

ACQUISITION BY VANILLA GROUP LIMITED OF WASHSTATION LIMITED

Directions issued pursuant to paragraph 10 of the Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

On 13 December 2017 the Competition and Markets Authority (CMA) issued an Initial Enforcement Order in accordance with section 72(2) of the Act in respect of the completed acquisition by JLA New Equityco Ltd (**JLA**) through its subsidiary Vanilla Group Limited (**Vanilla**) of Washstation Limited (**Washstation**) (the Initial Enforcement Order).

On 16 April 2018 the CMA made a reference to its chair under section 22(1) of the Act for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 in order that the group may investigate and report on the completed acquisition in accordance with section 35(1) of the Act.

The CMA wishes to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action under Part 3 of the Act which may be justified by the CMA's decisions on the reference.

The CMA now gives Directions under paragraph 10 of the Initial Enforcement Order that, for the purpose of securing compliance with the Initial Enforcement Order, JLA must:

- (a) appoint a monitoring trustee (**MT**) in accordance with the terms provided for in the Directions, and must comply with the obligations set out in the Directions; and
- (b) appoint a hold separate manager (**HSM**) in accordance with the terms provided for in the Directions, and must comply with the obligations set out in the Directions.

Stuart McIntosh
Inquiry Group Chair

8 May 2018

DIRECTIONS

Interpretation

1. In these Directions:

The '**Act**' means the Enterprise Act 2002;

'**CMA**' means the Competition and Markets Authority;

'**commencement date**' means 13 December 2017;

'**HSM**' means the hold separate manager appointed in accordance with these Directions;

'**Initial Enforcement Order**' means the Initial Enforcement Order issued by the CMA on 13 December 2017 and terms and expressions defined in the Initial Enforcement Order have the same meaning in these Directions, unless the context requires otherwise;

'**JLA**' means JLA New Equityco Limited, a company registered in Jersey (company number 119729);

'**JLA business**' means the business of JLA and its subsidiaries but excluding the Washstation business, carried on as at the commencement date;

'**MT**' means the monitoring trustee appointed in accordance with these Directions;

'**Vanilla**' means Vanilla Group Limited, a company registered in the United Kingdom (company number 02566320);

'**Washstation**' means Washstation Limited, a company registered in the United Kingdom (company number 05382113);

'**the Washstation business**' means the business of Washstation and its subsidiaries but excluding Vanilla business, carried on as at the commencement date.

Appointment of Monitoring Trustee

2. JLA must appoint an MT in order to:
 - (a) support any action, or as the case may be any remedial action, which may be required to maintain the Washstation business as a viable business; and

- (b) monitor compliance by JLA and Vanilla with the Initial Enforcement Order.
- 3. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out the MT functions to the best of the MT's abilities.
- 4. JLA and Vanilla must cooperate fully with the MT, in particular as set out below, and JLA 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 JLA and Vanilla as set out in these Directions.

General

- 5. The MT must possess appropriate qualifications and experience to carry out the MT's functions.
- 6. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging the MT's duties under these Directions, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
- 7. JLA 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 the MT's functions.
- 8. JLA must appoint the MT as soon as is reasonably practicable and in any event by 10 May 2018 and the MT will continue to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or such earlier date as approved by the CMA in writing.
- 9. The appointment of an MT by JLA must be subject to the approval in writing of the CMA as to the identity of the MT and the MT's terms and conditions of appointment in their entirety.
- 10. JLA must inform the CMA as soon as is reasonably practicable and in any event by 9 May 2018 of the identity of the MT that JLA proposes to appoint and provide the CMA with draft terms and conditions of appointment. If JLA fails to so inform the CMA, the CMA will notify JLA of the identity of the MT that JLA must appoint.
- 11. Once the MT has been approved in writing by the CMA and appointed, JLA must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

12. The functions of the MT will be to:
 - (a) ascertain the current level of compliance by JLA and Vanilla with the Initial Enforcement Order, including the communications within and between JLA and/or Vanilla and Washstation and/or the Washstation business, such as written and electronic communications, telephone conversations and meetings;
 - (b) assess the arrangements made by JLA and Vanilla for compliance with the Initial Enforcement Order and advise the HSM and the CMA what changes to those arrangements, if any, are necessary to prevent any action which might prejudice the reference or impede the taking of any action under Part 3 of the Act which may be justified by the CMA's decisions on the reference;
 - (c) identify (and supervise if necessary) the arrangements made by JLA and Vanilla for ensuring compliance with the Initial Enforcement Order;
 - (d) assist the HSM with arrangements for ensuring compliance with the Initial Enforcement Order and the HSM directions; and
 - (e) carry out the reporting functions set out in paragraphs 18. to 23.;

without prejudice to the rights of JLA, Vanilla and the HSM to: (i) contact the CMA, (ii) respond as soon as reasonably practicable to any questions which JLA, Vanilla or the HSM may have in relation to compliance with the Initial Enforcement Order, in consultation with the CMA; or (iii) advise the CMA on the adequacy of the arrangements made for compliance with the Initial Enforcement Order.
13. The MT must take such steps as the MT reasonably considers necessary in order to carry out the MT's functions effectively.
14. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by JLA and Vanilla with the Initial Enforcement Order.

Obligations of JLA

15. JLA, 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 the MT's functions, including but not limited to:

- (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of JLA, Vanilla and the Washstation business as the MT may reasonably require; and
 - (b) the provision of such office and supporting facilities as the MT may reasonably require.
- 16. If JLA or any of its subsidiaries is in any doubt as to whether any action or communication would infringe the Initial Enforcement Order, it is required to contact the MT for clarification.
- 17. If JLA or any of its subsidiaries has any reason to suspect that the Initial Enforcement Order may have been breached, it must notify the MT and the CMA as soon as reasonably practicable.

Reporting functions

- 18. The MT is required to provide an initial report to the CMA, with input from the HSM, no later than seven working days following the date of the MT's appointment giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Initial Enforcement Order, and including among other things:
 - (a) details of the current extent of compliance with the Initial Enforcement Order;
 - (b) a description of the current arrangements made for the operation of the Washstation business and for the preservation of the assets required to operate the Washstation business;
 - (c) recommendations as to what changes to those arrangements, if any, are necessary; and
 - (d) details of tenders or other contractual negotiations expected to arise within the period of nine months from the commencement date in connection with the supply of managed laundry services by the Washstation business.
- 19. In addition to providing the initial report referred to above, the MT must report every two weeks thereafter (or otherwise as required by the CMA) to the CMA stating whether or not, in the MT's view, JLA and Vanilla have complied with the Initial Enforcement Order. This assessment should consider the following:
 - (a) the basis for the MT's view that the Initial Enforcement Order has or has 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 JLA or Vanilla have complied with the Initial Enforcement Order, and if it has, whether those concerns have been resolved and why; and
 - ii. anything that causes him or her to be concerned about a possible future breach of the Initial Enforcement Order (whether deliberate or inadvertent); and
 - (b) whether appropriate steps are being taken to maintain the Washstation business as a going concern.
20. Where necessary the MT will also be required as part of this assessment, at any time, to consider and report on:
- (a) the extent to which JLA and Vanilla have cooperated with the MT in the MT's task of monitoring compliance with the Initial Enforcement Order and details of any aspects of the cooperation of JLA and Vanilla that he considers could be improved;
 - (b) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance with the Initial Enforcement Order and details of any aspects of the cooperation of JLA or Vanilla that he considers could be improved; and
 - (c) any current or anticipated requests for consent to derogate from or vary the Initial Enforcement Order.
21. When reporting to the CMA the MT must ensure that he or she does not disclose any information or documents to the CMA which JLA or Vanilla would be entitled to withhold from the CMA on the grounds of legal privilege.
22. The MT must notify the CMA in writing as soon as reasonably practicable if he or she forms a reasonable suspicion that the Initial Enforcement Order has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out the MT's 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 21 above).
23. All communications between the MT and the CMA (including the statements and reports referred to in paragraph 19 and 20 above) are confidential and should not be disclosed to JLA, Vanilla or the Washstation business, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.

Appointment of a hold separate manager

24. JLA must appoint an HSM, subject to the approval in writing by the CMA of the MT's identity and terms and conditions of appointment, to ensure that the Washstation business operates as a viable and competitive business, separately from and independently of the JLA business. Any appointment must be made in accordance with the provisions of these Directions.
25. JLA must appoint the HSM without delay and in any event by 10 May 2018 (or such longer period as the CMA may reasonably agree in writing) and the HSM will continue to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act).
26. JLA must inform the CMA as soon as is reasonably practicable and in any event by 9 May 2018 of the identity of the HSM that JLA proposes to appoint and provide the CMA with draft terms and conditions of appointment. If JLA fails to so inform the CMA, the CMA will notify JLA of the identity of the HSM that JLA must appoint.
27. The HSM must act on behalf of the CMA and be under an obligation to the CMA to carry out the HSM's functions to the best of the HSM's abilities.
28. JLA must ensure that the terms and conditions of appointment of the HSM reflect and give effect to the functions and obligations of the HSM and the obligations of JLA and Vanilla as set out in these Directions.
29. JLA, its subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the HSM, in particular by providing the HSM with all cooperation, assistance and information as the HSM may reasonably require in order to discharge the HSM's functions.

Functions

30. The functions of the HSM will be to exercise day-to-day management and control of the Washstation business so that:
 - (a) it is operated separately from and competes actively with the JLA business;
 - (b) appropriate systems are put in place to preserve the independence of the Washstation business; and
 - (c) the Washstation business is maintained as a going concern with access to sufficient resources for its continued operation and development.

31. The HSM will also be required to:
- (a) ensure that the Washstation business complies with the Initial Enforcement Order;
 - (b) ensure the economic viability and competitiveness of the Washstation business in accordance with good business practice;
 - (c) minimize, as far as possible, any risk of loss of competitive potential of the Washstation business;
 - (d) implement any additional measures that may be necessary to ensure that JLA does not have access to any business secrets or information of confidential or proprietary nature relating to the Washstation business and that the Washstation business does not have access to any business secrets or information of a confidential or proprietary nature relating to the JLA business;
 - (e) assist the CMA in monitoring the extent of compliance by JLA and Vanilla with the Initial Enforcement Order; and
 - (f) assist the MT in producing an initial report for the CMA no later than ten working days following the date of the MT's appointment. The HSM shall discuss with the MT arrangements which have been, or should be, put in place to ensure the separate operation from JLA and Vanilla of a viable, competitive Washstation business and compliance by JLA and Vanilla with the Initial Enforcement Order; and
 - (g) provide every two weeks (or otherwise as required in writing by the CMA) a report on the implementation of the measures mentioned in paragraph 30 and on this paragraph and on JLA's and Vanilla's compliance with the Initial Enforcement Order.
32. The HSM must take such steps as it reasonably considers necessary in order to carry out the HSM's functions effectively.
33. The HSM must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by JLA and Vanilla with the Initial Enforcement Order.
34. The HSM must notify the CMA in writing as soon as reasonably practicable if the HSM forms a reasonable suspicion that the Initial Enforcement Order has been breached or if the HSM considers that the HSM is no longer in a position to effectively carry out the HSM's functions.

General

35. The HSM must possess the appropriate qualifications and experience to carry out the HSM's functions.
36. The HSM must neither have nor become exposed to a conflict of interest that impairs the HSM's objectivity and independence in discharging the HSM's functions under these Directions, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
37. JLA shall remunerate and reimburse the HSM 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 HSM's independence or ability to effectively and properly carry out the HSM's functions.
38. JLA must provide the CMA with a copy of the agreed terms and conditions of the appointment of the HSM prior to the HSM's appointment.
39. Any termination of the appointment of the HSM is subject to the agreement in writing of the CMA, such agreement not to be unreasonably withheld, and the CMA shall respond in writing within one week of receipt of JLA's request.
40. All communications between the HSM and the CMA are confidential and should not be disclosed to JLA or Vanilla, save with the prior written consent of the CMA. The HSM shall not disclose such communications to third parties.
41. The CMA may issue such further directions as it considers necessary to ensure compliance with the Initial Enforcement Order, including, where the appointment of the HSM has been terminated, directions for the appointment of a further HSM.