

**DEROGATION LETTER IN RESPECT OF INITIAL ENFORCEMENT ORDER ISSUED  
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

**COMPLETED ACQUISITION**

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (the CMA) on 14 April 2023**

**Completed acquisition by Bestway Panacea Holdings Limited of Lexon UK Holdings Limited and Asurex Limited (the Transaction)**

We refer to your email dated 13 April 2023 requesting that the CMA consents to derogations to the Initial Enforcement Order of 14 April 2023 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, and Norchem are required to hold separate the Lexon Pharmacy business from the Bestway Healthcare business (all terms as defined in the IEO) and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Bestway Healthcare and Lexon may carry out the following actions, in respect of the specific paragraphs:

**Paragraph 6(l) of the Initial Order – Sharing of information for external accounting and reporting**

1. The CMA consents to a derogation from paragraph 6(l) of the Initial Order to permit the provision of information by the Lexon Pharmacy business to Bestway Healthcare to meet Bestway Healthcare's standard financial reporting obligations following completion of the Transaction.
2. The CMA's consent is conditional upon such information being in the form of the template previously approved by the CMA.
3. The CMA's consent is further conditional upon:
  - (i) only the individuals listed in Annex 1 (the **Clean Team**) may receive the information;
  - (ii) the CMA being informed in advance of changes to the composition of the Clean Team and the CMA agreeing to such changes in writing;
  - (iii) the Clean Team must each enter into a non-disclosure agreement in the form set out in Annex 2 (the **Clean Team NDA**) which has been approved in advance by the CMA and governs their obligations to keep the information confidential, not to circulate that information more widely than other members of the Clean Team and only to use the confidential information for the purposes it was received;
  - (iv) the information must not be disclosed to any persons outside the Clean Team other than on a consolidated and aggregated basis;
  - (v) where information is disclosed, the Clean Team shall not offer or receive any commentary on that information and the Clean Team shall not receive any information or commentary in response from the individuals to whom they have made or from whom they have received a disclosure;
  - (vi) appropriate physical and IT firewalls shall be put in place to prevent unauthorised individuals from accessing the disclosed information; and

- (vii) detailed records must be kept of all communications between the merging parties for this purpose.

**Paragraphs 5(a), 6(a), 6(c), 6(e)(iii) and 6(l) of the Initial Order – the Lexon Pharmacy business to access funding under Bestway Healthcare’s pre-existing financing agreement**

- 4. The CMA consents to a derogation from paragraphs 5(a), 6(a), 6(c), 6(e)(iii) and 6(l) of the Initial Order to permit Bestway Healthcare to provide funding to the Lexon Pharmacy business including under its pre-existing financing agreement (the ~~[X]~~ “SFA”) for its pre-merger business plan including a derogation for the Lexon Pharmacy business to:
  - (i) adopt new articles of association on completion which are compliant with the requirements of the SFA;
  - (ii) accede to the SFA on completion;
  - (iii) act as guarantor and grant security on completion as required under the SFA;
  - (iv) provide information to the Clean Team at Bestway Healthcare to allow Bestway Healthcare to manage cashflow to the Lexon Pharmacy business; and
  - (v) make requests for any funding via the Clean Team at Bestway Healthcare.
- 5. The CMA consents to this derogation on the basis of representations by Bestway Healthcare that existing financing of the Lexon Pharmacy business will automatically fall away at completion of the Transaction and that the Lexon Pharmacy business will need access to funding in order to operate in accordance with its pre-merger business plan and to ensure its viability during the term of the Initial Order.
- 6. The CMA’s consent is conditional upon:
  - (i) nothing in the SFA limits the CMA’s ability to take any action as part of its merger investigation should that be required (including but not limited to the sale of any or all of the retail pharmacy operations owned and operated by the Lexon Pharmacy business);
  - (ii) the provision of any requests or information from the Lexon Pharmacy business only to the individuals in the Clean Team;
  - (iii) the provision of any requests or information from the Lexon Pharmacy business to the individuals in the Clean Team only in accordance with the conditions set out in paragraph 3 above and only to the extent necessary to perform the activities described in this derogation;
  - (iv) Bestway Healthcare will commit to make available funding to the Lexon Pharmacy business in line with its pre-merger business plans;
  - (v) the amount of funding and terms available from Bestway Healthcare, including the conditions on which the Lexon Pharmacy business can access that funding, will be at least as favourable to the Lexon Pharmacy business as its pre-closing lenders; and
  - (vi) Bestway Healthcare will inform the CMA of any instances in which a funding request from the Lexon Pharmacy business has been denied.

**Paragraphs 6(a) and 6(c) of the Initial Order – Changes to the boards of directors of the Lexon Pharmacy business**

- 7. The CMA consents to a derogation from paragraphs 6(a) and 6(c) of the Initial Order to permit
  - (i) the directors listed in Annex 3 to effect their respective board resignations in respect of the corporate entities listed therein which form part of the Lexon Pharmacy business;

8. The CMA consents to this derogation on the basis of representations by Bestway Healthcare that ~~the~~ the resignation of the directors listed in Annex 3 and that the Retained Director is sufficient to ensure the continued viability of the Lexon Pharmacy business during the term of the Initial Order.
9. The CMA's consent is conditional upon:
  - (i) the derogation will not have any impact on the ability of the Lexon Pharmacy business to carry on business in the ordinary course;
  - (ii) the derogation will not impact the viability of the Lexon Pharmacy business during the term of the Initial Order;
  - (iii) the derogation will not impact the ability of the Lexon Pharmacy business to compete independently of Bestway Healthcare;
  - (iv) the derogation will not result in any integration between the Lexon Pharmacy business and the Bestway Healthcare business; and
  - (v) the derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

Alistair Thompson  
Director, Remedies, Business and Financial Analysis  
14 April 2023

## **ANNEX 1**

### **CLEAN TEAM**

[X] - Reporting and Finance specialist at Well.

## ANNEX 2

### CLEAN TEAM NON-DISCLOSURE AGREEMENT

#### BESTWAY PANACEA HOLDINGS LIMITED ACQUISITION OF LEXON UK HOLDINGS LIMITED AND ASUREX LIMITED

**To:** Bestway Healthcare Holdings Limited, Bestway Healthcare Finco Limited and Bestway Panacea Holdings Limited

#### Background

1. On 19 March 2023, Bestway entered into an agreement to purchase Lexon UK Holdings Limited (the "Transaction"). In relation to the Transaction, the Competition and Markets Authority (the "CMA") issued an Initial Enforcement Order (IEO) on 14 April 2023 prohibiting the integration of the Lexon Pharmacy business (the "Initial Enforcement Order") whilst the CMA carries out an investigation into the compatibility of the Transaction with the Enterprise Act 2002.
2. Whilst the Initial Enforcement Order is in place the Lexon Pharmacy business must continue to act as an independent competitor. The Lexon Pharmacy business must therefore be managed and operated separately from Bestway Healthcare and the general rule is that there must be no exchange of confidential information (as defined in the Initial Enforcement Order) between the Lexon Pharmacy business and the Bestway Healthcare business (the "General Rule").
3. Failure to comply with the General Rule (except where permitted in accordance with Paragraph 4) could lead to significant fines for Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, and Norchem as well as personal sanctions for the individuals involved. Personal sanctions will include internal disciplinary proceedings and if the behaviour amounts to a breach of UK competition law, could include a prison sentence, unlimited fine and disqualification from acting as a director for up to 15 years.
4. The CMA has granted derogations (the "**Derogations**") to Bestway Healthcare whereby a small number of individuals at Bestway Healthcare (the "**Clean Team**") may receive such financial information from Lexon as is strictly necessary for the purposes of:
  - a. consolidating Bestway Healthcare group financial information to ensure compliance with accounting and reporting obligations; and
  - b. accessing funding for the Lexon Pharmacy business under Bestway Healthcare's pre-existing finance agreement (the ~~[X]~~ "**SFA**").("the Permitted Purposes").
5. Full details are specified in the Initial Enforcement Order and the derogations made under it, which are available on the CMA's website.

#### Declaration

6. I, the undersigned, hereby undertake to:
  - (i) Keep confidential and not knowingly share any confidential information which I receive relating to the Lexon Pharmacy business with any other Bestway Healthcare personnel (except other members of the Clean Team who are named in the Derogation);
  - (ii) Only use confidential information obtained from the Lexon Pharmacy business for the purposes described in this Agreement;

- (iii) Return and/or destroy records and copies of any document containing Lexon Pharmacy business confidential financial information should the transaction ultimately be prohibited by the CMA; and
  - (iv) Contact [X], General Counsel of Bestway, if I need advice as to how to comply with this non-disclosure agreement or have any reason to believe that it might have been breached.
7. I confirm that I have read, understood and will comply with this letter and with the Initial Enforcement Order and Derogation and am aware of the serious sanctions for failing to maintain the confidentiality of confidential information of the Lexon Pharmacy business.

**Name:**

**Date:**

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**Countersigned by** Bestway Healthcare Holdings Limited/ Bestway Healthcare Finco Limited / Bestway Panacea Holdings Limited:

**Name:**

**Date:**

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**ANNEX 3**  
**DIRECTORS<sup>1</sup>**

**Table 1 – Resigning Directors**

<b>Resigning Directors</b>	<b>Corporate Entity</b>
[X]	NORCHEM HEALTHCARE LIMITED
[X]	
[X]	
[X]	

**Table 2 – Retained Director**

<b>Retained Director</b>	<b>Corporate Entity</b>
[X]	NORCHEM HEALTHCARE LIMITED

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<sup>1</sup> Norchem Healthcare Limited is the only trading entity of the Lexon Pharmacy business. For completeness, there are a number of dormant and non-trading entities which will have the same Retained Director. A full list of entities can be found at Annex 004 of the [Draft] Merger Notice.