

Draft Enterprise Act 2002 Undertakings

Anticipated acquisition by Gardner Aerospace Holdings Limited of Impcross Limited

Undertakings given to the Secretary of State for Business, Energy and Industrial Strategy

By

Gardner Aerospace Holdings Limited, a company incorporated and registered in England and Wales with Company Number 07978111 whose registered office is at United 9 Victory Park, Victory Road, Derby, DE24 8ZF (“Gardner Aerospace”).

Whereas:

- (a) On the 5th December 2019 the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) issued a public intervention notice (“the intervention notice”) to the Competition and Markets Authority (“CMA”) under section 42 of the Enterprise Act 2002 (the “Act”) in relation to the proposed acquisition by Gardner Aerospace Holdings Limited (Gardner Aerospace) of the entire issued and to be issued ordinary share capital of Impcross Limited (Impcross) (the “Transaction”).
- (b) On the 2nd March 2020, the CMA reported to the Secretary of State in accordance with section 44(2) of the Act, which was within the period specified by the Secretary of State. The report contained the CMA’s conclusions on the jurisdictional and competition aspects of the Transaction and summarised representations received by it relating to the national security public interest consideration specified in the intervention notice.
- (c) The Secretary of State has the power to refer the Transaction under section 45(5) of the Act to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 or may, instead of making such a reference, accept undertakings in lieu under paragraph 3 of Schedule 7 to the Act.
- (d) On the 30th March 2020 Gardner Aerospace informed the Secretary of State that it no longer intended to progress any exploratory conversations with Impcross and on 17th April 2020 further indicated that it was no longer pursuing the Transaction.
- (e) The Secretary of State considers the undertakings given by Gardner Aerospace are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act which may be expected to result from the creation of the relevant merger situation and the Secretary of State shall in consequence not make a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (f) The Secretary of State made the Public Interest Merger Reference (Gardner Aerospace Holdings Ltd.) and Impcross Ltd) (Pre-emptive Action) Order 2019 (S.I.

2019/1490)(“the Order”) in respect of the Transaction pursuant to sections 86(1) and (3), 87(1) and (3), and 124(2)(b) of and paragraph 2(2) of Schedule 7 to, the Act. Pursuant to paragraph 2(9) of Schedule 7 to the Act, this Order ceases to be in force on the acceptance by the Secretary of State of the undertakings given below by Gardner Aerospace.

Gardner Aerospace therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this relevant merger situation.

1. Commencement

1.1 The Undertakings shall come into force on the Commencement Date.

2. Undertaking not to acquire shares

2.1 Gardner Aerospace undertakes that within the Prohibition Period it will not itself nor through any subsidiary, affiliate or associated person, directly or indirectly, acquire any shares in Impcross without the prior written consent of the Secretary of State.

3. Undertaking not to enter into arrangements with similar effects

3.1 Except with the prior written consent of the Secretary of State, Gardner Aerospace undertakes that it will not during the Prohibition Period enter into any agreement or arrangement that would have similar effect to the acquisition, directly or indirectly, by Gardner Aerospace itself or through any subsidiary, affiliate or associated person, of any shares in Impcross.

[B]

4. Undertaking to provide notice of any discussions after the Prohibition Period

4.1 Gardner Aerospace undertakes to notify the Secretary of State before commencing any discussions with Impcross regarding any future arrangements for Gardner Aerospace or any subsidiary, affiliate or associated person to acquire shares in Impcross within a period of One (1) years following the end of the Prohibition Period.

4.2 Any notice provided pursuant to paragraph 4.1 is -

(i) to be provided by email, in the English language, to: [EMAIL ACCOUNT].

(ii) to be given no less than two calendar weeks before any discussions commence.]

5. Compliance

- 5.1 Gardner Aerospace undertakes to comply with these Undertakings.
- 5.2 Gardner Aerospace undertakes to procure that its subsidiaries, affiliates and associated persons comply with these Undertakings.
- 5.3 Gardner Aerospace shall provide promptly to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under sections 92 and 94(6) of the Act.
- 5.4 Gardner Aerospace shall provide promptly to the Secretary of State such information as the Secretary of State may reasonably require for the purpose of performing any of his functions under these Undertakings or under section 94(8) of the Act.

6. Directions

- 6.1 The Secretary of State may give directions falling within paragraph 6.2 to:
 - (a) a person specified in the directions; or
 - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- 6.2 Directions fall within this paragraph if they are directions:
 - (a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with these Undertakings; or
 - (b) to do, or refrain from doing, anything so specified or described which the person might be required by these Undertakings to do or refrain from doing. The Secretary of State may vary or revoke any directions so given.
- 6.3 Gardner Aerospace undertakes to comply with such written directions as the Secretary of State may from time to time (acting reasonably) issue in so far as such steps are within its competence.

7. Governing law

- 7.1 These Undertakings shall be governed by and construed in all respects in accordance with English law.
- 7.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

8. Effect of invalidity

8.1 Should any provision of these Undertakings be contrary to law or invalid for any reason, Gardner Aerospace undertake to continue to observe the remaining provisions.

9. Termination and variation

9.1 These Undertakings shall be in force until such time as they are varied superseded or released under the Act or for the period of two (2) years commencing on the Commencement Date, whichever is the earlier.

9.2 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.

9.3 For the avoidance of doubt, nothing in these Undertakings affects the rights of Gardner Aerospace to make a request to the Secretary of State for variation of these Undertakings.

10. Interpretation

10.1 For the purposes of these Undertakings, the following definitions apply:

Act	means the Enterprise Act 2002
Affiliate	means a person who would be regarded as under common control for the purposes of section 26 of the Act;
Associated Person	means a person who would be treated as associated with another person by section 127(4) of the Act;
Commencement Date	means the date on which these Undertakings are accepted by the Secretary of State;
Gardner Aerospace	means Gardner Aerospace Holdings Limited, a company incorporated and registered in England and Wales with Company Number 07978111 whose registered office is at United 9 Victory Park, Victory Road, Derby, DE24 8ZF.
Impcross	Impcross Limited, a company incorporated and registered in England and Wales with Company Number 02909757, whose registered office is at

Staverton Court, Staverton, Cheltenham,
Gloucestershire, GL51 0UX.

Prohibition Period

means the period of One (1) years commencing on the Commencement Date.

Secretary of State

means the Secretary of State for Business, Energy and Industrial Strategy from time to time.

Shares

means certificates or book entries representing units of ownership in a company and any reference to a share or shares or shareholder shall also be taken to refer to a Quota, Quotas or Quotaholder.

Subsidiary

has the meaning given to it by Section 1159 of the Companies Act 2006.

Signed

For and on behalf of Gardner Aerospace