

COMPLETED ACQUISITION BY RESTORE PLC OF CERTAIN PARTS OF THE TNT UK LIMITED BUSINESS

Directions issued on 17 May 2018 pursuant to paragraph 10 of the Initial Enforcement Order imposed by the Competition and Markets Authority on Restore PLC on 8 September 2016

On 1 May 2018 Restore PLC (**Restore**) purchased certain assets of the TNT UK Limited business (**TNT BS**) (the **Merger**) pursuant to an asset purchase agreement dated 26 March 2018. Restore and TNT BS are together referred to as the Parties.

On 27 April 2018 the Competition and Markets Authority sent an enquiry letter to the Parties. On 1 May 2018, the CMA made an Initial Enforcement Order (the **Order**) addressed to Restore in accordance with section 72(2) of the Enterprise Act 2002 for the purpose of preventing pre-emptive action. The Order is still in force.

The CMA now issues written directions under paragraph 10 of the Order that, for the purpose of securing compliance with the Order, Restore must appoint a monitoring trustee in accordance with the terms provided for in the Annex and must comply with the obligations set out in the Annex.

Signed

Alba Ziso
Assistant Director, Mergers
Competition and Markets Authority
17 May 2018

Annex

Directions to appoint a monitoring trustee

Interpretation

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

'CMA' means the Competition and Markets Authority.

'Derogations' means any derogations granted whether before or after the appointment of the monitoring trustee by the CMA by which the Parties may undertake certain actions that derogate from the Order.

'Parties' means Restore and TNT BS and their subsidiaries.

'Order' means the initial enforcement order made by the CMA on 1 May 2018 and addressed to Restore.

'Restore' means Restore Plc, Company Number: 05169780.

'the Restore business' means the business of Restore and its subsidiaries but excluding the TNT BS business, carried on as at the commencement date of the Order.

'TNT BS' means the parts of the business of TNT UK Limited, Company number 01628530, related to the physical records management services, magnetic media storage services, document scanning and document destruction business, at the time of the acquisition trading as "TNT Archive Services", "TNT Records Management" and "TNT Business Solutions."

'the TNT BS business' means the business of TNT BS and its subsidiaries carried on as at the commencement date of the Order.

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

1. Restore must appoint a monitoring trustee in order to ensure compliance with the order, in particular to:
 - a. monitor and report to the CMA on compliance by the Parties with the Order;
 - b. support the CMA taking any remedial action which may be required to maintain the TNT BS business as a going concern;

2. The monitoring trustee must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
3. Restore and TNT BS must cooperate fully with the monitoring trustee, in particular as set out below, and must ensure that the terms and conditions of appointment of the monitoring trustee reflect and give effect to the functions and obligations of the monitoring trustee and the obligations of Restore and TNT BS as set out in these directions.

General

4. The monitoring trustee must possess appropriate qualifications and experience to carry out his or her functions.
5. The monitoring trustee must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Restore shall remunerate and reimburse the monitoring trustee 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 monitoring trustee's independence or ability to effectively and properly carry out his or her functions.
7. Restore must appoint the monitoring trustee as soon as is reasonably practicable and in any event by 24 May 2018 and the monitoring trustee will continue to act either until the CMA reaches a decision to clear the Merger or until CMA directs that the monitoring trustee is no longer required.
8. The appointment of a monitoring trustee by Restore is subject to the approval of the CMA as to the identity of the monitoring trustee and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed monitoring trustee must be notified to the CMA as soon as is reasonably practicable and in any event by 21 May 2018
 - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by 23 May 2018; and
 - c. once the monitoring trustee has been approved by the CMA and appointed, Restore must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. The functions of the monitoring trustee will be to:
 - a. ascertain the current level of compliance by Restore and its subsidiaries with the Order;
 - b. assess the arrangements made by Restore for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
 - c. identify and supervise if necessary the arrangements made by Restore for ensuring compliance with the Order;
 - d. monitor compliance by Restore and its subsidiaries with the Order; and
 - e. without prejudice to the right of Restore and TNT BS to contact the CMA, respond to any questions which Restore or TNT BS may have in relation to compliance with the Order, in consultation with the CMA.
10. The monitoring trustee must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Restore business and the TNT BS business, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The monitoring trustee must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Restore with the Order.

Obligations of Restore

12. Restore and its employees, officers, directors, advisers and consultants must cooperate fully with the monitoring trustee, in particular by providing the monitoring trustee with all cooperation, assistance and information as the monitoring trustee may reasonably require in order to discharge his or her functions, including but not limited to:
 - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Restore business and the TNT BS business as the monitoring trustee may reasonably require; and
 - b. the provision of such office and supporting facilities as the monitoring trustee may reasonably require.

13. If the Restore business or the TNT BS business is in any doubt as to whether any action or communication would infringe the Order, it is required to contact the monitoring trustee for clarification.

14. If Restore has any reason to suspect that the Order may have been breached, it must notify the monitoring trustee and the CMA immediately.

Reporting functions

15. The monitoring trustee is required to provide an initial report to the CMA no later than 31 May 2018, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:

- a. details of the current extent of compliance with the Order;
- b. a description of the current arrangements made for the operation of the TNT BS business and for the preservation of the assets required to operate the TNT BS business; and
- c. recommendations as to what changes to those arrangements, if any, are necessary.

16. In addition to providing the initial report referred to in paragraph 15 above, the monitoring trustee must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, Restore and its subsidiaries have complied with the Order. At the same time, the monitoring trustee must provide the CMA with a report setting out the following:

- a. the basis for the monitoring trustee's view that the 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 Restore and its subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. he or she has any remaining doubts or uncertainties as to whether Restore and its subsidiaries have complied with the Order; and
 - iii. anything that causes him or her to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
- b. details of the performance of the TNT BS businesses, including any factors that might indicate asset deterioration;

- c. whether appropriate steps are being taken to maintain the TNT BS business as a going concern;
- d. the extent to which Restore has cooperated with the monitoring trustee in his or her task of monitoring its compliance with the Order and details of any aspects of the cooperation of Restore that he or she considers could be improved;
- e. the extent to which the monitoring trustee considers that he or she is in an appropriate position to monitor the compliance of Restore and its subsidiaries with the Order and if there is anything that the monitoring trustee considers would assist him or her in monitoring compliance;
- f. any current or anticipated requests for consent to vary the Order; and
- g. the information he or she used to compile the report.

17. When providing reports to the CMA, the monitoring trustee must ensure that he or she does not disclose any information or documents to the CMA which Restore would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Restore to produce any information or documents to the monitoring trustee which are privileged.

18. The monitoring trustee must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Order have been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the monitoring trustee must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).

19. All communications between the monitoring trustee and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to Restore, save with the prior written consent of the CMA. The monitoring trustee shall not disclose such communications to third parties.