

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

Directions issued on 19 January 2022 pursuant to paragraph 10 of the Initial Enforcement Order made by the Competition and Markets Authority on 27 August 2021 pursuant to section 72(2) of the Enterprise Act 2002 (the Act), as varied by the Variation Order made by the Competition and Markets Authority on 30 September 2021 pursuant to section 72(4)(b) of the Act

On 8 July 2021 Dye & Durham Limited (**D&D**), via its wholly-owned subsidiary, Dye & Durham (UK) Limited (**D&D UK**) completed the acquisition of TM Group (UK) Limited (**TMG**).

On 27 August 2021, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (the **Initial Order**) addressed to D&D, D&D UK and TMG in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action. On 30 September 2021, the CMA made an order varying the Initial Order (the **Variation Order**) in accordance with section 72(4)(b) of the Enterprise Act 2002. The Initial Order as varied by the Variation 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, D&D, D&D UK and TMG 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,

Adam Cooper
Director, Remedies, Business and Financial Analysis
19 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;
‘business’	has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act;
‘CMA’	means the Competition and Markets Authority;
‘D&D’	means Dye & Durham Limited, a company incorporated under the laws of Canada, registered at Suite 4610, 199 Bay Street W, Toronto, ON, M5L 1E9, with Ontario corporation number 002762926;
‘the D&D business’	means the business of D&D and its direct and indirect subsidiaries (including for the avoidance of doubt D&D UK) but excluding the TMG business, carried on as at the commencement date;
‘D&D UK’	means Dye & Durham (UK) Limited, a company incorporated under the laws of England and Wales, registered at Courtyard House, The Square, Lightwater, Surrey, United Kingdom, GU18 5SS, with company number 11844231;
‘the D&D UK business’	means the business of D&D UK and its direct and indirect subsidiaries but excluding the TMG business, carried on as at the commencement date;
‘Derogations’	means any derogations granted whether before or after the appointment of the MT by the CMA by which D&D, D&D UK and TMG may undertake certain actions that derogate from the Order;

‘MT’	means the monitoring trustee appointed in accordance with this Annex;
‘Order’	means the initial enforcement order made by the CMA on 27 August 2021 and addressed to D&D, D&D UK and TMG, as varied by the variation order made by the CMA on 30 September 2021;
‘TMG’	means TM Group (UK) Limited, a company incorporated under the laws of England and Wales, registered at Courtyard House, The Square, Lightwater, Surrey, United Kingdom, GU18 5SS, with company number 05278187;
‘the TMG business’	means the business of TMG and its direct and indirect subsidiaries carried on as at the commencement date;
‘the Transaction’	means the transaction by which, D&D, through its subsidiary D&D UK, acquired the entire allotted and issued share capital of TMG, and thereby D&D/D&D UK and TMG have ceased to be distinct within the meaning of section 23 of the Act;
‘subsidiary’	has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and ‘subsidiaries’ shall be construed accordingly)’.

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

Appointment

1. D&D, D&D UK and TMG 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 D&D, D&D UK and TMG with the Order; and
 - b. support the CMA taking any remedial action which may be required to maintain the D&D and D&D UK business, and TMG business as going concerns.
2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out its functions to the best of its abilities.
3. D&D, D&D UK and TMG 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 D&D, D&D UK and TMG as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out its functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. D&D, D&D UK and TMG 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 its functions.
7. D&D, D&D UK and TMG must appoint the MT as soon as is reasonably practicable and in any event by **26 January 2022** (or such longer period as the CMA may reasonably agree in writing) 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 D&D, D&D UK and TMG 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 **5pm on 21 January 2022** (or such longer period as the CMA may reasonably agree in writing);
 - 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 **5pm on 21 January 2022** (or such longer period as the CMA may reasonably agree in writing); and
 - c. once the MT has been approved by the CMA and appointed, D&D, D&D UK and TMG 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 D&D, D&D UK, TMG and their subsidiaries with the Order;
 - b. assess and report to the CMA in relation to the arrangements made by D&D, D&D UK and TMG 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 D&D, D&D UK and TMG for ensuring compliance with the Order;
 - d. monitor compliance by D&D, D&D UK, TMG and their subsidiaries with the Order;
 - e. assist the CMA with the consideration of any derogation requests made by D&D, D&D UK and TMG, and monitor compliance by D&D, D&D UK and TMG with any derogations granted by the CMA; and
 - f. without prejudice to the right of D&D, D&D UK and TMG to directly contact the CMA, respond to any questions which D&D, D&D UK and TMG may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the D&D and D&D UK business and the TMG business, 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 D&D, D&D UK and TMG with the Order.

Obligations of D&D, D&D UK and TMG

12. D&D, D&D UK, TMG and their respective 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 its 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 D&D and D&D UK business, and the TMG 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 D&D, D&D UK or TMG 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 D&D, D&D UK or TMG 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 **5pm 9 February 2022** (or such longer period as the CMA may reasonably agree in writing), 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 TMG business and for the preservation of the assets required to operate the TMG 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 its view, D&D, D&D UK and TMG 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 it to be concerned as to whether D&D, D&D UK and TMG have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. it has any remaining doubts or uncertainties as to whether D&D, D&D UK and TMG have complied with the Order; and

- iii. anything that causes it to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the TMG business, including any factors that might indicate asset deterioration;
 - c. Details of all communications in relation to the merger between the TMG Business and (a) customers and (b) employees;
 - d. whether appropriate steps are being taken to maintain the TMG business as a going concern;
 - e. the extent to which D&D, D&D UK and TMG have cooperated with the MT in its task of monitoring its compliance with the Order and details of any aspects of the cooperation of D&D, D&D UK and/or TMG that it considers could be improved;
 - f. the extent to which the MT considers that it is in an appropriate position to monitor the compliance of D&D, D&D UK and TMG with the Order and if there is anything that the MT considers would assist it in monitoring compliance;
 - g. any current or anticipated requests for consent to vary the Order; and
 - h. the information it used to compile the report.
17. When providing reports to the CMA, the MT must ensure that it does not disclose any information or documents to the CMA which D&D, D&D UK and/or TMG would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires D&D, D&D UK and/or TMG to produce any information or documents to the MT which are privileged.
18. The MT must immediately notify the CMA in writing if it forms a reasonable suspicion that the Order has been breached, or if it considers that it is no longer in a position to effectively carry out its 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 D&D, D&D UK and TMG, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.