

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 9 August 2019 (IEO)

Completed acquisition by KNPak Acquisition Limited of certain subsidiaries of Bemis Company, Inc.

We refer to your emails dated 12, 14, 16, 21, 22 and 23 August 2019 requesting that the CMA consents to derogations to the Initial Enforcement Order of 9 August 2019 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

- A. Under the Initial Order, save for written consent by the CMA, Kohlberg and KNPak are required to hold separate the Kohlberg business from the Bemis 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, Kohlberg and KNPak may carry out the following actions, in respect of the specific paragraphs of the Initial Order, with effect from 9 August 2019:

1. Paragraphs 5(c) and 5(i) - Management of the Bemis business

The CMA understands that upon completion of the acquisition by Kohlberg of the Bemis Subsidiaries (the '**Transaction**'), Kohlberg appointed Joseph Gabriel Holland, Seth Howard Hollander and Jean Elizabeth Roberts as Directors of each of the Bemis Subsidiaries. The CMA understands that these Directors will not exercise powers on behalf of the Bemis business and will delegate their powers to [X] who has been the Operations Leader of the Bemis business since [X].

To ensure the effective operation of the Bemis business, the CMA consents to a derogation from paragraphs 5(c) and 5(i) strictly limited to the purpose of allowing [X] to be appointed as CEO of the Bemis business and to manage its responsibilities whilst the CMA's Initial Order is in force.

2. Paragraph 5(l) of the Initial Order

Kohlberg requests that [X] is able to escalate certain matters of an exceptional nature (as set out below) to [X], non-executive Chairman of Nelipak and a Kohlberg Operating Partner.

Kohlberg submitted that information shared with Nelipak through [X] will be shared in exceptional circumstances only (as set out below).

The CMA consents to [X] sharing information with [X] regarding exceptional matters for the purpose of ensuring the viability of the Bemis business (as set out below) on the condition that:

- The commercially-sensitive information which may be exchanged as a result of escalation to [X] will be limited to that which is strictly necessary.
- [X] will sign a confidentiality undertaking, obliging him not to share any commercially sensitive information relating to the Bemis business with any employee of Nelipak or any other person associated with Kohlberg, in a form agreed in advance with the CMA.

The exceptional matters are:

- 1) Incurring any capital expenditure in relation to any item exceeding [X];
- 2) Establishing any new branch, agency, trading establishment or business;
- 3) With respect to the Bemis business or any of the Bemis Subsidiaries:
 - (a) making any change to:
 - (i) the auditors;
 - (ii) the bankers or the terms of the mandate given to such bankers in relation to account(s);
 - (iii) any accounting reference date; and/or
 - (iv) any accounting policies, bases or methods from those set out in relevant accounts and/or accountants' reports (other than as recommended by the relevant auditors);
 - (b) factoring any of its debts, borrowing monies (other than by way of its facilities in place at the date of this agreement), incurring indebtedness in excess of [X] or accepting credit (other than normal trade credit); and/or
 - (c) making any loan or advance or giving any credit (other than in the ordinary course of business) to any person or acquiring any loan capital of any corporate body (wherever incorporated).

- 4) Conducting any litigation material to the Bemis business, save for the collection of debts arising in the ordinary course of the business carried on by the Bemis business.
- 5) Proposing or implementing any variation to the Bemis business' pension schemes or any of the benefits payable to members of the scheme.
- 6) Taking or agreeing to take any leasehold interest in or licence over any real property.
- 7) Entering into or varying any transaction or arrangement with, or for the benefit of any of its Directors or Shareholders or any other person who is a "connected person" with any of its Directors or Shareholders.
- 8) Entering into any transaction or making any payment other than on an arm's length basis for the benefit of the Bemis business.
- 9) Making an insurance claim for an amount above [X], or taking a decision in relation to an insured loss of more than [X].
- 10) Entering into or varying either any unusual or onerous contract or any other material or major or long-term contract.

3. Paragraphs 5(a), 5(g) and 5(l) - Provision of essential services by Nelipak

The CMA understands, on the basis of information provided by Kohlberg, that upon completion of the Transaction, Kohlberg made necessary arrangements to provide the Bemis business with certain essential services that had previously been provided by other parts of Bemis Company, Inc. which Kohlberg did not purchase, including:

- (i) access to insurance coverage ([X]); and
- (ii) access to the provision of legal services.

To ensure the effective operation of the Bemis business, the CMA consents to a derogation from paragraphs 5(a), 5(g) and 5(l) of the Initial Order strictly limited to the purpose of allowing the Bemis business to benefit from these services.

Subject to the safeguard measures set out in paragraph A5 below, the CMA consents to this derogation in relation to access to insurance coverage on the understanding that:

- Information disclosed to the Kohlberg business for the purpose of processing a claim or providing associated advice to employees of the Bemis business will be made accessible only to [X] and [X], who are responsible for organising and administering Nelipak's insurance cover, and/or (where appropriate) to [X], who is responsible for Kohlberg's directors & officers' liability insurance cover and employment practices liability insurance cover.
- Information disclosed to [X], [X] and/or [X] for the purposes of making or processing an insurance claim or providing associated advice will not be circulated more widely within Nelipak or Kohlberg more generally.

- Accordingly, [X], [X] and [X] will each sign a confidentiality undertaking approved by the CMA, including appropriate safeguards on the use, treatment and storage of confidential information.
- Subject to paragraph A2(9) above, decisions relating to insurance claims will be made by Bemis Subsidiaries personnel, as opposed to Nelipak personnel on their behalf.

With regards to legal services, advice sought by the Bemis business must be supplied separately to the Bemis business and must not be shared with Nelipak. Nelipak and the Bemis business shall instruct their lawyers to deal separately with Kohlberg/the Nelipak business and the Bemis business, unless the relevant issue affects, concerns or applies to both the Nelipak business and the Bemis business and they are jointly instructed in relation to the relevant issue.

4. Paragraphs 5(b), 5(e) and 5(l) - funding working capital (through group credit arrangements and a shared credit facility)

The CMA understands, on the basis of information provided by Kohlberg, that upon completion of the Transaction, the Kohlberg business made necessary arrangements to provide the Bemis business with certain essential services that had previously been provided by other parts of Bemis Company, Inc. which Kohlberg did not purchase, including providing working capital through group credit arrangements and a shared credit facility (the '**Facilities**').

The CMA consents to a derogation from paragraphs 5(b), 5(e), and 5(l) of the Initial Order in relation to funding working capital on the understanding that:

- The Kohlberg business will commit to provide funding to the Bemis business in line with its pre-merger business plans as required by the Initial Order;
- Information disclosed to the Kohlberg business for the purpose of providing funding to the Bemis business or servicing the Facilities will be made available only to [X] (CFO) and/or [X] (Controller, Europe) of Nelipak and to [X] (Partner) and [X] (Operating Partner) of Kohlberg (the '**Finance Clean Team**');;
- Information disclosed to any of the Finance Clean Team for the purposes of providing capital or servicing joint credit facilities will not be circulated more widely within the Kohlberg business;
- Accordingly, each of the Finance Clean Team will sign a confidentiality undertaking approved by the CMA, including appropriate safeguards on the use, treatment and storage of confidential information; and
- Prior to such a decision being communicated to the Bemis business, the Kohlberg business will inform the CMA of any instances in which it is proposed that a funding request from the Bemis business would be denied.

With respect to the Facilities, and without prejudice to paragraphs 5(b) and 5(e) of the Initial Order, the CMA also consents to:

- a) the transfer of funds between Bemis and Nelipak and for both Bemis and Nelipak to service the joint loan;
- b) the granting of guarantees in relation to the Facilities by each of the Bemis Subsidiaries;
- c) the creation and/or perfection by Kohlberg, KNPAK, Nelipak and/or the Bemis Subsidiaries of any and all security granted and/or required under the Facilities between (among others) KNPAK, Nelipak, and their lenders in relation to the provision of funding to KNPAK, Nelipak and their affiliates; and
- d) KNPAK, Nelipak, the Bemis Subsidiaries and their affiliates complying with their other obligations to their lenders under the Facilities from time to time.

5. Safeguard measures in relation to paragraphs A3 & A4 above

The derogations granted at paragraphs A3 and A4 above are subject to the implementation of the following safeguard measures:

- a) Information will be provided to the persons specified below (as amended from time to time with the CMA's prior approval) who will support in relation to working capital, insurance coverage and/or legal services (with each individual limited to the relevant function specified):
 - i. Working capital: The Finance Clean Team, as defined in paragraph A4 above;
 - ii. Insurance coverage: [X], [X] and/or [X], as per paragraph A3 above; and
 - iii. Legal services: [X] (Partner, Kohlberg); [X] (President, Europe, Nelipak) and [X] (Controller, Europe, Nelipak)
- b) The information will only be provided once the Bemis business has received appropriate signed confidentiality undertakings (in a form approved in advance by the CMA) to preserve the confidentiality of the information and to use the information only for the purposes specified in this letter;
- c) In particular, the specified persons above will undertake not to discuss or otherwise share Bemis business information with any unauthorised individuals or use the information for any purpose other than that specified above;
- d) The working capital information will only be provided in a format approved in advance by the CMA;
- e) Firewalls (to be agreed with the CMA) will be put in place to prevent any unauthorised individuals from accessing the information; and
- f) If the Transaction is prohibited, or relevant remedies accepted, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the Bemis business to which they relate, and/or any copies destroyed.

6. Paragraphs 5(I) - Financial oversight by Kohlberg

To ensure that designated individuals within the Kohlberg business can receive financial information regarding the Bemis business for internal accounting and external auditing and financial reporting purposes, the CMA consents to the designated individuals set out at paragraph A7 below (the '**Kohlberg Business Clean Team**')

a) receiving financial information which may include commercially sensitive information, including the following:

- i. weekly cash flow forecasts; and
- ii. monthly and year to date income statements, balance sheets and cashflow statements

for the Bemis business which you have provided to us in pro forma form; and

b) seeking and receiving explanations from the Bemis business where monthly revenues and/or EBITDA of the Bemis business are below budget by [X]% or more and/or below prior year by [X]% or more, provided that:

- i. such explanations are provided by Bemis in writing and copied to the CMA, and are provided in general terms explaining the high-level reasons for the variances without disclosing any confidential or commercially sensitive information about the Bemis business; and
- ii. should Kohlberg require a more detailed explanation from Bemis, this should be requested by way of a further derogation.

7. Safeguard measures for paragraph A6 above

The derogation granted at paragraph A6 above is subject to the implementation of the following safeguard measures:

a) Information will be provided only to the following designated individuals (as amended from time to time with the CMA's prior approval):

- i. [X] (Partner, Kohlberg);
- ii. [X] (Operating Partner, Kohlberg);
- iii. [X] (Associate, Kohlberg);
- iv. [X] (Associate, Kohlberg);
- v. [X] (Partner, Kohlberg);
- vi. [X] (CEO, Nelipak);
- vii. [X] (President, Europe, Nelipak);
- viii. [X] (Controller, Europe, Nelipak); and
- ix. [X] (Group Controller, Nelipak).

- b) The information will only be provided once the Bemis business has received appropriate signed confidentiality undertakings (in a form approved in advance by the CMA) from each of the Kohlberg Business Clean Team to preserve the confidentiality of the information and to use the information only for the purposes specified in this letter;
 - c) In particular, each of the Kohlberg Business Clean Team will undertake not to discuss or otherwise share Bemis business information with any unauthorised individuals or use the information for any purpose other than that specified above;
 - d) The information will only be provided in a format approved in advance by the CMA;
 - e) Firewalls (to be agreed with the CMA) will be put in place to prevent any unauthorised individuals from accessing the information; and
 - f) If the Transaction is prohibited, or relevant remedies accepted in relation to the Transaction, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the Bemis business to which they relate and/or any copies destroyed.
- B. The Initial Order applies to the Kohlberg business, which includes assets, staff and other entities which are unrelated to Nelipak, KNPAK or the Bemis business.
1. 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, the CMA understands that the following entities within the Kohlberg business (the **'Fund Entities'**) hold (and/or may hold from time to time) investments which are entirely unrelated to packaging and subject to the safeguard measures set out below, with effect from 9 August 2019 the CMA therefore consents (subject to the safeguard measures set out in paragraph B3 below), by way of derogation from paragraphs 5(c), 5(e) 5(h), 5(i) and 5(k) of the Initial Order, to any of them disposing of any of their assets, or creating or disposing of any interest in their assets, other than their interests in KNPAK Holdings, LP and/or any of its subsidiaries (including but not limited to Nelipak) and/or the Bemis business:
 - a) Kohlberg;
 - b) Kohlberg Investors VIII, L.P.;
 - c) Kohlberg Investors VIII-B, L.P.;
 - d) Kohlberg Investors VIII-C L.P.;
 - e) Kohlberg TE Investors VIII L.P.;
 - f) Kohlberg TE Investors VIII-B, L.P.; and
 - g) Kohlberg Partners VIII, L.P..
 2. In addition, with effect from 9 August 2019 the CMA consents (subject to the safeguard measures set out in paragraph B3 below) to:

- a) any of the Fund Entities from time to time making changes to their key staff and to them not encouraging their key staff to remain with the Fund Entities; and
 - b) with respect to entities within the Kohlberg business other than KNPAK, KNPAK's subsidiaries and/or the Bemis business, changes to:
 - (i) their organisational structure and/or management responsibilities; and/or
 - (ii) the entity servicing any existing contract.
3. The safeguard measures referred to in paragraphs B1 and B2 above are that none of the Fund Entities may take or do any act or thing (nor omit to take any action) which jeopardises or threatens (or could jeopardise or threaten) the viability of the Bemis business or any of the Bemis Subsidiaries without the prior consent of the CMA.

Yours sincerely