

## **COMPLETED ACQUISITION BY THE MIDCOUNTIES CO-OPERATIVE LIMITED OF TUFFIN INVESTMENTS LIMITED**

### **UNDERTAKINGS GIVEN BY THE MIDCOUNTIES CO-OPERATIVE LIMITED TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002**

#### **WHEREAS:**

- (a) On 30 April 2012, Midcounties completed the acquisition of the entire issued share capital of Harry Tuffins;
- (b) The OFT believes that as a consequence of the Acquisition, 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 to the CC and;
- (f) The OFT further considers that the undertakings given below by Midcounties 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** Midcounties 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 Midcounties, they are accepted by the OFT.

## **Divestment of the Divestment Businesses**

- 2.1 Midcounties shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, effect to the satisfaction of the OFT the divestment of each of the Divestment Businesses as a going concern by the end of the Divestment Period to a purchaser or purchasers approved by the OFT in accordance with the provisions of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, Midcounties shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Businesses.
- 2.3 Midcounties shall be deemed to have complied with the obligation at paragraphs 2.1 and 2.2 if, as soon as reasonably practicable and in any event by the end of the Divestment Period, it has entered into a legally binding agreement or agreements with a purchaser or purchasers approved in advance by the OFT in writing pursuant to these undertakings (or a legally binding agreement or agreements conditional on such approval) provided that the completion of the divestment of each of the Divestment Businesses contemplated by such agreement or agreements, if later than the end of the Divestment Period, takes place:
- (a) within a period not exceeding three months after the approval of the relevant purchaser or purchasers by the OFT (or within three months of the effective date of these undertakings, as set out in paragraph 1.1 above, whichever is later); or
  - (b) within a period not exceeding 10 Working Days after all the necessary approvals and consents from third parties have been obtained,
- whichever is later.
- 2.4 Without prejudice to the generality of paragraph 2.1 above, Midcounties 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 Businesses 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
- (d) the formation or winding up of a company,

provided that, for the avoidance of doubt, nothing in this paragraph 2.4 shall be interpreted as (i) preventing or precluding Midcounties from using any co-operative (or similar) or Harry Tuffins (or similar) brand used to denote stores; or (ii) requiring Midcounties to transfer or license any such brand to a third party.

- 2.5 Where Midcounties divests a Divestment Business over which it holds, or Harry Tuffins held, a freehold interest by way of the grant of a long lease on normal commercial terms of not less than 25 years duration to the relevant purchaser, it shall in addition sell the freehold interest in that Divestment Business to a person independent of and unconnected to Midcounties and the Group of Interconnected Bodies Corporate to which Midcounties belongs and any Associated Person or Affiliate of Midcounties or such Group of Interconnected Bodies Corporate with the completion of that sale occurring within a period not exceeding three months from the date of the commencement of the lease.
- 2.6 Midcounties shall ensure that each sale and purchase agreement entered into for the purposes of paragraphs 2.1 and 2.3 above includes a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the relevant Divestment Business as part of a viable and active business in competition with Midcounties and other competitors in the provision of grocery retailing.
- 2.7 In the event that Midcounties fails to divest one or more of the Divestment Businesses in accordance with paragraphs 2.1, 2.2, 2.3 and 2.5 above, the OFT may, whether or not initiating the Trustee Functions set out below, require Midcounties to divest that or those Divestment Businesses as a going concern at no minimum price to a purchaser or purchasers approved by the OFT.
- 2.8 Midcounties shall notify the OFT in writing of the identity of each proposed purchaser that makes an offer for any of the Divestment Businesses together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.

### **Approval of purchaser and terms of divestment**

- 3.1 For the purposes of the OFT approving a Divestment Purchaser in accordance with these undertakings, Midcounties shall, save as required or permitted by the OFT, satisfy the OFT that:

- (a) the acquisition of the Divestment Business or the Divestment Businesses by the Divestment Purchaser 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 Divestment Purchaser is independent of and unconnected to Midcounties and the Group of Interconnected Bodies Corporate to which Midcounties belongs and any Associated Person or Affiliate of Midcounties or such Group of Interconnected Bodies Corporate;
- (c) the Divestment Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the relevant Divestment Business as part of a viable and active business in competition with Midcounties and other competitors in the provision of grocery retailing;
- (d) the Divestment Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority including landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Divestment Purchaser of the relevant Divestment Business (or Divestment Businesses) does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The OFT may require Midcounties 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.

#### **Appointment of a Trustee**

4.1 The provisions of paragraphs 4.2 to 4.7 below shall apply only as long as Midcounties has not satisfied, or where the OFT has reasonable grounds for believing that Midcounties will not satisfy, all or any part of the obligation to divest the Divestment Businesses in accordance with paragraphs 2.1, 2.2, 2.3 and 2.5 above.

4.2 Within 15 Working Days of the OFT notifying in writing Midcounties that it must do so, Midcounties shall propose to the OFT for approval:

- (a) the names of at least two individuals to exercise the Trustee Functions; and
  - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 Midcounties and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the OFT that, save as required or permitted by the OFT:
- (a) such nominated individuals are each EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
  - (b) such nominated individuals are each independent of Midcounties and of the Group of Interconnected Bodies Corporate to which Midcounties belongs and of any Associated Person or Affiliate of Midcounties or of such Group of Interconnected Bodies Corporate and of any proposed purchasers of the Divestment Businesses and, in the reasonable opinion of Midcounties, are appropriate to be appointed as Trustee; and
  - (c) such nominated individuals neither are nor are likely to become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.
- 4.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the persons nominated by Midcounties and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, Midcounties shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the OFT pursuant to paragraph 4.2.
- 4.5 In the event that:
- (a) Midcounties fails to propose any person or persons in accordance with paragraph 4.2 above; or
  - (b) none of the persons proposed by Midcounties pursuant to paragraph 4.2 is approved by the OFT; or

- (c) Midcounties is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 any such person following approval by the OFT,

Midcounties shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions on the terms of a mandate approved by the OFT. Midcounties shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or 4.5 shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;

(b) the Trustee ceases to perform the Trustee Functions; or

- (c) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, Midcounties shall, if requested to do so in writing by the OFT, use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. Midcounties shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT. Where required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

### **The Mandate**

5. The terms of the mandate proposed by Midcounties pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell any of the Divestment Businesses as required by paragraph 6.1 below to a purchaser or purchasers as directed or approved in writing in advance by the OFT at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;

- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of such Divestment Businesses;
- (d) a mandate to comply with any orders and/or directions given by the OFT; and
- (e) a mandate to appoint at Midcounties' expense such advisers as the OFT and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

### **Functions of Trustee**

- 6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the OFT, the completion of the sale of the Divestment Businesses at no minimum price, to a purchaser or purchasers approved by the OFT in accordance with paragraph 6.3 below.
- 6.2 Without prejudice to the generality of paragraph 6.1, the Trustee shall take any of the measures set out in paragraph 2.4 above in relation to the Divestment Businesses to the extent to which such measures may be necessary to effect the divestment of the Divestment Businesses in accordance with that provision.
- 6.3 The Trustee shall not sell or permit the divestment of any of the Divestment Businesses to a proposed purchaser unless it has been directed to do so by the OFT or has obtained the OFT's prior written approval in respect of the identity of that proposed purchaser. The Trustee shall notify the OFT of the identity of a proposed purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Businesses pursuant to paragraph 6.1 above, the Trustee shall monitor Midcounties' compliance with its obligations under paragraphs 7.1 and 7.2 of these undertakings and shall take such measures as it considers necessary to ensure such compliance.

- 6.5 The Trustee may give written directions to Midcounties to take such steps as may be specified or described in the directions for the purpose of securing Midcounties' compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Midcounties to:
- (a) offer any reverse premium or similar inducement to a purchaser; or
  - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Businesses which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the OFT for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require. The Trustee shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that Midcounties is failing to comply with any of its obligations under these undertakings.
- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Midcounties nor shall the Trustee Functions be extended or varied in any way by Midcounties save with the prior express written consent of the OFT.

#### **Obligations of Midcounties following appointment of Trustee**

- 7.1 Midcounties shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 Midcounties shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.5 above; and
  - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

#### **Remuneration of Trustee**



8. Midcounties shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

### **Interim action**

- 9.1 Pending the completion of the divestment of each of the Divestment Businesses to the satisfaction of the OFT in accordance with the provisions of these undertakings, Midcounties shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses and in particular ensure that:
  - (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, each of the Divestment Businesses is maintained as a going concern and sufficient resources are made available for the development of each of the Divestment Businesses on the basis of its pre-merger plans and no change is made to the pre-merger commercial strategy or the investment policy of the Divestment Business;
  - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Divestment Businesses or the management responsibilities within the Divestment Businesses;
  - (c) except with the prior written consent of the OFT, the Divestment Businesses are maintained and preserved, including facilities and goodwill;
  - (d) the nature, description, range and standard of goods and services currently supplied by the Divestment Businesses are maintained and preserved;
  - (e) the separate trading name and/or the separate sales or brand identity of each of the Divestment Businesses is maintained;
  - (f) except in accordance with paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, or 6 above, no assets of the Divestment Businesses are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
  - (g) there is no integration or, in the case of those Divestment Businesses that have been carried on by Midcounties prior to the Acquisition, no further integration of the information technology

used by Midcounties with that used by any of the Divestment Businesses and the software and hardware platforms of the Divestment Businesses shall remain essentially unchanged, except for routine changes and maintenance;

- (h) all reasonable steps are taken (including appropriate incentive schemes (based on industry practice)) to encourage all Key Staff to remain with the Divestment Businesses; and
- (i) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to any of the Harry Tuffins Divestment Businesses shall pass, directly or indirectly from any of the Harry Tuffins Divestment Businesses (or any employees, directors, agents or Affiliates of the Divestment Businesses) to Midcounties (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
  - (i) the transfer of any accounting information necessary to allow Midcounties' Chief Executive Officer, Deputy Chief Executive of Services, Company Secretary and the Midcounties Board to monitor and review the financial performance of the Divestment Businesses provided that such accounting information is not passed on to any other person within Midcounties;
  - (ii) the transfer of any information required in connection with Midcounties' dealings with the OFT;
  - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the Divestment Businesses and, for the avoidance of doubt, the compilation of consolidated accounts in line with Midcounties' existing accounting practices; and
  - (iv) any steps necessary in order for Midcounties to comply with these undertakings,

provided that, upon divestment of any of the Divestment Businesses, any records or copies (electronic or otherwise) of Confidential Information held by Midcounties in relation to that Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed.

9.2 For the avoidance of doubt, each of Harry Tuffins and Midcounties' stores identified within Table 2 and Table 3 of Annex 1 shall be treated as a

Divestment Business for the purposes of paragraph 9.1 of these undertakings.

### **Continued separation**

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

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
  - (i) any Interest in that Divestment Business other than (a) any freehold interest in the property associated with a Divestment Business pending divestment of that freehold proprietary interest pursuant to paragraph 2.5, or (b) any leasehold reversionary interest of that Divestment Business where that Divestment Business is divested by way of granting a sublease, or (c) any overriding leasehold interest reversionary to a leasehold interest of that Divestment Business granted pursuant to section 19 Landlord and Tenant (Covenants) Act 1995; or (d) any leasehold interest in a property associated with a Divestment Business following a default by the owner of the relevant Divestment Business in complying with the terms of the relevant lease, provided that each of (b), (c) and (d) above shall be read subject to paragraph 11 below.
  - (ii) any Interest in any company carrying on or having Control of that Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Midcounties or of any members of the Group of Interconnected Bodies Corporate to which Midcounties 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 that Divestment Business;
- (b) shall procure that no employee or director of Midcounties or of any member of the Group of Interconnected Bodies Corporate to which Midcounties belongs, for as long as they are an employee or director of Midcounties or of any member of the Group of Interconnected Bodies Corporate to which Midcounties belongs,

holds or is nominated to any directorship or managerial position in that Divestment Business or any company or other undertaking utilising or having Control of that 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 that Divestment Business or any company or other undertaking carrying on or having Control of that 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 Midcounties or of any member of the Group of Interconnected Bodies Corporate to which Midcounties belongs directly or indirectly acquiring that Divestment Business or doing any of the things listed in sub-paragraphs (a), (b) and (c) above.

#### **New divestment if Midcounties obtains possession of a Divestment Business Property**

11.1 In the event that, following divestment of a Divestment Business in a manner that has involved Midcounties assigning an existing lease or granting a sub-lease to the purchaser of the Divestment Business, Midcounties benefits from or becomes subject to an Occupation Interest (so long as Midcounties so benefits or becomes so subject during the term of the lease assigned or sub-lease granted by Midcounties as part of such divestment), Midcounties shall:

- (a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the OFT in writing of that fact; and
- (b) using its best endeavours and acting in good faith comply with such written directions as the OFT may give to Midcounties to effect a new divestment of the Occupation Interest to a new purchaser approved by the OFT in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Divestment Business.

11.2 In determining, for the purposes of paragraph 11.1(b), whether to require Midcounties to effect a new divestment of the Occupation Interest to a new purchaser approved by the OFT in accordance with the provisions of these undertakings, the OFT may have regard to any change of circumstances since the Decision.

- 11.3 In the event that Midcounties fails to divest the Occupation Interest in accordance with paragraph 11.1 above, the OFT may, whether or not initiating the Trustee Functions set out in these undertakings, require Midcounties to divest the Occupation Interest at no minimum price to a purchaser approved by the OFT.
- 11.4 Midcounties shall notify the OFT in writing of the identity of each proposed purchaser that makes an offer for the Occupation Interest together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.
- 11.5 In the event that the OFT gives written directions under paragraph 11.1 for Midcounties to effect a new divestment of the Occupation Interest, paragraphs 3, 4, 5, 6, 7 and 8 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to 'Divestment Business' in those paragraphs shall be construed as references to 'Occupation Interest'.

## **Compliance**

- 12.1 Midcounties 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 it might be required by these undertakings to do or to refrain from doing.
- 12.2 Midcounties shall procure that any member of the same Group of Interconnected Bodies Corporate as Midcounties 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 Midcounties shall be attributed to Midcounties for the purposes of these undertakings.
- 12.3 Where any Affiliate of Midcounties is not a member of the same Group of Interconnected Bodies Corporate as Midcounties, Midcounties shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

## **Extension of time limits**

13. The OFT may, in response to a written request from Midcounties, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

### **Provision of Information**

14. Midcounties 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**

- 15.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

- 15.2 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.

- 15.3 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.

- 15.4 For the purposes of these undertakings:

**'Acquisition'** means the acquisition by Midcounties of the entire issued share capital of Harry Tuffins completed on 30 April 2012;

**'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;

**'Associated Person'** means a person or persons associated with Midcounties 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;

'Decision' means the OFT's decision under section 22 of the Act dated 18 October 2012 in connection with the Acquisition;

'Divestment' shall include:

- (a) in respect of stores at which Midcounties holds a freehold interest in the property, either (i) the sale of the freehold property; or (ii) the grant of a long lease on normal commercial terms of not less than 25 years duration and, in addition the sale of the freehold interest in accordance with paragraph 2.5 above; and
- (b) in respect of stores at which Midcounties holds a leasehold interest, the assignment of that leasehold interest

and the word 'divest' and its derivatives shall be construed accordingly, and 'purchase', 'purchaser', 'acquire' and 'acquisition' and 'attempted divestment' shall be construed to include both freehold and leasehold transactions;

'Divestment Business' means:

- (a) the Harry Tuffins store identified at row 1 of Table 1 of Annex 1;
- (b) either the Harry Tuffins store or the Midcounties store in respect of each of row 1 and row 2 of Table 2 of Annex 1; and
- (c) either the Harry Tuffins store or the Midcounties store identified at row 1 of Table 3 of Annex 1, and where this relates to the Harry Tuffins store in Craven Arms, the business relating to the one-stop store, petrol station and convenience store only; for the avoidance of doubt, the ten commercial units situated by the Harry Tuffins one-stop store in Craven Arms are not included within the definition of 'Divestment Business' insofar as this relates to the Harry Tuffins store identified at row 1 of Table 3 of Annex 1,

comprising, in respect of each such business, comprising the Divestment Businesses, the whole or substantially the whole of the rights, assets, interests

and obligations of or associated with that business as operated immediately prior to the date of the Acquisition, including without prejudice to the foregoing, save as required or permitted by the OFT:

- (a) where capable of being transferred, all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of the business;
- (b) where capable of being transferred, all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit of the business;
- (c) where capable of being transferred, all or substantially all contracts, leases, commitments and customer orders of or associated with the business; and
- (d) all customer, credit and other records related to or associated with the business.

provided that, for the avoidance of doubt, nothing in this definition shall be interpreted as (i) preventing or precluding Midcounties from using any co-operative (or similar) or Harry Tuffins (or similar) brand used to denote stores or (ii) requiring Midcounties to transfer or license any such brand to a third party;

**'Divestment Business Property'** means the relevant property associated with each of the Divestment Businesses as at the date of these undertakings;

**'Divestment Period'** means the period of time determined by the OFT and notified in writing to Midcounties by the OFT;

**'Divestment Purchaser'** means any proposed purchaser of the Divestment Business;

**'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;

**'Harry Tuffins'** means Tuffin Investments Limited;

**'Harry Tuffins Divestment Businesses'** means the Harry Tuffins stores identified within Annex 1;

**'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 any of the Divestment Businesses;

**'Midcounties'** means The Midcounties Co-operative Limited;

**"Occupation Interest"** means an interest in the Divestment Business Property by virtue of which Midcounties enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Business Property provided always that: (i) the original purchaser (or his successor) is not in occupation of the Divestment Business Property; and/or (ii) before such interest in the Divestment Business Property arose, the most recent use to which the Divestment Business Property had been put was that of carrying on a grocery store;

**'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;

**'Trustee'** means the person appointed pursuant to paragraph 4.4, 4.5 or 4.7 to carry out the Trustee Functions;

**'Trustee Functions'** means the functions set out in paragraph 6;

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

**'Working day'** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England.

FOR AND ON BEHALF OF  
**THE MIDCOUNTIES CO-OPERATIVE  
LIMITED**

Signature

.....

Name

.....

Title

.....

Date

.....

Authorised Signatory

## Annex 1

### Divestment Businesses

Table 1

Number	Postcode of Harry Tuffins store	Location of Harry Tuffins store
1	SY9 5AA	Bishop's Castle

Table 2

Number	Postcode of Harry Tuffins store	Location of Harry Tuffins store	Postcode of Midcounties store	Location of Midcounties store
1	GL16 8HA	Coleford	GL16 8AA	Coleford
2	GL15 5PE	Lydney	GL15 5RB	Lydney

Table 3

Number	Postcode of Harry Tuffins store	Location of Harry Tuffins store	Postcode of Midcounties store	Location of Midcounties store
1	SY7 9PY	Craven Arms	SY6 6BX	Church Stretton