

**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 as varied on 30 September 2021

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

Dear Mr [REDACTED],

We refer to the submissions on behalf of your client dated 6 and 16 December 2021 and 5 January 2022 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 related derogation from the Initial Order granted by the CMA on 26 October 2021, have the same meaning in this letter.

Under the Initial Order and related derogation from the Initial Order granted by the CMA on 26 October 2021, 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 UK business and D&D’s UK-related assets 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 circumstances of this case, TMG may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 5(f) of the Initial Order

TMG submits that its current hosting service will terminate in [REDACTED]. TMG also submits that after considering different options to replace its current hosting solution, it has decided to migrate to a cloud-based solution provided by [REDACTED] (**‘[REDACTED]’** and the **‘[REDACTED] Hosting Solution’**). TMG further submits that it considers the [REDACTED] Hosting Solution to be the best hosting solution for the TMG business regardless of whether the Merger is ultimately approved by the CMA and any potential future alignment with D&D. In addition, TMG further

submits that prior to the Merger it already considered that cloud-hosted solutions were the way forward for the TMG business. Further, TMG submits that the [X] Hosting Solution will be agreed between TMG and [X] with no involvement from D&D.

Moreover, TMG submits that the initial term of a contract with [X] would be [X]. TMG also submits that although infrastructure uptime costs of the [X] Hosting Solution appear more expensive than a more traditional solution where TMG would buy its own dedicated servers on which to run its platforms, the [X] Hosting Solution is a more flexible operational model than a sunk cost in the more traditional approach. TMG further submits that despite potential skills gap within TMG staff for the operation of the [X] Hosting Solution, TMG will use third-party experience and ensure that TMG staff undertakes appropriate training to guarantee that a trackable and consistent base of knowledge and competency is established across multiple TMG teams. Also, TMG submits that the TMG/[X] programme will be run totally independently of D&D.

TMG is therefore seeking CMA consent to permit a change of TMG business' hosting service provider.

Based on TMG's representations, the CMA consents to a derogation from paragraph 5(f) of the Initial Order to permit the migration of the current TMG business' hosting solution to the [X] Hosting Solution strictly on the basis that:

- (a) The migration of the current TMG business' hosting solution to the [X] Hosting Solution will not impair the viability, ongoing operation, and competitive capability of the TMG business.
- (b) The initial term of any contract in relation to the [X] Hosting Solution will not exceed [X]. Save for the changes described in this letter, no other changes will be made to the software and hardware platforms of the TMG business.
- (c) The [X] Hosting Solution will be provided to TMG entirely independently of the services currently being provided by [X] to D&D.
- (d) TMG will not receive any commercially sensitive information about D&D's arrangements with [X], or vice versa.
- (e) This derogation will not lead to any integration of the TMG and D&D businesses.

- (f) This derogation will not result in any 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.

Yours sincerely,



Adam Cooper
Director, Remedies, Business and Financial Analysis
13 January 2022