

## **ACQUISITION BY ARAGORN PARENT CORPORATION OF OVERDRIVE HOLDINGS, INC.**

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

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in KKR & Co. Inc., Aragorn Parent Corporation and OverDrive Holdings, Inc. (**OverDrive**) ceasing to be distinct (the **Merger**);
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 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 decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to KKR & Co. Inc. (**KKR**); KKR Management LLP; KKR Group Holdings Corp.; KKR Group Partnership L.P.; KKR Americas Fund XII L.P.; KKR Americas Fund XII (EEA) L.P.; KKR Americas Fund XII ESC (Unlev) L.P.; KKR Americas Fund XII ESC (Lev) L.P.; KKR Americas Fund XII SBS Aggregator L.P.; KKR Partners IV L.P.; KKR Gatsby Aggregator L.P.; KKR Gatsby Aggregator GP LLC (collectively **KKR Group**); Opuspond Limited (**Opuspond**),) and Aragorn Parent Corporation (**Aragorn**) (**Order**).

## **Commencement, application and scope**

1. This Order commences on the commencement date: being the date of completion of the Merger.
2. This Order applies to KKR Group, Opuspond and Aragorn.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige KKR Group, Opuspond or Aragorn to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order does not prohibit the completion of the transaction provided that KKR Group, Opuspond and Aragorn observe the restrictions set out below.

## **Management of the KKR and OverDrive businesses until determination of proceedings**

5. Except with the prior written consent of the CMA, KKR Group, Opuspond and Aragorn shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the OverDrive business with the KKR business;
  - (b) transfer the ownership or control of the KKR business or the OverDrive business or any of their subsidiaries; or
  - (c) otherwise impair the ability of the OverDrive business or the KKR business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, KKR Group, Opuspond and Aragorn shall at all times during the specified period procure that, except with the prior written consent of the CMA:
  - (a) the OverDrive business is carried on separately from the KKR business and the OverDrive business's separate sales or brand identity is maintained;
  - (b) the OverDrive business and the KKR business are maintained as a going concern and sufficient resources are made available for the development

of the OverDrive business and the KKR business, on the basis of their respective pre-merger business plans;

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

- (k) all reasonable steps are taken to encourage all key staff to remain with the OverDrive business and the KKR business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the OverDrive business (or any of its employees, directors, agents or affiliates) to the KKR business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

## **Compliance**

- 7. KKR Group, Opuspond and Aragorn shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 8. KKR Group, Opuspond, Aragorn and OverDrive shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by KKR Group, Opuspond, Aragorn and OverDrive and their subsidiaries with this Order. In particular, on the date two weeks after the commencement date of the Order and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of KKR Group, Opuspond and Aragorn and the Chief Executive Officer of OverDrive or other persons of KKR Group, Opuspond, Aragorn and OverDrive as agreed with the CMA shall, on behalf of each of KKR Group, Opuspond, Aragorn and OverDrive, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
- 9. At all times, KKR Group, Opuspond and Aragorn shall, or shall procure that OverDrive shall, each actively keep the CMA informed of any material developments relating to the OverDrive business or the KKR business, which includes but is not limited to:
  - (a) details of key staff who leave or join the OverDrive business or the KKR business;

- (b) any interruption of the OverDrive or KKR 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 won or lost or substantial changes to the customer contracts for the OverDrive or KKR business including any substantial changes in customers' demand; and
  - (d) substantial changes in the OverDrive or KKR business's contractual arrangements or relationships with key suppliers.
10. If KKR Group, Opuspond, Aragorn or OverDrive has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that KKR Group, Opuspond, Aragorn or OverDrive may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. KKR Group, Opuspond and Aragorn shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## **Interpretation**

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

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

**'an affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**'Aragorn'** means Aragorn Parent Corporation, a company with registered number 7760546 (Delaware, US), registered offices at 9 West 57th Street, Suite 4200, New York, NY 10019, US;

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

**'commencement date'** means the date of completion;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**'the decisions'** means the decisions of the CMA on the questions which it is required to answer by virtue of sections 35 or 36 of the Act;

**'key staff'** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**'KKR'** means KKR & Co. Inc., a company registered in Delaware (US) with registered number 4378294 (Delaware, US), registered offices at 9 West 57th Street, Suite 4200, New York, NY 10019, US;

**'the KKR business'** means: the business of KKR Gatsby Aggregator L.P. and its subsidiaries, (including, but not limited to Opuspond and Aragorn and their subsidiaries) carried on as at the commencement date and for the avoidance of doubt excludes the OverDrive business;

**'Opuspond'** means Opuspond Limited, a company with registered number 08841284 (England and Wales), registered offices at Unit 5 St George's House, Rearsby Business Park Gaddesby Lane, Rearsby, Leicester, LE7 4YH, UK.

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods and/or services by the OverDrive business or the KKR business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the OverDrive business and the KKR business;

**'OverDrive'** means OverDrive Holdings, Inc., a company with registered number 4874100 (Delaware, US), registered offices at One OverDrive Way, Cleveland, OH 44125, US;

**'the OverDrive business'** means the business of OverDrive and its subsidiaries carried on as at the commencement date;

**'specified period'** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'the transaction'** means the transaction by which KKR, Aragorn and OverDrive will cease to be distinct within the meaning of section 23 of the Act;

**'the two businesses'** means the KKR business and the OverDrive business;

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

Karina Kucaidze

Assistant Director, Mergers

## Compliance statement for KKR Group/Opuspond/Aragorn

I [insert name] confirm on behalf of KKR Group/Opuspond/Aragorn that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) KKR Group/Opuspond/Aragorn has complied with the Order made by the CMA in relation to the transaction on 8 June 2020 (the Order).
  - (b) KKR Group's/Opuspond's/Aragorn's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by KKR Group that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the OverDrive business with the KKR business;
    - (ii) transfer the ownership or control of the KKR business or the OverDrive business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the OverDrive business or the KKR business to compete independently in any of the markets affected by the transaction.
  - (b) The OverDrive business has been carried on separately from the KKR business and the OverDrive business's separate sales or brand identity has been maintained.
  - (c) The OverDrive business and the KKR business have been maintained as a going concern and sufficient resources have been made available for the development of the OverDrive business and the KKR business, on the basis of their respective pre-merger business plans.
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the OverDrive business or the KKR business, except in the ordinary course of business.



- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the OverDrive business and the KKR business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the OverDrive business and the KKR business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the OverDrive business or the KKR business have been disposed of; and
  - (iii) no interest in the assets of the OverDrive business or the KKR business has been created or disposed of.
- (g) There has been no integration of the information technology of the OverDrive or KKR businesses, and the software and hardware platforms of the OverDrive business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the OverDrive business have been carried out by the OverDrive business alone and, for the avoidance of doubt, the KKR business has not negotiated on behalf of the OverDrive business (and vice versa) or entered into any joint agreements with the OverDrive business (and vice versa).
- (i) All existing contracts of the OverDrive business and the KKR business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the OverDrive business or the KKR business.
- (k) No key staff have been transferred between the OverDrive business and the KKR business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the OverDrive business and the KKR business.

(m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the OverDrive business (or any of its employees, directors, agents or affiliates) to the KKR business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the OverDrive business or the KKR business;
- (ii) interruptions of the OverDrive business or the KKR business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the OverDrive business or the KKR business; or
- (iv) substantial changes in the OverDrive or KKR business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. KKR Group/Opuspond/Aragorn and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the OverDrive or the KKR business in accordance with paragraph 9 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

### **I understand that:**

It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fines, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF KKR GROUP

Signature .....

Name .....

Title .....

Date .....

FOR AND ON BEHALF OF OPUSPOND

Signature .....

Name .....

Title .....

Date .....

FOR AND ON BEHALF OF ARAGORN

Signature .....

Name .....

Title .....

Date .....

## Compliance statement for OverDrive

I [insert name] confirm on behalf of OverDrive that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) OverDrive has complied with the Order made by the CMA in relation to the transaction on 8 June 2020 (the Order).
  - (b) OverDrive's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by OverDrive that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the OverDrive business with the KKR business;
    - (ii) transfer the ownership or control of the KKR business or the OverDrive business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the OverDrive business or the KKR business to compete independently in any of the markets affected by the transaction.
  - (b) The OverDrive business has been carried on separately from the KKR business and the OverDrive business's separate sales or brand identity has been maintained.
  - (c) The OverDrive business and the KKR business have been maintained as a going concern and sufficient resources have been made available for the development of the OverDrive business and the KKR business, on the basis of their respective pre-merger business plans.
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the OverDrive business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the OverDrive business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the OverDrive business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the OverDrive business have been disposed of; and
  - (iii) no interest in the assets of the OverDrive business has been created or disposed of.
- (g) There has been no integration of the information technology of the OverDrive or KKR businesses, and the software and hardware platforms of the OverDrive business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the OverDrive business have been carried out by the OverDrive business alone and, for the avoidance of doubt, the KKR business has not negotiated on behalf of the OverDrive business (and vice versa) or entered into any joint agreements with the OverDrive business (and vice versa).
- (i) All existing contracts of the OverDrive business and the KKR business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the OverDrive business.
- (k) No key staff have been transferred between the OverDrive business and the KKR business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the OverDrive business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the OverDrive business (or any of its employees, directors, agents or affiliates) to the KKR business (or any of its employees, directors, agents or affiliates), or vice versa.

- (n) Except as listed in paragraph (o) below, there have been no:
- (i) key staff that have left or joined the OverDrive business;
  - (ii) interruptions of the OverDrive business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the OverDrive business; or
  - (iv) substantial changes in the OverDrive business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. OverDrive and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the OverDrive or the KKR business in accordance with paragraph 9 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

### **I understand that:**

It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fining, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or

controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF OVERDRIVE

Signature .....

Name .....

Title .....

Date .....