

COMPLETED ACQUISITION BY INDEPENDENT VETCARE LIMITED OF SWAYNE & PARTNERS TOPCO LIMITED

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

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that Independent Vetcare Limited (**IVC**) and Swayne & Partners Topco Limited and its subsidiaries (including Swayne & Partners Ltd) (together, **Swayne**) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (c) the CMA wishes 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 decisions on the reference;
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act; and
- (e) the CMA previously issued an order (the **Previous Order**) on 31 October 2022 under section 72(2) of the Act in relation to the transaction described in (a) above, which this Order is intended to replace.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to IVC, IVC Acquisition Pikco Ltd (**Pikco**), IVC Acquisition Topco Limited (**IVC Topco**), Islay New Group Holding S.A. (**Islay**), Société Des Produits Nestlé S.A. (**Nestle**), EQT Fund

Management S.à r.l. (**EQT**) and Berkshire Partners LLC (**Berkshire**) (collectively, the **Acquirer Group**) (the **Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 17 November 2022.
2. This Order applies to the Acquirer Group.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige the Acquirer Group to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Acquirer Group and Swayne businesses until determination of proceedings

4. Except with the prior written consent of the CMA, the Acquirer Group shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Acquirer Group business with the Swayne business;
 - (b) transfer the ownership or control of the IVC business or the Swayne business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Swayne business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.

Save that paragraph 4(a) and 4(c) shall apply to the Acquirer Group and paragraph 4(b) shall apply to IVC, Pikco, IVC Topco and Islay only.

5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, the Acquirer Group shall at all times during the specified period take all necessary steps to ensure that, except with the prior written consent of the CMA:
 - (a) the Swayne business is carried on separately from the Acquirer Group business and the Swayne business's separate sales or brand identity is maintained;

- (b) the Swayne business and the IVC business are maintained as a going concern and sufficient resources are made available for the development of the Swayne business and the IVC business, on the basis of their respective pre-merger business plans;
- (c) except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities within, the Swayne business or the IVC business;
- (d) the nature, description, range and quality of goods or services (or both) supplied in the UK by each of the Swayne business and the IVC business are maintained and preserved;
- (e) except in the ordinary course of business through the separate operation of the Swayne business and the IVC business:
 - (i) all of the assets of the Swayne business and the IVC business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Swayne business or the IVC business are disposed of; and
 - (iii) no interest in the assets of the Swayne business or the IVC business is created or disposed of;
- (f) there is no integration of the information technology of the Swayne or the Acquirer Group businesses, and the software and hardware platforms of the Swayne business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the IVC business and the Swayne business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Swayne business will be carried out by the Swayne business alone and for the avoidance of doubt the Acquirer Group business will not negotiate on behalf of the Swayne business (and vice versa) or enter into any joint agreements with the Swayne business (and vice versa);
- (h) all contracts of the Swayne business and the IVC business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Swayne business or the IVC business;
- (j) no key staff are transferred between the Swayne business and the IVC business;

- (k) all reasonable steps are taken to encourage all key staff to remain with the Swayne business and the IVC business; and
- (l) 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 Swayne and the Acquirer Group businesses shall pass, directly or indirectly, from the Swayne business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of their employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Save that paragraphs 5(b), 5(c), 5(d), 5(e), 5(g) (insofar as this sub-paragraph is expressed to apply to the IVC business), 5(h), 5(i), 5(j) and 5(k) shall apply to IVC, Pikco, IVC Topco and Islay only.

- 6. The derogations issued in relation to or pursuant to the Previous Order as set out in Schedule 1 to this Order (the **Derogations**) shall continue in force under this Order, except that:
 - (a) the Derogations shall be treated as having been granted in relation to the Previous Order on the date on which they were granted but amended by paragraphs 6(b) and 6(c) of this Order on the commencement date;
 - (b) the following defined terms used in the Derogations and any ancillary documents (including insofar as IVC can procure such changes, any non-disclosure agreements or confidentiality undertakings) shall be interpreted in accordance with the meanings set out in this Order:
 - (i) 'Order' or 'Initial Order' shall mean this Order;
 - (ii) 'Orders' or "Initial Orders' shall mean the Orders set out in paragraph 14 below;
 - (c) references in the Derogations to paragraphs of the Previous Order shall be replaced with references to the equivalent or nearest equivalent paragraphs of this Order;

- (d) all terms of the Derogations shall be interpreted in accordance with the purpose for which the particular derogation was granted by the CMA and strictly within the limits of such purpose;
- (e) to the extent that there remains any uncertainty regarding the interpretation of any of the terms of the Derogations as applicable under this Order, the CMA reserves its rights to determine the meaning of the Derogations in all such circumstances;
- (f) to the extent any of the derogations listed in Schedule 1 are varied or revoked in future, such variation or revocation will apply irrespective of their inclusion in Schedule 1.

Compliance

- 7. The Acquirer Group shall take all necessary steps to ensure that each of their subsidiaries complies with the provisions of this Order as they apply to that entity as if the Order had been issued to each of them.
- 8. Each entity in the Acquirer Group shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by that entity and its subsidiaries with this Order. In particular, on 1 December 2022 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officers of each of the addressees of the IEO that form part of the Acquirer Group or other persons of the Acquirer Group as agreed with the CMA shall, on behalf of the entity for which they are certifying compliance, provide a statement to the CMA in the form set out in Annexes A and B to this Order (as relevant) confirming compliance with this Order.
- 9. At all times, IVC, Pikco, IVC Topco and Islay shall actively keep the CMA informed of any material developments relating to the Swayne business or the IVC business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Swayne business or the IVC business;
 - (b) any interruption of the Swayne business or the IVC business (including without limitation its procurement, production, 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 or substantial changes to the customer contracts for the Swayne business or the IVC business including any substantial changes in customers' demand; and

- (d) substantial changes in the Swayne business's or the IVC business's contractual arrangements or relationships with key suppliers.
10. If any member of the Acquirer Group has any reason to suspect that any provision (or provisions) of this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that the Acquirer Group may be directed to appoint under paragraph 11.
 11. 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 Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
 12. The Acquirer Group shall comply 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 Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'the Acquirer Group' means IVC, Pikco, IVC Topco, Islay, Nestle, EQT and Berkshire;

'the Acquirer Group business' means the businesses of IVC, Pikco, IVC Topco, Islay, Nestle, EQT and Berkshire and their subsidiaries (including the entities that EQT and Berkshire manage respectively) but excluding the Target Entities' businesses carried on as at the commencement date;

'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;

‘Berkshire’ means Berkshire Partners LLC, incorporated in the US (tax registration number 04-2911958);

‘the Berkshire business’ means the business of Berkshire and its subsidiaries, and including entities which it manages, but excluding the Target Entities’ businesses, carried on as at the commencement date.

‘business’ has the meaning given by section 129(1) and (3) of the Act;

‘commencement date’ means 17 November 2022;

‘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;

‘the decisions’ means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

‘EQT’ means EQT Fund Management S.à r.l., incorporated in Luxembourg (company number B167972);

‘the EQT business’ means the business of EQT and its subsidiaries, and including entities which it manages, but excluding the Target Entities’ businesses, carried on as at the commencement date.

‘Islay’ means Islay New Group Holding S.A. (incorporated in Luxembourg with registration number B252223);

‘IVC’ means Independent Vetcare Limited (company number 07746795);

‘the IVC business’ means the business of Islay and its subsidiaries but excluding the Target Entities’ businesses, carried on as at the commencement date;

‘IVC Topco’ means IVC Acquisition Topco Limited (incorporated in Guernsey with registration number 62852);

‘key staff’ means staff in positions of (i) executive or managerial responsibility or (ii) whose performance affects the viability of the business;

‘Nestle’ means Société Des Produits Nestlé S.A., incorporated in Switzerland (company number CHE-109.815.753);

‘the Nestle business’ means the business of Nestle and its subsidiaries but excluding the Target Entities’ businesses, carried on as at the commencement date;

‘the ordinary course of business’ means matters connected to the day-to-day supply of goods or services (or both) by Swayne or IVC and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Swayne and IVC;

‘the Orders’ means this Order and the other seven initial enforcement orders issued to the Acquirer Group on 17 November 2022 in respect of the Relevant Transactions;

‘Pikco’ means IVC Acquisition Pikco Ltd (incorporated in England and Wales with registration number 10510862);

‘the Relevant Transactions’ means IVC’s completed acquisitions of the Target Entities.

‘specified period’ means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

‘subsidiary’, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

‘Swayne’ means Swayne & Partners Topco Limited, company number 13549613, and its subsidiaries (including Swayne & Partners Ltd, company number 07986290);

‘the Swayne business’ means the business of Swayne and its subsidiaries (including Swayne & Partners Ltd) carried on as at the commencement date;

‘the Target Entities’ means the independent veterinary practices acquired by IVC and listed in Annex C to this Order.

‘the Target Entities’ businesses’ means the businesses of each of the Target Entities and their respective subsidiaries carried on as at the commencement date [X];

‘the transaction’ means the transaction by which Independent Vetcare Limited and Swayne have ceased to be distinct within the meaning of section 23 of the Act;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Faye Fullalove, Assistant Director, Mergers

**Compliance statement for each entity in the Acquirer Group
(excluding IVC, Pikco, IVC Topco and Islay)**

I [insert name] confirm on behalf of [relevant IEO addressee] that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
 - (a) [relevant IEO addressee] has complied with the Orders made by the CMA in relation to the Relevant Transactions on 17 November 2022 (the **Orders**).
 - (b) [relevant IEO addressee]'s subsidiaries have also complied with these Orders.
2. Subject to paragraph 3 of the Orders, and except with the prior written consent of the CMA:
 - (a) No action has been taken by [relevant IEO addressee] that might prejudice a reference of any of the transactions under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of any of the Target Entities' businesses with the [relevant IEO addressee] business; or
 - (ii) otherwise impair the ability of any of the Target Entities' businesses or the [relevant IEO addressee] business to compete independently in any of the markets affected by the transaction.
 - (b) The Target Entities' businesses have been carried on separately from the [relevant IEO addressee] business and, to the best of [relevant IEO addressee]'s knowledge, the Target Entities' businesses' separate sales or brand identities have been maintained.
 - (c) There has been no integration of the information technology of any of Target Entities' businesses or the [relevant IEO addressee] business.
 - (d) Except as permitted by the Orders, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the any of the Target Entities' businesses or the Acquirer Group business, has passed,

directly or indirectly, from any of the Target Entities' businesses (or any of their employees, directors, agents or affiliates) to the [relevant IEO addressee] business (or any of its employees, directors, agents or affiliates), or vice versa.

3. [relevant IEO addressee] and its subsidiaries remain in full compliance with the Orders.

Interpretation

4. Terms defined in the Orders 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 **finances, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [RELEVANT ENTITY(IES) OF THE ACQUIRER GROUP]

Signature

Name

Title

Date

Compliance statement for IVC, Pikco, IVC Topco and Islay

I [insert name] confirm on behalf of IVC, Pikco, IVC Topco and Islay that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
 - (a) IVC Pikco, IVC Topco and Islay have complied with the Orders made by the CMA in relation to the Relevant Transactions on 17 November 2022 (the **Orders**).
 - (b) IVC's, Pikco's, IVC Topco's and Islay's subsidiaries have also complied with these Orders.
2. Subject to paragraph 3 of the Orders, and except with the prior written consent of the CMA:
 - (a) No action has been taken by IVC, Pikco, IVC Topco and Islay that might prejudice a reference of any of the transactions under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of any of the Target Entities' businesses with the IVC business;
 - (ii) transfer the ownership or control of the IVC business or any of the Target Entities' businesses or any of their subsidiaries; or
 - (iii) otherwise impair the ability of any of the Target Entities' businesses or the IVC business to compete independently in any of the markets affected by the transaction.
 - (b) The Target Entities' businesses have been carried on separately from the IVC business and the Target Entities' businesses' separate sales or brand identity have been maintained.
 - (c) The Target Entities' businesses and the IVC business have been maintained as a going concern and sufficient resources have been made available for the development of the Target Entities' businesses and the IVC business, on the basis of their respective pre-merger business plans.

- (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Target Entities' businesses or the IVC business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Target Entities' businesses and the IVC business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the Target Entities' businesses and the IVC business:
 - (i) all of the assets of the Target Entities' businesses and the IVC business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Target Entities' businesses or the IVC business have been disposed of; and
 - (iii) no interest in the assets of the Target Entities' businesses or the IVC business has been created or disposed of.
- (g) There has been no integration of the information technology of the Target Entities' businesses or the IVC business, and the software and hardware platforms of the Target Entities' businesses has remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the Target Entities' businesses and the IVC business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Target Entities' businesses has been carried out by the Target Entities' businesses alone and, for the avoidance of doubt, the Acquirer Group business has not negotiated on behalf of the Target Entities' businesses (and vice versa) or entered into any joint agreements with the Target Entities' businesses (and vice versa).
- (i) All contracts of the Target Entities' businesses and the IVC business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Target Entities' businesses or the IVC business.

- (k) No key staff have been transferred between the Target Entities' businesses and the IVC business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Target Entities' businesses and the IVC business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to any of the Target Entities' businesses or the Acquirer Group business, has passed, directly or indirectly, from any of Target Entities' businesses (or any of their employees, directors, agents or affiliates) to the IVC business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph **Error! Reference source not found.** below, there have been no:
 - (i) key staff that have left or joined the Target Entities' businesses or the IVC business;
 - (ii) interruptions of the Target Entities' businesses or the IVC business (including without limitation 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 Target Entities' businesses or the IVC business; or
 - (iv) substantial changes in the Target Entities' businesses' or the IVC business' contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. IVC, Pikco, IVC Topco and Islay and their subsidiaries remain in full compliance with the Orders and will continue actively to keep the CMA informed of any material developments relating to the Target Entities' businesses or the IVC business in accordance with paragraph 99 of the Orders.

Interpretation

4. Terms defined in the Orders 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 **finest, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF IVC, PIKCO, IVC TOPCO AND ISLAY

Signature

Name

Title

Date

List of Target Entities

- Penrose Veterinary Group Limited;
- Kevin Castle (Pet Care) Ltd;
- Swayne & Partners Topco Limited (including Swayne & Partners Ltd);
- Treforest Vets (Holdings) Limited (including Treforest Veterinary Clinic Limited¹);
- Mercer & Hughes Limited;
- Swaffham Veterinary Centre Ltd;
- Anglesey Pet Clinic Ltd, and
- Chiltern Equine Clinic (including Chiltern Veterinary Services Ltd & Chiltern Bury Farm Ltd).

¹ Including Treforest and Tonypandy Veterinary Clinics.

SCHEDULE 1

1. Carve-out of non-UK business derogation granted on 31 October 2022.
2. Provision of support services derogation granted on 31 October 2022.
3. Referrals and provision of out-of-hours (OOH) services derogation granted on 31 October 2022.
4. Procurement derogation granted on 7 November 2022.