

COMPLETED ACQUISITIONS BY INDEPENDENT VETCARE LIMITED OF MULTIPLE INDEPENDENT VETERINARY PRACTICES

Directions issued on 18 November 2022 pursuant to paragraph 11 of the Initial Enforcement Orders imposed by the Competition and Markets Authority on Independent Vetcare Limited, IVC Acquisition Pikco Ltd, IVC Acquisition Topco Ltd, Islay New Group Holding S.A., Société Des Produits Nestlé S.A., EQT Fund Management S.à.r.l., and Berkshire Partners LLC on 17 November 2022 pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

The Competition and Markets Authority (**CMA**) is investigating the completed acquisitions by Independent Vetcare Ltd of 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 Limited, Anglesey Pet Clinic Ltd, Chiltern Equine Clinic (including Chiltern Veterinary Services Limited & Chiltern Bury Farm Limited) (the **Target Entities**) (the **Transactions**).

On 17 November 2022, the CMA made Initial Enforcement Orders (the **Orders**) addressed to Independent Vetcare Limited (**IVC**), IVC Acquisition Pikco Ltd (**Pikco**), IVC Acquisition Topco Ltd (**IVC Topco**), Islay New Group Holding S.A. (**Islay**) (collectively, the '**IVC Group**'), Société Des Produits Nestlé S.A. (**Nestle**), EQT Fund Management S.à.r.l. (**EQT**) and Berkshire Partners LLC (**Berkshire**) in accordance with section 72(2) of the Act to prevent pre-emptive action. The Orders are still in force.

The CMA now issues written directions under paragraph 11 of each of the Orders that, for the purpose of securing compliance with the Orders, the IVC Group must appoint a monitoring trustee in accordance with the terms provided for in Annex A and must comply with the obligations set out in Annex A.

Faye Fullalove

¹ Including Treforest and Tonypandy Veterinary Clinics.

Assistant Director, Mergers
Competition and Markets Authority
18 November 2022

Annex A

Directions to appoint a monitoring trustee

Interpretation

In these directions:

‘the Act’	means the Enterprise Act 2002;
‘an affiliate’	of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;
‘Berkshire’	means Berkshire Partners LLC, incorporated in the US (tax registration number 04-2911958);
‘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 of commencement of the Orders;
‘Derogations’	means any derogations granted whether before or after the appointment of the MT by the CMA by which any or all of the entities forming part of the IVC Group may undertake certain actions that derogate from the Orders;
‘EQT’	means EQT Fund Management S.à r.l., incorporated in Luxembourg (company number B167972);
‘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;
‘the IVC Group’	means each of IVC, Pikco, IVC Topco and Islay;
‘MT’	means the monitoring trustee appointed in accordance with these directions;

‘Nestle’	means Société Des Produits Nestlé S.A., incorporated in Switzerland (company number CHE-109.815.753);
‘Orders’	means the initial enforcement orders made by the CMA on 17 November 2022 and addressed to the IVC Group, Nestle, EQT and Berkshire;
‘Pikco’	means IVC Acquisition Pikco Ltd (incorporated in England and Wales with registration number 10510862);
‘subsidiary’,	has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and ‘subsidiaries’ shall be construed accordingly);
‘the Target Entities’	means the independent veterinary practices acquired by IVC and listed in Annex B to this Order and ‘the Target Entities businesses’ means the business, trade and assets of the Target Entities and their subsidiaries [3<];
‘Transactions’	means the transactions by which Independent Vetcare Limited and each of the Target Entities have ceased to be distinct within the meaning of section 23 of the Act;

Terms and expressions defined in the Order have the same meaning in these directions, and the singular shall include the plural and vice versa, unless otherwise specified or the context requires otherwise.

Appointment

1. The IVC Group must appoint a MT in order to ensure compliance with the Orders, in particular to:
 - a. avoid any pre-emptive action (within the meaning of the Act) taking place during the CMA’s investigation;
 - b. monitor and report to the CMA on compliance by the IVC Group and the IVC Group’s subsidiaries with the Orders; and
 - c. support the CMA taking any remedial action which may be required to keep the IVC business and the Target Entities businesses separate and maintain the IVC business and the Target Entities businesses as going concerns.
2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out its functions to the best of its abilities.

3. The IVC Group must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of the IVC Group as set out in these directions.

General

4. The MT must possess appropriate qualifications and experience to carry out its functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. The IVC Group shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out its functions.
7. The IVC Group must appoint the MT as soon as is reasonably practicable and in any event by **5pm on Friday 25 November 2022** (or such longer period as the CMA may reasonably agree in writing, including by email) and the MT will continue to act either until the CMA reaches a decision to clear the Transactions or until the CMA directs that the MT is no longer required.
8. The appointment of a MT by the IVC Group is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on Tuesday 22 November 2022** (or such longer period as the CMA may reasonably agree in writing, including via email);
 - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on Tuesday 22 November** (or such longer period as the CMA may reasonably agree in writing, including via email); and
 - c. once the MT has been approved by the CMA and appointed, the IVC Group must forthwith provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

9. The functions of the MT will be to:

- a. ascertain and report to the CMA in relation to the current level of compliance by the IVC Group and the IVC Group's subsidiaries with the Orders;
- b. assess and report to the CMA in relation to the arrangements made by the IVC Group and the IVC Group's subsidiaries for compliance with the Orders and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
- c. identify and supervise if necessary the arrangements made by IVC Group and the IVC Group's subsidiaries for ensuring compliance with the Orders;
- d. monitor compliance by the IVC Group and the IVC Group's subsidiaries with the Orders;
- e. assist the CMA with the consideration of any derogation requests made by the IVC Group and monitor compliance by the IVC Group with any derogations granted by the CMA; and
- f. without prejudice to the right of the IVC Group to directly contact the CMA, respond to any questions which the IVC Group may have in relation to compliance with the Orders, in consultation with the CMA.

10. The MT must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the IVC business and the Target Entities businesses, such as written and electronic communications, telephone conversations and meetings as may be required.

11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by the IVC Group and the IVC Group's subsidiaries with the Orders.

Obligations of the IVC Group

12. The entities forming part of the IVC Group, their respective affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge its functions, including but not limited to:

- a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the IVC business, and the Target Entities businesses as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If any of the entities in the IVC Group is in any doubt as to whether any action or communication would infringe the Orders, it is required to contact the MT for clarification. However, for the avoidance of doubt, the MT has no authority, express or implied, to consent to any derogation or variation of the obligations in the Order, and any opinion of the MT regarding an action or communication does not bind the CMA nor indicate that the CMA has approved or sanctioned the action or communication. Derogations can only be granted by the CMA, and will always be granted in writing.
14. If any of the entities in the IVC Group have any reason to suspect that the Orders may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

15. The MT is required to provide an initial report to the CMA no later than **Friday 2 December 2022** (or such longer period as the CMA may reasonably agree in writing, via email), giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Orders, and including among other things:
- a. details of the current extent of compliance with the Orders by the IVC Group and the IVC Group's subsidiaries;
 - b. a description of the current arrangements made for the operation of the IVC business and the Target Entities' businesses and for the preservation of the assets and key staff required to operate each business;
 - c. recommendations as to what changes to those arrangements, if any, are necessary, particularly whether a hold separate manager should be hired to manage any or all of the Target Entities; and
 - d. the extent to which the conditions attached to the Derogations are being complied with;
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in the MT's view, the IVC Group and the IVC Group's subsidiaries have complied with the

Orders. At the same time, the MT must provide the CMA with a report setting out the following:

- a. the basis for the MT's view that the Orders has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused the MT to be concerned as to the IVC Group and the IVC Group's subsidiaries having complied with the Orders, and if it has, whether those concerns have been resolved and why;
 - ii. the MT has any remaining doubts or uncertainties as to whether the IVC Group and the IVC Group's subsidiaries have complied with the Orders; and
 - iii. anything causes the MT to be concerned about a possible future breach of the Orders (whether deliberate or inadvertent);
 - b. details of the performance of the IVC business and the Target Entities' businesses, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the IVC Group business and each of the Target Entities businesses as separate businesses and the IVC business and each of the Target Entities businesses as going concerns;
 - d. the extent to which the IVC Group and the IVC Group's subsidiaries have cooperated with the MT in its task of monitoring their compliance with the Orders and details of any aspects of the cooperation of the IVC Group and the IVC Group's subsidiaries that the MT considers could be improved;
 - e. the extent to which the MT considers that it is in an appropriate position to monitor the compliance of the IVC Group and the IVC Group's subsidiaries with the Orders and if there is anything that the MT considers would assist it in monitoring compliance;
 - f. any current or anticipated requests for consent to vary, or to seek a derogation from, the Orders; and
 - g. the information the MT used to compile the report.
17. When providing reports to the CMA, the MT must ensure that it does not disclose any information or documents to the CMA which the IVC Group, the IVC Group's subsidiaries and/or the Target Entities would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these

directions requires the IVC Group, the IVC Group's subsidiaries and/or the Target Entities to produce any information or documents to the MT which are privileged.

18. The MT must immediately notify the CMA in writing if it forms a reasonable suspicion that the Order has been breached, or if the MT considers that it is no longer in a position to effectively carry out its functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to the IVC Group, the IVC Group's subsidiaries or the Target Entities, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.

Annex B

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 Limited²);
- Mercer & Hughes Limited;
- Swaffham Veterinary Centre Limited;
- Anglesey Pet Clinic Ltd, and
- Chiltern Equine Clinic (including Chiltern Veterinary Services Limited & Chiltern Bury Farm Limited).

² Including Treforest and Tonypandy Veterinary Clinics.