henderson Wholesale business, on the basis of their respective pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Target Stores' business

or the Henderson Wholesale business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Target Stores' business and the Henderson Wholesale business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Target Stores' business and the Henderson Wholesale business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Target Stores' business or the Henderson Wholesale business have been disposed of; and
 - (iii) no interest in the assets of the Target Stores' business or the Henderson Wholesale business has been created or disposed of.
- (g) There has been no integration of the information technology of the Target Stores' or Henderson Wholesale businesses, and the software and hardware platforms of the Target Stores' business have remained essentially unchanged, except for routine changes and maintenance.
- (h) 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 Target Stores' business have been carried out by the Target Stores' business alone and, for the avoidance of doubt, the Henderson Wholesale business has not negotiated on behalf of the Target Stores' business (and vice versa) or entered into any joint agreements with the Target Stores' business (and vice versa).
- (i) All existing contracts of the Target Stores' business and the Henderson Wholesale business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Target Stores' business or the Henderson Wholesale business.
- (k) No key staff have been transferred between the Target Stores' business and the Henderson Wholesale business.

- (l) All reasonable steps have been taken to encourage all key staff to remain with the Target Stores' business and the Henderson Wholesale business.
- (m) 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 Target Stores' business (or any of its employees, directors, agents or affiliates) to the Henderson Wholesale business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the Target Stores' business or the Henderson Wholesale business;
 - (ii) interruptions of the Target Stores' business or the Henderson Wholesale business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it 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 the Target Stores' business or the Henderson Wholesale business; or
 - (iv) substantial changes in the Target Stores' or Henderson Wholesale business' contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Henderson Wholesale and its subsidiaries remain in full compliance with the Order and will, or will procure that the Target Stores, continue actively to keep the CMA informed of any material developments relating to the Target Stores or the Henderson Wholesale 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 HENDERSON WHOLESAL

Signature

Name

Title

Date

Compliance statement for Henderson Retail Limited

I [insert name] confirm on behalf of Henderson Retail Limited (Henderson Retail) that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Henderson Retail has complied with the Order made by the CMA in relation to the transaction on 7 December 2017 (the Order).
 - (b) Henderson Retail's 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 Henderson Retail 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 its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Target Stores' business with the Henderson Retail business;
 - (ii) transfer the ownership or control of the Henderson Retail business or the Target Stores' business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Target Stores' business or the Henderson Retail business to compete independently in any of the markets affected by the transaction.
 - (b) The Target Stores' business has been carried on separately from the Henderson Retail business and the Target Stores' business' separate sales or brand identity has been maintained.
 - (c) The Target Stores' business and the Henderson Retail business have been maintained as a going concern and sufficient resources have been made available for the development of the Target Stores' business and the Henderson Retail business, on the basis of their respective pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Target Stores' business or the Henderson Retail business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Target Stores' business and the Henderson Retail business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Target Stores' business and the Henderson Retail business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Target Stores' business or the Henderson Retail business have been disposed of; and
 - (iii) no interest in the assets of the Target Stores' business or the Henderson Retail business has been created or disposed of.
- (g) There has been no integration of the information technology of the Target Stores' or Henderson Retail businesses, and the software and hardware platforms of the Target Stores' business have remained essentially unchanged, except for routine changes and maintenance.
- (h) 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 Target Stores' business have been carried out by the Target Stores' business alone and, for the avoidance of doubt, the Henderson Retail business has not negotiated on behalf of the Target Stores' business (and vice versa) or entered into any joint agreements with the Target Stores' business (and vice versa).
- (i) All existing contracts of the Target Stores' business and the Henderson Retail business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Target Stores' business or the Henderson Retail business.
- (k) No key staff have been transferred between the Target Stores' business and the Henderson Retail business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Target Stores' business and the Henderson Retail business.

(m) 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 Target Stores' business (or any of its employees, directors, agents or affiliates) to the Henderson Retail business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Target Stores' business or the Henderson Retail business;
- (ii) interruptions of the Target Stores' business or the Henderson Retail business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it 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 the Target Stores' business or the Henderson Retail business; or
- (iv) substantial changes in the Target Stores' or Henderson Retail business' contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Henderson Retail and its subsidiaries remain in full compliance with the Order and will, or will procure that the Target Stores, continue actively to keep the CMA informed of any material developments relating to the Target Stores or the Henderson Retail 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 HENDERSON RETAIL

Signature

Name

Title

Date