

ACQUISITION BY LIQUI-BOX, INC. OF THE FLEXIBLE AND RIGID PLASTIC PACKAGING BUSINESS OF DS SMITH

Undertakings given by Liqui-Box to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

Whereas:

- (a) Liqui-Box, Inc. (**Liqui-Box**) proposes to acquire entities comprising the flexible and rigid plastic packaging business of DS Smith Holdings Limited (the **Target**) by way of an acquisition of the entire share capital of the Target entities (the **Transaction**) such that Liqui-Box and the Target shall cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 22(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 19 July 2019 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (e) The CMA considers that the undertakings given below by Liqui-Box are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision; and

- (f) Prior to the acceptance of these undertakings by the CMA, Liqui-Box, entered into a legally binding agreement of [date] to divest the Divestment Business as a going concern to a Proposed Purchaser and to enter into the Relevant Arrangements on terms approved by the CMA. This agreement was conditional only on formal CMA approval of the Proposed Purchaser and acceptance by the CMA of these undertakings. This agreement includes a warranty that the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with Liqui-Box and other competitors in the supply of Bag-in-Box for edible fills in the UK.

NOW THEREFORE Liqui-Box hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

1 EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by Liqui-Box, they are accepted by the CMA.

2 DIVESTMENT OF THE DIVESTMENT BUSINESS

- 2.1 Liqui-Box shall ensure that the completion of the divestment of the Divestment Business to the Proposed Purchaser contemplated by the agreement referred to in recital (f) of these undertakings takes place within a period not exceeding [~~30~~] from the date these undertakings take effect. Liqui-Box shall also enter into the Relevant Arrangements with the Proposed Purchaser upon completion of the divestment.
- 2.2 Liqui-Box shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Business.
- 2.3 In the event that Liqui-Box fails to complete the divestment of the Divestment Business in accordance with paragraphs 2.1 and 2.2 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 4 below, require Liqui-Box to divest the Divestment Business as a going concern at no minimum price to a purchaser or purchasers approved by the CMA.

3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT

3.1 For the purposes of the CMA approving a Proposed Purchaser of the Divestment Business in accordance with these undertakings, Liqui-Box shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) the acquisition by the Proposed Purchaser of the Divestment Business, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (b) the Proposed Purchaser is independent of and unconnected to Liqui-Box and the Group of Interconnected Bodies Corporate to which Liqui-Box belongs and any Associated Person or Affiliate of Liqui-Box or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as a viable and active business in competition with Liqui-Box and other competitors in the supply of BiB in the UK from the date of completion of the divestment of the Divestment Business;
- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Proposed Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require Liqui-Box to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser will fulfil the requirements in paragraph 3.1 above.

4 APPOINTMENT OF A TRUSTEE

4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as Liqui-Box has not satisfied, or where the CMA has reasonable grounds for believing that Liqui-Box will not satisfy, all or any part of the

obligation to divest the Divestment Business in accordance with paragraph 2 above.

- 4.2 Within 5 Working Days of the CMA notifying Liqui-Box in writing that it must do so, Liqui-Box shall propose to the CMA for approval:
- (a) the names of at least two individuals to exercise the Trustee Functions; and
 - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 Liqui-Box and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the CMA that, save as required or permitted by the CMA:
- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
 - (b) such nominated individuals are each independent of Liqui-Box and of the Group of Interconnected Bodies Corporate to which Liqui-Box belongs and of any Associated Person or Affiliate of Liqui-Box or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of Liqui-Box, are appropriate to be appointed as Trustee; and
 - (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.
- 4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Liqui-Box and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, Liqui-Box shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.
- 4.5 In the event that:

- (a) Liqui-Box fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by Liqui-Box pursuant to paragraph 4.2 is approved by the CMA; or
- (c) Liqui-Box is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

Liqui-Box shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. Liqui-Box shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, Liqui-Box shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Liqui-Box shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

5 THE MANDATE

5.1 The terms of the mandate proposed by Liqui-Box pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the

Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Business as required by paragraph 6.1 below to a purchaser as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Business;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at Liqui-Box's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

6 FUNCTIONS OF TRUSTEE

6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Business at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.

6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take the following measures in relation to the Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Divestment Business in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
- (b) any other transfer of interests that will take effect with the sale;
- (c) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;

- (d) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (e) the formation or winding up of a company.
- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Business to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Business pursuant to paragraph 6.1 above, the Trustee shall monitor Liqui-Box's compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that Liqui-Box is failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to Liqui-Box to take such steps as may be specified or described in the directions for the purpose of securing Liqui-Box's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Liqui-Box to:
 - (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Business which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that Liqui-Box is failing or will fail to comply with any of its obligations under these undertakings.

6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Liqui-Box nor shall the Trustee Functions be extended or varied in any way by Liqui-Box save with the prior express written consent of the CMA.

7 OBLIGATIONS OF LIQUI-BOX FOLLOWING APPOINTMENT OF TRUSTEE

7.1 Liqui-Box shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

7.2 Liqui-Box shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:

- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6 above; and
- (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

8 REMUNERATION OF TRUSTEE

8.1 Liqui-Box shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

9 INTERIM ACTION

9.1 Pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA, Liqui-Box shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business and in particular ensure that:

- (a) the Divestment Business is carried on separately from the Liqui-Box UK Business and the Divestment Business's separate sales identity is maintained;
- (b) the Divestment Business and the Liqui-Box UK Business are maintained as a going concern and sufficient resources are made available for the development of the Divestment Business and the Liqui-Box UK Business, on the basis of their respective pre-Transaction business plans as applicable;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Divestment Business or the Liqui-Box UK Business;
- (d) the nature, description, range and quality of goods supplied in the UK by each of the Divestment Business and the Liqui-Box UK Business are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the Divestment Business and the Liqui-Box UK Business:
 - (i) all of the assets of the Divestment Business and the Liqui-Box UK Business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Divestment Business or the Liqui-Box UK Business are disposed of; and
 - (iii) no interest in the assets of the Divestment Business or the Liqui-Box UK Business is created or disposed of;
- (f) there is no integration of the information technology of the Divestment Business or Liqui-Box UK Businesses, and the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer lists of the Divestment Business and the Liqui-Box UK Business shall be operated and updated separately and any negotiations with any existing or potential customers in relation to the Divestment Business will be carried out by the Divestment Business alone and for the avoidance of doubt the Liqui-Box UK Business will not negotiate on behalf of the Divestment Business (and vice versa) or enter into any joint agreements with the Divestment Business (and vice versa);
- (h) all existing contracts of the Divestment Business and the Liqui-Box UK Business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to Key Staff of the Divestment Business or Liqui-Box UK Business;
- (j) no Key Staff are transferred between the Divestment Business and the Liqui-Box UK Business;

- (k) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business and the Liqui-Box UK Business; and
- (l) no Confidential Information relating to either of the Divestment Business or the Liqui-Box UK Business shall pass, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or affiliates) to the Liqui-Box UK Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or any steps necessary in order for Liqui-Box to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by Liqui-Box in relation to the Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

9.2 At all times, Liqui-Box will actively keep the CMA informed of any material developments relating to the Divestment Business, which includes, but is not limited to:

- (a) details of Key Staff who leave the Liqui-Box UK Business or the Divestment Business;
- (b) any interruption of the Liqui-Box UK Business or the Divestment Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
- (c) all substantial customer volumes lost by the Divestment Business; and
- (d) substantial changes in the Liqui-Box UK Business's or the Divestment Business's contractual arrangements or relationships with key suppliers.

10 CONTINUED SEPARATION

10.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Business pursuant to these undertakings, Liqui-Box, or any member of the Group of Interconnected bodies Corporate to which Liqui-Box belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) an Interest in the Divestment Business; or
 - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Liqui-Box or of any members of the Group of Interconnected Bodies Corporate to which Liqui-Box belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the normal course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of Liqui-Box or any member of the Group of Interconnected Bodies Corporate to which Liqui-Box belongs for as long as they are an employee or director of Liqui-Box or any member of the Group of Interconnected Bodies Corporate to which Liqui-Box belongs holds or is nominated to any directorship or managerial position in the Divestment Business or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Business without the CMA's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Business or any company or other undertaking carrying on or having control of that Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Liqui-Box or of any member of the Group of Interconnected Bodies Corporate to which Liqui-Box belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above.

10.2 Liqui-Box has agreed a non-solicit undertaking with the Proposed Purchaser, in respect of the customer list which forms part of the Divestment Business.

- 10.3 Liqui-Box has agreed a non-solicit undertaking with the Proposed Purchaser, in respect of the employees who will transfer to the Proposed Purchaser.
- 10.4 Subject to novation of the [X], to the Proposed Purchaser, Liqui-Box undertakes to destroy all copies of the [X], except that Liqui-Box proposes to retain a single copy of the [X] which shall be held by the [X] on a strictly confidential basis, and which shall be retained for compliance purposes, including reference in case of any audit enquiry or legal claim requiring access to the [X].

11 COMPLIANCE

- 11.1 Liqui-Box shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 11.2 Liqui-Box shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
 - (b) investigating potential breaches of the provisions of these undertakings.
- 11.3 Liqui-Box shall procure that any member of the same Group of Interconnected Bodies Corporate as Liqui-Box complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Liqui-Box shall be attributed to Liqui-Box for the purposes of these undertakings.
- 11.4 Where any Affiliate of Liqui-Box is not a member of the same Group of Interconnected Bodies Corporate as Liqui-Box, Liqui-Box shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

12 PROVISION OF INFORMATION

- 12.1 Liqui-Box shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

13 EXTENSION OF TIME LIMITS

- 13.1 The CMA may, in response to a written request from Liqui-Box , or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

14 SERVICE

- 14.1 Liqui-Box hereby authorises Kirkland & Ellis International LLP, whose address for service is 30 St Mary Axe, London, EC3A 8AF, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Liqui-Box, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 14.2 Unless Liqui-Box inform the CMA in writing that Kirkland & Ellis International LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Liqui-Box if it is served on Kirkland & Ellis International LLP; and service shall be deemed to have been acknowledged by Liqui-Box if it is acknowledged by Kirkland & Ellis International LLP or such other nominee.
- 14.3 Paragraph 14.2 above has effect irrespective of whether, as between Liqui-Box and Kirkland & Ellis International LLP or other nominees, Kirkland & Ellis International LLP or other nominees has or continues to have any authority to accept and acknowledge service on Liqui-Box's or any of its respective Subsidiaries' behalf.
- 14.4 No failure or mistake by Kirkland & Ellis International LLP or other nominees (including a failure to notify Liqui-Box of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 14.5 Any communication from Liqui-Box to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

15 EFFECT OF INVALIDITY

- 15.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Liqui-Box undertake to continue to observe the remaining provisions.

16 GOVERNING LAW

- 16.1 Liqui-Box recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 16.2 In the event that a dispute arises concerning these undertakings, Liqui-Box undertakes to submit to the courts of England and Wales.

17 TERMINATION

- 17.1 Liqui-Box recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 17.2 Liqui-Box recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

18 INTERPRETATION

- 18.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 18.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 18.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 18.4 For the purposes of these undertakings:

“the Act” means the Enterprise Act 2002;

“Affiliate” a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

“Associated Person” means a person or persons associated with Liqui-Box within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

[✂]

“business” has the meaning given by section 129(1) and (3) of the Act;

“CMA” means the Competition and Markets Authority or any successor body;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“Control” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“Decision” means the CMA’s decision under section 22 of the Act dated 19 July 2019 in connection with the Transaction;

“Divestment Business” means the assets listed in Schedule 1.

“enterprise” has the meaning given in section 129(1) of the Act;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“Key Staff” means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business or the Liqui-Box UK Business, as the case may be;

“Peak Packaging” means Peak Packaging Limited, a company incorporated in England and Wales (company number 02688073), which has its registered office at Gilmer House, Manners Ave, Ilkeston, Derbyshire, DE7 8EF (or any of its Affiliates);

“Proposed Purchaser” means Peak Packaging or such other proposed purchaser;

“Relevant Arrangements” means the arrangements to be entered into between Liqui-Box and the Proposed Purchaser, as listed in Schedule 2;

“Subsidiary” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“Trustee” means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

“Trustee Functions” means the functions set out in paragraph 6;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Working Day” means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

“Liqui-Box” means Liqui-Box, Inc. a company incorporated and registered in Delaware (company number 5066726), which has its registered office at 1209 Orange Street, Wilmington, DE 19801, USA;

“Liqui-Box UK Business” means the UK BiB business of LB Europe Limited (excluding the Divestment Business) and its Group of Interconnected Bodies Corporate carried on as at the date of these undertakings;

“Target” means the flexible and rigid plastics of DS Smith Holdings including the following legal entities [X];

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

FOR AND ON BEHALF OF LIQUI-BOX

Signature:

Name: Kenneth J. Swanson

Title: CEO of Liqui-Box

Date: 27 September 2019

DATE ACCEPTED BY THE CMA: 27 September 2019

SCHEDULE 1

Divestment Business assets

Divestment Business assets include:

- BiB manufacturing equipment, specifically three BiB production lines currently installed at Liqui-Box's Wythenshawe facility (M1, M5 and M11), which are used to supply the beverages, wine, food and dairy end use segments in the UK;
- Injection moulding and fitment assembly equipment comprising: (i) B2S gland and cap tool, (ii) E210 gland and cap tooling, (iii) wine spout and tap tooling, (iv) one gland cap assembly machine; (v) one wine tap assembly machine and (vi) four moulding machines;
- A customer list for Liqui-Box's UK BiB customers in all end use segments, together with appropriate contact details;
- Liqui-Box will make best efforts to assist with these customer transfers, by engaging with these customers, taking part in customer visits as required, to reassure customers that there will be a smooth transition to the Proposed Purchaser; and
- Manufacturing knowhow for BiB, including product specifications, quality testing criteria and information regarding machine settings for manufacturing and training on the operation of the equipment for divestment; and
- [✂].

SCHEDULE 2

Relevant Arrangements

Relevant Arrangements include:

- An arm's length supply agreement in respect of the fitments used to supply BiB to [X], subject to [X] consent an ownership interest in the relevant moulds [X], as well as the transfer of any IP owned by Liqui-Box in these fitments;
- An arm's length supply agreement in respect of the bulk BiB products sold currently by Liqui-Box to [X], and a non-exclusive license to use relevant IP owned by Liqui-Box;
- An arm's length supply agreement in respect of the fitments used to supply BiB to [X], and a non-exclusive licence to use relevant IP owned by Liqui-Box;
- An agreement for the transitional supply of fitments used on the divested production lines to the Proposed Purchaser; and
- A transitional services agreement ("TSA") governing the transitional operation of the divested production lines by Liqui-Box from the Wythenshawe facility whilst the "lift and lay" to the Proposed Purchaser's facility remains underway and also the supply of BiB inventory and raw materials, during the transitional period.
 - To ensure an orderly transition of the Business Assets to the Proposed Purchaser, Liqui-Box has agreed to provide or procure the provision of certain services to the Proposed Purchaser on a transitional basis for a limited period after closing of the divestment.
 - Under the TSA, the Proposed Purchaser will, to the extent it receives the same from UK BiB customers, provide Liqui-Box with a written rolling forecast (updated on a monthly basis) specifying the quantity and type of products that the Proposed Purchaser wishes to order as part of the transitional services.
 - Liqui-Box will provide the Proposed Purchaser with historic forecasts for the products in relation to the UK BiB Customers for the three months prior to the closing date.
 - Liqui-Box will acquire raw materials based on the rolling forecasts provided by the Proposed Purchaser.
 - Liqui-Box will hold certain Spare Parts relating exclusively to the divested BiB production lines during the transitional period and it is

intended that these Spare Parts will transfer to the Proposed Purchaser at the end of the transitional period.