

## **COMPLETED ACQUISITION BY RENTOKIL INITIAL PLC OF MPCL LIMITED (FORMERLY MITIE PEST CONTROL LTD)**

### **Directions issued on 23 August 2019 pursuant to paragraph 11 of the Undertakings in Lieu of Reference accepted by the Competition and Markets Authority from Rentokil Initial plc on 22 August 2019**

As a result of documents executed on 29 and 30 September 2018, Rentokil Initial PLC (**Rentokil Initial**) acquired the pest control business of MPCL Limited (**MPCL**), formerly known as Mitie Pest Control Limited (the **Merger**).

On 9 October 2018, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order addressed to Rentokil Initial in accordance with section 72(2) of the Enterprise Act 2002 (the **Act**) to prevent pre-emptive action, as varied on 13 December 2018 (**IEO**). On 18 December 2018, the CMA issued directions under paragraph 10 of the IEO (**Directions**) that, for the purposes of securing compliance with the IEO, Rentokil Initial was required to appoint a monitoring trustee in accordance with the terms provided for in those Directions.

On 12 April 2019, the CMA decided under section 22(1) of the Act that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

On 23 April 2019, Rentokil Initial offered undertakings in lieu of reference (**UILs**) to the CMA for the purposes of section 73(2) of the Act. On 30 April 2019, the CMA gave notice to Rentokil Initial, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering Rentokil Initial's offer.

On 22 August 2019, the CMA announced that it had decided to accept the UILs. Paragraph 9 of the UILs requires Rentokil Initial to minimise as far as possible any risk of loss of competitive potential of the Divestment Business under the UILs and imposes a number of specific obligations on Rentokil Initial, subject to the same derogations as already granted by the CMA pursuant to the IEO.

The CMA now issues written directions under paragraph 11 of the UILs that, for the purposes of securing compliance with the UILs, Rentokil Initial must appoint a

monitoring trustee in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Lasse Burmester  
Assistant Director, Mergers  
Competition and Markets Authority  
23 August 2019

## **Annex**

### **Directions to appoint a monitoring trustee**

#### **Interpretation**

**‘the Act’** means the Enterprise Act 2002;

**‘CMA’** means the Competition and Markets Authority;

**‘MT’** means the monitoring trustee appointed in accordance with paragraphs 2 to 4 below;

**‘the Divestment business’** means the Divestment Business as defined in the UILs which Rentokil Initial agreed to sell to ServiceMaster pursuant to a legally binding agreement dated 20 August 2019;

**‘MPCL’** means MPCL Limited, Company number 03173779, Riverbank Meadows Business Park, Blackwater, Camberley, Surrey, England, GU17 9AB;

**‘the MPCL business’** means the business of MPCL and its subsidiaries carried on as at 22 August 2019;

**‘Parties’** means Rentokil Initial, MPCL and their subsidiaries;

**‘ServiceMaster’** means SVM Finance Luxembourg 2 SARL;

**‘Rentokil Initial’** means Rentokil Initial plc, Company number 05393279, Riverbank Meadows Business Park, Blackwater, Camberley, Surrey, England, GU17 9AB;

**‘the Rentokil Initial business’** means the business of Rentokil Initial and its subsidiaries but excluding the MPCL business, carried on as at 22 August 2019; and

**‘UILs’** means the undertakings in lieu of reference offered by Rentokil Initial and accepted by the CMA on 22 August 2019.

Terms and expressions defined in the UILs have the same meaning in these directions, unless the context requires otherwise.

#### **Appointment**

1. Rentokil Initial must appoint a MT in order to ensure compliance with the UILs, in particular to:
  - a. monitor and report to the CMA on compliance by the Parties with the UILs; and

- b. support the CMA taking any action which may be required to ensure compliance with the UILs.
2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
3. Rentokil Initial and MPCL must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Rentokil Initial and MPCL as set out in these directions.

## General

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Rentokil Initial shall remunerate and reimburse the MT 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 MT's independence or ability to effectively and properly carry out his or her functions.
7. Rentokil Initial must appoint the MT as soon as is reasonably practicable and in any event by **28 August 2019** and the MT will continue to act either until the completion of the divestment of the Divestment Business in accordance with paragraph 2.2 and 2.3 of the UILs or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by Rentokil Initial is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
  - a. the name of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by **27 August 2019**;
  - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **27 August 2019**; and
  - c. once the MT has been approved by the CMA and appointed, Rentokil Initial must provide the CMA with a copy of the agreed terms and conditions of appointment.

## **Functions**

9. The functions of the MT will be to:
  - a. ascertain and report to the CMA in relation to the current level of compliance by Rentokil Initial and its subsidiaries with the UILs;
  - b. assess and report to the CMA in relation to the arrangements made by Rentokil Initial for compliance with the UILs and what changes to those arrangements, if any, are necessary to ensure compliance with the UILs, if required;
  - c. identify and supervise if necessary the arrangements made by Rentokil Initial for ensuring compliance with the UILs;
  - d. monitor compliance by Rentokil Initial and its subsidiaries with the UILs; and
  - e. without prejudice to the right of Rentokil Initial and MPCL to contact the CMA, respond to any questions which Rentokil Initial and MPCL may have in relation to compliance with the UILs, in consultation with the CMA.
10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Rentokil Initial business and the MPCL business to the extent that any such communications may relate in any way to the Divestment Business, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Rentokil Initial with the UILs.

## **Obligations of Rentokil Initial**

12. Rentokil Initial and its employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
  - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Rentokil Initial business and the MPCL business as the MT may reasonably require; and

- b. the provision of such office and supporting facilities as the MT may reasonably require.
- 13. If the Rentokil Initial business or the MPCL business are in any doubt as to whether any action or communication would infringe the UILs, they are required to contact the MT for clarification.
- 14. If Rentokil Initial has any reason to suspect that the UILs may have been breached, it must notify the MT and the CMA immediately.

### **Reporting functions**

- 15. The MT is required to provide an initial report to the CMA no later than 6 September 2019, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the UILs, and including among other things:
  - a. details of the current extent of compliance with the UILs;
  - b. a description of the current arrangements made for the operation of the Divestment business as part of the MPCL business and for the preservation of the assets required to operate the Divestment business; and
  - c. recommendations as to what changes to those arrangements, if any, are necessary, particularly whether a hold separate manager should be hired to manage the Divestment business.
- 16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, Rentokil Initial and its subsidiaries have complied with the UILs. At the same time, the MT must provide the CMA with a report setting out the following:
  - a. the basis for the MT's view that the UILs has or has not, as the case may be, been complied with and in particular whether:
    - i. anything has caused him or her to be concerned as to whether Rentokil Initial and its subsidiaries have complied with the UILs, and if it has, whether those concerns have been resolved and why;
    - ii. he or she has any remaining doubts or uncertainties as to whether Rentokil Initial and its subsidiaries have complied with the UILs; and

- iii. anything that causes him or her to be concerned about a possible future breach of the UILs (whether deliberate or inadvertent);
  - b. details of the performance of the Divestment business as part of the MPCL business, including any factors that might indicate asset deterioration;
  - c. whether appropriate steps are being taken to maintain the Divestment business as a going concern;
  - d. the extent to which Rentokil Initial and its subsidiaries have cooperated with the MT in his or her task of monitoring its compliance with the UILs and details of any aspects of the cooperation of Rentokil Initial that he or she considers could be improved;
  - e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Rentokil Initial and its subsidiaries with the UILs and if there is anything that the MT considers would assist him or her in monitoring compliance;
  - f. the information he or she used to compile the report.
17. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which Rentokil Initial would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Rentokil Initial to produce any information or documents to the MT which are privileged.
18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the UILs has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 18 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 16 and 17) are confidential and should not be disclosed to Rentokil Initial or to MPCL, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.