

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 26 June 2018

Anticipated acquisition by Castle Water Holdings Limited of Invicta Water Limited

Dear Mr Mitchell,

We refer to your letter and its attachments dated 28 June 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 26 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 with written consent by the CMA, Castle Water and Castle Water Holdings (collectively, '**Castle**') are required to hold separate the Invicta business from the Castle 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, Castle and Invicta may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(a), 6(g) and 6(l) of the Initial Order: Provision of back office services

The CMA understands that Invicta was created principally as a vehicle for transferring customers in connection with the acquisition, and therefore lacks back-office staff, functions and systems necessary to meet Invicta's statutory, licence and other regulatory obligations to its customers (in relation to, for example, supply and other service issues, including those that relate to public health). Therefore, Castle is proposing to provide these services on an arm's length basis from within Castle, pursuant to a Shared Services Agreement to be entered into between Castle and Invicta (the '**SSA**').

In light of these factors, and in order to maintain in particular the ability of Invicta to operate on a standalone basis, the CMA consents to Castle and Invicta entering into the SSA as proposed. Consent is granted on the basis that:

- a) The SSA is in a form approved by the CMA;

- b) The Castle employees serving the SSA are only those listed in Section 2 of Annex 3 of the Rules of Engagement and call centre and administrative support staff needed to serve the SSA;
- c) The Castle employees permitted to provide services under the SSA only use the individual customer data to handle customer queries, deal with supply issues, and fulfil regulatory obligations;
- d) The Castle employees providing the information under the SSA will not use the Invicta customer information they have access to in relation to any sales, marketing or retention activity in accordance with paragraph 6(g) of the IEO;
- e) Castle employees involved in supplying services under the SSA will, when engaging with customers, ensure that they are clear that services are being supplied on behalf of Invicta, in accordance with paragraph 6(a) of the IEO;
- f) No Castle employees outside those permitted for the purposes of providing the services under the SSA or otherwise permitted due to a derogation granted by the CMA, have access to Invicta customer information;
- g) Castle employees involved in the provision of back-office services to Invicta pursuant to the SSA sign an appropriate Non-Disclosure Agreement, in a form approved by the CMA, which governs their obligations to keep relevant information confidential and only use it for the purpose for which it was received.

2. Paragraphs 6(c), 6(i) and 6(j) of the Initial Order: appointment of an independent interim management team and sales team

As explained above, the CMA understands that Invicta was created principally as a vehicle for transferring customers in connection with the acquisition, and therefore lacks a number of functions required to operate as a standalone business. In particular, Invicta will lack a management and sales team to be responsible for Invicta's commercial activities in the period from completion to the CMA's lifting of the Initial Order.

The CMA understands that Castle wishes to appoint three individuals to full-time managerial positions within the Invicta business, to ensure that Invicta continues to operate on a standalone basis and that Castle complies with its obligation under paragraph 6(b) to maintain Invicta as a going concern. Those positions would be as (i) Managing Director, who will be primarily responsible for ensuring Invicta continues to operate as a standalone business, (ii) Customer Service Manager, whose primary responsibility will be to manage the provision by Castle of shared services pursuant to the SSA, and (iii) Sales Executive, whose primary responsibility will be to develop and implement Invicta's sales and business development strategy in line with its pre-Merger business plans.

The individuals proposed are:

- [X], who would be acting as Managing Director of Invicta. [X]'s current position is as Strategic Operations Director of Castle. He is not involved in any day to day commercial decision making in respect of Castle;
- [X] as Customer Service Manager of Invicta. [X]'s current position is as an independent contractor working at Castle as Programme Director – Strategic Partnerships; and
- [X] as Sales Executive of Invicta. [X]'s current position is as Commercial Pricing Analyst of Castle.

The CMA consents to Castle making these appointments on the basis that:

- a) Each appointment will be formally documented, by (i) in the case of the Managing Director, a written letter of appointment in a form approved by the CMA; (ii) in the case of the Customer Service Manager, a written contract of employment with Invicta; and (iii) in the case of the Sales Executive, a written secondment agreement;
- b) Each appointee will exercise their functions in accordance with the letter of appointment, Rules of Engagement, IEO and any derogations issued by the CMA;
- c) Each appointee will be required to operate Invicta in accordance with its pre-Merger business plans;
- d) Each appointee will not take part in, have access to information regarding, or attend meetings discussing commercially sensitive information in relation to the Castle business including but not limited to customer negotiations, price-setting or margins and prices in relation to the Castle business;
- e) Prior to starting their role, each appointee will be required to enter into a non-disclosure agreement, in a form approved by the CMA, to ensure that any confidential information relating to Invicta that he or she receives is appropriately ring-fenced from Castle;
- f) Each appointee shall have full responsibility for decision making regarding the Invicta business and such decisions shall not be made by any senior staff members of the Castle business except as permitted below;

3. Paragraph 6(b) and (l) of the IEO: Input and authorisation by the Castle business

The CMA consents to [X] (Managing Director of Invicta) obtaining input and/or authorisation from John Reynolds (CEO of the Castle Water Group and a Director of CWHL), Euan Mitchel and [X] (HR Director) as relevant with respect to the issues listed in Annex 2 of the Ring-fencing Rules of Engagement agreed with

the CMA where they fall outside the ordinary course of business in order to ensure that: (i) Castle can comply with its obligation under paragraph 6(b) of the IEO to maintain the business as a going concern and to ensure that sufficient resources are made available for the development of the business; and/or (ii) Castle is able to comply with its relevant statutory and contractual reporting and compliance obligations.

This consent is granted on the basis that:

- a) All discussions relating to such authorisation rights will be promptly summarised and recorded by Castle. Castle shall submit summaries of such communications and copies of any documents/information shared to the CMA along with the fortnightly compliance report that it is required to submit to the CMA under the IEO.
- b) Where the individuals listed above propose to veto certain conduct, the CMA must be informed before such a veto is exercised/implemented.
- c) The individuals listed above will enter into a Non-Disclosure Agreement in the form approved by the CMA, which governs their obligations to keep relevant information confidential and to only use it for the legitimate purpose for which it was received.

4. Paragraphs 6 (l) of the IEO: Reporting to the Board of CWHL

In order to maintain Invicta as a going concern and ensure that the value of Invicta business is protected, Castle has requested that the Managing Director of Invicta will report on a fortnightly basis to the Board of CWHL.

The fortnightly report will outline the performance of Invicta and any areas of material concern with Invicta. Castle has also requested that monthly management accounts are shared with the senior individuals listed in Section 1 of Annex 3 of the Rules of Engagement and the Board of CWHL.

The CMA consents to this on the basis that:

- a) Ahead of any receipt of information, CWHL board members in receipt of this information will sign a Non-Disclosure Agreement;
- b) Any information shared with CWHL board members (including the monthly management accounts of Invicta) should be in a form agreed by the CMA and sufficiently aggregated in nature to ensure that it is not commercially sensitive, eg it not include individual prices or margins or details of any specific customers (or any information that would enable the acquirer to deduce this kind of granular data).
- c) The Performance Report should not reveal details which would reasonably be considered to be commercially sensitive information for Invicta;

- d) The reports to the CWHL Board should be for information only, and the CWHL Board cannot make any recommendations or actions based on that information, unless it seeks approval from the CMA.

Alba Ziso

Assistant Director, Mergers

29 June 2018