

**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 3 November 2021.**

**Completed acquisition by Boparan Private Office, via Amber REI Holdings Limited, of Banham Poultry (2018) Limited (the ‘Acquisition’).**

We refer to your submissions of 19 November 2021 and 8 December 2021 requesting that the CMA consents to derogations from the Initial Enforcement Order of 3 November 2021 (the ‘**Initial Order**’). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Boparan and Banham (together the ‘**Parties**’) are required to hold separate the Banham business from any of the businesses of Boparan 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, the CMA consents to the Parties carrying out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 5(c) and 5(i) – appointment of [X] as Managing Director of Banham and consequent staffing changes**

The CMA understands that the former Managing Director of Banham, [X] took the decision to resign with immediate effect at completion of the Acquisition [X]. The CMA also understands that [X], is the best qualified internal candidate to succeed [X] as Managing Director of Banham.

Banham submits that [X] has an in-depth knowledge of Banham having served on the old shareholder board, which comprised the owners, the previous Managing Director and

[REDACTED]. Under the previous ownership of Banham, [REDACTED] worked closely with the Managing Director, and was involved in all the strategic decision making. This included [REDACTED].

Banham further submits that [REDACTED], the current most senior Banham finance employee after [REDACTED], will absorb most of [REDACTED] current responsibilities as [REDACTED]. [REDACTED] new role will be labelled [REDACTED], and [REDACTED] will become part of Banham's senior leadership team. Banham will recruit someone externally to take on any responsibilities which [REDACTED] will have vacated as a result of [REDACTED] effective promotion.

Finally, Banham submits that the current board of directors of Banham, which includes [REDACTED] and [REDACTED], will delegate to [REDACTED], who was appointed to Banham's board of directors on 18 October 2021, managerial responsibility for the day-to-day business of Banham and its subsidiaries.

The CMA consents to a derogation from paragraphs 5(c) and 5(i) of the Initial Order to permit the following staffing changes:

- (i) [REDACTED] to become the Managing Director of Banham, and to assume complete managerial responsibility for the day-to-day business of Banham and its subsidiaries without any Banham board oversight, subject to obtaining consent from [REDACTED], to certain actions which are out of the ordinary course, as set out in derogation 2 below.
- (ii) [REDACTED], a role equivalent to [REDACTED] current [REDACTED].

The CMA consents to the above strictly on the understanding that:

- (a) [REDACTED] has the necessary experience and expertise to assume the role of Managing Director of Banham.
- (b) [REDACTED] has the necessary experience and expertise to become [REDACTED] of Banham.
- (c) Banham will recruit an experienced finance candidate to absorb any responsibilities vacated by [REDACTED] effective promotion.
- (d) This derogation will not affect the viability of the Banham business.
- (e) This derogation will not result in any integration between the Banham business and the Boparan businesses.
- (f) This derogation will not prevent any remedial action which the CMA may need to take regarding the Acquisition.

## 2. Paragraphs 5(a), 5(c) and 5(l) – delegation of authority

The CMA understands that Boparan wishes to exercise limited oversight of activities by Banham which are outside the ordinary course of business. This is to protect the value of its investment in Banham, and to ensure Banham remains a going concern. The activities which Boparan considers it needs oversight of for these purposes (the ‘**Non-Standard Acts**’) are as follows:

- (i) [X].
- (ii) [X].
- (iii) [X].
- (iv) [X].
- (v) [X].

The Parties submit that these limits are set at a level where they will not significantly restrict the ability of Banham to operate independently from the Boparan businesses, or to pursue its pre-merger business plan. Given the levels at which these are set Boparan does not anticipate that the approvals will be triggered frequently in practice, as they are limited to very significant customer and supplier contracts, as well as capital and operating expenditure out of the ordinary course. By way of example, activities (i) and (ii) above occurred three and four times, respectively, between 1 November 2020 and 1 November 2021. The Parties have therefore sought the CMA’s consent for Banham to (i) seek approval from Boparan each time each time it proposes to undertake a Non-Standard Act, and (ii) share limited commercially-sensitive information with Boparan in order for Boparan to take an informed decision on the proposed Non-Standard Act.

The CMA consents to a derogation from paragraphs 5(a), 5(c) and 5(l) of the Initial Order to permit the above strictly on the basis that:

- (a) Unless otherwise agreed in writing with the CMA, requests will be raised by Banham with, and information provided only to, [X].
- (b) [X] does not, and will not have for the duration of the Initial Order, any responsibility for the commercial or strategic operations of Boparan, and shall not use any information provided by Banham in any way to intervene in the management or operation of the Banham business or the Boparan business.

- (c) Before sharing information on a Non-Standard Act with [REDACTED], Banham will set out to the CMA the information it proposes to share with Boparan, and why it considers it strictly necessary to share this information.
- (d) [REDACTED] must not consult with any other individual in the Boparan business in taking decisions on the Non-Standard Acts.
- (e) In the event of a proposed veto of a Non-Standard Act by [REDACTED], [REDACTED] will notify the CMA of his reasons for vetoing at least one working day in advance of any such veto being exercised.
- (f) The CMA can amend each of the Non-Standard Acts at any time in writing (including via email) if it subsequently reaches a view that any one of the Non-Standard Acts is impacting upon the independent operation of Banham.
- (g) [REDACTED] shall enter into an NDA in a form approved by the CMA.
- (h) IT firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within the Boparan business from accessing the information shared with [REDACTED] for the purposes of this derogation.
- (i) Should the Acquisition be prohibited, or remedies required, any records or copies (electronic or otherwise) of 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 by Boparan from Banham for the purposes of this derogation will be returned to Banham and any copies destroyed, except to the extent that record retention is required by law or regulation.
- (j) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

### **3. Paragraph 5(l) – information-exchange between Banham and Boparan**

The CMA understands that Boparan will need to receive certain financial information from Banham in order to fulfil its statutory duties and to ensure Banham has access to the funds it needs to remain a going concern. Specifically, certain Boparan individuals will need access to the following information:

- (i) [REDACTED].
- (ii) [REDACTED].

(iii) [✂].

(iv) [✂].

(v) [✂].

The CMA consents to a derogation from paragraph 5(l) of the Initial Order to permit Boparan to receive information from Banham under each of the five categories above (collectively the '**Strictly Necessary Financial Information**'). The CMA consents to this derogation strictly on the basis that:

- (a) The Banham information provided to Boparan will be limited to the Strictly Necessary Financial Information, and will be provided only under the templates provided to the CMA on 19 November 2021, and approved by the CMA subject to the edits specified in the email from the CMA on 26 November 2021 at 17:23.
- (b) The Strictly Necessary Financial Information will be provided only to the Boparan personnel listed in **Annex 1** for whom it is strictly necessary to see the Strictly Necessary Financial Information.
- (c) The individuals listed in **Annex 1** will enter into non-disclosure agreements in a form approved by the CMA.
- (d) No changes to the individuals listed in **Annex 1** are permitted without the prior written consent of the CMA (including via email).
- (e) IT firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within Boparan from accessing the Strictly Necessary Financial Information.
- (f) Should the Acquisition be prohibited or if Boparan is required to divest all, or part of, the Banham business, Boparan will ensure that any records or copies (electronic or otherwise) of 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 Banham for the purposes of this derogation will be returned to Banham and any copies destroyed, except to the extent that record retention is required by law or regulation.
- (g) This derogation will not result in any integration between the Banham business and the Boparan businesses.

(h) This derogation will not prevent any remedial action which the CMA may need to take regarding the Acquisition.

#### **4. Paragraphs 5(a) and 5(h) – Banham providing whole bird packing and transport to Bernard Matthews [X]**

[X]. In such circumstances, Boparan considers it strictly necessary to use Banham for additional packing capacity. Boparan would pay Banham on an arms' length basis for packing turkeys.

The CMA further understands that it may also be necessary for Banham to assist with transporting the packed turkeys back to Bernard Matthews to be shipped to retailer depots together with the turkeys packed by Bernard Matthews. The need for transport would be decided at the time based on logistics otherwise available to Boparan and would also be paid for on arms' length terms.

The CMA consents to a derogation from paragraphs 5(a) and 5(h) of the Initial Order to permit Banham to provide packaging and logistics services to Boparan in the event this becomes strictly necessary. The CMA consents to this derogation strictly on the basis that:

- (a) Any such agreements would be entered into only where strictly necessary.
- (b) Any such agreements would be entirely on an arm's length basis.
- (c) Any such agreements would not disrupt Banham's ability to serve its own customers.
- (d) Information-sharing will be kept to the minimum strictly necessary to reach and execute a packaging or distribution agreement.
- (e) Before entering into any such agreement, the Parties will submit to the CMA a written explanation of how each one of the above conditions is met by the specific proposed agreement(s), and provide details of what the arrangement(s) would involve.
- (f) This derogation will not prevent any remedial action which the CMA may need to take regarding the Acquisition.

#### **5. Paragraphs 5(a) and 5(l) – provision of on-site [X] technical advice, and advice on [X]**

The CMA understands that Banham has in recent years [REDACTED]. The CMA further understands that Banham has supplied Boparan with processed poultry since March 2021, and that Boparan has a consequent responsibility to its retail customers to audit quality standards down the supply chain. This has to be done on a regular basis given that some of Boparan's retail customers perform unannounced audits.

The Parties submit that prior to the Initial Order, [REDACTED]. Further, [REDACTED] had been advising [REDACTED]. The Parties additionally submit that although Banham has an engineering and capital expenditure team in place, they do not have the experience held by Boparan. [REDACTED].

The CMA consents to a derogation from paragraphs 5(a) and 5(l) of the Initial Order to permit [REDACTED] and [REDACTED] to carry on supporting Banham so it can continue to meet the standards required by regulators and grocery retailers for the duration of the Initial Order. The CMA consents to this derogation on the strict basis that:

(a) [REDACTED] will only provide advice and support which is of a technical nature, and limited in application to:

- [REDACTED].
- [REDACTED].
- [REDACTED].

(b) [REDACTED] will only provide advice to Banham in relation to:

- [REDACTED].
- [REDACTED].

(c) [REDACTED] and [REDACTED] will each sign a confidentiality undertaking in a format agreed with the CMA.

(d) Any information received by [REDACTED] and [REDACTED] will be limited to what is strictly necessary for the purposes set out in paragraphs (a) and (b) above.

(e) This derogation will not result in any integration between the Banham business and the Boparan businesses.

(f) This derogation will not prevent any remedial action which the CMA may need to take regarding the Acquisition.

Yours sincerely,

Anna Caro  
**Assistant Director, Mergers**  
[anna.caro@cma.gov.uk](mailto:anna.caro@cma.gov.uk)

15 December 2021



## ANNEX 1

The members of the BPO central finance team and the directors of AREIL who may receive the Strictly Necessary Financial Information on the terms set out above are:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED];
- d. [REDACTED];
- e. [REDACTED];
- f. [REDACTED];
- g. [REDACTED]; and
- h. [REDACTED].