

**ACQUISITION BY NICHOLLS' (FUEL OILS) LIMITED OF THE OIL  
DISTRIBUTION BUSINESS OF DCC ENERGY LIMITED IN  
NORTHERN IRELAND**

**Directions issued pursuant to paragraph 10 of the Initial  
Enforcement Order made by the  
Competition and Markets Authority pursuant to  
section 72(2) of the Enterprise Act 2002 (the Act)**

On 8 June 2018 the Competition and Markets Authority (CMA) issued an Initial Enforcement Order in accordance with section 72(2) of the Enterprise Act 2002 (the **Act**) concerning the completed acquisition by Nicholls' (Fuel Oils) Limited (**Nicholls**) of certain assets related to the oil distribution business of DCC Energy Limited in Northern Ireland (the **acquired DCC business**) (the **Initial Enforcement Order**).

On 11 July 2018, the CMA issued directions to Nicholls to appoint a monitoring trustee (**MT**) for securing compliance with the Initial Enforcement Order.

On 4 September 2018, the CMA received a report from the MT [✂].

The CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 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 decision on the reference.

The CMA now issues written Directions under paragraph 10 of the Initial Enforcement Order that, for the purpose of securing compliance with the Initial Enforcement Order, Nicholls must appoint a formal **HSM** of the acquired DCC business in accordance with the terms provided for in Annex 1.

## ANNEX 1

### Directions to appoint a hold separate manager

#### Interpretation

1. In these Directions:

**'the acquired DCC business'** means the business and assets of DCC Energy Limited that were the subject of the transaction and which remain under the control of Nicholls;

**'the Act'** means the Enterprise Act 2002;

**'CMA'** means the Competition and Markets Authority;

**'HSM'** means the Hold Separate Manager appointed in accordance with these Directions;

**'Initial Enforcement Order'** means the Initial Enforcement Order issued by the CMA on 8 June 2018 and terms and expressions defined in the Initial Enforcement Order have the same meaning in these Directions, unless the context requires otherwise; **'Initial Enforcement Order'** means the Initial Enforcement Order issued by the CMA on 8 June 2018 and terms and expressions defined in the Initial Enforcement Order have the same meaning in these Directions, unless the context requires otherwise;

**'MT'** means the Monitoring Trustee appointed by Nicholls pursuant to the directions issued by the CMA on 11 July 2018 under paragraph 10 of the Initial Enforcement Order; **'MT'** means the Monitoring Trustee appointed by Nicholls pursuant to the directions issued by the CMA on 11 July 2018 under paragraph 10 of the Initial Enforcement Order;

**'Nicholls'** means Nicholls' (Fuel Oils) Limited (company number NI005816);

**'the Nicholls business'** means the business of Nicholls and its subsidiaries, but excluding the acquired DCC business, carried on as at the commencement date of the Initial Enforcement Order;

**'the transaction'** means the transaction by which Nicholls and the acquired DCC business have ceased to be distinct within the meaning of section 23 of the Act;

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

## **Appointment**

2. Nicholls must appoint a formal HSM to ensure that the acquired DCC business operates as a viable and competitive business, separately from and independently of the Nicholls business. The HSM must be subject to the approval by the CMA of his or her identity and the terms and conditions of appointment. Any appointment must be made in accordance with the provisions of these Directions.
3. Nicholls must appoint the HSM without delay and in any event by 28 September 2018 (or such longer period as the CMA may reasonably agree in writing) and the HSM will continue to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or revoked the Initial Enforcement Order. Nicholls must provide the CMA with the names of potential candidate HSMs, and provide draft agreements, by 26 September 2018 (or such longer period as the CMA may reasonably agree in writing).
4. The HSM must act on behalf of the CMA and be under an obligation to the CMA to carry out its functions to the best of its abilities.
5. Nicholls must ensure that the terms and conditions of appointment of the HSM reflect and give effect to the functions and obligations of the HSM and the obligations of Nicholls as set out in these Directions.
6. Nicholls, its subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the HSM, in particular by providing the HSM with all cooperation, assistance and information as the HSM may reasonably require in order to discharge its functions.

## **Functions**

7. The functions of the HSM will be to exercise day-to-day management and control of the acquired DCC business so that:
  - (a) it is operated separately from and competes actively with the Nicholls business;
  - (b) appropriate management, reporting and decision-making systems are put in place to preserve the independence of the acquired DCC business and ensure such independence on an ongoing basis;
  - (c) the business is maintained as a going concern with access to sufficient resources for its continued operation and development.
8. The HSM will also be required to:

- (a) ensure that the acquired DCC business complies with the Initial Enforcement Order;
  - (b) assist the CMA in monitoring the extent of compliance by Nicholls with the Initial Enforcement Order; and
  - (c) provide every two weeks (or otherwise as required by the CMA) a statement stating whether or not the acquired DCC business has complied with the Initial Enforcement Order.
9. The HSM must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including seeking informal *ad hoc* advice from [X], if appropriate. If issues arise that are expected to require more than 1 hour of [X] time on any given day, the HSM must notify the MT, providing a brief description of the issue and reason for [X] involvement. For the avoidance of doubt, the HSM, not [X], will have final say in business decisions concerning the acquired DCC business.
10. The HSM must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Nicholls with the Initial Enforcement Order.
11. The HSM must immediately notify the CMA in writing if it forms a reasonable suspicion that the Initial Enforcement Order has been breached or if it considers that it is no longer in a position to effectively carry out its functions.

### **General**

12. The HSM must possess the appropriate qualifications and experience to carry out its functions.
13. The HSM must neither have nor become exposed to a conflict of interest that impairs the HSM's objectivity and independence in discharging its functions under these Directions, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
14. The HSM must act in accordance with the budget agreed between Nicholls and the acquired DCC business.
15. Nicholls shall remunerate and reimburse the HSM 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 HSM's independence or ability to effectively and properly carry out its functions.
16. Nicholls must provide the CMA with a copy of the agreed terms and conditions of the appointment of the HSM prior to its appointment.

17. Any termination of the appointment of the HSM is subject to the agreement of the CMA, such consents not to be unreasonably withheld.
18. All communications between the HSM and the CMA are confidential and should not be disclosed to Nicholls, save with the prior written consent of the CMA. The HSM shall not disclose such communications to third parties.
19. The CMA may issue such further directions as it considered necessary to ensure compliance with the Initial Enforcement Order, including, where the appointment of the HSM has been terminated, directions for the appointment of a further HSM.