

ACQUISITION BY DYE & DURHAM (UK) LIMITED OF TM GROUP (UK) LIMITED

Variation Order made by the Competition and Markets Authority pursuant to section 72(4)(b) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) imposed an initial enforcement order pursuant to section 72(2) of the Act in relation to the completed acquisition by Dye & Durham Limited (**D&D**) of TM Group (UK) Limited (**TMG**) on 27 August 2021 (the **Initial Enforcement Order**); and
- (b) the CMA considers that it is appropriate to vary the Initial Enforcement Order.

For the purpose of varying the Initial Enforcement Order, the CMA hereby makes the following order pursuant to section 72(4)(b) of the Act, addressed to D&D, Dye & Durham (UK) Limited (**D&D UK**) and TMG (the **Variation Order**).

Annex A to the Initial Enforcement Order is varied in accordance with the version contained in the **Annex** to this Variation Order (with changes highlighted in track).

This order comes into force on **30 September 2021**.

Signed,

Alex Knight
Assistant Director, Remedies, Business and Financial Analysis
30 September 2021

ANNEX TO THE VARIATION ORDER

Annex A

Compliance statement for D&D/D&D UK

I [insert name] confirm on behalf of D&D/D&D UK that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) D&D/D&D UK has complied with the Order made by the CMA in relation to the transaction on 27 August 2021 (the **Order**).
 - (b) D&D/D&D UK's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by D&D/D&D UK that might prejudice a reference of the transaction under section 22 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 TMG business with the D&D/D&D UK business;
 - (ii) transfer the ownership or control of the D&D/D&D UK business or the TMG business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the TMG business or the D&D/D&D UK business to compete independently in any of the markets affected by the transaction.
 - (b) The TMG business has been carried on separately from the D&D/D&D UK business and the TMG business' separate sales or brand identity has been maintained.
 - (c) The TMG business and the D&D/D&D UK business have been maintained as a going concern and sufficient resources have been made available for the development of the TMG business and the D&D/D&D UK 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 TMG business or the D&D/D&D UK business, except in the ordinary course of business.
- (e) The nature, description, range and quality of product and/or services supplied in the UK by the TMG business and the D&D/D&D UK 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 TMG business and the D&D/D&D UK 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 TMG business or the D&D/D&D UK business have been disposed of; and
 - (iii) no interest in the assets of the TMG business or the D&D/D&D UK business has been created or disposed of.
- (g) There has been no integration of the information technology of the TMG or D&D/D&D UK businesses, and the software and hardware platforms of the ~~D&D/D&D UK~~ TMG 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 TMG business have been carried out by the TMG business alone and, for the avoidance of doubt, the D&D/D&D UK business has not negotiated on behalf of the TMG business (and vice versa) or entered into any joint agreements with the TMG business (and vice versa).
- (i) All existing contracts of the TMG business and the D&D/D&D UK 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 TMG business or the D&D/D&D UK business.
- (k) No key staff have been transferred between the TMG business and the D&D/D&D UK business.

- (l) All reasonable steps have been taken to encourage all key staff to remain with the TMG business and the D&D/D&D UK 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 TMG business (or any of its employees, directors, agents or affiliates) to the D&D/D&D UK 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 TMG business or the D&D/D&D UK business;
 - (ii) interruptions of the TMG business or the D&D/D&D UK 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 TMG business or the D&D/D&D UK business; or
 - (iv) substantial changes in the TMG or D&D/D&D UK business' contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. D&D/D&D UK and its subsidiaries remain in full compliance with the Order and will, or will procure that TMG, continue actively to keep the CMA informed of any material developments relating to the TMG or the D&D/D&D UK business in accordance with paragraph 8 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 D&D/D&D UK

Signature

Name

Title

Date