

COMPLETED ACQUISITION BY HOME RETAIL GROUP PLC OF 27 LEASEHOLD PROPERTIES FROM FOCUS (DIY) LTD

PROPOSED UNDERTAKINGS TO BE GIVEN BY HOME RETAIL GROUP PLC TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 31 December 2007, HRG completed the acquisition of the Leasehold properties from Focus;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of the Leasehold properties to the CC; and
- (f) The OFT further considers that the undertakings given below by HRG are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE HRG hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by HRG, they are accepted by the OFT.

Divestment of the Divestment Business

- 2.1 HRG shall, prior to acceptance of these undertakings by the OFT, enter into a legally binding agreement (or agreements) to divest to the satisfaction of the OFT the Divestment Business to the proposed purchaser, Focus, on terms approved by the OFT in advance of acceptance of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, HRG shall use all reasonable endeavours to ensure the transfer of the Key Staff with the divestment of the Divestment Business if desired by the proposed purchaser of the Divestment Business.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, HRG shall take the following measures to the extent they may be necessary in the opinion of the OFT, to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:
 - (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and/or
 - (d) the formation or winding up of a company.

Approval of purchaser and terms of divestment

- 3.1 For the purposes of the OFT approving Focus as a proposed purchaser for the Divestment Business in accordance with these undertakings, HRG shall, save as required or permitted by the OFT, satisfy the OFT that:
 - (a) the acquisition by the proposed purchaser of the Divestment Business remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
 - (b) the proposed purchaser is independent of and unconnected to HRG and the Group of Interconnected Bodies Corporate to which HRG belongs and any Associated Person or Affiliate of HRG or such Group of Interconnected Bodies;

- (c) the proposed purchaser has the financial resources, expertise (including the managerial, operational and technical capability) and incentive to maintain and operate the Divestment Business as part of a viable and active business in competition with HRG and other competitors in the supply of 'do it yourself' (DIY) and home enhancement products through national DIY sheds in Woking;
- (d) the proposed purchaser has obtained all necessary approvals and consents; and
- (e) the acquisition by the proposed purchaser of the Divestment Business is not expected to result in a substantial lessening of competition within any market or markets in the UK.

3.2 The OFT may require HRG and/or a proposed purchaser to provide it with such information and documentation as it may reasonably require to satisfy the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

Continued separation

4.1 Except with the prior written consent of the OFT, following the divestment of the Divestment Business, HRG or any member of the Group of Interconnected Bodies Corporate to which HRG belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the Divestment Business;
 - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of HRG or of any members of the Group of Interconnected Bodies Corporate to which HRG belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the ordinary course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of HRG or of any member of the Group of Interconnected Bodies Corporate to which HRG belongs holds or is nominated to any directorship or managerial position in any company or other undertaking utilising or having

Control of the Divestment Business without the OFT's prior written consent;

- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking carrying on or having Control of the Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of HRG or of any member of the Group of Interconnected Bodies Corporate to which HRG belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

Compliance

- 5.1 HRG shall comply promptly with such written directions as the OFT may from time to time give:
 - (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 5.2 HRG shall procure that any member of the same Group of Interconnected Bodies Corporate as HRG complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as HRG shall be attributed to HRG for the purposes of these undertakings.
- 5.3 Where any Affiliate of HRG is not a member of the same Group of Interconnected Bodies Corporate as HRG, HRG shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

- 6.1 HRG shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

Interpretation

- 7.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 7.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 7.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.
- 7.4 For the purposes of these undertakings:

“Acquisition” means the acquisition completed on 31 December 2007 by HRG of the Leasehold properties;

“the Act” means the Enterprise Act 2002;

“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 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;

“Argos” means Argos Limited, a subsidiary of HRG;

“Associated Person” means a person or persons associated with HRG within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

“business” has the meaning given by section 129(1) and (3) of the Act;

“CC” means the Competition Commission;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“Control” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“the Decision” means the OFT’s decision under section 22 of the Act dated 15 April 2008 in connection with the Acquisition;

“the Divestment Business” means the leasehold premises located at Unit 1B Lion Retail Park, Woking, along with the personnel employed by HRG in relation to the DIY and home enhancement retail business previously run by Focus at Unit 1 Lion Retail Park Woking, to be divested by way of:

- (a) agreement between Homebase and the Landlord for Homebase to carry out division works to separate Unit 1 Lion Retail Park Woking into Units 1A and 1B and then surrender its lease back to the Landlord;
- (b) agreement between the Landlord and Focus for Focus to take a lease of Unit 1B Lion Retail Park, Woking, once the division works have been completed, for operation as a DIY and home enhancement retail business;
- (c) agreement between the Landlord and Argos for Argos to take a lease of Unit 1A Lion Retail Park, Woking, once the division works have been completed; and
- (d) a separate transfer agreement between Homebase and Focus setting terms including financial payments and TUPE matters and transferring all or substantially all tangible and intangible assets which contribute to the operation of the DIY and home enhancement retail business previously run by Focus at Unit 1 Lion Retail Park Woking, or are necessary to ensure its viability or competitiveness, and which are capable of being transferred;

“Focus” means Focus (DIY) Limited;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Homebase” means Homebase Limited, a subsidiary of HRG;

“HRG” means Home Retail Group plc;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“Key Staff” means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

"the Landlord" means The Mary Street Estate Limited, a subsidiary of The British Land Company plc;

"the Leasehold properties" means the business HRG acquired from Focus comprising a portfolio of 27 leasehold properties by agreement completed on 31 December 2007;

"OFT" means the Office of Fair Trading;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

"UK" means the United Kingdom of Great Britain and Northern Ireland;