

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

Consent under section 72(3C) of the Enterprise Act 2002 (the ‘Act’) to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (‘CMA’) on 27 August 2021

Completed acquisition by Dye & Durham Limited, through its subsidiary Dye & Durham (UK) Limited, of TM Group (UK) Limited (the ‘Merger’)

Dear [X],

We refer to your submissions of 13 and 27 October 2021 and 4, 8 and 15 November 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 27 August 2021 (as varied on 30 September 2021, the ‘**Initial Order**’). Unless otherwise stated, the terms defined in the Initial Order and the derogations granted on 26 October 2021 have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Dye & Durham Limited (‘**D&D**’) and Dye & Durham (UK) Limited (‘**D&D UK**’) are required to hold separate the D&D business from the TM Group (UK) Limited (‘**TMG**’) business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, D&D and TMG may carry out the following actions, in respect of the specific paragraphs of the Initial Order:

1. Paragraphs 5(a), 5(e)(iii) and 5(l) of the Initial Order

D&D submits that on 7 October 2021, it entered into a refinancing arrangement with Ares Capital Corporation and Ares Capital Management LLC (together ‘**Ares**’) involving the provision of a new committed senior secured credit facility (the ‘**New Facility**’) and that the respective credit agreement will be executed shortly (the ‘**New**

Facility Agreement'). D&D also submits that under the New Facility, D&D, including the TMG business, will be jointly and severally liable for servicing the debt which will be secured by guarantees and a first charge over substantially all of D&D's assets, including the TMG business. D&D further submits that the New Facility will require funds to flow from the TMG business to the D&D business. In addition, D&D submits that to enable Ares and the lenders (the '**Lenders**') to ensure that D&D is complying with its obligations under the New Facility, D&D will require access to certain confidential information of the TMG business. This information is limited to (i) certain financial information of the TMG business, on a quarterly basis, enabling the Lenders to determine the value of the TMG business and how much of D&D's consolidated EBITDA is represented by the TMG business (the '**Specified Financial Information**'), and (ii) certain non-financial information of the TMG business to enable the Lenders to take security over the assets of the TMG business (the '**Specified Non-Financial Information**'). Templates for the Specified Financial Information and for the Specified Non-Financial Information are provided in Annex 1 and Annex 2.

D&D is therefore seeking CMA consent to permit:

- (a) the transfer of funds between TMG and D&D in order to service the New Facility;
- (b) the granting of guarantees in relation to the New Facility by D&D and TMG;
- (c) the creation and/or perfection by D&D and/or the TMG of any and all security interests granted and/or required under the New Facility between (among others) D&D, TMG and Ares in relation to the provision of funding to the D&D Group;
- (d) D&D to receive, on a quarterly basis, the Specified Financial Information from TMG as outlined in Annex 1, and incorporate it within its New Facility calculations to share with the Lenders for the purposes of providing the Lenders with oversight of D&D's compliance with its obligations under the New Facility; and
- (e) D&D to receive the Specified Non-Financial Information from TMG as outlined in Annex 2 and incorporate it within D&D's non-financial information to share with the Lenders. D&D submits that the Lenders require access to this information in order to take security over D&D's assets.

Based on D&D's representations, the CMA consents to a derogation from paragraphs 5(a), 5(e)(iii) and 5(l) of the Initial Order to permit the above-mentioned actions, strictly on the basis that:

- (a) The actions described in paragraphs (a) to (e) above are strictly necessary to ensure that the viability and competitive capability of the TMG business is maintained.
- (b) The final version of the New Facility Agreement:
 - i. will not in any way restrict D&D (including for the avoidance of doubt D&D UK) and TMG ability to divest all or a portion of the TMG business or any portion of D&D's other businesses, in each case, to the extent necessary either (1) as part of a voluntary offer by way of undertakings in lieu of reference to a Phase 2 pursuant to section 73 of the Act or (2) in order to comply with any order made by the CMA at Phase 2 under sections 41 and 84 of the Act to remedy any competition concerns identified;
 - ii. in an event of default, D&D (including for the avoidance of doubt D&D UK) will be entitled to dispose of the TMG business, or any TMG assets, with any security over the TMG assets being unconditionally released by the Lenders upon disposal;
 - iii. will not impede or in any way interfere with the strategic, commercial, or operational decision-making ability of the TMG business; and
 - iv. will not include any other provisions that give rise to a risk of pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decisions on a reference.
- (c) Any funds transferred from the TMG business to the D&D business:
 - i. shall not exceed the amounts strictly necessary to service TMG's debt service under the New Facility; and
 - ii. shall not service the debt service costs owned by the D&D business under the New Facility (without the prior written consent of the CMA).

- (d) The debt service costs payable by the TMG business do not undermine the TMG business' ability to pursue its pre-Merger business plan.
- (e) The terms of the funding being provided by D&D to TMG under the New Facility are at least as favourable as the terms of the financing which TMG received prior to the Merger. TMG information provided to D&D for the purposes of this derogation will be limited to the Specified Financial Information and the Specified Non-Financial Information listed in Annex 1 and Annex 2.
- (f) The Specified Financial Information and the Specified Non-Financial Information will only be provided to the authorised individuals listed in Annex 3 (the '**Authorised Individuals**') for whom it is strictly necessary to see the Specified Financial Information and the Specified Non-Financial Information, and whom do not hold commercial or strategic roles within the D&D business
- (g) The Authorised Individuals listed in Annex 3 shall enter into non-disclosure agreements in a form approved by the CMA. D&D and TMG shall submit to the CMA a summary of the Specified Financial Information and Specified Non-Financial Information shared with the Authorised Individuals listed in Annex 3, at the CMA's request.
- (h) IT firewalls and/or other ring-fencing measures have been put in place to prevent any unauthorised individuals within the D&D business from accessing the Specified Financial Information and the Specified Non-Financial Information shared with the Authorised Individuals listed in Annex 3 for the purposes of this derogation.
- (i) D&D will make sure that its Lenders (to whom it will provide the Specified Financial Information and the Specified Non-Financial Information) are aware of the terms on which the information has been provided to D&D and that the Specified Financial Information and the Specified Non-Financial Information must not be provided to any individual other than in compliance with the Initial Order and this derogation.
- (j) No changes to the Authorised Individuals listed in Annex 3 are permitted without the prior written consent of the CMA (including via email).

- (k) Should the Merger be prohibited or D&D is required or decide to divest all, or part of the TMG business, D&D will ensure that any record or copies (electronics or otherwise) or business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from TMG for the purposes of this derogation will be returned to the TMG business and any copies destroyed, except to the extent that record retention is required by law or regulation.

Yours sincerely,

Alex Knight
Assistant Director, Remedies, Business and Financial Analysis
23 November 2021

Annex 1: Template for sharing Specified Financial Information

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Annex 2: Template for sharing Specified Non-Financial Information

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Annex 3: Authorised Individuals

Name	Position
[X]	CFO
[X]	VP Finance
[X]	Director of Finance
[X]	Finance Manager
[X]	Director of Finance Integrations