

**COMPLETED ACQUISITION BY DYE & DURHAM LIMITED, THROUGH ITS  
SUBSIDIARY DYE & DURHAM (UK) LIMITED, OF TM GROUP (UK)  
LIMITED**

**Final Undertakings given by Dye & Durham Limited to the Competition  
and Markets Authority pursuant to section 82 of the Enterprise Act 2002**

**Background**

- A. On 8 July 2021, Dye & Durham Limited (**D&D**), through its subsidiary Dye & Durham (UK) Limited (**D&D UK**), acquired TM Group (UK) Limited (**TMG**) from TMG's former shareholders, Countrywide Group Holdings Limited, Connells Limited, and LSL Property Services plc (**the Shareholders**) (**the Merger**).
- B. On 27 August 2021, the Competition and Markets Authority (the **CMA**) made an initial enforcement order (**IEO**) pursuant to section 72(2) of the Enterprise Act 2002 (the **Act**) for the purpose of preventing pre-emptive action in accordance with that section (as varied by the variation order dated 30 September 2021). On 19 January 2022, the CMA issued directions under the IEO for the appointment of a monitoring trustee in order to monitor and ensure compliance with the IEO.
- C. On 23 December 2021, the CMA, in accordance with section 22(1) of the Act, referred the Merger to a group of CMA panel members (the **Reference**) to determine, pursuant to section 35 of the Act:
- (i) whether a relevant merger situation has been created; and
  - (ii) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) in any market or markets in the United Kingdom (UK) for goods or services.
- D. On 3 August 2022, the CMA published a final report pursuant to section 38 of the Act (the **Report**) which concluded that:
- (i) the Merger has created a relevant merger situation;
  - (ii) the creation of that situation has resulted in, or may be expected to result in, a SLC in relation to the supply of property search report bundles (**PSRBs**) in England & Wales (**E&W**); and
  - (iii) the CMA should take action to remedy the SLC and any adverse effects resulting from it.

- E. The CMA, having regard to its findings in the Report, requires a full divestiture of the TMG business (the **Remedy**).
- F. The implementation of the Remedy will be subject to the following safeguards:
  - (a) the Parties will be subject to regular reporting requirements;
  - (b) the Monitoring Trustee appointed in accordance with paragraph 7 will monitor compliance with these Final Undertakings, including the progress of the implementation of the Remedy;
  - (c) the purchaser must be an Approved Purchaser in accordance with the Purchaser Approval Criteria in Annex 3; and
  - (d) these Final Undertakings include provisions enabling the CMA to direct the appointment of a Divestiture Trustee to effect the final disposal of the TMG business in accordance with the conditions set out in paragraph 8.
- G. Now therefore each of D&D and TMG gives to the CMA on behalf of itself and, where relevant, its Subsidiaries and Affiliates, the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying, mitigating or preventing the SLC identified in the Report and any adverse effects resulting from it.

## 1. **Interpretation**

- 1.1 The purpose of these Final Undertakings is to give effect to the Remedy identified in the Report and they shall be construed in accordance with the Report.
- 1.2 Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report (as appropriate).
- 1.3 The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 1.4 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
- 1.5 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals, paragraphs and subparagraphs of, and annexes to, these Final Undertakings unless otherwise stated.
- 1.6 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate. Any reference to person or position includes its or their successor in title.
- 1.7 The Annexes form part of these Final Undertakings.
- 1.8 The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.

1.9 Further, in these Final Undertakings:

‘the Act’	means the Enterprise Act 2002;
‘Affiliate’	means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;
‘Approved Purchaser’	means any purchaser approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 3;
‘Approved Timetable’	means the divestment timetable approved by the CMA in accordance with paragraph 3.4;
‘Associated Person’	means a person who is an associated person within the meaning of section 127 of the Act;
‘business’	has the meaning given by section 129(1) and (3) of the Act;
‘CMA’	means the Competition and Markets Authority;
‘Commencement Date’	means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;
‘Completion Date’	means the date on which the Final Disposal is implemented;
‘Confidential Information’	means business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;
‘control’	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise, as defined in section 26 of the Act;
‘Core Management Team’	means the following TMG Key Staff: [✂];
‘Directions’	means written directions given by the CMA as set out in paragraph 4.1;
‘Divestiture’	means the sale of TMG by D&D;
‘Divestiture Period’	means the period beginning on the Commencement Date and ending [✂] months after the Commencement Date, or such longer period as the CMA may approve in accordance with paragraph 13.1;

‘Divestiture Trustee’	means a person appointed in accordance with paragraph 8;
‘Divestiture Undertakings’	means those undertakings set out in paragraph 3;
‘Final Disposal’	means completion of the divestiture of the TMG business in accordance with the Final Undertakings to an Approved Purchaser;
‘Final Undertakings’	means these final undertakings given by each of the Parties and accepted by the CMA, including the Annexes hereto, and as may be varied in accordance with paragraph 9;
‘IEO’	means the initial enforcement order made by the CMA on 27 August 2021, as varied by the variation order dated 30 September 2021;
‘Input Switching Clauses’	means a condition included in the Supply Agreements that LSL and Connells, within [✂] of the date of the Supply Agreements, replace certain reports offered to their panel firm with those supplied by D&D group companies;
‘Key Staff’	means those staff who are in positions of executive or managerial responsibility and/or whose performance affects the viability of the relevant business;
‘Merger’	means the completed acquisition by D&D, through D&D UK, of TMG from TMG’s former Shareholders;
‘Monitoring Trustee’	means a person appointed or retained in accordance with paragraph 7;
‘ordinary course of business’	means matters connected with the day-to- day supply of goods and services by the TMG business or the D&D business but does not include matters involving significant changes to the organisational structure of or related to the post-merger integration of TMG and D&D;
‘Parties’	means D&D and TMG;
‘Purchaser Approval Criteria’	means the criteria set out in Annex 3;
‘PSRBs’	means property search report bundles;
‘Related Person’	means any Subsidiary, Affiliate or Associated Person;

‘Relevant Market’	means the supply of PSRBs in E&W;
‘Remedy’	means the divestiture by D&D of TMG as set out in Chapter 10 of the Report;
‘Report’	means the report entitled "Completed acquisition by Dye & Durham Limited, through its subsidiary Dye & Durham (UK) Limited, of TM Group (UK) Limited – Final Report" published by the CMA on 3 August 2022;
‘Shareholders’	means TMG’s former shareholders, Countrywide Group Holdings Limited, Connells Limited, and LSL Property Services plc;
‘SLC’	means a substantial lessening of competition;
‘Specified Period’	means the period beginning on the Commencement Date and terminating on the Completion Date;
‘Supply Agreements’	means the Agreements entered into by TMG with each of LSL and Connells for the exclusive supply of PSRBs;
‘Subsidiary’	unless otherwise expressly stated has the meaning given by section 1159 of the Companies Act 2006;
‘Transaction Agreements’	means the sale agreement and all other agreements to be concluded between D&D and the Approved Purchaser which are necessary in order to effect the Final Disposal;
‘Trustee Divestiture Period’	means a period as the CMA may direct for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee; It ends on Completion Date;
‘Trustee Obligation’	means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal promptly and, in any event, within the Trustee Divestiture Period;
‘UK’	means the United Kingdom of Great Britain and Northern Ireland;

'Working Day'	means a day that is not a Saturday or Sunday or a bank holiday in England; and
'written consent'	means a consent given in writing, including by email.

## 2. **Commencement**

These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

## 3. **Divestiture Undertakings**

### 3.1 D&D gives the following undertakings:

- (a) to give effect to and implement the Final Disposal within the Divestiture Period having due regard to the findings in the Report and procure that its Subsidiaries do all things necessary to ensure D&D is able to comply with these Final Undertakings;
- (b) to comply with any written directions given by the CMA under these Final Undertakings and to procure that its Subsidiaries also comply, and to take such steps as may be specified or described in the directions for complying with these Final Undertakings, in particular the appointment of a Divestiture Trustee;
- (c) to inform the CMA as soon as practicable, and in any event, within six weeks of the Commencement Date, of a shortlist of potential purchasers of the TMG business being drawn up for the CMA's formal approval against the Purchaser Approval Criteria;
- (d) to provide the CMA with sufficient information regarding each potential purchaser for which D&D seeks formal approval from the CMA, having regard to the Purchaser Approval Criteria to enable the CMA to give its approval of that potential purchaser, which shall not be unreasonably withheld.

3.2 TMG undertakes to, using reasonable endeavours, cooperate with D&D and take all steps as may in each case be reasonably required to assist D&D in complying with the Divestiture Undertakings, including complying with any Directions given by the CMA in relation to its obligations under these Final Undertakings (and D&D undertakes in turn to provide TMG with such reasonable assistance as TMG may require in connection with the same).

3.3 D&D undertakes to provide TMG and its legal advisors with copies of the Transaction Agreements, including drafts, for TMG's review and comment to ensure compliance with these Final Undertakings and to provide TMG with updates, at reasonable intervals, as to the status of the Divestiture and progress towards the Final Disposal.

3.4 D&D undertakes that within five Working Days following the commencement of the Divestiture Period, or such other period as may be agreed by the CMA, to provide a timetable setting out the key milestones to ensure completion of the

Final Disposal within the Divestiture Period. The CMA will as soon as reasonably practicable either approve this timetable as proposed or require reasonable amendments to it. D&D shall notify the CMA as soon as reasonably practicable of any material changes or amendments to the timetable as approved by the CMA.

- 3.5 In the event that D&D does not meet or is unlikely to meet a step as set out in the Approved Timetable or is otherwise delayed in implementing the Final Disposal, D&D undertakes to inform the CMA promptly in writing of the occurrence, the reasons for the failure and any remedial steps, but not later than three Working Days from becoming aware that a step in the Approved Timetable has not been or is unlikely to be met.
- 3.6 The CMA will advise the Parties whether any potential purchaser is an Approved Purchaser within a reasonable period from the time the CMA concludes it has received sufficient information about the potential purchaser. The CMA will promptly inform the Parties where it considers it has received insufficient information about the potential purchaser.
- 3.7 D&D undertakes to inform the CMA as soon as practicable, and in any event within three Working Days of the occurrence of each of the following: (i) D&D has agreed heads of terms (if applicable); (ii) the Transaction Agreements have been agreed; and (iii) the Final Disposal has been completed. D&D also undertakes to share heads of terms within three Working Days of their agreement.
- 3.8 D&D undertakes to seek CMA approval of the final terms of the Divestiture prior to the Final Disposal, to send the CMA a copy of all the final form Transaction Agreements constituting or relating to the final terms before they are entered into (or other information the CMA may reasonably require) and not to complete the Final Disposal until the CMA has given its written consent to these terms.
- 3.9 D&D undertakes to inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or believes it is unlikely to, achieve the Final Disposal within the Divestiture Period.
- 3.10 Upon the Completion Date, D&D shall transfer the entirety of the shares it holds in TMG to an Approved Purchaser.

#### **4. Additional Obligations**

- 4.1 Each of the Parties undertakes to comply and, where necessary, to procure that its Subsidiaries comply, with all Directions the CMA may issue relating to these Final Undertakings and will promptly take such steps as may be specified or described in the Directions.
- 4.2 The Parties acknowledge that the CMA may choose not to issue Directions immediately upon becoming entitled to do so, and recognise that any delay by the CMA in making a Direction shall not affect the obligations of each of the Parties at such time as the CMA makes any Direction.
- 4.3 Each of D&D and TMG undertake that for a period of ten years from the Final Disposal, they will not, and shall procure that any Related Person will not, bring

under common ownership or control in whole or in part the TMG business without the prior written consent of the CMA.

4.4 In accordance with paragraph 10.120 of the Report, each of D&D and TMG undertake that the Input Switching Clauses will remain suspended until Final Disposal.

4.5 D&D further undertakes not to make the sale of TMG either legally or de facto conditional on the purchaser retaining the Supply Agreements or on the purchaser concluding any other arrangements for the supply of inputs with D&D.

## 5. **Divestiture Reporting Obligations**

5.1 D&D undertakes to provide a written report to the CMA every four weeks from the Commencement Date or such other interval as agreed with the CMA, until Final Disposal. With the consent of the CMA, the reports may be provided through the Monitoring Trustee. The report shall outline the progress D&D has made towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings and shall in particular report on:

- (a) details of the efforts taken by D&D and its financial advisers to solicit purchasers for the TMG business.
- (b) the total number of persons who have indicated an interest or lodged a formal bid with D&D for the acquisition of the TMG business since the publication of the Report;
- (c) the name, address, email address, contact point and telephone number of each person who has lodged a formal bid or indicated an interest with D&D since the publication of the Report;
- (d) the name, address, email address, contact point and telephone number of all those persons who have been short-listed by D&D as a preferred purchaser;
- (e) the status of any discussions that have been held with potential purchasers of the TMG business;
- (f) the progress that has been made against the Approved Timetable;
- (g) the progress that has been made towards agreeing heads of terms (if applicable);
- (h) the steps that have been taken towards reaching Transaction Agreements and the persons to whom any draft agreements have been distributed; and
- (i) such other matters as may be directed by the CMA or Monitoring Trustee from time to time.

## 6. **Asset Maintenance Undertakings**

6.1 Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA pursuant to the



IEO, which shall remain applicable during the Specified Period), the Parties undertake not to take any action and to procure that their Subsidiaries do not take any action during the Specified Period which might:

- (a) lead to the integration of the TMG business with the D&D business;
- (b) transfer the ownership or control of all or any part of the TMG business or any of its Subsidiaries except in the course of complying with these Final Undertakings; or
- (c) otherwise impair the ability of the TMG business and the D&D business to compete independently in any of the markets affected by the Merger.

6.2 Further and without prejudice to the generality of paragraph 6.1, the Parties undertake during the Specified Period to procure that, except with the prior written consent of the CMA (which includes any previous derogations granted pursuant to the IEO, which will remain applicable during the Specified Period):

- (a) No action is taken by D&D or its Subsidiaries or Related Persons to solicit the transfer of any Key Staff from TMG or its Subsidiaries to the D&D business;
- (b) the TMG business is carried on separately from the D&D business and the separate sales or brand identity of the TMG business is maintained;
- (c) the TMG business is maintained as a going concern and sufficient resources are made available for the development of the TMG business to enable it to continue to compete independently in any of the markets affected by the Merger;
- (d) except in the ordinary course of business and for the purpose of complying with these Final Undertakings, no substantive changes are made to the organisational structure of, or the management responsibilities within, the TMG business;
- (e) except in the ordinary course of business and for the purpose of complying with these Final Undertakings, the nature, description, range and quality of goods and/or services supplied by the TMG business are maintained and preserved;
- (f) except in the ordinary course of business:
  - (i) all of the assets of the TMG business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the TMG business are disposed of; and
  - (iii) no interest in the assets of the TMG business is created or disposed of;
- (g) there is no integration of the information technology of the TMG and D&D businesses, and the software and hardware platforms of the TMG business shall remain essentially unchanged, except (in relation to the latter) in the ordinary course of business, for routine changes and

maintenance or, where strictly necessary to comply with these Final Undertakings;

- (h) the customer and supplier lists of the TMG business and the D&D business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the TMG business will be carried out by TMG alone and, for the avoidance of doubt, the D&D business will not negotiate on behalf of the TMG business;
- (i) all existing contracts of the TMG business and the D&D business continue to be serviced by the business to which they were awarded;
- (j) no changes are made to the Key Staff of the TMG business;
- (k) no Key Staff are transferred between TMG or its Subsidiaries and D&D or its Subsidiaries or Related Parties;
- (l) reasonable steps are taken to encourage all Key Staff to remain with the TMG business, including by establishing and maintaining appropriate [✂]; and
- (m) no Confidential Information shall pass, directly or indirectly, from TMG (or any of its employees, directors, agents or Related Persons) to D&D (or any of its employees, directors, agents, or Related Persons), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations).

6.3 Further, within 5 working days of the Commencement Date, D&D undertakes to offer an appropriate [✂].

6.4 Each Party undertakes that until the Final Disposal, they will keep the CMA updated of any material developments (and, with the consent of the CMA, such updates may be provided through the Monitoring Trustee) relating to their respective business, which includes but is not limited to:

- (a) details of Key Staff who leave or join the TMG business;
- (b) any interruption of the TMG business (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
- (c) all substantial customer volumes won or lost for the TMG business including any substantial changes in customers' demand;
- (d) substantial changes in the TMG business' contractual arrangements or relationships with key suppliers;
- (e) substantial adverse changes in any material litigation or regulatory enforcement action;
- (f) the initiation, defence, progress and resolution of any material litigation or regulatory enforcement action; and

- (g) substantial adverse changes in the financial position and/or performance of the TMG business.
- 6.5 The Parties each undertake that within a period of two weeks from the Commencement Date, they will provide written compliance statements to the CMA in the form set out in Annexes 5 and 6, confirming compliance with their respective obligations under paragraph 6 of these Final Undertakings (subject to any granted derogations). Each Party shall set out any details of material developments for the purposes of paragraph 6.4 of which they are aware. Thereafter, each of the Parties will provide similar compliance statements to the CMA (or, with the consent of the CMA, such statements may be provided through the Monitoring Trustee) on a monthly basis until the Completion Date.
- 6.6 If any of the Parties has any reason to suspect that this paragraph 6 might have been breached, it shall immediately notify the CMA and the Monitoring Trustee appointed in accordance with the terms of paragraph 7.
- 6.7 The CMA may give Directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with this paragraph 6 or do or refrain from doing any specified action in order to ensure compliance with this paragraph 6. The CMA may vary or revoke any Directions so given.
- 6.8 The Parties shall comply and procure compliance by their Subsidiaries where necessary in so far as they are able with such Directions as the CMA may from time to time give to take such steps as may be specified or described in the Directions for the purpose of carrying out or securing compliance with this paragraph 6.
- 6.9 Within 5 working days of Final Disposal, D&D undertakes to return to TMG or destroy all TMG Confidential Information or, where the TMG Confidential Information is in electronic form and destruction is not possible, to return it to TMG or render it inaccessible from any computer system, disk or device so that it is not readily available to any person; and where the Confidential Information is destroyed or rendered inaccessible, inform TMG of the manner of the destruction or rendering inaccessible.

## 7. **Monitoring Trustee**

- 7.1 D&D undertakes to secure the appointment or retention of an independent Monitoring Trustee to perform the functions set out in Annex 1 on behalf of the CMA. Provided that the other conditions set out in Annex 1 are complied with, the Monitoring Trustee may be the same as already appointed pursuant to the written directions made by the CMA on 19 January 2022 under the IEO.
- 7.2 In the event that D&D proposes to retain the current monitoring trustee, D&D shall provide the CMA with a copy of the updated agreed terms and conditions of appointment and the revised mandate that reflect these Final Undertakings no later than five Working Days after the Commencement Date.
- 7.3 D&D undertakes to
  - (a) provide the Monitoring Trustee with direct access to potential purchasers;

- (b) provide copies of the Transaction Agreements, including drafts, for the Monitoring Trustee to review;
- (c) provide the Monitoring Trustee on request with any information, correspondence, materials and other documents relating to the Divestiture;
- (d) invite the Monitoring Trustee to be present on all calls and meetings where the Supply Agreements are to be discussed or where decisions on shortlisting bidders are taking place, and
- (e) copy the Monitoring Trustee on all communications between D&D (or its representatives) and prospective purchasers concerning the Supply Agreements.

## 8. Divestiture Trustee

8.1 The Parties recognise and acknowledge that the CMA may direct the appointment of a Divestiture Trustee following the expiration of the Divestiture Period if the Parties fail to achieve the Final Disposal within the Divestiture Period, or prior to the expiry of the Divestiture Period including where:

- (a) the CMA reasonably believes that there is a risk that the Final Disposal would be delayed or fail to be completed within the Divestiture Period; or
- (b) the CMA reasonably believes after raising its concerns with the Parties that D&D is not engaging constructively with their obligations under these Final Undertakings or that D&D has otherwise failed to comply with their obligations under these Final Undertakings; or
- (c) the CMA reasonably believes there is a material deterioration in the TMG business during the divestiture process.
- (d) the CMA reasonably believes that D&D is in violation of Clause **Error! Reference source not found.** making the sale of TMG either legally or de facto conditional on the purchaser retaining the Supply Agreements or on the purchaser concluding any other arrangements for the supply of inputs with D&D.

8.2 To give effect to this paragraph 8, D&D undertakes to enter into a Divestiture Trustee Mandate with the Divestiture Trustee in accordance with Annex 2.

## 9. Variations to these Final Undertakings

9.1 The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.

9.2 Where a request for consent to vary these Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.

9.3 The consent of the CMA shall not be unreasonably withheld or delayed.

## 10. **General obligations to provide information to the CMA**

10.1 The Parties each undertake to cooperate with the CMA in good faith and to promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.

10.2 The Parties each undertake that should they at any time be in breach of any provision of these Final Undertakings, the relevant party will notify the CMA within three Working Days, starting with the date it becomes aware of the breach or relevant circumstances of that breach.

10.3 Where any person, including a Monitoring Trustee or a Divestiture Trustee must provide information to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, the Parties each undertake that they will take reasonable steps within their respective power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of the Parties to any person other than to the CMA, without the prior written consent of both the CMA and the Parties.

## 11. **Acceptance of service**

11.1 D&D hereby authorises its legal representatives, Clifford Chance LLP to accept service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to D&D or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).

11.2 TMG hereby authorises its legal representatives, Fieldfisher LLP to accept service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to TMG or its Subsidiaries or Affiliates in connection with proceedings in court in the UK).

11.3 Unless D&D or TMG informs the CMA that their legal representatives have ceased to have authority and have informed the CMA of an alternative to accept and acknowledge service on their behalf, any document, written directions, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served, as applicable, on D&D or TMG, if it is served on their applicable respective legal representatives, and service or receipt shall be deemed to be acknowledged by email from D&D's and TMG's legal representatives to the CMA.

11.4 This paragraph has effect irrespective of whether, as between D&D and its legal representatives, or TMG and its legal representatives, their respective legal representatives have or continue to have any authority to accept and acknowledge service on their behalf (unless they inform the CMA that D&D's or TMG's legal representatives have ceased to have authority to accept and acknowledge service on their behalf), and no failure or mistake by D&D's or TMG's legal representatives (including a failure to notify, as applicable, D&D or

TMG, of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

**12. Effect of invalidity**

12.1 The Parties undertake that should any provision of these Final Undertakings be contrary to law or invalid for any reason, they shall continue to observe the remaining provisions.

**13. Extension of time**

13.1 The Parties recognise and acknowledge that the CMA may, where it considers it appropriate, in response to a written request from either of the Parties showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which the Parties, the Monitoring Trustee and the Divestiture Trustee (as the case may be) must take action. The grant of any such extension shall not be unreasonably withheld or delayed.

**14. Undertakings given jointly and severally**

14.1 Where undertakings in these Final Undertakings are given by D&D and TMG, they are given jointly and severally.

**15. Governing law**

15.1 These Final Undertakings shall be governed by and construed in all respects in accordance with English law.

15.2 Disputes arising concerning these Final Undertakings shall be subject to the exclusive jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF DYE &  
DURHAM LIMITED:

WITNESS:

.....  
Signed

.....  
Signed

.....  
Name

.....  
Name

.....  
Title

.....  
Title

.....  
Date

.....  
Date

FOR AND ON BEHALF OF DYE &  
DURHAM LIMITED:

WITNESS:

.....  
Signed

.....  
Signed

.....  
Name

.....  
Name

.....  
Title

.....  
Title

.....  
Date

.....  
Date

FOR AND ON BEHALF OF TMG:

.....

Signed

.....

Name

.....

Title

.....

Date



## **Annex 1: Appointment and Functions of Monitoring Trustee**

1. The Monitoring Trustee must possess appropriate qualifications and experience to carry out its functions. The Monitoring Trustee must be under an obligation to carry out its functions to the best of its abilities.
2. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA.
3. D&D shall remunerate and reimburse the Monitoring Trustee for all reasonable costs and professional fees properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out its functions.
4. Unless paragraph 7.2 applies:
  - a. the appointment of the Monitoring Trustee and its terms and conditions must be approved by the CMA. D&D shall inform the CMA as soon as is reasonably practicable and in any event by no later than five Working Days after the Commencement Date of the identity of the Monitoring Trustee that it proposes to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by D&D, D&D shall provide the CMA with a copy of the agreed terms and conditions of appointment.
  - b. If the proposed Monitoring Trustee is rejected by the CMA, D&D shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedures set out in clauses 1 to 3 of this Annex above.
5. The provisions of clause 6 of this Annex shall apply if:
  - a. paragraph 7.2 does not apply; and
  - b. D&D fails to nominate persons in accordance with clause 4(a); or
  - c. those further persons nominated by D&D in accordance with clause 4(b) above are rejected by the CMA; or
  - d. D&D is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as Monitoring Trustee, and D&D shall appoint or cause to be appointed such Monitoring Trustee within five Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
7. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out in clauses 10 and 11 of this Annex and that the Monitoring Trustee will monitor the compliance of the Parties with their obligations under these Final Undertakings. The mandate shall provide that the

Monitoring Trustee shall take such steps as it reasonably considers necessary to carry out its functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out its functions under these Final Undertakings.

### **Monitoring Trustee – replacement, discharge and reappointment**

8. D&D acknowledges that if the Monitoring Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest, the CMA may, after consulting the Monitoring Trustee, require D&D to replace the Monitoring Trustee.
9. If the Monitoring Trustee is removed under clause 8 of this Annex, the Monitoring Trustee may be required to continue in its post until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure contained in clauses 1 to 5 of this Annex.

### **Monitoring Trustee Functions – Divestiture of TMG**

10. The Monitoring Trustee's functions as set out in this clause 10 are to monitor and review compliance with these Final Undertakings and progress towards the Final Disposal, and shall in particular include:
  - a. Monitoring on-going compliance with the Divestiture Undertakings set out in paragraphs 3 and 4 and the Asset Maintenance Undertakings set out in paragraph 6; and
  - b. monitoring the progress made against the Approved Timetable towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings including:
    - i. the steps that have been taken towards the preparation of agreements for the transfer of the TMG business and the persons to whom such agreements have been distributed;
    - ii. where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between D&D and its financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process; and
    - iii. in instances where the Monitoring Trustee reasonably considers there to be a material risk that D&D or TMG or any of their Subsidiaries will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between D&D and possible purchasers in connection with the disposal process. For the avoidance of doubt, the Monitoring Trustee will also attend all meetings and calls where the Supply Agreements are discussed (see Annex 4 paragraph 2(g)) or where decisions shortlisting bidders are being taken and will be copied on all communications

between D&D (or its representatives) and prospective purchasers concerning the Supply Agreements.

11. The Monitoring Trustee will promptly inform the CMA of any material developments in connection with these Final Undertakings and will provide a written report to the CMA every four weeks, the first report to be submitted no later than three weeks from the Commencement Date.

## **Annex 2: Appointment and Functions of Divestiture Trustee**

1. D&D undertakes that within the period of five Working Days following the day on which the CMA issues a Direction pursuant to paragraph 8, D&D shall submit to the CMA for approval a list of persons from which it proposes to appoint a Divestiture Trustee with sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in clause 2 of this Annex and shall include among other things:
  - a. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to perform its duties; and
  - b. a schedule of the steps to be taken to give effect to the mandate.
2. Each person on the list referred to in clause 1 shall possess the qualifications necessary for the performance of the mandate, shall be independent of and unconnected to the Parties and free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration, on appointment or thereafter.
3. The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld or delayed) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, D&D shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, D&D shall be free to choose among the approved names the Divestiture Trustee to be appointed. D&D undertakes to appoint the Divestiture Trustee within three Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
4. If all the proposed Divestiture Trustees are rejected by the CMA, D&D shall submit the names of at least two further persons within five Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in clauses 1 to 3 above.
5. The provisions of clause 6 below shall apply only if:
  - a. D&D fails to nominate persons in accordance with clause 1 above;
  - b. those further persons nominated by D&D in accordance with clause 4 above are rejected by the CMA;
  - c. D&D is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as a Divestiture Trustee, and D&D shall appoint or cause to be appointed such Divestiture Trustee within

three Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

### **Divestiture Trustee – Functions**

7. The Parties undertake to enable the Divestiture Trustee to carry out its duties and to provide such co-operation and resources as the Divestiture Trustee may reasonably require.
8. The Parties recognise and acknowledge that:
  - a. the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty to implement the Trustee Obligation;
  - b. in order to implement the Trustee Obligation, the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written directions or instructions to the Divestiture Trustee to amend the scope of the TMG business to be divested, where the CMA has reasonable grounds for believing that the divestiture of TMG cannot be achieved within the Divestiture Period;
  - c. the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary to implement the Trustee Obligation and such terms and conditions as the CMA considers appropriate; and
  - d. the Divestiture Trustee shall protect the legitimate financial interests of D&D subject to the Divestiture Trustee's overriding obligation to implement the Trustee Obligation which may include the Final Disposal of the TMG business [✂].
9. The Parties recognise and acknowledge that the Divestiture Trustee shall take such steps and measures as it considers necessary to implement the Trustee Obligation and to that end, the Divestiture Trustee may give written directions to the Parties. The Parties undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestiture Trustee may specify.
10. The Parties recognise and acknowledge that in the performance of the Trustee Obligation, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of the Parties. The Parties undertake that they shall not seek to revise the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.
11. The Divestiture Trustee shall every four weeks until the date on which Final Disposal takes place, report to the CMA on its progress towards Final Disposal, compliance with paragraph 4.3 and any other matter specified by the CMA.

## **Divestiture Trustee – duties and obligations of D&D and TMG**

12. The Parties undertake to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request that is relevant to the divestiture, excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the performance of the Trustee Obligation.
13. The Parties recognise and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege). The Parties also undertake to provide the Divestiture Trustee upon reasonable request with copies of any such items. Upon the reasonable request of the Divestiture Trustee, the Parties undertake to make available to the Divestiture Trustee one or more offices on their respective premises and ensure that the necessary D&D and/or TMG Group personnel are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary to discharge the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with the Parties' respective internal policies.
14. The Parties undertake to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. The Parties undertake that upon the reasonable request of the Divestiture Trustee, they shall execute the documents required to give effect to the Trustee Obligation.
15. The Parties undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the duty to divest TMG and the Parties recognise and acknowledge that the Divestiture Trustee, its employees, agents or advisers shall have no liability to the Parties or any of its Subsidiaries or Affiliates for any liabilities arising out of the proper performance of the duty to divest the TMG, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
16. D&D shall be entitled to a monthly statement from the Divestiture Trustee of all professional fees and expenses properly incurred by the Divestiture Trustee and its advisers, appointed in accordance with clause 14. Any individual items of costs or expenses in excess of an amount at a level set in advance by the CMA in consultation with the Divestiture Trustee shall not be properly incurred unless with the prior written consent of the CMA, D&D having had prior opportunity to comment to the CMA on both the level to be set in advance and any individual items of cost or expense that exceed that amount, on the condition that D&D shall provide such comments to the CMA within a timescale specified by the CMA that shall be reasonable in all the circumstances.
17. D&D shall remunerate and reimburse the Divestiture Trustee for all professional fees, expenses and reasonable costs properly incurred in accordance with the terms and conditions of its appointment. This may include all costs, expenses

and professional fees of financial or legal advisers appointed to assist with the fulfilment of the Divestiture Trustee Obligation if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by D&D. Should D&D refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with D&D, approve and direct the appointment of such advisers.

18. The Parties undertake to make no objection to the Final Disposal save on the grounds of bad faith, wilful default, recklessness or negligence by the Divestiture Trustee or subject to paragraph 8.d, failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of either of the Parties.

#### **Divestiture Trustee – replacement, discharge and reappointment**

19. The Parties acknowledge that if the Divestiture Trustee ceases to perform its duties, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require D&D to replace the Divestiture Trustee.
20. If the Divestiture Trustee is removed under clause 19 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee will have effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in clauses 1 to 6 above.
21. The Parties recognise and acknowledge that, other than in accordance with paragraph 19 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

## **Annex 3: Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed in a manner that is consistent with, and for the purpose of giving effect to, the Report in the Relevant Market.

The CMA shall on reasonable request give D&D guidance on the interpretation of specific aspects of these Purchaser Approval Criteria, so as to enable D&D to ensure that its selected purchaser for TMG will meet the requirements of this Annex 3.

### **1. Independence**

- 1.1 An Approved Purchaser should not have any connection (for example financial, management, shared directorships, equity interests, reciprocal commercial arrangements) to D&D and/or TMG that could reasonably be expected to compromise the Approved Purchaser's ability or incentives to compete with D&D after the Final Disposal.

### **2. Capability**

- 2.1 An Approved Purchaser should have access to or be able to secure appropriate financial resources, expertise and assets to enable TMG to be an effective competitor. This access should be sufficient to enable TMG to continue to develop as an effective competitor.
- 2.2 When assessing the capability of a potential purchaser of the TMG, an Approved Purchaser should:
  - (a) be independent of the Parties; and
  - (b) be committed to TMG competing in the supply of PSRBs in E&W.

### **3. Commitment to the Relevant Market**

- 3.1 An Approved Purchaser should demonstrate to the satisfaction of the CMA that it is committed to and has credible plans for TMG competing in the supply of PSRBs in E&W. This should be evidenced by an appropriate business plan and objectives demonstrating how the purchaser will maintain and operate the TMG business as a viable business actively competing in the market for the supply of PSRBs in E&W.

### **4. Absence of competitive concern**

- 4.1 The CMA shall consider whether the terms of the Transaction Agreements would give rise to a material risk that the Divestiture would not remedy the SLC and the adverse effects that may be expected to result from them. Further an Approved Purchaser should not give rise to a realistic prospect of any further competition or regulatory concerns.



## **Annex 4: Compliance Statement for D&D**

I [insert name] confirm on behalf of D&D that:

### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) D&D has complied with the Final Undertakings made by the CMA in relation to the divestiture of TMG on [insert date] (the Final Undertakings);  
and
  - (b) D&D's subsidiaries have also complied with these Final Undertakings.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by D&D that might prejudice the Final Disposal, the CMA's decisions in the Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of the TMG business and the D&D business;
    - (ii) Transfer the ownership or control of the TMG business or D&D business or any of its subsidiaries except where strictly necessary to comply with these Final Undertakings; or
    - (iii) Otherwise impair the ability of the TMG business to compete independently in any of the markets affected by the Merger;
  - (b) The TMG business has been carried on separately from the D&D business and the TMG business's separate sales or brand identity has been maintained;
  - (c) The TMG business has been maintained as a going concern and sufficient resources have been made available for the development of the TMG business, on the basis of its pre-merger business plans;

- (d) No substantive changes have been made to the organisational structure of the TMG business, except in the ordinary course of business and except where strictly necessary to comply with these Final Undertakings;
- (e) No changes have been made to the organisational structure of the D&D business which would alter, impede or frustrate the implementation, carrying out or enforcement of the Final Undertakings except where strictly necessary to comply with these Final Undertakings;
- (f) No substantive changes are made to the management responsibilities within the TMG business except in the ordinary course of business and where strictly necessary to comply with these Final Undertakings;
- (g) No discussions or communications in relation to the Supply Agreements have been conducted without the Monitoring Trustee being present or copied in;
- (h) The nature, description, range and quality of goods and/or services supplied by the TMG business have been maintained and preserved;
- (i) Except in the ordinary course of business for the separate operation of the TMG business or where strictly necessary to comply with these Final Undertakings:
  - (i) All of the assets of the TMG business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of the TMG business have been disposed of; and
  - (iii) No interest in the assets of the TMG business has been created or disposed of;
- (j) There has been no integration of the information technology of the TMG business and the D&D business, and the software and hardware platforms of the TMG business and the D&D business have remained essentially unchanged, except (in relation to the latter) for routine changes and maintenance, or where strictly necessary to comply with these Final Undertakings;
- (k) The customer and supplier lists of the TMG business and the D&D business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the TMG business have been carried out by the TMG business alone and the D&D business has not negotiated on behalf of the TMG

business (and vice versa) or entered into any joint agreements with the TMG business (and vice versa);

- (l) All existing contracts of the TMG business and the D&D business have been serviced by the business to which they were awarded;
- (m) No changes have been made to Key Staff of the TMG business except where strictly necessary to comply with these Final Undertakings;
- (n) No Key Staff have been transferred between the D&D business and the TMG business except where strictly necessary to comply with these Final Undertakings;
- (o) All reasonable steps have been taken to encourage all Key Staff to remain with the TMG business;
- (p) Except as permitted by the Final Undertakings, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the TMG business (or any of its employees, directors, agents or Affiliates) to the D&D business (or any of its employees, directors, agents or Affiliates), or vice versa;
- (q) Except as listed in paragraph (r) below, there have been no:
  - (i) Changes to the Key Staff of the TMG business;
  - (ii) Interruptions to the TMG business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on TMG and/or its customers;
  - (iii) Substantial customer volumes won or lost or substantial changes to the customer contracts for the TMG business ; or
  - (iv) Substantial changes in the TMG business' contractual arrangements or relationships with key suppliers.
- (r) *[list of material developments]*

3. D&D and its subsidiaries remain in full compliance with the Final Undertakings and will continue actively to keep the CMA informed of any material developments relating to the TMG or the D&D businesses in accordance with Article 4 of the Final Undertakings.

Interpretation

4. Terms defined in the Final Undertakings have the same meaning in this compliance statement.

I understand that:

5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both. (Section 117 of the Enterprise Act 2002.)

FOR AND ON BEHALF OF DYE & DURHAM LIMITED.

Signature .....

Name .....

Title .....

Date .....

## Annex 5: Compliance Statement for TMG

I [insert name] confirm on behalf of TMG that:

### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) TMG has complied with the Final Undertakings made by the CMA in relation to the divestiture of TMG on [insert date] (the Final Undertakings);  
and
  - (b) TMG's subsidiaries have also complied with these Final Undertakings.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by TMG that might prejudice the Final Disposal, the CMA's decisions in the Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of the TMG business and the D&D business;
    - (ii) Transfer the ownership or control of the TMG business or any of its subsidiaries except where strictly necessary to comply with these Final Undertakings; or
    - (iii) Otherwise impair the ability of the TMG business to compete independently in any of the markets affected by the Merger;
  - (b) The TMG business has been carried on separately from the D&D business and the separate sales or brand identity of the TMG business has been maintained;
  - (c) The TMG business has been maintained as a going concern and sufficient resources have been made available for the development of the TMG business, on the basis of its pre-merger business plans;
  - (d) No substantive changes have been made to the organisational structure of the TMG business, except in the ordinary course of business or where strictly necessary to comply with these Final Undertakings;
  - (e) No changes have been made to the organisational structure of the TMG business which would alter, impede or frustrate the implementation,

carrying out or enforcement of the Final Undertakings, except where strictly necessary to comply with the Final Undertakings;

- (f) No substantive changes are made to the management responsibilities within the TMG business except in the ordinary course of business or except where strictly necessary to comply with these Final Undertakings;
- (g) The nature, description, range and quality of goods and/or services supplied by the TMG business in the UK have been maintained and preserved;
- (h) Except in the ordinary course of business for the separate operation of the TMG business and the D&D business or except where strictly necessary to comply with these Final Undertakings:
  - (i) All of the assets of the TMG business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of the TMG business have been disposed of; and
  - (iii) No interest in the assets of the TMG business has been created or disposed of;
- (i) There has been no integration of the information technology of the TMG and D&D businesses, and the software and hardware platforms of the TMG business have remained essentially unchanged, except (in relation to the latter) for routine changes and maintenance, or where strictly necessary to comply with these Final Undertakings;
- (j) Subject to integration which had occurred prior to 27 August 2021, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the TMG business have been carried out by the TMG business alone and the D&D business has not negotiated on behalf of the TMG business (and vice versa) or entered into any joint agreements with the TMG business (and vice versa);
- (k) All existing contracts of the TMG business and the D&D business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to 27 August 2021;
- (l) No changes have been made to Key Staff of the TMG business, except where strictly necessary to comply with these Final Undertakings;

- (m) No Key Staff have been transferred between the D&D business and the TMG business except where strictly necessary to comply with these Final Undertakings;
- (n) All reasonable steps have been taken to encourage all Key Staff to remain with the TMG business;
- (o) Except as permitted by the Final Undertakings, no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the TMG business (or any of its employees, directors, agents or Affiliates) to the D&D business (or any of its employees, directors, agents or Affiliates), or vice versa;
- (p) Except as listed in paragraph (q) below, there have been no:
- (i) Changes to the Key Staff of the TMG business except where strictly necessary to comply with these Undertakings;
  - (ii) Interruptions of the TMG business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) Substantial customer volumes won or lost or substantial changes to the customer contracts for the TMG business; or
  - (iv) Substantial changes in the TMG business's contractual arrangements or relationships with key suppliers.
- (q) *[list of material developments]*

3. TMG and its subsidiaries remain in full compliance with the Final Undertakings and will continue actively to keep the CMA informed of any material developments relating to the TMG business in accordance with Article 4 of the Final Undertakings.

#### Interpretation

4. Terms defined in the Final Undertakings have the same meaning in this compliance statement.

I understand that:

6. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both. (Section 117 of the Enterprise Act 2002.)

FOR AND ON BEHALF OF TM GROUP (UK) LIMITED.

Signature .....

Name .....

Title .....

Date .....