



## **DETERMINATION OF MERGER NOTIFICATION M/21/016 – PANDAGREEN/EXOMEX**

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### **Section 21 of the Competition Act 2002**

### **Proposed acquisition by Pandagreen Limited of sole control of Exomex (Ireland) Limited**

**Dated 30 September 2021**

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#### **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Pandagreen Limited (“Pandagreen”) has submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services, with a view to said proposals becoming binding on Pandagreen.

The Commission has taken the proposals into account and in light of said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, the result of the proposed acquisition whereby Pandagreen Limited would acquire sole control of Exomex (Ireland) Limited will not be to substantially lessen competition in any market for goods and services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**



## PROPOSALS BY PANDAGREEN TO THE CCPC (“Proposals”)

### PART I – PROPOSALS

#### RECITALS

- a) Pursuant to section 20(3) of the Act, Pandagreen has submitted to the CCPC the following Proposals for the purpose of ameliorating the CCPC’s competition concerns in respect of any effect of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals becoming binding on Pandagreen on the date of the Determination.
- b) Panda has agreed with the CCPC to commit to sell the Divestment Package in accordance with the terms and procedures set out in these Proposals.
- c) Prior to the date of the Determination, the following has occurred:
  - i. Pandagreen identified Thorntons as a Suitable Purchaser of the Divestment Package.
  - ii. Pandagreen has entered into non-binding Heads of Agreement with Thorntons for the sale of the Divestment Package.

#### A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**CCPC**” means the Competition and Consumer Protection Commission and its successors;

“**Completion**” means completion of the Proposed Transaction in accordance with the terms of the Share Purchase Agreement

“**Determination**” means the Determination of the CCPC pursuant to Section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

“**Divestment Customers**” means the 89 customers to whom Pandagreen provides Individual C&I Waste Collection Services on the date of the Determination in the areas of: Collon; Ardee; Dunleer; Dundalk/Blackrock; and Castlebellingham.

“**Divestment Package**” means the business consisting of the items listed in the Appendix to the Proposals;

“**Exomex**” means Exomex (Ireland) Limited.

“**Heads of Agreement**” means the heads of agreement entered into between Pandagreen and Thorntons dated 27 September 2021, which relates to the proposed acquisition by Thorntons of the Divestment Package;



**“Individual C&I Waste Collection Services”** means waste collection services provided to businesses and other non-domestic/residential customers, excluding customers whose relationship with Pandagreen requires collection of waste at multiple sites.

**“Material Change”** means a change whereby a purchaser of the Divestment Package no longer fulfils the requirements of a “Suitable Purchaser”, as defined below;

**“Notification Form”** means the merger notification form submitted to the Commission on 9 April 2021 in relation to the Proposed Transaction;

**“Pandagreen”** means Pandagreen Limited;

**“Proposed Transaction”** means the proposed acquisition by Pandagreen of sole control of Exomex as notified to the CCPC on 9 April 2021; and

**“Share Purchase Agreement”** means the agreement between Pandagreen and the sellers of Exomex, dated 1 April 2021 (a copy of which was provided to the CCPC with the Notification Form);

**“Suitable Purchaser”** means a purchaser who meets all of the following four criteria:

- 1) the acquisition by the purchaser of the Divestment Package or the terms and conditions of any such acquisition would not be likely to create prima facie competition concerns;
- 2) the purchaser (or, in the case of separate purchasers, each purchaser) is unconnected to and independent of Pandagreen and Exomex;
- 3) the purchaser (or, in the case of separate purchasers, each purchaser) is able to maintain and develop the Divestment Package as an active competitive force; and
- 4) the purchaser (or, in the case of separate purchasers, each purchaser) is reasonably likely to obtain all permits or access to assets required to provide Individual C&I Waste Collection Services to the Divestment Customers;

**“Thorntons”** means Pdraig Thornton Waste Disposal Limited, trading as “Thorntons Recycling”;

**“Trustee”** means the trustee approved by the CCPC in accordance with clause 4 of Part II of these Proposals.

## **B. The Proposal to Divest**



2. Pandagreen undertakes, subject to the provisions set out herein, to effect the sale of the Divestment Package to Thorntons within four (4) months of the Determination.
- 2.1 Pandagreen agrees with the CCPC that the sale of the Divestment Package to Thorntons shall be upon the basis of the broad terms set out in the Heads of Agreement. Pandagreen shall immediately inform the CCPC if Thorntons exercises its rights in accordance with the Heads of Agreement to decide not to proceed with the acquisition of the Divestment Package.
- 2.2 Pandagreen shall be deemed to have complied with paragraph 2 above if, within a four (4) month period from the Determination (or such longer period as may be allowed by the CCPC), it has entered into a binding contract for the sale of the Divestment Package to Thorntons (subject to due diligence, regulatory permits and any other necessary conditions not within the control of Pandagreen or Thorntons provided that such sale is completed within a two (2) month period from the date of the binding contract (or such longer period as may be allowed by the CCPC).
- 2.3 Pandagreen shall immediately inform the CCPC if, having entered into a binding contract with Pandagreen for the acquisition of the Divestment Package, Thorntons exercises any relevant rights it has pursuant to such binding contract not to proceed with the acquisition of the Divestment Package.
- 2.4 When Pandagreen and Thorntons have entered into a binding contract for the sale of the Divestment Package, Pandagreen shall submit to the Trustee and the CCPC a copy of the binding contract together with a fully documented and reasoned report which enables the Trustee and the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change to Pandagreen's knowledge since the Determination, subject to the CCPC agreeing to keep confidential all such information received.
- 2.5 Within two (2) weeks of the receipt by the Trustee and the CCPC of the binding contract for the sale of the Divestment Package and accompanying fully documented and reasoned report in accordance with paragraph 2.4, the CCPC shall communicate in writing its view as to whether the conditions laid down in these Proposals have been fulfilled and, in particular, as to whether there has been any Material Change as provided for in paragraph 2.4. If the CCPC does not communicate its approval or non-approval within thirty days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally.
- 2.6 Pandagreen recognises that, if at any time prior to completion of the sale of the Divestment Package to Thorntons the CCPC reasonably considers on the basis of information available to it that there has been a Material Change, the CCPC may withdraw its approval of Thorntons as a Suitable Purchaser of the Divestment Package. In the event that the CCPC withdraws its approval of Thorntons as a Suitable Purchaser of the Divestment Package as provided for in this paragraph, the procedure provided for in paragraph 3 of these Proposals shall be followed.



**C. Divestment by Pandagreen to an Alternative Purchaser or Purchasers**

3. Pandagreen undertakes, subject to the provisions set out herein, to effect the sale of the Divestment Package to an alternative prospective purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld) in the following circumstances, such sale to be effected within four (4) months of the occurrence of any one of these events:
- (a) if the CCPC withdraws its approval of the suitability of Thorntons as a purchaser of the Divestment Package for the reasons referred to in paragraph 2.6 of these Proposals;
  - (b) if Pandagreen informs the CCPC, pursuant to paragraph 2.1 of these Proposals, that Thorntons has exercised its rights in accordance with the Heads of Agreement not to proceed with the acquisition of the Divestment Package;
  - (c) if four (4) months (or such longer period as may be agreed by the CCPC) have elapsed after the date of the Determination without Pandagreen having entered into a binding agreement with Thorntons for the disposal of the Divestment Package; or
  - (d) if, having entered into a binding agreement with Thorntons for the acquisition of the Divestment Package, Pandagreen informs the CCPC, pursuant to paragraph 2.3 of these Proposals, that Thorntons has exercised its rights pursuant to such binding agreement not to proceed with the acquisition of the Divestment Package.
- 3.2 Pandagreen agrees with the CCPC that the sale of the Divestment Package shall be upon such conditions as the CCPC may reasonably consider proper and that the sale of the Divestment Package to a prospective purchaser (or purchasers) must not be likely to create, in light of information available to the CCPC, *prima facie* competition concerns.
- 3.3 Pandagreen agrees that for a prospective purchaser (or purchasers) to obtain the CCPC's approval, such purchaser (or purchasers) shall:
- (a) be unconnected to and independent of Pandagreen and Exomex;
  - (b) be able to maintain and develop the Divestment Package as an active competitive force; and
  - (c) have, or be reasonably likely to obtain, all permits and access to assets required to provide Individual C&I Waste Collection Services to the Divestment Customers.
- 3.4 Pandagreen shall be deemed to have complied with paragraph 3 of these Proposals if, within a four (4) month period after the occurrence of any one of the events set out in paragraph 3 above (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 3.8 below), it has entered into a binding contract for the sale of the Divestment Package to a single prospective purchaser, or alternatively to separate prospective purchasers (subject to due diligence, regulatory



permits and any other conditions not within the control of Pandagreen or the purchaser(s)), provided that each such sale is (or sales are) completed within a two (2) month period from the date of the relevant binding contract (or such longer period as may be allowed by the CCPC).

- 3.5 Pandagreen shall immediately inform the Trustee and the CCPC if, having entered into a binding contract with Pandagreen for the acquisition of the Divestment Package, a prospective purchaser exercises any relevant rights it has pursuant to the binding contract not to proceed with the proposed acquisition.
- 3.6 Pandagreen shall:
- (a) promptly inform the Trustee and the CCPC in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the Divestment Package, and to whom Pandagreen is seriously considering the sale of the Divestment Package, in order to enable the Trustee and the CCPC to verify the suitability of the prospective purchaser or purchasers;
  - (b) when the parties have entered into a binding contract for the sale of the Divestment Package, submit a fully documented and reasoned report relating to the sale to the Trustee and the CCPC (including a copy of the binding contract) in order to enable the Trustee and the CCPC to verify that the conditions laid down in these Proposals are fulfilled and that there has been no Material Change since the CCPC assessed that purchaser's suitability under paragraph 3.6(a), subject to the CCPC agreeing to keep confidential all such information received.
- 3.7 The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within two weeks of the receipt by the CCPC of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 3.6(a). Separately, within two weeks of the receipt by the CCPC of a binding contract and accompanying fully documented and reasoned report in accordance with paragraph 3.6(b), the CCPC shall communicate in writing its view as to whether the conditions laid down in these Proposals have been fulfilled and as to whether there has been any Material Change as provided for in paragraph 3.6(b).
- 3.8 Failure of the CCPC to communicate its approval or non-approval of a prospective purchaser within two weeks of the receipt by the CCPC of a fully documented and reasoned proposal and/or report in accordance with paragraph 3.6(a) or paragraph 3.6(b) shall in each case suspend the running of the four (4) month period established in paragraph 3 above until the CCPC communicates its approval or non-approval. If the CCPC does not communicate its approval or non-approval within thirty days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally.
- 3.9 In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Pandagreen shall be free to accept any offer or to select the offer it considers best.
- 3.10 The sale of the Divestment Package shall not prevent or delay the Completion.



## D. The Divestment Package

### *The Divestment*

4. Pandagreen undertakes to dispose of the entirety of the Divestment Package.
5. Pandagreen further undertakes that, for a period of twenty-four (24) months from the date of completion of the sale of the Divestment Package in accordance with paragraph 2 (or as applicable paragraph 3) of these Proposals, Pandagreen will not actively canvass or solicit any Divestment Customer in relation to the provision of Individual C&I Waste Collection Services. For the avoidance of doubt, this does not preclude Pandagreen from responding to an unsolicited request from a Divestment Customer to provide Individual C&I Waste Collection Services or from conducting general marketing activities which are not specifically targeted at the Divestment Customers. During the relevant twenty-four (24) month period referred to in this paragraph 5 of these Proposals (the “**Non-solicitation Period**”):
  - (a) in the event that a Divestment Customer submits an unsolicited request to Pandagreen for a quotation for the provision of Individual C&I Waste Collection Services by Pandagreen, Pandagreen shall respond in writing in a timely manner (the “**Offer**”). If the Offer is accepted Pandagreen shall not, during the Non-solicitation Period, subsequently amend the price or terms and conditions for the provision of the Individual C&I Waste Collection Services contained in the Offer, although Pandagreen may provide clarifications on the Offer, which must also be in writing, in response to a specific query received from that same Divestment Customer. Pandagreen shall not comment on the prices or terms and conditions offered by a competing supplier of Individual C&I Waste Collection Services if asked to do so by a Divestment Customer. Pandagreen shall retain copies of the Offer and written responses for a period of twenty-four (24) months after communication to the relevant Divestment Customer and must provide copies of the Offer and written responses to the CCPC upon the request of the CCPC;
  - (b) Pandagreen shall submit to the CCPC within six (6) months after the date of the Determination a written report (the “**First Report**”) demonstrating Pandagreen’s compliance with its obligations set out in paragraph 5(a) of these Proposals since the date of the Determination. Pandagreen shall submit to the CCPC within six (6) months after the date of submission of the First Report and at intervals of six (6) months thereafter, a written report (each, a “**Compliance Report**”) demonstrating Pandagreen’s continued compliance with its obligations set out in paragraph 5(a) of these Proposals until the expiry of six (6) months after the Non-solicitation Period. The First Report and each subsequent Compliance Report shall include the following: (i) the total number of unsolicited requests for a quotation for the provision of Individual C&I Waste Collection Services received by Pandagreen from Divestment Customers during the preceding six (6) month period; (ii) how Pandagreen dealt with each such unsolicited request received from a Divestment Customer during the preceding six (6) month period, including the price and terms and conditions for the provision of Individual C&I Waste Collection Services contained in any Offer made by Pandagreen to a Divestment Customer and clarifications on any Offer



made by Pandagreen; (iii) the total number of Divestment Customers who, as a result of an unsolicited request to Pandagreen, commenced receiving Individual C&I Waste Collection Services from Pandagreen during the preceding six (6) month period.

6. Pandagreen confirms that it will not impose, as a condition of sale of the Divestment Package, an obligation on the purchaser to acquire any associated assets or staff from Pandagreen (except where such assets or staff are requested by the purchaser to be included and agreed by Pandagreen).

***Interim Position of the Divestment Package***

7. Following the Determination and pending the sale of the Divestment Package, Pandagreen undertakes to continue to provide Individual C&I Waste Collection Services to the Divestment Customers and to preserve the economic viability, marketability, and competitiveness of the Divestment Package until the date of divestment in accordance with good commercial practice.
8. Pandagreen undertakes to protect the value of the Divestment Package during the period from the date of the Determination until the date of divestment of the Divestment Package and, more specifically:
  - (i) to continue to operate the collection routes that service the Divestment Customers in the manner it had done in the twelve (12) months prior to the Determination and without any material reduction in service quality for the Divestment Customers, except where it can be demonstrated by reference to circumstances outside Pandagreen's control that this was not possible; and
  - (ii) to refrain from terminating any contracts with any of the Divestment Customers (other than for breach of a term or terms of the relevant contract giving rise to a termination right thereunder).

For the avoidance of doubt, the foregoing obligations in paragraphs 7 and 8 shall cease immediately on divestiture of the Divestment Package or (where relevant and appropriate) at such later time as may be agreed between Pandagreen and the purchaser of the Divestment Package.

9. Pandagreen undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Divestment Package until the date of its divestment. Further, Pandagreen undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Divestment Package.

***Review clause***

10. The CCPC may at its sole discretion extend any of the time periods provided for in these Proposals in response to a reasoned request from Pandagreen or, if applicable, the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole



discretion, in response to a reasoned request from Pandagreen or, if applicable, the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Proposals.

### ***Continued Separation***

11. Pandagreen undertakes not to acquire any interest in Thorntons for a period of one (1) year following the date of the completion of the sale of the Divestment Package to Thorntons pursuant to these Proposals. Alternatively, in the event that Thorntons does not acquire the Divestment Package for one or more of the reasons set out in paragraph 3 of these Proposals and the Divestment Package is acquired by one or more alternative purchasers who have been approved by the CCPC in accordance with paragraph 3.7 or paragraph 3.8 of Part I or paragraph 9 of Part II of these Proposals, Pandagreen undertakes not to acquire any interest in the purchaser(s) of the Divestment Package for a period of one (1) year following the date of the completion of the sale of the Divestment Package (or relevant portion of the Divestment Package) pursuant to these Proposals.
12. Pandagreen undertakes that if it attempts by entering into a legally binding agreement, for a period of two (2) years following the expiry of the one (1) year period referred to in paragraph 11 of these Proposals, to acquire any interest in:
  - (a) Thorntons; or
  - (b) in the event that Thorntons does not acquire the Divestment Package for one or more of the reasons set out in paragraph 3 of these Proposals, the purchaser(s) of the Divestment Package,

Pdagreen will inform the CCPC prior to doing so and will, if required to do so by the CCPC, notify any such proposed acquisition in accordance with Section 18(3) of the Act (or its successor provision, if applicable) if such proposed acquisition is not required to be notified under Section 18(1) of the Act (or its successor provision, if applicable)

### ***Applicable Laws***

13. Pandagreen undertakes to ensure that the divestment of the Divestment Package is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law. Pandagreen shall procure that Thorntons or any other prospective purchaser(s) of the Divestment Package takes all necessary steps to ensure that the divestment of the Divestment Package is conducted in a manner that complies with all applicable laws, including without limitation data protection law, contract law and consumer protection law.



## APPENDIX TO THE PROPOSALS

The Divestment Package includes the following:

- (i) all books, records and correspondence relating to the Divestment Customers, including the full name, address and contact details of each Divestment Customer and any other relevant information relating to each Divestment Customer (including but not limited to account number, number and type of bins, billing frequency, billing charge, billing date, payment method, debtor balance and prepaid calculation), which are maintained by Pandagreen at the date of the Determination;
- (ii) the rights, interest and obligations under all contracts between Pandagreen and each of the Divestment Customers for the provision of Individual C&I Waste Collection Services which are in force at the date of the Determination;
- (iii) the bins at the sites of the Divestment Customers; and
- (iii) all debts (if applicable, less any deferred income calculated upon closing of the sale of the Pandagreen businesses) in respect of the Divestment Customers which are outstanding at the date of the Determination.



## PART II – APPOINTMENT OF TRUSTEE IN RESPECT OF THE PROPOSALS

### *Appointment of a Trustee*

1. Within ten (10) working days of the Determination being notified to Pandagreen, Pandagreen will propose to the CCPC a trustee, who is independent of Pandagreen and Exomex (the “**Proposed Trustee**”). The appointment of the Proposed Trustee is subject to the approval of the CCPC (such approval not to be unreasonably withheld). If the CCPC does not reject the Proposed Trustee by notice in writing within five working days of the proposal, the Proposed Trustee shall be deemed to have been approved.
2. If the Proposed Trustee is rejected, Pandagreen will propose the name of a new trustee (the “**New Trustee**”) within five working days of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Pandagreen within five working days of the new proposal, the New Trustee shall be deemed to have been approved.
3. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable trustee (the “**CCPC Trustee**”) within five working days which Pandagreen will appoint or cause to be appointed.

### *Trustee’s Mandate*

4. Within five working days of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee, Pandagreen shall enter into a mandate agreement with the approved trustee (the “**Trustee**”), the terms of which shall have previously been agreed with the CCPC, which confers on the Trustee all the rights and powers necessary to permit the Trustee to carry out the mandate described in paragraphs 6 and 9 of Part II of the Proposals (the “**Mandate**”).
5. The Trustee shall be independent of Pandagreen and Exomex, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
6. Throughout the duration of the Trustee’s appointment, the Trustee shall, in respect of the Proposals:
  - (i) provide written reports (“**Trustee Reports**”) to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to Pandagreen. Pandagreen shall receive a non-confidential copy of such Trustee Reports;
  - (ii) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;



- (iii) monitor the maintenance of the nature, description, range and standard of the Individual C&I Waste Collection Services provided to the Divestment Customers by Pandagreen from the date of the Determination until completion of the sale of the Divestment Package;
  - (iv) monitor and advise the CCPC as to the effectiveness of the process by which the Divestment Customers are transferred to the purchaser; and
  - (v) monitor and advise the CCPC as to whether Thorntons or any other prospective purchaser(s) with whom Pandagreen or the Trustee intends to negotiate are likely to be, and pending completion of sale continue to be, a Suitable Purchaser, including providing a written report to the CCPC within five working days of receipt of a fully documented and reasoned proposal from Pandagreen, pursuant to clause 3.6(a) of Part I of these Proposals, verifying the suitability of a prospective purchaser or purchasers;
  - (iv) provide a written report to the CCPC within 5 working days of receipt of a fully documented and reasoned report from Pandagreen, pursuant clause 2.4 and/or clause 3.6(b) of Part I of these Proposals, verifying whether the requirements set out in these Proposals have been fulfilled and that there has been no Material Change.
- 7. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Pandagreen, save with the express consent of the CCPC. Any instruction or request to the Trustee from Pandagreen which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
- 8. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination so long as Pandagreen is first given a reasonable opportunity to comment on any such orders or instructions in advance.
- 9. In the circumstances specified below, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the sale of the Divestment Package to one prospective purchaser, or alternatively for the sale of the Divestment Package to one or more prospective purchasers, at no minimum price and upon such terms and conditions as it considers appropriate for an expedient sale to a viable and independent third party (subject to the CCPC having approved both the purchaser and the binding letter of intent or binding contract for the divestment of the Divestment Package in accordance with paragraphs 3.6, and paragraphs 3.7 or 3.8 of Part I of the Proposals):
  - (i) If four (4) months (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in paragraph 3.8 of these Proposals) have elapsed after the date of the occurrence of any one of the events set out in paragraph 3 above without Pandagreen having entered into a binding contract for the disposal of the entirety of the Divestment Package; or



- (ii) if a sale pursuant to a binding contract referred to in (i) above has not completed within a two (2) month period from the date of the relevant binding contract (or such longer period as may be allowed by the CCPC), or any prospective purchaser referred to in section C (i.e. an Alternative Purchaser or Purchasers) of these Proposals exercises any relevant rights it has pursuant to any binding contract with Pandagreen not to proceed with the proposed acquisition within that two (2) month period.

The Trustee shall have regard to the legitimate financial interests of Pandagreen in respect of such divestment, subject to Pandagreen's unconditional obligation to divest the Divestment Package at no minimum price.

### ***Miscellaneous***

10. Pandagreen will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Proposals. Pandagreen will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Pandagreen as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
11. In addition, at the expense of Pandagreen, the Trustee may (during the trustee divestment period referred to in paragraph 9 above) appoint advisors (in particular for corporate finance or legal advice), subject to Pandagreen's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Pandagreen refuse to approve the advisors proposed by the Trustee, the CCPC may approve the appointment of such advisors instead, after first having heard Pandagreen. Only the Trustee shall be entitled to issue instructions to the advisors.
12. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible, given the nature of its tasks, due regard to the commercial interests of Pandagreen.
13. Pandagreen shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Pandagreen for, any liabilities arising out of the performance of the Trustee's duties under the Proposals and the Mandate, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence, fraud, or bad faith of the Trustee, its employees, agents or advisors.
14. The Mandate and the Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Pandagreen announces that the Proposed Transaction has been irrevocably abandoned.



15. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.

***Review clause***

16. The CCPC may at its sole discretion extend any of the time periods provided for in relation to the appointment of the Trustee in response to a reasoned request from Pandagreen or the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole discretion, in response to a reasoned request from Pandagreen or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in relation to the appointment of the Trustee.