

**DEROGATION LETTER
IN RESPECT OF INTERIM UNDERTAKINGS ACCEPTED
PURSUANT TO SECTION 80 OF THE ENTERPRISE ACT 2002**

Consent under section 80(2B) of the Enterprise Act 2002 (the ‘Act’) to certain actions for the purposes of the Interim Undertakings accepted by the Competition and Markets Authority (‘CMA’) on 18 May 2023.

Anticipated acquisition by Broadcom Inc. of VMware, Inc. (the ‘Merger’)

We refer to your emails dated 12 June 2023 and 29 June 2023 (the ‘**Derogation Request**’) requesting that the CMA consents to a derogation to the Interim Undertakings of 18 May 2023 (the ‘**Interim Undertakings**’). The terms defined in the Interim Undertakings have the same meaning in this letter.

Under the Interim Undertakings, except with the prior written consent from the CMA, Broadcom Inc. and Broadcom Europe Limited (together ‘**Broadcom**’) and VMware, Inc. and VMware UK Limited (together ‘**VMware**’) are required to refrain from any action which might prejudice the Reference or impede the taking of any action under the Act which may be justified by the CMA’s decisions on the Reference. Broadcom and VMware are together, the ‘**Parties**’.

After due consideration of your Derogation Request from the Interim Undertakings, based on the information received from you and in the particular circumstances of this case, the CMA grants the consent described below.

1. Paragraph 5(f) of the Interim Undertakings

Paragraph 5(f) of the Interim Undertakings provides among other things that no commercially-sensitive information or other confidential information relating to the VMware business or to the Broadcom business shall pass, directly or indirectly, from the VMware business to the Broadcom business or vice versa.

The Parties have requested a derogation from paragraph 5(f) of the Interim Undertakings in order to allow them to share confidential information that they submit is strictly necessary to enable VMware to obtain consent from Broadcom under certain provisions of Section 6.1(b) of the ‘Agreement and Plan of Merger’ dated 26 May 2022 (the ‘**Merger Agreement**’) in relation to a range of matters.

The Parties submit that, under Section 6.1(b) (titled ‘Conduct of Business by the Company Pending the Closing; Notification of Certain Matters’) of the Merger Agreement, the interim operating covenants set out in that section are intended to enable Broadcom to protect its legitimate interest in maintaining the value of its anticipated investment in VMware during the period between the signing of the Merger Agreement and the closing of the Merger. The Parties submit that Section 6.1(b) of the Merger Agreement, therefore, prevents VMware from taking any of the actions listed in Annex 1 below without obtaining Broadcom’s consent first.

Annex 1 to this consent letter identifies and summarises the specific provisions of Section 6.1(b) of the Merger Agreement to which this derogation applies.

The CMA consents to this derogation strictly on the basis of the Parties' representations, including that:

- a) The Parties are not competitors for most of their activities, and the information shared will not relate to VMware's competitive strategy;
- b) The sharing of confidential information will be limited to what is strictly necessary for the purpose of seeking and providing of the relevant consents under Paragraph 6.1(b) of the Merger Agreement;
- c) Any notifications under Section 6.1(b) of the Merger Agreement will be made to Wachtell, Lipton, Rosen & Katz and Cleary Gottlieb Steen & Hamilton LLP, Broadcom's external legal advisers in the first instance, with the relevant information then passed on to a restricted group of authorised Broadcom recipients as listed in Annex 2 (the '**Authorised Broadcom Individuals**') subject to the following conditions:
 - i. Each Authorised Broadcom Individual has a strict need to receive that confidential information;
 - ii. Such recipients will not further disclose that confidential information with any person other than another Authorised Broadcom Individual listed in Annex 2, except with the prior written consent of the CMA (which may be provided by email); and
 - iii. Each Authorised Broadcom Individual has entered into an appropriate non-disclosure agreement in a form approved by the CMA;
- d) Should the Merger not close, the relevant information will be returned to VMware and/or deleted from Broadcom's systems;
- e) The derogation will not lead to any integration of the VMware business and the Broadcom business;
- f) The derogation will not impact VMware's ability to operate independently from Broadcom;
- g) Broadcom and VMware would continue to comply with all other provisions of the Interim Undertakings; and
- h) Should Broadcom intend to withhold, condition or delay its consent under Section 6.1(b) of the Merger Agreement in relation to any of the matters set out in Annex 1 to this letter, the Parties will consult the CMA in advance on whether a further derogation to the Interim Undertakings is required.

Richard Feasey
Inquiry Group Chair
5 July 2023

ANNEX 1

List of Interim Operating Covenants Subject to Derogation Request

The Parties request a derogation from paragraph 5(f) of the Interim Undertakings to permit information exchange that is strictly necessary, in compliance with the provisions of the Merger Agreement, to seek and provide Broadcom's reasonable consent to:

1. [X];
2. [X];
3. [X];
4. [X];
5. [X];
6. [X];
7. [X];
8. [X];
9. [X];
10. [X];
11. [X].

ANNEX 2

Authorised Broadcom Individuals

1. [X]

2. [X]

3. [X]

4. [X]

5. [X]