

## **ACQUISITION BY RENTOKIL INITIAL PLC OF CANNON HYGIENE LIMITED**

### **Derogation from Interim Order**

#### **Background**

- A. On 5 July 2018 the Competition and Markets Authority (CMA) made an Interim Order pursuant to [section 81](#) of the Enterprise Act 2002 (the Act) applying to Rentokil Initial Plc ('Rentokil') and Cannon Hygiene Limited ('Cannon') (together 'the Parties') to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which may be justified by the CMA's decisions on the Reference. The derogations adopted in respect of the Phase 1 Initial Enforcement Order (IEO) continue to apply to the Interim Order.
- B. The Reference has not been finally determined in accordance with [section 79](#) of the Act.
- C. The Interim Order prohibits certain actions without the prior consent of the CMA.

#### **Derogation requests**

##### ***Paragraph 5(m) of Interim Order***

1. On 19 July 2018, the CMA was informed that Rentokil was seeking several derogations from paragraph 5(m) of the Interim Order, as follows:
  - (a) *Pension administrative support*: Rentokil has requested permission to provide pension administrative support to Cannon in respect of Rentokil's obligation to complete the necessary auto-enrolment details on the pension regulator's website. This requirement relates to the transfer of employees from the OCS Group to Cannon. In order to provide this support, Rentokil is proposing that one Rentokil identified employee (see Annex 1) be provided with the necessary information and recognises that the individual concerned may receive access to Cannon commercially-sensitive information as a result of providing this support. The provision of such support will be subject to the following controls to minimise the risk

of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:

- (i) Disclosure of information to the Rentokil named individual will be limited to that which is strictly necessary for the purpose of providing pension administrative support to Cannon; and
- (ii) The Rentokil named individual will enter into a confidentiality agreement, the form of which will be agreed with the CMA.

(b) *Insurance support:* Rentokil has requested that it be permitted to provide limited support to Cannon in respect of insurance arrangements including claims matters. Rentokil is proposing that three Rentokil identified employees (see Annex 1) provide this support to Cannon. Rentokil acknowledges that in providing this support to Cannon, the Rentokil employees may be exposed to commercially-sensitive information of Cannon and as such, the provision of insurance support will be subject to the following controls to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:

- (i) Disclosure of information to the Rentokil named individuals will be limited to that which is strictly necessary for the purpose of providing insurance support to Cannon;
- (ii) The Rentokil named individuals will enter into a confidentiality agreement, the form of which will be agreed with the CMA; and
- (iii) The parties will maintain a schedule of interactions which will be provided to the Monitoring Trustee on a regular basis.

(c) *Financial reporting:* In order to enable Rentokil to comply with its fiduciary duties, Rentokil has requested consent to receive commercially-sensitive information of Cannon relating to P&L forecasts, balance sheet and cashflow statements and ad-hoc reporting of key issues and governance matters. Rentokil is proposing that a reporting pack (the format of which has been agreed with the CMA) be sent by Cannon's Managing Director to Rentokil's CFO & CIO on a monthly basis. The communication of this information will be subject to the following controls to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:

- (i) Disclosure of information to the Rentokil CFO will be limited to that provided for in the template approved by the CMA;

- (ii) The Rentokil named individual will enter into a confidentiality agreement, the form of which will be agreed with the CMA; and
  - (iii) The monthly report will also be shared with the Monitoring Trustee to confirm that the information shared with Rentokil is limited to that provided in the template.
- (d) *Company secretary function:* Rentokil has requested consent to provide Cannon with support in respect of various company secretarial duties and is proposing that an identified individual (see Annex 1) within Rentokil act as company secretary for Cannon. In order to fulfil the role, the Rentokil identified individual may be required to attend Cannon board meetings where the discussions relate to the role of company secretary and regulatory reporting obligations. This support will be provided to Cannon subject to the following controls which are intended to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:
  - (i) Disclosure of information to the Rentokil named individual will be limited to that which is strictly necessary for the purpose of fulfilling the role as company secretary and complying with Cannon's regulatory reporting obligations;
  - (ii) The Rentokil named individual will enter into a confidentiality agreement, the form of which will be agreed with the CMA; and
  - (iii) Agendas for Cannon board meetings (whether in person/by teleconference or otherwise) and minutes of all board meetings will be shared with the Monitoring Trustee in parallel.
- (e) *Project leadership:* Rentokil has requested consent for Rentokil's General Counsel and Company Secretary to act as project lead for both Cannon and Rentokil in respect of the CMA's phase 2 merger investigation. This role requires liaison between Cannon and Rentokil and as a result, Rentokil's General Counsel may be exposed to commercially-sensitive information of Cannon. Rentokil will ensure that the following controls are in place to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:
  - (i) Disclosure of information to Rentokil's General Counsel will be limited to that which is strictly necessary for the purpose of acting as project lead for Cannon during the course of the CMA's phase 2 merger investigation; and

- (ii) Rentokil's General Counsel will enter into a confidentiality agreement, the form of which will be agreed with the CMA.
- (f) *Legal support*: Rentokil has requested permission to provide limited legal support to Cannon in order to maintain the Cannon business as a going concern and has identified one Rentokil individual who will provide this legal support (see Annex 1). Such support will be directly associated with the operation of the Cannon business and can include support with commercial contracts, negotiations and management issues. Rentokil will ensure that the following controls are in place to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:
  - (i) Disclosure of information to the identified individual will be limited to that which is strictly necessary for the purpose of providing limited legal support to the Cannon business;
  - (ii) The identified individual will enter into a confidentiality agreement, the form of which will be agreed with the CMA;
  - (iii) Whilst providing legal support to the Cannon business during the course of the CMA's phase 2 merger investigation, the identified individual will be prevented from providing legal support to Rentokil in respect of its washrooms business in the UK or in respect of any international washroom customers on UK washroom issues. For the avoidance of doubt, the identified individual may provide legal support to Rentokil in respect of its other businesses;
  - (iv) Cannon information shared with the identified individual for the purposes of providing legal support to Cannon will be stored in a separate ring-fenced folder to which only the identified individual maintain access; and
  - (v) The parties will maintain a schedule of interactions which will be provided to the Monitoring Trustee on a regular basis.
- (g) *Property advice*: Rentokil has requested that it be permitted to provide support to Cannon in respect of property advice in order to maintain the Cannon business as a going concern. Rentokil has identified an individual (see Annex 1) within Rentokil who will be tasked with providing such advice to Cannon only when requests are received from the Cannon business. [REDACTED]. This support will be provided to Cannon subject to the following controls which are intended to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:

- (i) Disclosure of information to the Rentokil named individual will be limited to that which is strictly necessary for the purpose of providing property advice to Cannon;
  - (ii) The Rentokil named individual will enter into a confidentiality agreement, the form of which will be agreed with the CMA; and
  - (iii) The parties will maintain a schedule of interactions which will be provided to the Monitoring Trustee on a regular basis.
- (h) *Tax support.* Rentokil has requested consent to provide support to Cannon on day-to-day tax issues which are directly associated with the operation of the Cannon business. Rentokil has identified a named individual (see Annex 1) who will provide this support to Cannon. This tax support will be provided to Cannon subject to the following controls which are intended to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:
- (i) Disclosure of information to the Rentokil named individual will be limited to that which is strictly necessary for the purpose of providing advice to Cannon on tax-related issues;
  - (ii) The Rentokil named individual will enter into a confidentiality agreement, the form of which will be agreed with the CMA; and
  - (iii) The parties will maintain a schedule of interactions which will be provided to the Monitoring Trustee on a regular basis.

***Paragraph 5(a) of Interim Order***

2. On 19 July 2018, the CMA was informed that Rentokil was seeking a derogation from paragraph 5(a) of the Interim Order, as follows:
- (a) *Training and learning platforms:* Rentokil has requested consent to provide Cannon employees with access to its online training portal for the purposes of providing compliance training to Cannon employees. Rentokil has identified an individual (see Annex 1) who will send a link to Cannon employees to the relevant training which they need to complete in order to remain compliant with various obligations. Rentokil will ensure that this proposed action is subject to the following controls which are intended to minimise the risk of wider information transfer between the Rentokil and Cannon businesses (in line with the Interim Order), specifically:
    - (i) Disclosure of information to the Rentokil named individual will be limited to that which is strictly necessary for the purpose of providing

a link to the necessary online compliance training to Cannon employees;

- (ii) The Rentokil named individual will enter into a confidentiality agreement, the form of which will be agreed with the CMA; and
- (iii) The training which Cannon employees undertake should be strictly limited to that which is necessary to ensure compliance with statutory and/or regulatory obligations and must not seek to apply Rentokil commercial policies, procedures or ways of working onto Cannon staff.

### **CMA consent**

- 3. On 24 July 2018, the CMA consented to the derogation requests of the Parties in respect of paragraphs 5(m) and 5(a) of the Interim Order as outline above, and subject to the controls described in more detail above.
- 4. Further, the CMA requires that the Monitoring Trustee maintain oversight of all controls put in place by Rentokil with respect to the derogations. In respect of the derogations granted in paragraphs 1(b), 1(f), 1(g) and 1(h), the Parties will maintain a schedule of interactions which will be shared with the Monitoring Trustee. Should the Monitoring Trustee request access to the underlying communications, these will also be provided to the Monitoring Trustee by the Parties.
- 5. The CMA reserves the right to: (i) review the derogations granted hereunder and (ii) amend (increase or reduce) the controls put in place by Rentokil. Further, the identified individuals set out in Annex 1 shall not be changed without prior permission of the CMA.

Signed by authority of the CMA

**Anne Lambert**  
**CMA Group Chairman**  
**1 August 2018**

**Annex 1**

<b>Area</b>	<b>Employee</b>	<b>Role in Rentokil</b>	<b>Intended support to Cannon</b>
Pensions	[X]	[X]	Limited support and on an as needed basis rather than regularly.  [X]  Regular day to day pension admin is provided by OCS.
Insurance	[X]	[X]	Gathering supporting information for managing the insurance arrangements (for all insurance cover).
	[X]	[X]	Providing support on all Insurance claims matters.
	[X]	[X]	Providing confirmation for customers of the extent of insurance cover as and when required.
Finance	[X]	[X]	Providing finance support to satisfy regulatory and/or accounting obligations
Company Secretary	[X]	[X]	Providing Company Secretary function including corporate governance and regulatory compliance support
Legal	[X]	[X]	Providing legal advice to the extent necessary to ensure legal compliance.
	[X]	[X]	[X]  Provide advice and assistance on commercial contracts / negotiations / management issues

Property	[X]	[X]	Routine [X]
Training & learning	[X]	[X]	Sending Cannon employees a link including the relevant compliance training they should complete.
Tax	[X]	[X]	Providing day-to-day tax advice