

Case ME/6524/15

**ACQUISITION BY MULLER UK & IRELAND GROUP LLP OF THE
PROCESSING AND DISTRIBUTION OF LIQUID MILK, PACKAGED
CREAM, FLAVOURED MILK AND BULK COMMODITY
INGREDIENT BUSINESSES OF DAIRY CREST**

**Proposed undertakings to be given by Muller UK & Ireland Group LLP
to the Competition and Markets Authority pursuant to section 73 of
the Enterprise Act 2002**

Whereas:

- (a) On 5 November 2014, Muller UK & Ireland Group LLP (**Müller**) entered into an asset purchase agreement to acquire sole control over the dairies operations of Dairy Crest Group Plc (**Dairy Crest**) (the **Transaction**), such that Müller and these dairies operations will cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 33(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA 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 has or may have resulted from it or 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, the CMA shall have 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;
- (d) As set out in the CMA's decision of 12 June 2015 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation; and

- (e) The CMA considers that the undertakings given below by Müller are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE Müller hereby gives to the CMA 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.

1 EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These undertakings shall take effect from the date that, having been signed by Müller, they are accepted by the CMA.

2 SALE OF THE TOLL PROCESSING ARRANGEMENT OPTION

- 2.1 Prior to the acceptance of these undertakings by the CMA, Müller shall have entered into a legally binding agreement (or agreements) to sell, to the satisfaction of the CMA, the Toll Processing Arrangement Option to the Proposed Purchaser on terms approved by the CMA.

- 2.2 Müller shall be deemed to have complied with its obligations at paragraph 2.1 above if, prior to acceptance of these undertakings by the CMA, Müller has entered into a legally binding agreement (or agreements) with the Proposed Purchaser, conditional on:

- (a) formal CMA approval of the Proposed Purchaser;
- (b) acceptance by the CMA of these undertakings; and
- (c) completion of the Transaction

provided that the Toll Processing Arrangement Option contemplated by such agreement (or agreements) shall be made available to the Proposed Purchaser (the **Completion of the Sale**) within a period not exceeding one month from the date of completion of the Transaction.

- 2.3 For the purposes of these undertakings, the Toll Processing Arrangement Option shall be comprised, as a minimum, of the following:

- (a) **Volume:** the processing to supply up to 100 million litres per annum in volume (as determined by the Proposed Purchaser from time to time for the duration of the Toll Processing Arrangement Option) of fresh liquid milk out of Dairy Crest's Severnside dairy (**Severnside**);
- (b) **Duration:** an initial term of five years, plus the option to fulfil any ongoing National Multiple contract that is in place at the end of this initial term for an additional period of up to three years. The total term of the Toll Processing Arrangement Option shall not exceed eight years; and
- (c) **Pricing mechanism:** the provision of a two-part pricing mechanism consisting of (i) an upfront payment component, and (ii) a per litre component based on the variable ~~cost~~costs of producing fresh liquid milk in Severnside. of which each cost component will be adjusted annually to reflect any actual increase in such costs (capped at RPIJ) or any actual decrease in such costs (other than the packaging plastic element which will be reviewed monthly).

2.4 Without prejudice to the generality of paragraph 2.1 above, Müller shall take the following measures, and shall have committed to do so in the agreement referred to at paragraph 2.1 above:

- (a) **Segregation of fresh liquid milk as required by the National Multiple tender:** if required by a National Multiple that the Proposed Purchaser is servicing using fresh liquid milk processed for supply under the Toll Processing Arrangement Option, and where technically possible, the provision of segregated fresh liquid milk volumes processed under the Toll Processing Arrangement Option;
- (b) **Service Level Agreements:** the provision of key performance indicators to set a level of acceptable service in relation to the Toll Processing Arrangement Option and any optional service agreements entered into by Müller at the option of the Proposed Purchaser; ~~and~~
- (c) **Audit Rights:** the granting of an audit right for the Proposed Purchaser to appoint an independent auditor ~~at shared cost with Müller~~(**the TPAO Auditor**) if there are reasonable grounds to suspect that Müller is not adhering to its commitments under these undertakings or any agreement with the Proposed Purchaser entered into pursuant to these undertakings. The TPAO Auditor's costs of any such audit shall be shared equally

between the Proposed Purchaser and Müller unless the TPAO Auditor determines that Müller has been in breach of its obligations, in which event such costs shall be borne by Müller. Any report produced by the TPAO Auditor shall be shared with the CMA; and

~~(e)~~(d) **Specialist consultant:** the provision of a fund capped at £20,000 for the engagement of independent dairy consultants to assist in the development of the Proposed Purchaser's National Multiple fresh liquid milk business shall be available to the Proposed Purchaser to be drawn from by the Proposed Purchaser at a time of its choosing and at its discretion.

- 2.5 The agreement entered into for the purposes of paragraph 2.1 above shall include a warranty from the Proposed Purchaser that it has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to exercise the Toll Processing Arrangement Option as part of a viable and active business in competition with Müller and other competitors in the supply of fresh liquid milk to National Multiples in the UIL Area.
- 2.6 In the event that Müller fails to effect the Completion of the Sale of the Toll Processing Arrangement Option in accordance with this clause 2 and clause 3 below, the CMA may, whether or not initiating the Trustee Functions as set out in clause 5 below, require Müller to sell the Toll Processing Arrangement Option with the same terms, measures and optional service agreements as set out in this clause 2 and clause 3 below at no minimum price to a purchaser approved by the CMA.

3 OPTIONAL SERVICE AGREEMENTS

- 3.1 At the option of the Proposed Purchaser, Müller shall have offered, to the satisfaction of the CMA, to enter into the following optional service agreements on terms approved by the CMA and for the duration of the Toll Processing Arrangement Option or, at the option of the Proposed Purchaser, part of that duration:
- (a) **Procurement of raw milk:** Müller shall use its best endeavours to facilitate access for the Proposed Purchaser to purchase raw milk directly from farmers and shall undertake to negotiate with the Proposed Purchaser a procurement contract on arm's length terms and on a

commercial basis to procure required raw milk volumes for the Toll Processing Arrangement Option;

- (b) **Collection of raw milk:** Müller shall undertake to negotiate with the Proposed Purchaser at arm's length and on a commercial basis an inbound logistics contract as part of a commercial negotiation to collect required raw milk volumes from farmers to Severnside for the Toll Processing Arrangement Option;
- (c) **Distribution of processed milk:** Müller shall undertake to negotiate with the Proposed Purchaser at arm's length and on a commercial basis a distribution contract to distribute the processed milk volumes required for the Toll Processing Arrangement Option to a location or locations specified by the Proposed Purchaser; and~~or~~
- (d) **Processing and supply of packaged cream:** Müller shall undertake to ~~negotiate with~~process and package for the Proposed Purchaser, ~~at arms' length and on a commercial basis a contract to process and package~~cost, all or part of the cream volumes associated with the fresh liquid milk processed under the Toll Processing Arrangement Option and supply this to the Proposed Purchaser; the distribution contract referred to at (c) above shall also cover this cream at the option of the Proposed Purchaser. The actual price for packaged cream shall be based upon the actual fixed and variable costs (including, for the avoidance of doubt overhead costs) of processing and packing, and shall not include a margin for packaged cream that is supplied by the Proposed Purchaser to a National Multiple as part of a fresh liquid milk contract. The review mechanism for each of the cost components shall be based on the same principles as the price review mechanism for fresh liquid milk.

4 APPROVAL OF PURCHASER AND TERMS OF SALE AND OPERATION

4.1 For the purposes of the CMA approving a Proposed Purchaser and the terms of the sale and operation of the Toll Processing Arrangement Option and any optional service agreements referred to in clause 3 above in accordance with these undertakings, Müller shall, save as required or permitted by the CMA, have satisfied the CMA that:

- (a) the acquisition by the Proposed Purchaser of the Toll Processing Arrangement Option, on the terms set out above, 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 Proposed Purchaser is independent of and unconnected to Müller and the Group of Interconnected Bodies Corporate to which Müller belongs and any Associated Person or Affiliate of Müller or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to exercise the Toll Processing Arrangement Option in competition with Müller and other competitors for the supply of fresh liquid milk to National Multiples in the UIL Area from the date of Completion of the Sale;
- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
- (e) the acquisition by the Proposed Purchaser of the Toll Processing Arrangement Option does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

4.2 Müller shall have provided the CMA with such information and documentation as the CMA reasonably required to be satisfied that the Proposed Purchaser will fulfil the requirements in paragraph 4.1 above.

5 COMPLIANCE WITH TERMS OF THE TOLL PROCESSING ARRANGEMENT OPTION

5.1 Müller shall comply with the terms of the agreement to sell the Toll Processing Arrangement Option referred to at paragraph 2.1 above and any optional service agreements referred to at clause 3 above, as agreed with the Proposed Purchaser and amended from time to time.

6 APPOINTMENT OF A TRUSTEE

- 6.1 The provisions of paragraph 6.2 to paragraph 6.7 below shall apply only as long as Müller has not satisfied, or where the CMA has reasonable grounds for believing that Müller will not satisfy,
- (a) all or any part of the obligation to sell the Toll Processing Arrangement Option in accordance with clauses 2 and 3 above; or
 - (b) the obligation to comply with the terms of the Toll Processing Arrangement Option and any optional service agreements in accordance with clause 5 above.
- 6.2 Within five Working Days of the CMA notifying Müller in writing that it must do so, Müller shall propose to the CMA 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.
- 6.3 Müller and/or any individuals nominated pursuant to paragraph 6.2 shall satisfy the CMA that, save as required or permitted by the CMA:
- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, 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 Müller and of the Group of Interconnected Bodies Corporate to which Müller belongs and of any Associated Person or Affiliate of Müller or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Toll Processing Arrangement Option to be sold pursuant to these undertakings, and, in the reasonable opinion of Müller, 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.

6.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by Müller and their proposed mandates pursuant to paragraph 6.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, Müller 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 CMA pursuant to paragraph 6.2 above.

6.5 In the event that:

- (a) Müller fails to propose any person or persons in accordance with paragraph 6.2 above; or
- (b) none of the persons proposed by Müller pursuant to paragraph 6.2 is approved by the CMA; or
- (c) Müller is unable for any reason to appoint within the time limit stipulated in paragraph 6.4 above any such person following approval by the CMA,

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

6.6 The appointment of the Trustee pursuant to paragraph 6.4 or paragraph 6.5 above 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 CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

6.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 6.6 above, Müller shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. Müller shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, 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.

7 THE MANDATE

7.1 The terms of the mandate proposed by Müller pursuant to paragraph 6.2 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) if paragraph 6.1(a) above applies, an exclusive, irrevocable mandate to sell the Toll Processing Arrangement Option as required by paragraph 8.1 below to a purchaser as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) if paragraph 6.1(b) above applies, a mandate to monitor compliance by Müller with its obligations under clause 5 above and with any orders and/or directions given to Müller by the CMA in relation to Müller's obligations under clause 5 above;
- (c) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraphs (a) and (b) above;
- (d) if paragraph 6.1(a) above applies, 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 the Toll Processing Arrangement Option;
- (e) a mandate to comply with any orders and/or directions given by the CMA;
and

- (f) a mandate to appoint at Müller's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

8 FUNCTIONS OF TRUSTEE

- 8.1 Paragraphs 8.2 to 8.5 below shall apply if paragraph 6.1(a) applies.
- 8.2 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the Completion of the Sale of the Toll Processing Arrangement Option with the terms, measures and optional service agreements set out in clauses 2 and 3 above at no minimum price, to Z or, at the option of the CMA, another purchaser or purchasers approved by the CMA in accordance with paragraph 8.4 below.
- 8.3 Without prejudice to the generality of paragraph 8.1 above, the Trustee shall take any of the measures set out in paragraph 2.4 above in relation to the Toll Processing Arrangement Option to the extent to which such measures may be necessary to effect the sale of the Toll Processing Arrangement Option in accordance with that provision.
- 8.4 The Trustee shall not sell or permit the sale of the Toll Processing Arrangement Option to a proposed purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that proposed purchaser. The Trustee shall notify the CMA 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.
- 8.5 Pending the sale of the Toll Processing Arrangement Option pursuant to paragraph 8.1 above, the Trustee shall monitor Müller's compliance with its obligations under paragraph 9.1 and paragraph 9.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that Müller is failing or will fail to comply with such obligations.
- 8.6 If paragraph 6.1(b) above applies, the Trustee shall monitor compliance by Müller with its obligations under clause 5 above and with any orders and/or

directions given to Müller by the CMA in relation to Müller's obligations under clause 5 above.

8.7 The Trustee may give written directions to Müller to take such steps as may be specified or described in the directions for the purpose of securing Müller's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Müller 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 sale of the Toll Processing Arrangement Option which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.

8.8 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that Müller is failing or will fail to comply with any of its obligations under these undertakings.

8.9 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Müller nor shall the Trustee Functions be extended or varied in any way by Müller save with the prior express written consent of the CMA.

9 OBLIGATIONS OF MÜLLER FOLLOWING APPOINTMENT OF TRUSTEE

9.1 Müller shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

9.2 Müller 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 8.8 above; and

- (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

10 REMUNERATION OF TRUSTEE

- 10.1 Müller 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 clause 7 above.

11 INTERIM ACTION

- 11.1 Pending the Completion of the Sale of the Toll Processing Arrangement Option to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA, Müller shall, subject to clause 11.3, minimise as far as possible any risk of loss of competitive potential of the Toll Processing Arrangement Option and in particular ensure that:

- (a) the Müller Business and Severnside are maintained as a going concern and sufficient resources are made available for the development of the Müller Business and Severnside so as to ensure that Severnside can serve the Toll Processing Arrangement Option in line with the plans of the Proposed Purchaser;
- (b) the nature, description, range and quality of goods and/or services supplied in the UK through the Müller Business and Severnside are maintained and preserved; and
- (c) the employees of the Müller Business who are involved in ~~national~~ National Multiple tenders for fresh liquid milk and, if the optional service agreement referred to at paragraph ~~3~~3.1(d) is entered into, for packaged cream are kept separate from its employees involved in negotiating any fees and other matters relating to the Toll Processing Arrangement Option with the Proposed Purchaser, each signing a confidentiality undertaking to this effect, and no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature (**Confidential Information**) relating to their respective functions and activities in

connection with such tenders or the Toll Processing Arrangement Option (as the case may be) shall, directly or indirectly, pass between them.

11.2 During the time that paragraph 11.1 above applies but subject to paragraph 11.3, Müller will actively keep the CMA informed of any material developments relating to Severnside, which includes, but is not limited to:

- (a) any interruption of the Müller Business or Severnside (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours; and
- (b) substantial changes in the Müller Business's or Severnside's contractual arrangements or relationships with key suppliers.

11.3 Where this clause relates to Severnside, it shall apply from completion of the Transaction. Prior to this completion, Müller shall use its best endeavours to procure that Dairy Crest does not act in a way that would have breached Müller's obligations under this clause if Müller had acted in that way after completion of the Transaction.

12 CONTINUED SEPARATION, PROTECTION OF CONFIDENTIAL INFORMATION AND MONITORING

12.1 Following the Completion of the Sale of the Toll Processing Arrangement Option to the Proposed Purchaser to the satisfaction of the CMA and in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA, Müller shall minimise as far as possible any risk of loss of competitive potential of the Toll Processing Arrangement Option for the duration of that option, and in particular shall ensure that:

- (a) Severnside is maintained and sufficient resources are made available for the continued operation and development of Severnside such that it can continue serving the Toll Processing Arrangement Option in line with the plans of the Proposed Purchaser; and
- (b) the employees of the Müller Business who are involved in ~~national~~ multiple the commercial and financial aspects of National Multiple tenders for (i) fresh liquid milk and, if the optional service agreement referred to at

paragraph ~~3~~(3.1(d) is entered into, as part of the same National Multiple fresh liquid milk contract, (ii) for packaged cream (the National Multiple Employees) are kept separate from its employees involved in negotiating ~~any fees and/or other matters relating to terms of~~ the Toll Processing Arrangement Option with the Proposed Purchaser, ~~each signing (the TPAO Employees)~~. The National Multiple Employees and the TPAO Employees are and will remain physically located at different Müller sites. The National Multiple Employees and the TPAO Employees will sign a confidentiality undertaking to this effect, and no Confidential Information relating to their respective functions and activities in connection with such tenders or the Toll Processing Arrangement Option (as the case may be) shall, directly or indirectly, pass between them. Such confidentiality undertakings shall safeguard against any disclosure of Confidential Information between the respective functions through the following provisions, amongst others, and Müller shall procure compliance with these provisions by the relevant employees:

- (i) the TPAO Employees will not participate in the preparation, negotiation, and/or decision making with respect to the formulation of any Müller bid for a National Multiple fresh liquid milk tender in the UK until the expiry of two years after the end of the Toll Processing Arrangement Option;
- (ii) the National Multiple Employees and the TPAO Employees will keep safe and maintain separate physical storage of Confidential Information and ensure electronic files and computers are password protected;
- (iii) the National Multiple Employees shall not provide any Confidential Information to any TPAO Employee and vice versa; and
- (iv) the sole Müller legal representative who will act under the Toll Processing Arrangement Option function, and his successor(s) (if any) during the term of the Toll Processing Arrangement Option, shall limit his engagement in relation to any National Multiple fresh liquid milk tender in the UK solely to the formulation of the contractual language required for the relevant National Multiple fresh liquid milk contract being tendered and shall ensure that in any such

engagement he shall not access any cost, fee or price related information of such National Multiple tender;

(c) in addition to the confidentiality firewall set up within the Müller business, Müller undertakes to:

(i) implement an arrangement that will ring-fence the toll processing fee from the National Multiple Employees;

(ii) ensure that the National Multiple Employees are not able to access specific order information of the Potential Purchaser through the implementation of appropriate IT firewalls; and

(iii) engage, at its own cost and during the first three months of the Toll Processing Arrangement Option, an appropriate independent third party (the **Firewall Auditor**) to audit the confidentiality arrangements and assess their appropriateness and, to the extent any concerns are identified, remedy those concerns to the extent that such suggestions are reasonable, proportionate and necessary in order for the firewall to be fully effective. The Firewall Auditor will be appointed in accordance with the principles set out in paragraph 6.3 above and Müller's obligations following the appointment shall be equivalent to those set out in clauses 9 and 10 above in relation to the Trustee. The Firewall Auditor shall promptly report to the CMA in writing if the Firewall Auditor concludes on reasonable grounds that Müller is failing or will fail to comply with its obligations to create a fully effective firewall. The Firewall Auditor shall report to the CMA at the end of its appointment on the effectiveness of the firewall measures that Müller has implemented.

12.2 Following the sale of the Toll Processing Arrangement Option to the Proposed Purchaser to the satisfaction of the CMA and in accordance with the provisions of these undertakings, Müller shall:

~~(e)~~(a) actively keep the CMA informed of any material developments relating to the Toll Processing Arrangement Option, which includes in any case the provision to the CMA every three months of a written report on the ~~volume used under the Toll Processing Arrangement Option, matters set out under (a) to (d) of this paragraph~~ and any other information that the CMA reasonably requires to effectively monitor the performance of the Toll

Processing Arrangement Option. This three-monthly report shall include in any case the following:

- (i) the volume used under the Toll Processing Arrangement Option during the preceding three months;
 - (ii) a compliance statement, signed by a Müller senior employee regarding Müller's compliance with these undertakings (including the performance of the Toll Processing Arrangement Option and the firewall measures stipulated at paragraphs 12.1(b) and 12.1(c) above);
 - (iii) any change in the price (i.e. processing fee under the review mechanism set out in the Toll Processing Arrangement Option) of the fresh liquid milk and (to the extent relevant) packaged cream supplied to the Proposed Purchaser; and
 - (iv) Müller's most recent management accounts regarding the Severnside operations, reporting separately total (multi-product) site costs and the results of the (non-returnable containers) fresh liquid milk and packaged cream divisions.
- (b) engage, at its own cost, an appropriate independent third party (the **Compliance Auditor**) to audit on an annual basis Müller's compliance with these undertakings (including the performance of the Toll Processing Arrangement Option and the firewall measures stipulated at paragraphs 12.1(b) and 12.1(c) above) based on the three-monthly written reports submitted to the CMA by Müller in accordance with paragraph 12.2(a) above. To the extent any concerns are identified, Müller shall remedy those concerns to the extent that such suggestions are reasonable, proportionate and necessary. The Compliance Auditor will be appointed in accordance with the principles set out in paragraph 6.3 above and Müller's obligations following the appointment shall be equivalent to those set out in clauses 9 and 10 above in relation to the Trustee. The Compliance Auditor shall report to the CMA in writing on the appropriateness of Müller's three-monthly reports and any remedial action Müller has undertaken. The Compliance Auditor shall submit these reports within two months from the date of each anniversary of the date these undertakings took effect, until the Toll Processing Agreement Option has expired.

13 COMPLIANCE

- 13.1 Müller shall comply promptly with such written directions as the CMA 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.
- 13.2 Müller shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
 - (b) investigating potential breaches of the provisions of these undertakings.
- 13.3 Müller shall procure that any member of the same Group of Interconnected Bodies Corporate as Müller 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 Müller shall be attributed to Müller for the purposes of these undertakings.
- 13.4 Where any Affiliate of Müller is not a member of the same Group of Interconnected Bodies Corporate as Müller, Müller shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

14 PROVISION OF INFORMATION

- 14.1 Müller shall furnish promptly to the CMA such information as the CMA 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.

15 EXTENSION OF TIME LIMITS

- 15.1 The CMA may, in response to a written request from Müller, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

16 SERVICE

- 16.1 Müller hereby authorizes Freshfields Bruckhaus Deringer LLP, whose address for service is 65 Fleet Street, London EC4Y 1HS, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to Müller, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 16.2 Unless Müller informs the CMA in writing that Freshfields Bruckhaus Deringer LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Müller if it is served on Freshfields Bruckhaus Deringer LLP; and service shall be deemed to have been acknowledged by Müller if it is acknowledged by Freshfields Bruckhaus Deringer LLP or such other nominee.
- 16.3 Paragraph 16.2 above has effect irrespective of whether, as between Müller and Freshfields Bruckhaus Deringer LLP or other nominees, Freshfields Bruckhaus Deringer LLP or other nominees has or continues to have any authority to accept and acknowledge service on Müller's or any of its respective Subsidiaries' behalf.
- 16.4 No failure or mistake by Freshfields Bruckhaus Deringer LLP or other nominees (including a failure to notify Müller of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 16.5 Any communication from Müller to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

17 EFFECT OF ~~INVALIDITY~~INVALIDITY

17.1 Should any provision of these undertakings be contrary to law or invalid for any reason, Müller undertake to continue to observe the remaining provisions.

18 GOVERNING LAW

18.1 Müller recognizes and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.

18.2 In the event that a dispute arises concerning these undertakings, Müller undertakes to submit to the courts of England and Wales.

19 TERMINATION

19.1 Müller recognizes and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.

19.2 Müller recognizes and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

20 INTERPRETATION

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

20.2 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.

20.3 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.

20.4 For the purposes of these undertakings:

“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 Müller 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;

“**CMA**” means the Competition and Markets Authority or any successor body;

“**Compliance Auditor**” means the independent third party appointed pursuant to paragraph 12.1(b)12.2(b) above to audit Müller’s compliance with these undertakings;

“**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;

“**Dairy Crest**” means Dairy Crest Group Plc;

“**Decision**” means the CMA’s decision under section 33 of the Act dated 12 June 2015 in connection with the Transaction;

“**Firewall Auditor**” means the independent third party appointed pursuant to paragraph 12.1(b)12.1(c)(iii) above to audit Müller’s compliance with its firewall arrangements;

“**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;

~~“National Multiples” means national grocery retailers with national scope as defined by the CMA in the Decision, specifically Tesco, Asda, Sainsbury’s, Morrisons, the Co-operative, Aldi, Lidl, Iceland, Waitrose and Marks & Spencer;~~

“**Müller**” means Muller UK & Ireland Group LLP;

“**Müller Business**” means the business of Müller and its Group of Interconnected Bodies Corporate carried on as at the date of these undertakings and shall from the date of completion of the Transaction include the dairies operations of Dairy Crest carried on as at that date;

“**National Multiple Employees**” means the employees of the Müller Business who are involved in the commercial and financial aspects of National Multiple tenders for (i) fresh liquid milk and, if the optional service agreement referred to at paragraph 3.1(d) is entered into as part of the same National Multiple fresh liquid milk contract, (ii) for packaged cream;

~~“National Multiples” means national grocery retailers with national scope as defined by the CMA in the Decision, specifically Tesco, Asda, Sainsbury’s, Morrisons, the Co-operative, Aldi, Lidl, Iceland, Waitrose and Marks & Spencer;~~

“**Proposed Purchaser**” means **Z** or such other proposed purchaser of the Toll Processing Arrangement Option;

“**Sale**” shall mean the grant by Muller to the Proposed Purchaser of the Toll Processing Arrangement Option;

“**Sevenside**” shall mean Dairy Crest’s Sevenside dairy;

“**Subsidiary**” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“**Toll Processing Arrangement Option**” means an option in favour of the Proposed Purchaser to require Müller to supply up to 100 million litres per annum volume of fresh liquid milk from Sevenside, as further described at paragraph 2.3;

“TPAO Auditor” means the auditor referred to at paragraph 2.4(c) above, which may be appointed pursuant to the audit right that the Proposed Purchaser may exercise if there are reasonable grounds to suspect that Müller is not adhering to its commitments;

“TPAO Employees” means the employees of the Müller Business involved in negotiating any fees and other matters relating to the Toll Processing Arrangement Option with the Proposed Purchaser;

“the Transaction” means the acquisition by Müller of sole control over the liquid milk, packaged cream, flavoured milk and bulk commodity ingredient processing, trading and distribution businesses of Dairy Crest;

“Trustee” means the person appointed pursuant to paragraph 6.4, paragraph 6.5 or paragraph 6.7 to carry out the Trustee Functions;

“Trustee Functions” means the functions set out in clause 8;

“UIL Area” means the catchment area of Severnside as referred to by the CMA in the Decision, which includes parts of the South West, Wales, the Midlands, West, and South of England;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“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;

“Z” means [full registered name of the proposed purchaser]; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF MÜLLER

Signature

Name

Title

Date

DATE ACCEPTED BY THE CMA: