

SLAUGHTER AND MAY

Acquisition by Dye & Durham Ltd of TM Group (UK) Limited Landmark comments on Dye & Durham's response to the CMA's Notice of Possible Remedies dated 10 June 2022

1. Landmark has reviewed a redacted version of Dye & Durham's ("**D&D**") response to the CMA's Notice of Possible Remedies dated 10 June 2022 (the "**D&D Response**") and has significant concerns about a number of points raised.
2. With respect to specific aspects of the D&D Response:
 - (i) **Paragraph 4.2:** Landmark understands that there are a number of pre-existing supply agreements between TM Group (UK) Limited ("**TM Group**") and its shareholders (the "**Supply Agreements**"). Given the extent of the redactions in the D&D Response, Landmark has little visibility into the terms of these Supply Agreements. However, if the CMA is minded to permit these to remain in place post-divestment, Landmark would expect the CMA first to verify that they would not have the effect of restricting competition. For example, Landmark would be concerned if lengthy exclusivity provisions (which might have been appropriate in an intra-group context) were permitted to remain in place, effectively depriving D&D's rivals of the opportunity to compete for this customer base.
 - (ii) **Paragraph 4.5:** Landmark again has limited visibility into the terms of any Supply Agreements between D&D and TM Group, but strongly disagrees that these are liable to be pro-competitive. Given D&D's track record and stated strategy of increasing prices, if these agreements were allowed to remain in place post-divestment this would be likely to have a detrimental impact on consumers, who would ultimately bear the burden of any increased costs. An inflated cost base may also deter suitable purchasers from bidding for the business. More fundamentally, Landmark believes that the substantial lessening of competition brought about by the transaction would not be effectively remedied if D&D were allowed to preserve commercial arrangements that were drawn up and agreed to only in the context of that transaction. An independent TM Group must be free to choose its own suppliers.
 - (iii) **Paragraph 5.1:** Landmark is concerned that if D&D 'facilitat[ed] a management buy-out or otherwise provid[ed] financial support to a prospective purchaser' this would enable it to exert a continuing influence over TM Group. Assuming that D&D was able to divest the TM Group with sufficient working capital, there should be no need for additional financing arrangements from D&D.
3. Landmark would be happy to answer any questions the CMA has, or to discuss these matters further.