

2021 No. 993

COMPETITION

The Public Interest Merger Reference (Perpetuus Advanced Materials plc) (Pre-emptive Action) Order 2021

Made - - - - at 6.30 p.m. on 5th September 2021

Coming into force - - at 7.30 p.m. on 5th September 2021

Laid before Parliament on 7th September 2021

The Secretary of State has reasonable grounds for suspecting that it is or may be the case that as a result of the proposed acquisition of Perpetuus Advanced Materials plc by Taurus International Ltd, its interconnected bodies corporate, Dr. Zhongfu Zhou, or other persons or bodies corporate associated with Dr. Zhongfu Zhou, arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.

An intervention notice in respect of the relevant merger situation concerned, given by the Secretary of State on 5th September 2021 under section 42 of the Enterprise Act 2002(a), is in force.

In the opinion of the Secretary of State the exercise of the powers as set out in this Order is required for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002(b) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State's decisions on the reference.

The Secretary of State, for the purpose of preventing pre-emptive action(c), in exercise of the powers conferred by sections 86(1) and (3), 87(1) and (3) and 124(2)(b) of, and paragraph 2(2) of Schedule 7 to, the Enterprise Act 2002(d), makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Public Interest Merger Reference (Perpetuus Advanced Materials plc) (Pre-emptive Action) Order 2021 and comes into force at 7.30 p.m. on 5th September 2021.

(a) 2002 c.40; section 42 was amended by paragraphs 59 and 82 of Schedule 5, and paragraphs 15 and 21 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013 (c. 24) and S.I. 2019/93.
(b) Section 45 was amended by paragraphs 59 and 85 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 45 but it is not relevant to this Order.
(c) "Pre-emptive action" is defined in paragraph 2(12) of Schedule 7 to the Enterprise Act 2002 (paragraph 2(12) was inserted into Schedule 7 by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013).
(d) Paragraph 2(2) of Schedule 7 was amended by paragraphs 59 and 160 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(2) This Order extends to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In this Order—

“the Acquiring entities” means—

- (a) any members of the Taurus Group;
- (b) Dr. Zhongfu Zhou, Research Professor and Principal Investigator at the Department of Physics, Aberystwyth University, Aberystwyth, Wales;
- (c) any person associated with Dr. Zhongfu Zhou;
- (d) any bodies corporate controlled by Dr. Zhongfu Zhou or by any person associated with him; and
- (e) any body corporate which is interconnected with a body corporate controlled by Dr. Zhongfu Zhou or by any person associated with him,

and for these purposes a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate but without having a controlling interest in that body corporate, may be treated as having control of it;

“the Acquiring entities business” means any enterprises carried on by any of the Acquiring entities;

“the Act” means the Enterprise Act 2002;

“key staff” in relation to an enterprise means—

- (a) staff in a position of executive or managerial responsibility or whose performance affects the viability of the enterprise; or
- (b) staff whose work for the enterprise involves creating, developing, understanding, using or applying any of the information referred to in article 5;

“Perpetuus” means Perpetuus Advanced Materials plc, a company incorporated in England and Wales (registered number 08772185);

“the Perpetuus business” means any enterprises carried on by a member of the Perpetuus group;

“the Perpetuus group” means Perpetuus and any other body corporate interconnected with Perpetuus and references to “members of the Perpetuus group” are to be construed accordingly;

“the Taurus group” means Taurus International Ltd, a company incorporated in England and Wales (registered number 12962488) and any other body corporate interconnected with Taurus International Ltd and references to “members of the Taurus group” are to be construed accordingly;

“working day” means any day which is not—

- (a) a Saturday, a Sunday, Good Friday or Christmas Day; or
- (b) a day which is a bank holiday in England and Wales.

(2) For the purposes of this Order, one person (A) is an “affiliate” of another person (B), if—

- (a) any enterprise that A carries on from time to time and any enterprise that B carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act (enterprises ceasing to be distinct enterprises); or
- (b) A and B are interconnected bodies corporate^(a).

(a) “Interconnected bodies corporate” are defined in section 129(2) of the Enterprise Act 2002.

Interim provisions

3.—(1) Perpetuus must ensure that ownership or control of the Perpetuus business is not transferred to any other person.

(2) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) (associated persons) of the Act^(a) apply for the purposes of paragraph (1) as they do for the purposes of section 26 of the Act.

(3) Perpetuus must ensure that no step is taken to integrate the Perpetuus business with any other enterprise.

(4) The Acquiring entities must ensure that no step is taken to integrate the Acquiring entities business with the Perpetuus business.

4. Without limiting article 3(3) and (4), Perpetuus and the Acquiring entities must, so far as it is within their respective powers to do so, ensure that, whether inside or outside the United Kingdom—

- (a) the Perpetuus business is carried on separately from the Acquiring entities business and the Perpetuus business's separate sales and brand identity is maintained;
- (b) except in the ordinary course of business, course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Perpetuus business;
- (c) except in the ordinary course of business—
 - (i) none of the assets of the Perpetuus business (nor any parts of any of those assets) is disposed of;
 - (ii) no interest in the assets of the Perpetuus business (or in any parts of any of those assets) is created or disposed of;
- (d) no steps are taken to integrate the information technology systems of the Perpetuus business with those of the Acquiring entities business, and the software and hardware platforms of the Perpetuus business remain unchanged, except for routine changes and maintenance;
- (e) Perpetuus does not perform or continue to perform any existing agreement between it and any of the Acquiring entities (including any joint agreement between Perpetuus, any of the Acquiring entities and any other person);
- (f) Perpetuus does not supply any goods or services, directly or indirectly, to any of the Acquiring entities;
- (g) no key staff are removed from their positions within the Perpetuus business;
- (h) no key staff are transferred between the Perpetuus business and the Acquiring entities business; and
- (i) all reasonable steps are taken to encourage all key staff to remain with the Perpetuus business.

5. No trade secrets, know how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the Perpetuus business may be disclosed or transferred, directly or indirectly and whether from inside or outside the United Kingdom, by any member of the Perpetuus group (or any of its employees, directors agents or affiliates) to any other person.

Compliance

6.—(1) Within the period of 10 working days beginning with the date on which this Order comes into force and, subsequently, at intervals of not more than 10 working days, Perpetuus must give the Secretary of State a compliance statement.

(a) Section 127 was amended by paragraph 168 of Schedule 27 to the Civil Partnership Act 2004 (c. 33); there is another amendment to section 127 but it is not relevant to this Order.

- (2) A compliance statement is a statement in writing confirming that the Perpetuus group—
- (a) is in compliance with the requirements of this Order; and
 - (b) has at all times since the coming into force of this Order been in compliance with those requirements.
- (3) A compliance statement must be signed by the chief executive, a director, or senior manager of Perpetuus.
- (4) In paragraph (3), “senior manager” means a person who plays a significant role in—
- (a) the making of decisions about how the whole or a substantial part of Perpetuus’s activities are to be managed or organised; or
 - (b) the actual managing or organising of the whole or a substantial part of those activities.
7. At all times, Perpetuus must keep the Secretary of State informed of any material developments relating to the Perpetuus business, including—
- (a) details of key staff who leave or join the Perpetuus business; and
 - (b) substantial changes in the Perpetuus business’s contractual arrangements or relationships with key suppliers.

Contravention

8. If Perpetuus or any of the Acquiring entities has any reason to suspect that this Order might have been contravened it must immediately notify the Secretary of State in writing.

Directions

- 9.—(1) The Secretary of State may give directions in writing falling within paragraph (2) to—
- (a) a person specified in the directions; or
 - (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- (2) Directions fall within this paragraph if they are directions—
- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
 - (b) to do or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.
- (3) The Secretary of State may vary or revoke any directions given under this article.

Derogations

10. For the purposes of paragraph 2(2C) of Schedule 7 to the Act^(a), the Secretary of State is not to be treated as having consented to the taking of action or action of a particular description which would otherwise constitute a contravention of this Order unless the consent is in writing.

Kwasi Kwarteng
Secretary of State for Business, Energy and Industrial Strategy

At 6.30 p.m. on 5th September 2021 Department for Business, Energy and Industrial Strategy

(a) Paragraph 2(2C) was inserted by paragraphs 1 and 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

EXPLANATORY NOTE

(This note is not part of the Order)

The Secretary of State has given the Competition and Markets Authority an intervention notice on public interest grounds in respect of the anticipated acquisition of Perpetuus Advanced Materials plc (“Perpetuus”). This Order is made for the purpose of preventing action which might prejudice a reference of the matter to the Competition and Markets Authority under section 45 of the Enterprise Act 2002 (c. 40) or impede the taking of any action under Part 3 of that Act which may be justified by the Secretary of State’s decisions on the reference.

Articles 3 to 5 of the Order prevent completion of the anticipated acquisition and require Perpetuus to maintain its business separately from that of acquiring entities and impose obligations in relation to the carrying on of the business and the safeguarding of assets. Articles 6 to 8 impose reporting obligations on Perpetuus and article 9 allows the Secretary of State to give directions for the purpose of ensuring compliance with the Order.

This Order, unless previously revoked, will cease to have effect if the Secretary of State accepts an undertaking under paragraph 3 of Schedule 7 to the Enterprise Act 2002 instead of referring the merger to the Competition and Markets Authority under section 45 of that Act or when the intervention notice otherwise ceases to be in force in accordance with section 43 of that Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is available alongside the instrument on the UK legislation website, www.legislation.gov.uk.

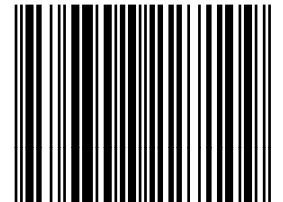
© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£4.90

<http://www.legislation.gov.uk/id/uksi/2021/993>

ISBN 978-0-34-822710-9



9 780348 227109