

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

Consent under section 72(3c) of the Enterprise Act 2002 (the Act) to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (CMA) on 10 November 2023

Completed acquisition by Lindab Limited of HAS-Vent Holdings Limited

We refer to your submission dated 20 November 2024 requesting that the CMA consents to a derogation from the Initial Enforcement Order of 10 November 2023 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save with the written consent of the CMA, Lindab, Lindab UK and HAS-Vent are required to hold separate the HAS-Vent business from the Lindab business 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 a derogation from the Initial Order, based on the information received from you and in the particular circumstances of this case, Lindab and HAS-Vent (the **Parties**) may carry out the following actions, in respect of the specific paragraphs:

(1) Paragraphs 5(a) and 5(l) of the Initial Order

HAS-Vent submits that, as a company incorporated and registered in England and Wales, it must file its annual accounts (the **HV Annual Accounts**) and consolidated annual accounts (the **HV Consolidated Annual Accounts**) (collectively the **Accounts**) at Companies House within 9 months after the end of the relevant accounting reference period. HAS-Vent's accounting reference date for 2023 was 31 December 2023 and, therefore, the deadline for filing the Accounts was 30 September 2024. HAS-Vent obtained an extension of the deadline for filing to 31 December 2024 but this deadline cannot again be deferred.

HAS-Vent's board of directors (the **Directors**, with each individual member being referred to henceforth as a **Director**), must approve the Accounts and they must be signed by a Director on behalf of the board of Directors. The board of Directors is prohibited from

approving the Accounts unless satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss of the company's accounts. Consequently, HAS-Vent submits that the board of Directors must have access to the Accounts and such associated company records (the **Financial Information**) that it deems necessary to see in order to be able to make such assessment. While the Directors are unable to agree to a pre-described financial template for the relevant Financial Information, they are able to confirm that the Financial Information shall not include commercially sensitive information on an individualised basis on the HAS-Vent branches in Nottingham and Stoke-on-Trent (the **SLC Branches**).

The Directors are as follows:

- [REDACTED] (Lindab Group Financial Manager);
- [REDACTED] (Lindab Group General Counsel); and
- [REDACTED] (Lindab UK Managing Director).

Lindab proposes that the Directors will receive the Financial Information, attend the relevant Board of Directors meeting, and/or sign a written resolution of the Board of Directors for the purposes of approving the Accounts.

HAS-Vent requests a derogation from paragraphs 5(a) and 5(l) to allow the HAS-Vent business to share with the Directors the Financial Information to enable the Directors to approve the Accounts and send the HV Annual Accounts to Lindab UK as its sole member, subject to the limitations referenced in this derogation.

The CMA consents to HAS-Vent's request for a derogation strictly on the basis that:

- 1) only the Directors shall have access to the Financial Information and solely for the purpose of HAS-Vent complying with its obligations under the CA 2006;
- 2) prior to sharing any Financial Information between HAS-Vent and the Directors, the monitoring trustee Lindab and HAS-Vent were directed to appoint (the **MT**) shall first review and approve the information to be shared, such approval to relate only to ensuring no single SLC Branch-specific information is identifiable;
- 3) the MT is invited to attend any Board of Directors meeting held for the purposes of this derogation to ensure no single SLC Branch-specific information is identifiable;
- 4) the Directors will enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing the Financial Information from being shared with unauthorised Lindab individuals;

- 5) should the Directors require access to commercially sensitive information specific to the SLC branches in order to fulfil their fiduciary duties, they will first seek consent from the CMA (which can be given via email);
- 6) except for the Accounts as approved by the board of Directors and in the form to be made public by Companies House and as provided to Lindab as its sole member, all electronically recorded Financial Information exchanged in this context will be password protected, held separately, and only accessible by the Directors; and
- 7) the derogation will not result in any pre-emptive action which might impede the taking of any action which may be justified by the CMA's decision on the reference as set out in the Final Report of 15 October 2024.

Yours sincerely

Colin Garland
Director
Competition and Markets Authority
10 December 2024