

COMPLETED ACQUISITION BY BESTWAY PANACEA HOLDINGS LIMITED OF LEXON UK HOLDINGS LIMITED AND ASUREX LIMITED

Directions issued on 20 June 2023 pursuant to paragraph 11 of the Initial Enforcement Order made by the Competition and Markets Authority on 14 April 2023 pursuant to section 72(2) of the Enterprise Act 2002 (the Act).

Whereas:

- a) On 14 April 2023, Bestway Panacea Holdings Limited (**Well**) completed the acquisition of Lexon UK Holdings Limited (**Lexon**) and Asurex Limited (**Asurex**) (together, the **Targets**) (the '**Transaction**'). Well, Lexon and Asurex are together referred to as the **Parties**.
- b) On 14 April 2023, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (the **Order**) addressed to Bestway Healthcare Holdings Limited (**Bestway Healthcare**), Bestway Healthcare Finco Limited (**Bestway Finco**), Well, Kericho Holding Limited (**Kericho**), Lexon and Norchem Healthcare Limited (**Norchem**) in accordance with section 72(2) of the Enterprise Act 2002 (the **Act**) to prevent pre-emptive action. The Order is still in force.
- c) On 15 June 2023, the CMA decided, under the Act that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom as a result of horizontal effects in the operation of retail pharmacies in certain local areas.
- d) On 15 June 2023 Well offered undertakings in lieu of a reference (**undertakings**) to the CMA for the purposes of section 73(2) of the Act.
- e) On 20 June 2023 pursuant to section 73A(2)(b) of the Act, the CMA gave notice to Well that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act, and that it was considering the Parties' offer. The undertakings provide for the proposed divestment of 7 pharmacies listed in Annex B to these directions (the **Divestment Pharmacies**).

- f) The CMA now issues written directions under paragraph 11 of the Order that, for the purpose of securing compliance with the Order, Well must appoint a monitoring trustee (**MT**) in accordance with the terms provided for in Annex A and must comply with the obligations set out in Annex A. The terms defined in the Order have the same meaning in these written directions, unless otherwise specified or the context requires otherwise.

Rachel Allen
Assistant Director, Mergers
Competition and Markets Authority
20 June 2023

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;
‘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;
‘business’	has the meaning given by section 129(1) and (3) of the Act;
‘CMA’	means the Competition and Markets Authority;
‘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;
‘Derogations’	means any derogations granted whether before or after the appointment of the MT by the CMA by which the Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, and Norchem may undertake certain actions that derogate from the Order;
“Divestment Pharmacies”	means the pharmacies listed in Annex B ⁱ to these directions and “Divestment Pharmacy” means any one of those Divestment Pharmacies. Divestment Pharmacies

shall also mean any such other pharmacy or pharmacies that are substituted for any or all of the pharmacies listed at Annex B, that the CMA requires to be divested to effectively address the substantial lessening of competition caused by the Transaction in each relevant local area if, in the view of the CMA, there are reasonable grounds for believing that any of the pharmacies listed in Annex B will not be divested for any reason. For the avoidance of doubt, the substituted Divestment Pharmacies shall only be considered Divestment Pharmacies from the time the CMA reaches the view that there are reasonable grounds for believing that any of the pharmacies listed in Annex B will not be divested for any reason;

‘Final Disposal’	means completion of the sale of the Divestment Pharmacies to the Proposed Purchasers;
‘Kericho’	means Kericho Holding 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;
‘MT’	means the monitoring trustee appointed in accordance with these directions;
‘Norchem’	means Norchem Healthcare Limited a company registered in England and Wales with company number 03465047;
‘Order’	means the initial enforcement order made by the CMA on 14 April 2023 and addressed to Bestway Healthcare, Bestway Finco, Well, Kericho, Lexon, and Norchem;
‘Proposed Purchasers’	means those purchasers proposed by Well for each of the Divestment Pharmacies;
‘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 andASUREX will cease to be distinct within the meaning of section 23 of the Act;

'Well' means

Bestway Panacea Holdings Limited, a company registered in England and Wales with company number 09225479.

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. Well must appoint a MT in order to:
 - a. monitor and report to the CMA on compliance with the Order in relation to the Divestment Pharmacies; and
 - b. support the CMA taking any action to ensure compliance with the Order and maintain the Divestment Pharmacies 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. Well 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 Well 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. Well 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. Well must appoint the MT as soon as is reasonably practicable and in any event by **5pm on 27 June 2023** (or such longer period as the CMA may reasonably agree in writing, including via email) and the MT will continue to act either until final acceptance of the undertakings at which point the MT may be reappointed under the terms of the undertakings, or final determination of any reference under section 22 of the Act, or until the CMA directs that the MT is no longer required.

8. The appointment of a MT by Well 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 and contact details of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 22 June 2023** (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 22 June 2023** (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, Well must 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 monitoring, save as otherwise agreed in advance in writing by the CMA, that:
 - i. stock levels in prescription-only medicines and pharmacy-only medicines at the Divestment Pharmacies are maintained at existing levels;
 - ii. there are no changes made to the current opening hours of the Divestment Pharmacies;
 - iii. training schedules for Well staff at the Divestment Pharmacies are maintained;
 - iv. no action is taken to solicit the transfer of repeat prescription customers from any Divestment Pharmacies to other pharmacies owned and operated by Well; and
 - v. no action is taken which otherwise might impair the ability of the Divestment Pharmacies to compete independently or that may significantly impact on the operation of the Divestment Pharmacies.
 - b. assist the CMA with the consideration of any derogation requests made by Well under the Order and monitor compliance by the Well with any derogations granted by the CMA; and

- c. without prejudice to the right of Well to directly contact the CMA, respond to any questions which Well may have in relation to compliance with the Order, 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 in regard to the Divestment Pharmacies, 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 Well with the Order

Obligations of Well

12. Well, and its respective affiliates and its 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 Well and the Divestment Pharmacies as the MT may reasonably require; and
 - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If Well is in any doubt as to whether any action or communication would infringe the Order, they are 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 Well has any reason to suspect that the Order 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 **4 July 2023** (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 Order, and including among other things:

- a. details of the current extent of compliance with the Order in relation to the Divestment Pharmacies by Well;
 - b. a description of the current arrangements made for the operation of the Divestment Pharmacies and for the preservation of the assets required to operate each of the Divestment Pharmacies; and
 - c. recommendations as to what changes to those arrangements, if any, are necessary.
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, Well has complied with the Order in relation to the Divestment Pharmacies. 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 Order in relation to the Divestment Pharmacies 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 whether Well has complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. the MT has any remaining doubts or uncertainties as to whether Well has complied with the Order; and
 - iii. anything causes the MT to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
 - b. details of the performance of the Divestment Pharmacies, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the Divestment Pharmacies as going concerns;
 - d. the extent to which Well has cooperated with the MT in its task of monitoring its compliance with the Order in relation to the Divestment Pharmacies and details of any aspects of the cooperation of Well that the MT considers could be improved;
 - e. the extent to which the MT considers that it is in an appropriate position to monitor Well's compliance with the Order in relation to the Divestment Pharmacies 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 Order in relation to the Divestment Pharmacies; 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 Well would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Well 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 in relation to the Divestment Pharmacies 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 Well, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.

Annex B – Divestment Pharmacies

Brand	Pharmacy code	Address
Well	FN907	Well Seaham - 43 Church Street, SR7 7HF
Well	FXF69	Well Bishop Auckland – Unit 7, Newgate Centre , DL14 7JQ
Well	FG244	Well Moreton - Pasture Road Health Centre, Pasture Road, CH46 8SA
Well	FNK57	Well High Howdon – 86 Windsor Drive, NE28 0PS
Well	FPM20	Well Pensby – 309 Pensby Road, CH61 9NG
Well	FVQ79	Well Kenton – 29 Arlington Avenue, Montague Estate, NE3 4TS
Well	FMP31	Well Stockton-on-Tees – 70 Bishopton Lane, TS18 2AJ

ⁱ References to Annex B in the definition of ‘Divestment Pharmacies’ have been amended to correct a typographical error originally stating Annex 1.