Competition and Markets Authority

Acquisition by Roanza Limited of Enza Group Limited and Robert Smith Group Limited

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

(a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that Enza Group Limited (Enza) and Robert Smith Group Limited (Robert Smith) have ceased to be distinct in that they have been merged under the control of Roanza Limited (Roanza)

(b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK)

(c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference, and

(d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to each of Roanza Enza and Robert Smith (Order).

Commencement, application and scope

1. This Order commences on the commencement date: 15 September 2014.

2. This Order applies to Roanza, Enza and Robert Smith.

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Roanza, Enza or Robert Smith to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Roanza, Enza and Robert Smith shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:

   (a) lead to the integration of the Robert Smith Business with the Enza Business or the further integration of either of them with the Roanza Business

   (b) transfer the ownership or control of the Businesses, or

   (c) otherwise impair the ability of the Roanza Business, the Robert Smith Business or the Enza Business to compete independently in any of the markets affected by the transaction.

5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3; Roanza, Enza and Robert Smith shall at all times during the specified period procure that, except with the prior written consent of the CMA:

   (a) the Robert Smith Business is carried on separately from the Enza Group Business and each Business's separate sales or brand identity is maintained

   (b) the Robert Smith Business and the Enza Business are maintained as a going concerns and sufficient resources are made available for the development of the Robert Smith Business and the Enza Business, on the basis of their respective pre-merger Business plans

   (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Robert Smith Business, the Enza Business or the Roanza Business

(d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the Businesses are maintained and preserved

(e) except in the ordinary course of business for the separate operation of the Businesses:

  (i) all of the assets of the Businesses are maintained and preserved, including facilities and goodwill

  (ii) none of the assets of the Businesses are disposed of, and

  (iii) no interest in the assets of the Businesses is created or disposed of

(f) there is no integration of the information technology of the Robert Smith or Enza Businesses, and the software and hardware platforms of the Businesses shall remain essentially unchanged, except for routine changes and maintenance

(g) the customer and supplier lists of the Businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to each Business will be carried out by that Business alone and, for the avoidance of doubt, the Enza Business will not negotiate on behalf of the Robert Smith Business (and vice versa) or enter into any joint agreements with the Robert Smith Business (and vice versa), and the Roanza Business will not negotiate on behalf of, or enter into any joint agreements with, either of the Robert Smith Business or the Enza Business.

(h) all existing contracts of the Robert Smith Business and the Enza Business continue to be serviced by the Business to which they were awarded

(i) no changes are made to key staff of the Businesses

(j) no key staff are transferred between the Businesses

(k) all reasonable steps are taken to encourage all key staff to remain with the Businesses, and

(l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to any of the Businesses shall pass, directly or indirectly, from the Robert Smith Business (or any of its employees, directors, agents or affiliates) to the Enza Business (or any of its employees, directors, agents or affiliates) or the Roanza Business (or any of its employees, directors, agents or affiliates), or vice versa, except

where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the Business to which they relate and any copies destroyed.

Compliance

6. Roanza, Enza and Robert Smith shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.

7. Roanza, Enza and Robert Smith shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Roanza, Enza and Robert Smith with this Order. In particular, on 29 September 2014 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Managing Directors of Roanza, Enza and Robert Smith or other persons of as agreed with the CMA shall, on behalf of Roanza, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.

8. At all times, Roanza, Enza and Robert Smith shall, actively keep the CMA informed of any material developments relating to the Businesses, which includes but is not limited to:

   (a) details of key staff who leave or join the Businesses

   (b) any interruption of the any of the Businesses(including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours

   (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for any of the Businesses including any substantial changes in customers' demand, and

   (d) substantial changes in the contractual arrangements or relationships with key suppliers of any of the Businesses.

9. If Roanza, Enza or Robert Smith has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Roanza, Enza or Robert Smith may be directed to appoint under paragraph 10.

10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.

11. Roanza, Enza and Robert Smith shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

13. For the purposes of this Order:

    '**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

    '**business**' has the meaning given by section 129(1) and (3) of the Act

    '**the Businesses**' means the Roanza Business, the Enza Business and the Robert Smith Business

    '**commencement date'** means 15 September 2014

    '**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

    '**the decisions**' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act

    'Enza' means Enza Group Limited

    '**Enza Group Limited**' means the company incorporated and registered in England and Wales with company number 05859577

‘**the Enza Business**’ means the business of Enza and its subsidiaries carried on as at the commencement date

‘key staff’ means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business

‘**the ordinary course of business**’ means matters connected to the day-to-day supply of goods and/or services by the Roanza Business or the Robert Smith Business or the Enza Business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the Roanza Business, the Robert Smith Business and/or Enza Business

‘Roanza’ means Roanza Limited‘

‘Roanza Limited’ means the company incorporated and registered in England and Wales with company number 08865644

‘the Roanza Business’ means the business of Roanza carried on as at the commencement date to the extent that any such business is carried on outside of the Robert Smith Business and the Enza Business

‘Robert Smith’ means Robert Smith Group Limited

‘**Robert Smith Group Limited**’ means the company incorporated and registered in England and Wales with company number 05400888

‘**the Robert Smith Business**’ means the business of Robert Smith Group Limited and its subsidiaries carried on as at the commencement date

‘**specified period**’ means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act

‘**subsidiary**’, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006

‘**the transaction**’ means the transaction by which Enza and Robert Smith have ceased to be distinct within the meaning of section 23 of the Act, and unless the context requires otherwise, the singular shall include the plural and vice versa.

Tim Geer
Assistant Director, Mergers

ANNEX

Compliance statement for Roanza Limited/ Enza Group Limited/ Robert Smith Group Limited

I [insert name] confirm on behalf of Roanza/Enza/Robert Smith that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):

   (a) Roanza/Enza/Robert Smith has complied with the Order made by the CMA in relation to the transaction on 15 September 2014 (the Order).

   (b) Roanza/Enza/Robert Smith's subsidiaries have also complied with this Order.

2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:

   (a) No action has been taken by Roanza/Enza/Robert Smith that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:

      (i) lead to the integration of the Robert Smith Business with the Enza Business and/or the Roanza Business

      (ii) transfer the ownership or control of the Roanza Business, the Enza Business or the Robert Smith Business or any of their subsidiaries, or

      (iii) otherwise impair the ability of the Roanza Business, the Robert Smith Business or the Enza Business to compete independently in any of the markets affected by the transaction.

   (b) The Robert Smith Business has been carried on separately from the Enza Business and the Robert Smith Business's separate sales or brand identity has been maintained.

   (c) The Robert Smith Group Limited Business and the Enza Business have been maintained as going concerns and sufficient resources have been made available for the development of the Robert Smith Business and the

Enza Business, on the basis of their respective pre-merger Business plans.

(d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Roanza Business, the Robert Smith Business or the /Enza Business, except in the ordinary course of business.

(e) The nature, description, range and quality of goods and/or services supplied in the UK by the Roanza Business, the Robert Smith Business and the Enza Business have been maintained and preserved.

(f) Except in the ordinary course of business for the separate operation of the Businesses:

(i) all of the assets of the Businesses, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period

(ii) none of the assets of the Businesses have been disposed of, and

(iii) no interest in the assets of the Businesses has been created or disposed of.

(g) There has been no integration of the information technology of the Businesses, and the software and hardware platforms of the Robert Smith Business and of the Enza Business have remained essentially unchanged, except for routine changes and maintenance.

(h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the Businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Robert Smith Business have been carried out by the Robert Smith Business alone and any negotiations with any existing or potential customers and suppliers in relation to the Enza Business have been carried out by the Enza Business alone. For the avoidance of doubt, the Enza Business has not negotiated on behalf of the Robert Smith Business (and vice versa) or entered into any joint agreements with the Robert Smith Business (and vice versa) and the Roanza Business has not negotiated on behalf of, or entered into any joint agreements with, either of the Robert Smith Business or the Enza Business.

(i) All existing contracts of the Robert Smith Business and the Enza Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.

(j) No changes have been made to key staff of the Businesses.

(k) No key staff have been transferred between the Businesses.

(l) All reasonable steps have been taken to encourage all key staff to remain with the Businesses.

(m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the Businesses, has passed, directly or indirectly, from the Robert Smith Business (or any of its employees, directors, agents or affiliates) to the Enza Business (or any of its employees, directors, agents or affiliates), or the Roanza Business (or any of its employees, directors, agents or affiliates) or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

(i) key staff that have left or joined any of the Enza Businesses

(ii) interruptions of any of the Businesses(including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours

(iii) substantial customer volumes won or lost or substantial changes to the customer contracts for any of the Businesses, or

(iv) substantial changes in the contractual arrangements or relationships with key suppliers of any of the Businesses.

(o) [list of material developments]

3. Roanza/ Enza / Robert Smith and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to any of the Businesses in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF Roanza Limited/ Enza Group Limited/ Robert Smith Group Limited

Signature ……

Name ……..

Title ……..

Date …….