

ACQUISITION BY ENERGYSTORE LIMITED OF WARMFILL LTD, WARMWALL LIMITED, AND RELATED ASSETS

Directions issued pursuant to paragraph 10 of the Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002

On 17 December 2021 the Competition and Markets Authority (**CMA**) served an initial enforcement order under section 72(2) of the Enterprise Act 2002 (the **Act**) on Bacar Group Limited (**Bacar**), Energystore Limited (**Energystore**) and Warmfill Ltd (**Warmfill**) in relation to the completed acquisition by Energystore of Warmfill for the purpose of preventing pre-emptive action. On 11 January 2022, pursuant to that initial enforcement order, the CMA directed Bacar, Energystore and Warmfill to appoint a Hold Separate Manager.

On 1 March 2022, the CMA revoked the 17 December initial enforcement order (including the directions to appoint a Hold Separate Manager) and reissued an initial enforcement order (the **Initial Enforcement Order**) to include Warmwall within the scope of the Initial Enforcement Order.

In order to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decision on the reference, the CMA now issues written Directions under paragraph 10 of the Initial Enforcement Order that Bacar, Energystore, Warmfill and Warmwall Limited (**Warmwall**) (Warmfill and Warmwall together the **Target businesses**) must appoint a formal Hold Separate Manager (**HSM**) of the acquired Target businesses in accordance with the terms provided for, and must comply with the obligations set out, in Annex 1.

Richard Romney,

Director Mergers
Competition and Markets Authority
1 March 2022

ANNEX 1

Directions to appoint a Hold Separate Manager

Interpretation

1. In these Directions:

'the Act' means the Enterprise Act 2002;

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

'the Bacar business' means the business of Bacar and its subsidiaries (including Energystore), excluding the Target businesses, 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;

'Commencement date' means 1 March 2022, which is the commencement date of the Initial Enforcement Order;

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

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

'HSM' means the Hold Separate Manager appointed in accordance with these Directions;

'Initial Enforcement Order' means the initial enforcement order issued under section 72(2) of the Enterprise Act 2002 by the CMA on 1 March 2022 and addressed to Bacar, Energystore, Warmfill and Warmwall;

'MT' means any Monitoring Trustee appointed pursuant to directions issued by the CMA under paragraph 10 of the Initial Enforcement Order;

'Target businesses' means the businesses of Warmfill, Warmwall and their subsidiaries, carried on as at the commencement date;

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

'Warmwall' means Warmwall Limited, with company number NI642175;

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

Appointment

2. Bacar, Energystore, Warmfill, and Warmwall must appoint a formal HSM to ensure that the Target businesses operate as viable and competitive businesses, separately from and independently of the Bacar business (which includes Energystore). The HSM must be subject to the approval by the CMA of their identity and the terms and conditions of appointment. Any appointment must be made in accordance with the provisions of these Directions.
3. Bacar, Energystore, Warmfill and Warmwall must appoint the HSM without delay and in any event by **8 March 2022** (or such longer period as the CMA may reasonably agree in writing) and the HSM will continue to act until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or revoked the Initial Enforcement Order. Bacar, Energystore, Warmfill and Warmwall must provide (in writing) the CMA with the name(s) of potential candidate HSM(s), and provide draft terms and conditions of appointment, by **3 March 2022** (or such longer period as the CMA may reasonably agree in writing).
4. The HSM 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.
5. Bacar, Energystore, Warmfill, and Warmwall must ensure that the terms and conditions of appointment of the HSM reflect and give effect to the functions and obligations of the HSM and the obligations of Bacar, Energystore, Warmfill, and Warmwall as set out in these Directions.
6. Bacar, Energystore, Warmfill, Warmwall, and their subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the HSM, in particular by providing the HSM with all cooperation, assistance and information as the HSM may reasonably require in order to discharge their functions.

Functions

7. The functions of the HSM will be to exercise day-to-day management and control of the Target businesses so that:
 - (a) they operate as viable and competitive businesses, separately from and independently of the Bacar business and compete actively with the Bacar business;

- (b) appropriate management, reporting and decision-making systems are put in place to preserve the independence of the Target businesses and ensure such independence on an ongoing basis; and
 - (c) the Target businesses are maintained as going concerns with access to sufficient resources for their continued operation and development.
- 8. The HSM will also be required to:
 - (a) ensure that the Target businesses comply with the Initial Enforcement Order;
 - (b) ensure the economic viability and competitiveness of the Target businesses in accordance with good business practice;
 - (c) minimise, as far as possible, any risk of loss of competitive potential of the Target businesses;
 - (d) assist the CMA and MT in monitoring the extent of compliance by Bacar, Energystore, Warmfill and Warmwall with the Initial Enforcement Order (including any direction issued under paragraph 10 of the Initial Enforcement Order) or any other order issued by the CMA pursuant to section 72 of the Act;
 - (e) discuss with the MT arrangements which have been, or should be, put in place to ensure the separate operation from the Bacar business of viable, competitive Target businesses and compliance by Bacar, Energystore, Warmfill and Warmwall with the Initial Enforcement Order; and
 - (f) provide every four weeks (or otherwise as required by the CMA) a statement stating whether or not the Target businesses have complied with the Initial Enforcement Order.
- 9. The HSM must take such steps as they reasonably consider necessary in order to carry out the HSM's functions effectively.
- 10. The HSM must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Bacar, Energystore, Warmfill and Warmwall with the Initial Enforcement Order.
- 11. The HSM must immediately notify the CMA in writing if they form a reasonable suspicion that the Initial Enforcement Order has been breached or if they consider that they are no longer in a position to effectively carry out the HSM's functions.

General

12. The HSM must possess the appropriate qualifications and experience to carry out the HSM's functions.
13. The HSM must neither have nor become exposed to a conflict of interest that impairs the HSM's objectivity and independence in discharging their functions under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
14. Bacar, Energystore, Warmfill and/or Warmwall shall remunerate and reimburse the HSM 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 HSM's independence or ability to effectively and properly carry out the HSM's functions.
15. Bacar, Energystore, Warmfill and Warmwall must provide the CMA with a copy of the agreed terms and conditions of the appointment of the HSM prior to their appointment.
16. Any termination of the appointment of the HSM is subject to the agreement of the CMA, such agreement not to be unreasonably withheld.
17. All communications between the HSM and the CMA are confidential and should not be disclosed to Bacar, Energystore, Warmfill, or Warmwall save with the prior written consent of the CMA. The HSM shall not disclose such communications to third parties, save for external legal advisers provided they are under a similar obligation to keep such communications confidential.
18. The CMA may issue such further directions as it considers necessary to ensure compliance with the Initial Enforcement Order, including, where the appointment of the HSM has been terminated, directions for the appointment of a further HSM.