

Secretary of State Department for Business, Energy and Industrial Strategy  
3 Whitehall Place  
London  
SW1A 2AW

10 April 2020

By email: [competition@beis.gov.uk](mailto:competition@beis.gov.uk)

To whom it may concern,

**Notification under Article 8 of the Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020, Statutory Instrument 2020 No. 369 (the "Order")**

1. In accordance with Article 8(2)(a) of the Order, we hereby submit notifications to the Secretary of State to apply for an exclusion from Chapter I of the Competition Act 1998, as contemplated in Article 5 of the Order (the "**Notifications**").
2. Any term in the Notifications bears the definition ascribed to it in the Order, unless specified otherwise.
3. Asda Stores Limited confirms that the Notifications relate to "qualifying activity" (as contemplated in Article 3 of the Order) which:
  - i. Took place prior to the coming into force of the Order (i.e. between 1 and 27 March 2020). The Notifications have thus been submitted to the Secretary of State within 14 days of 28 March 2020, as contemplated in Article 8(2)(a);
  - ii. Is/was to prevent or mitigate the disruption to the supply of groceries to consumers in the UK (or any part of it) caused by a reason relating to coronavirus; and
  - iii. Does not otherwise have the object or effect of preventing, distorting or restricting competition.
4. As you will be aware, retailers have had to work at pace to identify and implement a series of complex arrangements to mitigate unprecedented disruptions, and ensure the continuity of supply of groceries for consumers across the UK during the coronavirus crisis. Often, these arrangements require ongoing management and adjustment to ensure they continue to address supply challenges across numerous grocery retailers as the crisis has evolved. For that reason, it is at times practically difficult to pinpoint the precise boundaries of a single agreement (which bears a broad definition, including a concerted practice which does not require the

adoption of a common plan); and/or the date that agreement was made and implemented. Similarly, there may be instances where the retailers have agreed to consider proposed agreements to address the crisis, but ultimately decided not to pursue identical industry-wide action where it is subsequently found to be unfeasible or impractical in the circumstances. There is also some overlap between the qualifying activities listed in Article 3 of the Order.

5. Despite these challenges and in the spirit of transparency, we have sought to provide as much detail as possible relating to the qualifying activities listed in Article 3 in which we have been involved up to and including 27 March 2020, including as regards preparatory discussions and/or ongoing actions required to properly implement or manage such activity.
6. We provide the details required pursuant to Article 8(1) of the Order in the tables below.

**Agreement 1: Sharing information on the day to day stock position and shortages of groceries and logistics services**

<b>Information required by the Order</b>	<b>Comments</b>
Names of the undertakings involved (the “Parties”)	Asda, Co-Op, Morrisons, Sainsbury’s, Tesco, Aldi, Lidl, Waitrose, Iceland, Ocado and M&S
Qualifying activity as described in Article 3(2) of the Order	<p><b>3(2)(d):</b> Sharing information on the day to day stock position and shortages of groceries within the UK.</p> <p><b>3(2)(e):</b> Sharing information on services provided by logistics services providers.</p> <p>Note that information of this nature is/was required to identify and address shortages so as to prepare for and/or determine a possible approach to item limits on purchases; labour shortages; logistics; store hours and ways to support and protect vulnerable consumers in the UK. Accordingly, this conduct also relates to the qualifying activities listed in Article 3(2)(a), (b), (f), and (g).</p>
Groceries to which the Agreement relates	All groceries offered by the Parties.
Description of the Agreement	Since 6 March 2020 the Parties have participated in discussions hosted by DEFRA and the BRC involving the exchange of information on the day to day stock position, shortages of groceries and trade patterns, to anticipate and address possible supply shortages and other supply challenges to meeting consumer demand for groceries. As above, information of this nature is/was required to identify and address shortages so as to prepare for and/or determine a possible approach to item limits on purchases; labour shortages; logistics; store hours and ways to support and protect vulnerable consumers in the UK (e.g. increasing click

	<p>and collect capacity and online delivery slots).</p> <p>The principal forum for these discussions are CEO meetings and the Food Resilience Forums facilitated by DEFRA taking place on 26 and 27 March. These meetings continue on a regular basis.</p> <p>In addition, discussions have taken place in calls with George Eustice (e.g. 9 March 2020) and the Prime Minister (e.g. 20 and 21 March 2020) and in smaller calls or via email in order to prepare for, facilitate and progress those meetings/discussions and the understanding of the various supply positions.</p> <p>Discussions have involved exchanges of information and/or preparatory discussions relating to the activities listed in Article 3(2)(a), (b), (f) and (g) of the Order, some of which also forms the subject of separate notifications, as detailed below.</p> <p>The Parties will need to continue to engage in this conduct to continue to ensure continuity of supply of groceries throughout the coronavirus crisis.</p>
Date of the Agreement	The Parties have been in discussions since 6 March 2020.
Implementation Date	6 March 2020
Date of this Notification	10 April 2020

### **Agreement 2: Coordination on assistance for particular groups of customers**

<b>Information required by the Order</b>	<b>Comments</b>
Names of the undertakings involved (the “Parties”)	Asda, Co-op, Morrisons, Sainsbury’s, Tesco, Waitrose
Qualifying activity as described in Article 3(2) of the Order	<p><b>3(2)(f):</b> Coordination on assistance for particular groups of consumers, including critical workers, the most clinically vulnerable and socially isolated groups of consumers, such as prioritising deliveries or opening stores at specific times to these groups or otherwise providing assistance to them.</p> <p>Note that in order to progress, support or implement this action, the Parties have also discussed or considered actions relating to item limits on purchases; labour shortages and additional labour resource; daily stock position and groceries shortages; and store hours. Accordingly, this conduct also relates to the qualifying activities listed in Article 3(2)(a), (b), (d), and (g).</p>
Groceries to which the Agreement relates	All groceries offered by the Parties.
Description of the	The Parties have agreed with the UK government to

Agreement	<p>coordinate activities to assist vulnerable consumers. This includes ensuring that all consumers identified by the NHS or DEFRA as clinically and socially isolated have access to groceries during the coronavirus crisis, including through prioritised grocery home shopping delivery slots, increased click and collect capacity, “silver hours”, “NHS hours”, and “vulnerable customer shopping packs”.</p> <p>In an attempt to identify all vulnerable customers, the Parties agreed to match the data provided by the Government Digital Service (“GDS”) on behalf of the UK government with their own grocery home shopping and/or loyalty scheme membership lists, and contacted those vulnerable customers that appeared on their own membership lists (the “<b>matched customers</b>”).</p> <p>The Parties have had several calls (including with DEFRA on 18 March and the Prime Minister on 21 March) and email exchanges to prepare for, facilitate, implement and monitor the steps taken to support vulnerable consumers during the crisis.</p>
Date of the Agreement	The Parties have been in discussions with DEFRA since 9 March 2020 to discuss the concept of supporting vulnerable customers.
Implementation Date	<p>The Parties have each taken a number of steps to implement actions to support vulnerable consumers from 9 March (e.g. “silver hours” and “NHS hours” announced in the week commencing 16 March; prioritised delivery slots available in the week commencing 23 March, etc).</p> <p>The agreement as regards the “matched customers” was implemented on 3 April when the first batch of data was received from the GDS and the Parties began to match customers and email them informing them that they could access the prioritised grocery home shopping delivery slots. More matched customers will be contacted in due course as further data is provided by the GDS and matched against the Parties’ membership lists.</p>
Date of this Notification	10 April 2020

**Agreement 3: Coordination on limiting purchases by consumers of particular groceries**

Information required by the Order	Comments
Names of the undertakings involved (the “Parties”)	Asda, Co-op, Morrisons, Sainsbury’s, Tesco
Qualifying activity as described in Article 3(2) of the Order	<b>3(2)(a)</b> : Coordination on limiting purchases by consumers of particular groceries (“ <b>Purchase Limits</b> ”).

	<p>Note that in order to formulate a possible approach to Purchase Limits, the Parties shared information of the kind contemplated under Article 3(2)(d) (as detailed above) and also considered or discussed possible actions to protect vulnerable customers, or other groups of customers. Accordingly, this conduct also relates to the qualifying activities listed in Article 3(2)(d) and (f).</p>
Groceries to which the Agreement relates	<p>While the Agreement might have involved discussions regarding all groceries offered by the Parties, Purchase Limits are/were primarily considered in relation to a number of the most popular items such as toilet rolls, UHT milk, rice, pasta and soap.</p>
Description of the Agreement	<p>During early March 2020, the UK saw unprecedented shopping levels, including “panic-buying” and severe stockpiling of groceries by consumers, in particular relating to a range of items deemed essential by consumers (such as toilet rolls, cleaning products, hand sanitizer, dried pasta, rice, tinned food and UHT milk).</p> <p>In order to address this, and ensure that items stay on shelves for longer and can be bought by a larger number of customers, the Parties discussed a range of Purchase Limit proposals to manage “panic-buying”. In order to formulate an approach to Purchase Limits, the Parties have shared information since 6 March 2020 relating to stock positions, trade patterns and groceries shortages (as detailed above).</p> <p>In addition, discussions have taken place in calls with DEFRA (e.g. on 20 March 2020) and in smaller calls or via email in order to prepare for, facilitate and progress those meetings/discussions.</p> <p>The Parties identified and implemented a range of Purchase Limits (depending on the product in question) during the month of March.</p> <p>As purchasing patterns stabilise during the evolving crisis, some retailers are lifting Purchase Limits previously implemented. The Parties will continue to monitor this.</p>
Date of the Agreement	The Parties have been in discussions since 6 March 2020.
Implementation Date	10 March 2020
Date of this Notification	10 April 2020

**Agreement 4: Coordination as regards the temporary closure of stores or opening hours of stores**

Information required by the Order	Comments
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Names of the undertakings involved (the “Parties”)	Asda, Co-op, Morrisons, Sainsbury’s, Tesco
Qualifying activity as described in Article 3(2) of the Order	<p><b>3(2)(g):</b> Coordination as regards the temporary closure of stores or opening hours of stores (“Trading Hours”).</p> <p>Note that in order to formulate a possible approach to Trading Hours, the Parties shared information regarding stock positions, trading patterns, labour resources, absences from the workforce and measures to protect vulnerable customers or other customer groups. Accordingly, this conduct also relates to the qualifying activities listed in Article 3(2)(b), (d) and (f).</p>
Groceries to which the Agreement relates	All groceries offered by the Parties.
Description of the Agreement	<p>During early March 2020, the UK saw unprecedented shopping levels, including “panic-buying” and severe stockpiling of groceries by consumers as a result of the coronavirus.</p> <p>In order to address this, the Parties discussed possible adjustments to Trading Hours, which could allow colleagues additional time to unpack and restock the shelves, and/or enable the Parties to better manage resourcing gaps caused by colleague absences. Discussions also involved possible approaches to improve or prioritise access for key groups such as vulnerable customers or NHS workers.</p> <p>In order to formulate an approach to Trading Hours, the Parties have shared information since 6 March 2020 relating to stock positions, trade patterns and groceries shortages (as detailed above).</p> <p>In addition, discussions have taken place in calls with DEFRA (e.g. on 20 March 2020) and in smaller calls or via email in order to prepare for, facilitate and progress those meetings/discussions.</p> <p>The Parties adjusted their Trading Hours during the month of March.</p> <p>The Parties will continue to monitor this to determine whether revised Trading Hours are still required as the crisis evolves.</p>
Date of the Agreement	The Parties have been in discussions since 6 March 2020.
Implementation Date	23 March 2020
Date of this Notification	10 April 2020

7. We will provide subsequent notifications to cover any other qualifying activity in which we have or will engage post-27 March 2020, in due course as contemplated

in Article 8(2)(b) of the Order. For expediency, such future notifications will only cover qualifying activities that are clearly new and/or differ in a material and significant respect to those listed in the tables above.

8. Kindly acknowledge receipt.

Regards,

Asda Stores Limited