

## **ACQUISITION BY BESTWAY PANACEA HOLDINGS LIMITED OF LEXON UK HOLDINGS LIMITED AND ASUREX 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 arrangements are in progress or in contemplation which, if carried into effect, will result in Bestway Panacea Holdings Limited (**Well**) and Lexon UK Holdings Limited (**Lexon**) and Asurex Limited (**Asurex**) ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) Well is a private limited liability company, which is the wholly owned subsidiary of Bestway Healthcare Finco Limited a private limited company (**Bestway Finco**) which is in turn a wholly owned subsidiary of Bestway Healthcare Holdings Limited (**Bestway Healthcare**), a private limited Company;
- (d) Lexon is a private limited company which controls the relevant businesses that have been carved out from Kericho Holding Limited's (**Kericho's**) retained corporate group. Kericho is a private limited liability company and Lexon is a wholly owned subsidiary of Kericho. Lexon owns and manages the relevant contracts, employees, intellectual property rights and goodwill assets which are necessary to operate the business of Lexon;
- (e) Norchem Healthcare Limited is a private limited company which is the wholly owned subsidiary of Lexon (**Norchem**). Norchem owns and operates retail pharmacy businesses that have been carved out from Kericho's retained corporate group;
- (f) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 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; and

- (g) 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.

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 Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem (the **Order**).

### **Commencement, application and scope**

1. This Order commences on the commencement date: being the date of completion of the transaction.
2. This Order applies to Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, and Norchem.
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 Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order does not prohibit the completion of the transaction provided that Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem observe the restrictions set out below.

### **Management of the Bestway Healthcare business and Lexon Pharmacy business until determination of proceedings**

5. Except with the prior written consent of the CMA, Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, and Norchem shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 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 Lexon Pharmacy business with the Bestway Healthcare business;
  - (b) transfer the ownership or control of the Bestway Healthcare business or the Lexon Pharmacy business or any of their subsidiaries; or

- (c) otherwise impair the ability of the Lexon Pharmacy business or the Bestway Healthcare business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem shall at all times during the specified period procure that, except with the prior written consent of the CMA:
- (a) the Lexon Pharmacy business is carried on separately from the Bestway Healthcare business and the Lexon Pharmacy business's separate sales or brand identity is maintained;
  - (b) the Lexon Pharmacy business and the Bestway Healthcare business are maintained as a going concern and sufficient resources are made available for the development of the Lexon Pharmacy business and the Bestway Healthcare business, on the basis of their respective pre-merger business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Lexon Pharmacy business or the Bestway Healthcare business;
  - (d) the nature, description, range and quality of goods and/or services (or both) supplied in the UK by each of the two businesses are maintained and preserved;
  - (e) except in the ordinary course of business for the separate operation of the two businesses:
    - (i) all of the assets of the Lexon Pharmacy business and the Bestway Healthcare business are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets of the Lexon Pharmacy business or the Bestway Healthcare business are disposed of; and
    - (iii) no interest in the assets of the Lexon Pharmacy business or the Bestway Healthcare business is created or disposed of;
  - (f) there is no integration of the information technology of the Lexon Pharmacy or Bestway Healthcare businesses, and the software and hardware platforms of the Lexon Pharmacy business shall remain essentially unchanged, except for routine changes and maintenance;

- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Lexon Pharmacy business will be carried out by Lexon, the Lexon Pharmacy business, Kericho and Norchem alone and for the avoidance of doubt the Bestway Healthcare business will not negotiate on behalf of the Lexon Pharmacy business, (and vice versa) or enter into any joint agreements with the Lexon Pharmacy business (and vice versa);
- (h) all existing contracts of the Lexon Pharmacy business and the Bestway Healthcare business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Lexon Pharmacy business or Bestway Healthcare business;
- (j) no key staff are transferred between the Lexon Pharmacy business and the Bestway Healthcare business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Lexon Pharmacy business and the Bestway Healthcare 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 any of the two businesses shall pass, directly or indirectly, from Lexon, the Lexon Pharmacy business, Kericho, Norchem (or any of their employees, directors, agents affiliates) to the Bestway Healthcare 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 and/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.

## **Compliance**

7. Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.

8. Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem 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 Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem and their subsidiaries with this Order. In particular, on the date falling two weeks from the commencement of the Order 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 Bestway Healthcare, Bestway Finco and Well and the Chief Executive Officers of Kericho, Lexon, and Norchem or other persons of Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, and Norchem, as agreed with the CMA, shall, on behalf of each of Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
9. At all times, Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem shall each actively keep the CMA informed of any material developments relating to the Lexon Pharmacy business or the Bestway Healthcare business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Lexon Pharmacy business or the Bestway Healthcare business;
  - (b) any interruption of the Lexon Pharmacy or Bestway Healthcare businesses (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 Lexon Pharmacy or Bestway Healthcare businesses including any substantial changes in customers' demand; and
  - (d) substantial changes in the Lexon Pharmacy or Bestway Healthcare businesses' contractual arrangements or relationships with key suppliers.
10. If any one of Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, or Norchem has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem 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. Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon and Norchem 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;

**‘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;

**‘Asurex’** means Asurex Limited, a company registered in England and Wales with company number 04399894;

**‘Bestway Healthcare’** means Bestway Healthcare Holdings Limited, a company registered in England and Wales with company number 14598713;

**‘Bestway Finco’** means Bestway Healthcare Finco Limited, a company registered in England and Wales with company number 14598687;

**‘the Bestway Healthcare business’** means the business of Bestway Healthcare, Bestway Finco and their subsidiaries carried on as at the commencement date including, for the avoidance of doubt the Well business;

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

**‘commencement date’** means the date of completion of the transaction;

**‘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 sections 35 or 36 of the Act;

**‘Kericho’** means Kericho Holdings Limited, a company registered in England and Wales with company number 14625250;

**‘key staff’** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**‘Lexon’** means Lexon UK Holdings Limited a company registered in England and Wales with company number 11217461;

**‘the Lexon Pharmacy business’** means the Norchem business and all other businesses active in retail pharmacy that are owned by Lexon carried on as at the commencement date;

**‘Norchem’** means Norchem Healthcare Limited a company registered in England and Wales with company number 03465047;

**‘the Norchem business’** means the business of Norchem and its subsidiaries carried on as at the commencement date. For the avoidance of doubt this includes the retail pharmacy businesses that are owned and operated by Norchem and that were carved out from Kericho pursuant to the transaction as well as the assets necessary to sustain the competitive capability of Norchem.

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

**‘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;

**‘the transaction’** means the transaction as defined in the Share and Purchase Agreement entered into on 19 March 2023, by which Well, Lexon and Asurex will cease to be distinct within the meaning of section 23 of the Act;

**‘the two businesses’** means the Bestway Healthcare business and the Lexon Pharmacy business;

**'Well'** means Bestway Panacea Holdings Limited, a company registered in England and Wales with company number 09225479;

**'the Well business'** means the business of Well and its subsidiaries carried on as at the commencement date;

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

Rachel Allen  
Assistant Director, Mergers



## Compliance statement for Bestway Healthcare/Bestway Finco/Well

I [insert name] confirm on behalf of Bestway Healthcare/Bestway Finco/Well that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Bestway Healthcare/Bestway Finco/Well has complied with the Order made by the CMA in relation to the transaction on [insert the date of this Order] (the **Order**).
  - (b) Bestway Healthcare/Bestway Finco/Well's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Bestway Healthcare that might prejudice a reference of the transaction under section 22 or 33 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 the Lexon Pharmacy business with the Bestway Healthcare business;
    - (ii) transfer the ownership or control of the Bestway Healthcare business or the Lexon Pharmacy business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Lexon Pharmacy business or the Bestway Healthcare business to compete independently in any of the markets affected by the transaction.
  - (b) The Lexon Pharmacy business has been carried on separately from the Bestway Healthcare business and the Lexon Pharmacy business's separate sales or brand identity has been maintained.
  - (c) The Lexon Pharmacy business and the Bestway Healthcare business have been maintained as a going concern and sufficient resources have been made available for the development of the Lexon Pharmacy business and the Bestway Healthcare business, on the basis of their respective pre-merger business plans.

- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Lexon Pharmacy business or the Bestway Healthcare business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services (or both) supplied in the UK by the Lexon Pharmacy business and the Bestway Healthcare business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Lexon Pharmacy business and the Bestway Healthcare 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 Lexon Pharmacy business or the Bestway Healthcare business have been disposed of; and
  - (iii) no interest in the assets of the Lexon Pharmacy business or the Bestway Healthcare business has been created or disposed of.
- (g) There has been no integration of the information technology of the Lexon, Pharmacy or Bestway Healthcare businesses, and the software and hardware platforms of the Lexon Pharmacy business 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 two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Lexon Pharmacy business have been carried out by Lexon, the Lexon Pharmacy business, Kericho, and Norchem alone and, for the avoidance of doubt, the Bestway Healthcare business has not negotiated on behalf of the Lexon Pharmacy business (and vice versa) or entered into any joint agreements with the Lexon Pharmacy business (and vice versa).
- (i) All existing contracts of the Lexon Pharmacy business and the Bestway Healthcare 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 Lexon Pharmacy business or the Bestway Healthcare business.

- (k) No key staff have been transferred between the Lexon Pharmacy business and the Bestway Healthcare business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Lexon Pharmacy business and the Bestway Healthcare 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 either of the two businesses, has passed, directly or indirectly, from Lexon, the Lexon Pharmacy business, Kericho, Norchem (or any of their employees, directors, agents or affiliates) to the Bestway Healthcare business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
  - (i) key staff that have left or joined the Lexon Pharmacy business or the Bestway Healthcare business;
  - (ii) interruptions of the Lexon Pharmacy business or the Bestway Healthcare 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 Lexon Pharmacy business or the Bestway Healthcare business; or
  - (iv) substantial changes in the Lexon Pharmacy business's or Bestway Healthcare business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Bestway Healthcare/ Bestway Finco/Well and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Lexon Pharmacy or the Bestway Healthcare businesses in accordance with paragraph 9 of the Order.

## **Interpretation**

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

**I understand that:**

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.)

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 BESTWAY HEALTHCARE/ BESTWAY FINCO/WELL

Signature .....

Name .....

Title .....

Date .....

## **Compliance statement for Kericho/Lexon/Norchem**

I [insert name] confirm on behalf of Kericho/Lexon/Norchem that:

### **Compliance in the Relevant Period**

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Kericho/Lexon/Norchem has complied with the Order made by the CMA in relation to the transaction on [insert the date of this Order] (the Order).
  - (b) Kericho's/Lexon's/Norchem's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Kericho/Lexon/Norchem that might prejudice a reference of the transaction under section 22 or 33 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 the Lexon Pharmacy business with the Bestway Healthcare business;
    - (ii) transfer the ownership or control of the Bestway Healthcare business or the Lexon Pharmacy business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Lexon Pharmacy business or the Bestway Healthcare business to compete independently in any of the markets affected by the transaction.
  - (b) The Lexon Pharmacy business has been carried on separately from the Bestway Healthcare business and the Lexon Pharmacy business's separate sales or brand identity has been maintained.
  - (c) The Lexon Pharmacy business and the Bestway Healthcare business have been maintained as a going concern and sufficient resources have been made available for the development of the Lexon Pharmacy business and the Bestway Healthcare business, on the basis of their respective pre-merger business plans.
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Lexon Pharmacy

business or the Bestway Healthcare business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services (or both) supplied in the UK by the Lexon Pharmacy business and the Bestway Healthcare business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Lexon Pharmacy business and the Bestway Healthcare 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 Lexon Pharmacy business or the Bestway Healthcare business have been disposed of; and
  - (iii) no interest in the assets of the Lexon Pharmacy businesses or the Bestway Healthcare business has been created or disposed of.
- (g) There has been no integration of the information technology of the Lexon Pharmacy or Bestway Healthcare businesses, and the software and hardware platforms of the Lexon Pharmacy business have 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 two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Lexon Pharmacy business have been carried out by Lexon, the Lexon Pharmacy business, Kericho and Norchem alone and, for the avoidance of doubt, the Bestway Healthcare business has not negotiated on behalf of the Lexon Pharmacy business (and vice versa) or entered into any joint agreements with the Lexon Pharmacy business (and vice versa).
- (i) All existing contracts of the Lexon Pharmacy business and the Bestway Healthcare 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 Lexon Pharmacy business or the Bestway Healthcare business.
- (k) No key staff have been transferred between the Lexon Pharmacy business and the Bestway Healthcare business.

- (l) All reasonable steps have been taken to encourage all key staff to remain with the Lexon Pharmacy business and the Bestway Healthcare 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 either of the two businesses, has passed, directly or indirectly, from Lexon, the Lexon Pharmacy business, Kericho, Norchem (or any of their employees, directors, agents or affiliates) to the Bestway Healthcare business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
  - (i) key staff that have left or joined the Lexon Pharmacy business or the Bestway Healthcare business;
  - (ii) interruptions of the Lexon Pharmacy business or the Bestway Healthcare 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 Lexon Pharmacy businesses or the Bestway Healthcare business; or
  - (iv) substantial changes in the Lexon Pharmacy business's or Bestway Healthcare business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

- 3. Kericho/Lexon/Norchem and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Lexon Pharmacy business or the Bestway Healthcare business in accordance with paragraph 9 of the Order.

### **Interpretation**

- 4. Terms defined in the Order have the same meaning in this compliance statement.

**I understand that:**

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.)

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 KERICHO/LEXON/NORCHEM

Signature .....

Name .....

Title .....

Date .....