

ACQUISITION BY CASTLE WATER HOLDINGS LIMITED OF INVICTA WATER LIMITED

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 arrangements are in progress or in contemplation which, if carried into effect, will result in Castle Water Holdings Limited and Invicta Water Limited (**Invicta**) ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 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 Castle Water Limited (**Castle Water**) and Castle Water Holdings Limited (**Castle Water Holdings**) (Order).

Commencement, application and scope

1. This Order commences on the commencement date: 26 June 2018.
2. This Order applies to Castle Water and Castle Water Holdings.

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 Castle Water or Castle Water Holdings to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order does not prohibit the completion of the transaction provided that Castle Water and Castle Water Holdings observe the restrictions set out below.

Management of the Castle Water Holdings and Invicta businesses until determination of proceedings

5. Except with the prior written consent of the CMA, Castle Water and Castle Water Holdings shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 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 Invicta business with the Castle Water Holdings business;
 - (b) transfer the ownership or control of the Castle Water Holdings business or the Invicta business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Invicta business or the Castle Water Holdings business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, Castle Water and Castle Water Holdings shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Invicta business is carried on separately from the Castle Water Holdings business and the Invicta business's separate sales or brand identity is maintained;
 - (b) the Invicta business and the Castle Water Holdings business are each maintained as a going concern and sufficient resources are made available for the development of the Invicta business and the Castle Water Holdings 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 Invicta business or the Castle Water Holdings 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 Invicta business and the Castle Water Holdings business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Invicta business or the Castle Water Holdings business are disposed of; and
 - (iii) no interest in the assets of the Invicta business or the Castle Water Holdings business is created or disposed of;
- (f) there is no integration of the information technology of the Invicta or Castle Water Holdings businesses, and the software and hardware platforms of the Invicta 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 Invicta business will be carried out by the Invicta business alone and for the avoidance of doubt the Castle Water Holdings business will not negotiate on behalf of the Invicta business (and vice versa) or enter into any joint agreements with the Invicta business (and vice versa);
- (h) all existing contracts of the Invicta business and the Castle Water Holdings business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Invicta business or Castle Water Holdings business;
- (j) no key staff are transferred between the Invicta business and the Castle Water Holdings business;

- (k) all reasonable steps are taken to encourage all key staff to remain with the Invicta business and the Castle Water Holdings 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 Invicta business (or any of its employees, directors, agents or affiliates) to the Castle Water Holdings 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

- 7. Castle Water and Castle Water Holdings shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 8. Castle Water and Castle Water Holdings 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 Castle Water and Castle Water Holdings and their subsidiaries with this Order. In particular, on 11 July 2018 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Castle Water and Castle Water Holdings or other persons of Castle Water and Castle Water Holdings as agreed with the CMA shall, on behalf of each of Castle Water and Castle Water Holdings, provide a statement to the CMA in the form set out in the Annexe to this Order confirming compliance with this Order.
- 9. At all times, Castle Water and Castle Water Holdings shall each actively keep the CMA informed of any material developments relating to the Invicta business or the Castle Water Holdings business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Invicta business or the Castle Water Holdings business;

- (b) any interruption of the Invicta or Castle Water Holdings 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 Invicta business or Castle Water Holdings business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Invicta or Castle Water Holdings business's contractual arrangements or relationships with key suppliers.
10. If Castle Water or Castle Water Holdings has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Castle Water and/or Castle Water Holdings may be directed to appoint under paragraph 11.
11. 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.
12. Castle Water and Castle Water Holdings shall comply in so far as they are 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

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. 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;

'Castle Water' means Castle Water Limited, Company number SC475583;

'Castle Water Holdings' means Castle Water Holdings Limited, Company number 1918255 (British Virgin Islands registered);

'the Castle Water Holdings business' means the business of Castle Water Holdings and its subsidiaries carried on as at the commencement date;

'commencement date' means 26 June 2018;

'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 sections 35 or 36 of the Act;

'Invicta' means Invicta Water Limited, Company number 03037009;

'the Invicta business' means Invicta, any subsidiaries, and related customers and assets, which will transfer to Castle Water Holdings pursuant to the sale and purchase agreement dated 14 May 2018 relating to the sale of Invicta to Castle Water Holdings;

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

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

'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 transaction' means the transaction by which Castle Water Holdings and Invicta will cease to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Castle Water Holdings business and the Invicta business;

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

Alba Ziso
Assistant Director, Mergers

Compliance statement for Castle Water/Castle Water Holdings

I [insert name] confirm on behalf of Castle Water/Castle Water Holdings that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Castle Water/Castle Water Holdings has complied with the Order made by the CMA in relation to the transaction on 26 June 2018 (the Order).
 - (b) Castle Water/Castle Water Holdings's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Castle Water/Castle Water Holdings that might prejudice a reference of the transaction under section 22 or 33 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 Invicta business with the Castle Water Holdings business;
 - (ii) transfer the ownership or control of the Castle Water Holdings business or the Invicta business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Invicta business or the Castle Water Holdings business to compete independently in any of the markets affected by the transaction.
 - (b) The Invicta business has been carried on separately from the Castle Water Holdings business and the Invicta business's separate sales or brand identity has been maintained.
 - (c) The Invicta business and the Castle Water Holdings business have been maintained as a going concern and sufficient resources have been made available for the development of the Invicta business and the Castle Water Holdings 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 Invicta business or the Castle Water Holdings 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 Invicta business and the Castle Water Holdings 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 Invicta business and the Castle Water Holdings 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 Invicta business or the Castle Water Holdings business have been disposed of; and
 - (iii) no interest in the assets of the Invicta business or the Castle Water Holdings business has been created or disposed of.
- (g) There has been no integration of the information technology of the Invicta or Castle Water Holdings businesses, and the software and hardware platforms of the Invicta 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 Invicta business have been carried out by the Invicta business alone and, for the avoidance of doubt, the Castle Water Holdings business has not negotiated on behalf of the Invicta business (and vice versa) or entered into any joint agreements with the Invicta business (and vice versa).
- (i) All existing contracts of the Invicta business and the Castle Water Holdings 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 Invicta business or the Castle Water Holdings business.

- (k) No key staff have been transferred between the Invicta business and the Castle Water Holdings business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Invicta business and the Castle Water Holdings 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 Invicta business (or any of its employees, directors, agents or affiliates) to the Castle Water Holdings 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 Invicta business or the Castle Water Holdings business;
 - (ii) interruptions of the Invicta business or the Castle Water Holdings 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 Invicta business or the Castle Water Holdings business; or
 - (iv) substantial changes in the Invicta or Castle Water Holdings business's contractual arrangements or relationships with key suppliers.
- (o) [*list of material developments*]

3. Castle Water/Castle Water Holdings and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Invicta or the Castle Water Holdings business in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF Castle Water/Castle Water Holdings

Signature

Name

Title

Date