

COMPLETED ACQUISITION BY ENERGYSTORE LIMITED OF WARMFILL LIMITED

Directions issued on 5 January 2022 pursuant to paragraph 10 of the Initial Enforcement Order imposed by the Competition and Markets Authority on Bacar Group Limited, Energystore Limited and Warmfill Ltd on 17 December 2021

On 4 August 2021, Bacar Group Limited (**Bacar**), through its subsidiary, Energystore Limited (**Energystore**), completed the acquisition of Warmfill Ltd (**Warmfill**) (the **Transaction**).

Material facts regarding the Transaction were made public on 26 October 2021. On 17 December 2021, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order addressed to Bacar, Energystore and Warmfill in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action (the **Order**). The Order is still in force.

The CMA now issues written directions under paragraph 10 of the Order that, for the purpose of securing compliance with the Order, Bacar, Energystore, and Warmfill 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.

Signed

Richard Romney,

Director Mergers
Competition and Markets Authority
5 January 2022

Annex

Directions to appoint a monitoring trustee

Interpretation

In these Directions:

'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;

'Bacar' means Bacar Group Limited, with company number NI621064;

'the Bacar business' means the business of Bacar and its subsidiaries (including Energystore), excluding the Warmfill business, carried on as at the commencement date;

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

'CMA' means the Competition and Markets Authority;

'Derogations' means any derogations granted whether before or after the appointment of the MT by the CMA by which Bacar, Energystore and Warmfill may undertake certain actions that derogate from the Order;

'Energystore' means Energystore Limited, with company number NI010197;

'MT' means the monitoring trustee appointed in accordance with this Annex;

'Order' means the initial enforcement order made by the CMA on 17 December 2021 and addressed to Bacar, Energystore and Warmfill;

'the Transaction' means the transaction by which Energystore acquired Warmfill within the meaning of section 26 of the Act;

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

'Warmfill' means Warmfill Ltd, with company number NI043772;

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

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

Appointment

1. Bacar, Energystore and Warmfill must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. monitor and report to the CMA on compliance by Bacar, Energystore and Warmfill with the Order; and
 - b. support the CMA taking any remedial action which may be required to maintain the Bacar and Warmfill businesses as going concerns.
2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out their functions to the best of their abilities.
3. Bacar, Energystore and Warmfill 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 the Bacar and Warmfill businesses as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out their functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs their objectivity and independence in discharging their duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Bacar, Energystore and/or Warmfill 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 their functions.
7. Bacar, Energystore and Warmfill must appoint the MT as soon as is reasonably practicable and in any event by **12 January 2022** and the MT will continue to act either until the CMA reaches a decision to clear the Transaction or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by Bacar, Energystore and Warmfill 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 and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **7 January 2022**;

- 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 **7 January 2022**; and
- c. once the MT has been approved by the CMA and appointed, Bacar, Energystore and Warmfill 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 Bacar, Energystore and Warmfill and their subsidiaries with the Order;
 - b. assess and report to the CMA in relation to the arrangements made by Bacar, Energystore and Warmfill for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
 - c. identify and supervise if necessary the arrangements made by Bacar, Energystore and Warmfill for ensuring compliance with the Order;
 - d. monitor compliance by Bacar, Energystore and Warmfill and their subsidiaries with the Order;
 - e. assist the CMA with the consideration of any derogation requests made by Bacar, Energystore and Warmfill and monitor compliance by Bacar, Energystore and Warmfill and their subsidiaries with any derogations granted by the CMA; and
 - f. without prejudice to the right of Bacar, Energystore and Warmfill to contact the CMA, respond to any questions which Bacar, Energystore and Warmfill may have in relation to compliance with the Order, in consultation with the CMA.
- 10. The MT must take such steps as they reasonably consider necessary in order to carry out their functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Bacar and Warmfill businesses, 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 with the Order.

Obligations of Bacar, Energystore and Warmfill

12. Bacar, Energystore and Warmfill, their affiliates and their 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 their 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 Bacar business and the Warmfill 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 Bacar and/or Warmfill businesses are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.
14. If Bacar, Energystore and/or Warmfill has any reason to suspect that the Order 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 **8 February 2022**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
 - a. details of the current extent of compliance with the Order;
 - b. a description of the current arrangements made for the operation of the Warmfill business and for the preservation of the assets required to operate the Warmfill business; and
 - c. recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every four weeks thereafter (or otherwise as required by the CMA) stating whether or not, in their view, Bacar, Energystore and Warmfill and their subsidiaries have complied with the Order. 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 Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused them to be concerned as to whether Bacar, Energystore and Warmfill and their subsidiaries have complied with

the Order, and if it has, whether those concerns have been resolved and why;

- ii. they have any remaining doubts or uncertainties as to whether Bacar, Energystore and Warmfill and their subsidiaries have complied with the Order; and
 - iii. anything that causes them to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
- b. details of the performance of the Warmfill business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the Warmfill business as a going concern;
 - d. the extent to which Bacar, Energystore and Warmfill and their subsidiaries have cooperated with the MT in their task of monitoring its compliance with the Order and details of any aspects of the cooperation of Bacar, Energystore and Warmfill that they consider could be improved;
 - e. the extent to which the MT considers that they are in an appropriate position to monitor the compliance of Bacar, Energystore and Warmfill and their subsidiaries with the Order and if there is anything that the MT considers would assist them in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information they used to compile the report.

17. When providing reports to the CMA, the MT must ensure that they do not disclose any information or documents to the CMA which Bacar, Energystore and Warmfill would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Bacar, Energystore and Warmfill to produce any information or documents to the MT which are privileged.

18. The MT must immediately notify the CMA in writing if they form a reasonable suspicion that the Order has been breached, or if they consider that they are no longer in a position to effectively carry out their 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 17 above).

19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to the Bacar and/or Warmfill businesses, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.