

Dear Mr Warrington and Mr Snape

**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 5 December 2018**

**Completed acquisition by Headlam Group and HFD Limited of Rackhams Ltd ('Rackhams')**

We refer to your emails dated 15 January and 22 January 2019 requesting that the CMA consents to derogations to the Initial Enforcement Order of 5 December 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, Headlam Group PLC ('Headlam') and HFD Limited ('HFD') are required to hold separate the Rackhams business from the Headlam business and HFD 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, Headlam, HFD and Rackhams may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraph 5(c) and 5(i) of the Initial Order**

Headlam has informed the CMA that upon completion of the acquisition by Headlam of Rackhams, the owner-managers of Rackhams ([REDACTED]) left the Rackhams business. The CMA understands that the day-to-day management of Rackhams is provided by [REDACTED] (Operations Director, Rackhams) with supervisory oversight of Rackhams being provided by one of Headlam's General Managers, [REDACTED].

In order to ensure the independent operation of Rackhams, Headlam proposes to appoint [REDACTED] as General Manager of Rackhams to carry out the typical duties of a General Manager. Headlam submitted that [REDACTED] has relevant experience and industry expertise to act as General Manager of Rackhams and he is not currently, or has not previously been employed by Headlam. To allow Rackhams to be carried on as a going concern, the CMA consents to the appointment of [REDACTED] as General Manager of Rackhams under the terms set out below:

- In his role as General Manager of Rackhams, [X] will be fully briefed on his obligations under the Initial Order; and
- [X] will enter into a confidentiality agreement, the form of which will be agreed with the CMA.

## **2. Paragraphs 5(c), 5(i) of the Initial Order**

The CMA understands that Steve Wilson (CEO, Headlam) and Chris Payne (CFO, Headlam) were appointed as statutory directors of Rackhams prior to the commencement date of the CMA's Initial Order. In order to ensure the separate operation of the Rackhams business from the Headlam business and the HFD business, the CMA consents to the resignation of Steve Wilson and Chris Payne as statutory directors of Rackhams, and consents to the appointment of [X] (General Manager, Rackhams) as the sole statutory director of Rackhams on the condition that:

- [X] is independent of Headlam and HFD and is not employed in the management of Headlam or HFD;
- [X] has the capability and capacity to act as the sole statutory director of Rackhams;
- any commercially-sensitive, confidential or proprietary information which Steve Wilson and Chris Payne have received in their role as statutory directors of Rackhams will be held in the strictest confidence; and
- [X] will enter into a confidentiality undertaking in a form approved by the CMA.

## **3. Paragraphs 5(c) of the Initial Order**

The CMA understands that on 8 January 2019, Headlam appointed Karen Atterbury (Company Secretary, Headlam) as Company Secretary for Rackhams. The CMA further understands that Karen Atterbury has not had access to any commercially-sensitive, confidential or proprietary information from Rackhams in the period since her appointment as Company Secretary and that the Company Secretary role at Rackhams is purely a functional corporate governance role and has no management or strategic responsibilities.

In order to ensure the separate operation of the Rackhams business from the Headlam business and the HFD business, the CMA consents to the resignation of Karen Atterbury as Company Secretary for Rackhams and consents to the appointment of [X] as Company Secretary for Rackhams on the condition that:

- [X] is an entity which is independent of Headlam and HFD; and

- [X] has the experience and capability necessary to effectively fulfil the company secretary role for Rackhams.

#### **4. Paragraph 5(l) of the Initial Order**

The CMA understands that certain named individuals within Headlam and HFD ([X] and [X], both Finance Managers at Headlam) (the 'Authorised Individuals') will require access to confidential financial information relating to the Rackhams business for the purposes of producing statutory accounts for Rackhams and Headlam Group consolidated accounts, in accordance with regulatory requirements. The CMA further understands that certain Rackhams financial information also needs to be shared with [X] of Headlam in order to prepare the Headlam Group consolidated accounts.

The CMA consents to Rackhams sharing such financial information with the Authorised Individuals within Headlam and [X], subject to the following safeguards being place:

- The financial information shared with the Authorised Individuals will be in a template agreed with the CMA;
- The financial information shared with the Authorised Individuals will be limited to that which is strictly necessary for the purpose of preparing statutory accounts for Rackhams and Headlam Group consolidated accounts;
- [X] and [X] are not part of the Headlam or HFD management team and do not have any strategic or commercial role within any Headlam business;
- The financial information shared with [X] will be in a template agreed with the CMA;
- The Authorised Individuals and [X] will enter into a confidentiality agreement, the form of which will be agreed with the CMA;
- Headlam will put in place effective ring-fencing measures to ensure that no other Headlam employee has access to commercially-sensitive information of the Rackhams business. any Rackham's financial information provided to the Headlam Board will be shared on a consolidated basis only and in a template agreed with the CMA and for the avoidance of doubt, will not contain any granular financial information of the Rackhams business.

#### **5. Paragraphs 5(a), 5(c) and 5(l) of the Initial Order**

Headlam has requested that, in order to ensure sufficient oversight of the Rackhams business and that the Rackhams business is being maintained as a going concern, in relation to certain specific matters, [X] (General Manager, Rackhams) should be

permitted to escalate and discuss certain proposed conduct relating to the Rackhams business with [REDACTED], Financial Manager, Headlam) which exceed [REDACTED] level of delegated authority.

For those matters which are escalated to [REDACTED], [REDACTED] should be permitted to approve or veto the proposed actions of [REDACTED] identified in the template delegated authority agreed with Headlam and provided to the CMA.

The CMA consents to a derogation from the Initial Order to enable [REDACTED] to approve or veto certain action by [REDACTED] of the Rackhams business exceeding the levels of delegated authority as set out by Headlam in the template delegated authority shared with the CMA, provided that:

- the information shared by [REDACTED] with [REDACTED] is no more than is strictly necessary to allow [REDACTED] to reach a view on the specific matter at hand and should not include any commercially sensitive information, including, but not limited to, information relating to customers including names, margins and key contractual terms on price.
- Discussions will be limited to the specific matters listed in the template delegated authority provided to the CMA;
- [REDACTED] will take decisions on the escalated matters on his own and without involvement from any other Headlam employee in the decision-making process;
- The CMA is notified of any proposed veto and the reasons for this in advance of any such veto being exercised; and
- [REDACTED] is not part of the Headlam or HFD management team and does not have any strategic or commercial role within any Headlam business.

## **6. Paragraph 5(I) of the Initial Order**

In order to maintain oversight of the Rackhams business to ensure that it is being maintained as a going concern, the CMA understands that [REDACTED], Finance Manager, Headlam) requires access to certain commercially-sensitive information of Rackhams. Headlam proposed that a Rackhams sales report (the format of which has been agreed with the CMA) be sent to [REDACTED] on a weekly basis. Headlam submits that the weekly sales report includes the minimum information necessary to ensure business continuity of the Rackhams business.

The communication of this information will be subject to the following safeguards:

- (i) Disclosure of Rackhams financial information to [REDACTED] will be limited to that provided for in the template approved by the CMA;

- (ii) Headlam will put in place effective ring-fencing measures to ensure that no other Headlam employee has access to any commercially-sensitive information of the Rackhams business;
- (iii) [REDACTED] is not part of the Headlam or HFD management team and does not have any strategic or commercial role within any Headlam business;
- (iv) [REDACTED] enters into a confidentiality agreement, the form of which will be agreed with the CMA.

## 7. Paragraph 5(I) of the Initial Order

The CMA understands that in order to facilitate the CMA's review of the acquisition by Headlam and HFD of Rackhams, it may be necessary for [REDACTED] (Finance Manager, Headlam) to receive access to information of the Rackhams business which is strictly necessary in order to comply with any requests for information issued by the CMA.

The CMA consents to a derogation from the Initial Order subject to the following safeguards being in place:

- (i) Rackhams information will only be provided to [REDACTED] where strictly necessary to comply with the CMA's information requests and where such information cannot be provided directly to the CMA by the Rackhams business;
- (ii) Headlam will put in place effective ring-fencing measures to ensure that no other Headlam employee has access to any commercially-sensitive information of the Rackhams business;
- (iii) [REDACTED] is not part of the Headlam or HFD management team and does not have any strategic or commercial role within any Headlam business;
- (iv) [REDACTED] enters into a confidentiality agreement, the form of which will be agreed with the CMA.

Maria Duarte  
**Assistant Director, Mergers**  
30 January 2019