

Completed acquisition by Asda Stores Limited of Netto  
Foodstores Limited

**ME/4551/10**

Undertakings in lieu of a reference accepted on 9 March 2011.

The OFT's decision on the partial release of these undertakings under section 73 was given on 25 October 2011. The full text of the decision was published on 25 October 2011.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

**PARTIES**

1. **Asda Stores Limited** (Asda) is one of the UK's largest supermarket chains and is a wholly owned subsidiary of the US retailer Wal-Mart Stores Inc. Although groceries are its core business Asda also sells (among other products and services) clothing (through the 'George' range), general household items, financial products (for example, insurance products and credit cards), travel agency services and in-store pharmacy services.
2. **Netto Foodstores Limited** (Netto), a wholly owned subsidiary of Dansk Supermarked A/S which in turn is 68 per cent owned by the Danish company AP Møller-Maersk A/S. Netto operates 194 stores in the UK. It is a limited assortment discounter (LAD) offering fewer product lines than similarly sized mainstream supermarkets but at

generally low prices.<sup>1</sup> Unlike Asda, Netto does not offer non-grocery products to a significant extent.

## **THE TRANSACTION**

3. On 13 April 2011 Asda acquired the entire issued share capital of Netto.

## **JURISDICTION**

4. As a result of the merger the enterprises Asda and Netto ceased to be distinct.
5. For the year ending 31 December 2009 Netto had a UK turnover of around £745 million. Therefore, the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is met.
6. Consequently, the OFT considers that the merger created of a relevant merger situation.

## **BACKGROUND**

7. On 23 September 2010, the OFT announced its decision to suspend its duty to refer the anticipated acquisition by Asda Stores Limited (Asda) of Netto Foodstores Limited (Netto) to the Competition Commission under section 33 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings in lieu of reference from Asda.
8. The OFT believed that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in grocery retailing in relation to local areas around 47 Netto stores because of the loss of competitive pressure asserted by Asda on those Netto stores. The text of the OFT's decision, published on 20 October 2010, provides details on the OFT's findings.
9. Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission.

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<sup>1</sup> Other LADs operating in the UK include Aldi and Lidl.

10. To address the OFT's competition concerns, Asda offered to divest the relevant Netto stores in each of the 47 local areas identified by the OFT as potentially giving rise to a substantial lessening of competition.
11. On 12 January 2011 the OFT published for consultation the text of proposed undertakings in lieu offered by Asda.
12. On 9 March 2011, the OFT accepted undertakings in lieu of reference pursuant to section 73 of the Act (the Asda undertakings).
13. During the divestment process Asda has advertised and sought to effect a sale of the Netto store at Keighley but has been unsuccessful in doing so given the lack of interest by potential suitable purchasers. The OFT approved the appointment of a Trustee pursuant to sections 5–9 of the Asda undertakings. The Trustee has advised the OFT that it is extremely unlikely that a suitable purchaser can be found for the Keighley store.

## **CONSULTATION**

14. On 28 September 2011 the OFT published a consultation on the proposed release of Asda undertakings with respect to the Keighley store<sup>2</sup> inviting views to be submitted by 13 October 2011 (pursuant to paragraph 7(1) Schedule 10 of the Act). The OFT said in the consultation document that it is minded to release Asda from this divestment obligation.
15. The OFT did not receive any comments during the consultation.

## **DECISION**

16. On the basis of the evidence before it the OFT has decided to release Asda from its obligation to divest the Keighley store with effect from today.

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<sup>2</sup> Listed in row 35, annex 2 of the Asda undertakings.