

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 8 June 2018

Completed acquisition by Nicholls' (Fuel Oils) Limited of the Oil Distribution Business of DCC Energy Limited in Northern Ireland

We refer to your emails and accompanying further information dated 22 June, 3 July, and 9 July 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 8 June 2018 (the **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, Nicholls is required to hold separate the acquired DCC business from the Nicholls business 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, Nicholls and the acquired DCC business may carry out the following actions, in respect of the specific paragraphs, provided that in each case they do not share any confidential information more widely than is strictly necessary to carry out the relevant action:

1. Paragraphs 5(c), (i) and (j) of the Initial Order

The CMA understands that, prior to completion, the acquired DCC business was a business division within DCC Energy Limited and, as such, under the control of senior management within DCC Energy Limited. Not all those managers were transferred with the acquired DCC business as part of the transaction.

To ensure the effective operation of the acquired DCC business, the CMA consents to the appointment of [X] for the three-week period commencing 11 July 2018 and the appointment of [X] thereafter, to run the acquired DCC business.

The CMA consents to these appointments subject to the individuals each signing appropriate non-disclosure agreements and receiving appropriate training to ensure that they understand the requirements of the Initial Order.

2. Paragraphs 5(a) and (g) of the Initial Order

The CMA understands that, prior to completion, the acquired DCC business relied on DCC Energy Limited for financial support. To ensure that the acquired DCC business is maintained as a going concern and has sufficient resources available, the CMA consents to Nicholls providing suitable levels of financial support to the acquired DCC business where this is needed to finance its day-to-day operations.

To ensure the effective operation of the acquired DCC business, the CMA understands that it will be necessary to arrange for insurance cover to be in place. To facilitate this, the CMA consents to:

- (a) the acquired DCC business benefitting from and being covered by insurance policies organised by Nicholls, dealing with such issues as public liability, product liability, medical and employee liability; and
- (b) the acquired DCC business benefitting from and being covered by relevant group-wide credit-insurance policies organised by and in the name of Nicholls.

The CMA also consents to those individuals within the acquired DCC business responsible for dealing with such insurance policies being permitted to liaise with their counterparts of Nicholls, which is limited to [X], for the purpose of ensuring that the acquired DCC business is covered by and complies with the terms and procedures of these agreements. Communications between the acquired DCC business and Nicholls shall be strictly limited to this purpose. The CMA consent is subject to the named individuals each signing appropriate non-disclosure agreements.

3. Paragraph 4(a) and 5(a) of the Initial Order

The CMA understands that, prior to the conduct of the auction process by which the acquired DCC business was sold, DCC Energy Limited had made a commitment to the Northern Ireland Environment Agency to cease storing product at [X] during the course of 2018. To comply with that commitment and ensure the effective and safe operation of the acquired DCC business, the CMA consents to Nicholls accommodating the four members of staff of the acquired DCC business who were accommodated at [X] at the depot that Nicholls is in the course of restoring back into use at [X]. The CMA consent is subject to no Nicholls' staff operating from the depot at [X].

4. Paragraphs 4(a) and 5(a) of the Initial Order

The CMA understands that, during the conduct of the auction process by which the acquired DCC business was sold, DCC Energy Limited had served notice to quit its premises at [X] on 31 July 2018 and the premises will be vacated on 13 July 2017 in order that DCC Energy Limited can carry out certain remediation works. To accommodate the staff of the acquired DCC business who were accommodated at [X] and to ensure the effective operation of the acquired DCC business, the CMA consents such staff of the acquired DCC business being accommodated at one of Nicholls premises at [X]. The CMA consent is subject to the following conditions:

- (a) the staff of the acquired DCC business will operate from the main building of the premises at [X] (**Main Building**) and the staff of the Nicholls business will operate from the portacabin at the premises (**Portacabin**);
- (b) there will be an entrance for staff of the Nicholls business who are located in the Portacabin and a separate entrance for the staff of the acquired DCC business who will be located in the Main Building;
- (c) the entrance to the canteen and toilet facilities for staff of the Nicholls business who are located in the Portacabin will be separate from the entrance to those facilities for the staff of the acquired DCC business who will be located in the Main Building;
- (d) an email will be sent to all staff explaining the need for the separation of the staff of the Nicholls business and the staff of the acquired DCC business;
- (e) a sign will be placed on the door of the Portacabin prohibiting entry by the staff of the acquired DCC business and a sign will be placed on the door of the Main Building prohibiting entry by the staff of the Nicholls business;
- (f) notices will be placed at the premises to remind staff of the need for the separation of the staff of the Nicholls business and the staff of the acquired DCC business; and
- (g) the Nicholls business and the acquired DCC business operating at the premises will have separate telephone numbers, computer systems and servers. Nicholls staff will have no access to the computer system of the acquired DCC business and the staff of the acquired DCC business will have no access to the Nicholls computer system.