

ACQUISITION BY CO-OPERATIVE FOODSTORES LIMITED OF 8 OR MORE MY LOCAL GROCERY STORES FROM ML CONVENIENCE LIMITED AND MLCG LIMITED

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in Co-operative Foodstores Limited (**CFL**) and at least the following businesses under the control of ML Convenience Limited (**ML**) and/or MLCG Limited (**MLCG**):
- (i) the convenience store business in respect of the property located at Croydon, Lansdowne Road;
 - (ii) the convenience store business in respect of the property located at [REDACTED];
 - (iii) the convenience store business in respect of the property located at Nottingham Railway Station;
 - (iv) the convenience store business in respect of the property located at Steeton, Skipton Road;
 - (v) the convenience store business in respect of the property located at Widnes, Upton Rocks;
 - (vi) the convenience store business in respect of the property located at The Four Heatons 63 Didsbury Road, Stockport;
 - (vii) the convenience store business in respect of the property located 35 Warley Road, Blackpool; and
 - (viii) the convenience store business in respect of the property located at [REDACTED],

(together referred to as the '**Target Stores**') ceasing to be distinct (the '**transaction**');

- (b) the CMA was informed that MLCG has entered into administration and that KPMG has been appointed as an administrator (the **Administrator**) in respect of MLCG;
- (c) the CMA is considering whether it is or may be the case that, pursuant to section 33 of the Act, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, or should the transaction complete, pursuant to section 22 of the Act, a relevant merger situation has been created and whether the creation of that situation may be expected to result, in the case of the former, or has resulted, in the case of the latter, in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (d) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 or section 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (e) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Co-operative Group Limited (**CGL**) and Co-operative Foodstores Limited (**CFL**) (the **Order**).

Commencement, application and scope

1. This Order commences on 1 July 2016.
2. This Order applies to CGL and CFL.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige CFL and/or CGL to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order shall not prevent the legal completion of the transaction.

Management of the CGL/CFL and Target Store businesses until determination of proceedings

5. Except with the prior written consent of the CMA, CGL shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Target Store businesses with the CGL business specifically prevented by this Order; or
 - (b) otherwise impair the ability of the Target Store businesses or the CGL business to compete independently in any of the markets affected by the transaction.

6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3, CGL shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) there is accounting separation between CGL and each of the Target Stores;
 - (b) the Target Store businesses is carried on separately, on a day to day basis, from the CGL business and the Target Store businesses are maintained as separate stores;
 - (c) the Target Store businesses and the CFL business are each maintained as going concerns and sufficient resources are made available for the development of the Target Store businesses and the CFL business, on the basis of their respective pre-merger business plans to the extent a business plan exists;
 - (d) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Target Store businesses or the CFL business;
 - (e) with the exception of changes in the branding of the goods supplied, the nature, description, range and quality of goods supplied in the UK by each of the Target Stores businesses and the CFL business are maintained and preserved;
 - (f) except in the ordinary course of business for the separate operation of the Target Stores businesses and the CFL business:

- (i) all of the assets of the Target Store businesses, other than premises licences, and the CFL business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Target Store businesses or the CFL business are disposed of; and
 - (iii) no interest in the assets of the Target Store businesses or the CFL business is created or disposed of;
- (g) the customer and supplier lists of the Target Stores businesses and the CFL business shall be operated and updated separately and any negotiations and/or agreements with existing or potential customers or suppliers will be undertaken and/or entered into separately;
- (h) all existing contracts of the Target Store businesses and the CFL business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Target Store businesses or CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology;
- (j) no key staff are transferred between the Target Store businesses and the CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Target Store businesses and the CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Target Store businesses (or any of its employees, directors, agents or affiliates) to the CGL business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

7. CGL shall procure that each of its subsidiaries complies with this Order as if the Order had been issued to each of them.
8. CGL shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by CGL and its subsidiaries with this Order. In particular, on 14 July 2016 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of CGL or other persons of CGL as agreed with the CMA shall, on behalf of CGL, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
9. At all times, CGL shall actively keep the CMA informed of any material developments relating to the Target Store businesses or the CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology, which includes but is not limited to:
 - (a) details of key staff who leave or join the Target Store businesses or the CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology;
 - (b) any interruption of the Target Store businesses or CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology (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;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Target Store businesses or CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology, including any substantial changes in customers' demand; and
 - (d) substantial changes in the contractual arrangements or relationships with key suppliers pertaining to the Target Store businesses or the CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology.
10. If CGL has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that CGL may be directed to appoint under paragraph 11.

11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. CGL shall comply in so far as it is able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

14. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'the Administrator' the relevant person(s) within KPMG responsible for the entering into administration procedure of MLCG;

'an 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 from time to time 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;

'business' has the meaning given by section 129(1) and (3) of the Act;

'CFL' means Co-operative Foodstores Limited (Company number 32443);

'the CFL business' means the business of CGL and its subsidiaries carried on as at the commencement date and which is the only CGL business relating to the supply of food, groceries stores, convenience stores operating in the area's which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology;

'CGL' means Co-operative Group Limited (Company number IP00525R);

'the CGL business' means the business of CGL and its subsidiaries carried on as at the commencement date;

'CGL/Somerfield methodology' means the methodology as described in paragraph 14.7 (b) (i) of the draft Merger Notice 27 June 2016;

'commencement date' means the date specified in paragraph 1;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'ML' means ML Convenience Limited (Company number 07529989);

'MLCG' means MLCG Limited (Company number 09752798);

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by the Target Stores or CGL/CFL and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the Target Stores and CGL/CFL;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which CFL and the Target Stores have ceased or will cease to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the CGL business and the Target Store businesses;

'the Target Stores' means the businesses under the control of ML Convenience Limited (Company number 07529989) and MLCG Limited (Company number 09752798), including the My Local grocery stores described in recital (a) of this Order;

'the Target Store businesses' means the businesses of the Target Stores and their subsidiaries carried on as at the commencement date;

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

Stephanie Canet
Director, Mergers

Compliance statement for CGL/CFL

I [insert name] confirm on behalf of CGL/CFL that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) CGL/CFL has complied with the Order made by the CMA in relation to the transaction (the **Order**).
 - (b) CGL/CFL's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by CGL/CFL that might prejudice a reference of the transaction under section 22 or, as the case may be, section 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Target Stores business with the CGL business specifically prevented by the Order; or
 - (ii) otherwise impair the ability of the Target Stores business or the CGL business to compete independently in any of the markets affected by the transaction.
 - (b) CGL has maintained accounting separation in respect of the Target Stores.
 - (c) The Target Stores business has been carried on separately, on a day to day basis, from the CGL business and the Target Stores businesses have been maintained as separate stores.
 - (d) The Target Stores business and the CFL business have been maintained as a going concern and sufficient resources have been made available for the development of the Target Stores business and the CFL business, on the basis of their respective pre-merger business plans to the extent a business plan exists.
 - (e) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Target Stores business or the CFL business, except in the ordinary course of business.

- (f) With the exception of changes in the branding of the goods supplied, the nature, description, range and quality of goods and/or services supplied in the UK by the Target Stores business and the CFL business have been maintained and preserved.
- (g) Except in the ordinary course of business for the separate operation of the the Target Stores business and the CFL business:
 - (i) all of the assets of the Target Stores business other than premises licences and the CFL business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Target Stores business or the CFL business have been disposed of; and
 - (iii) no interest in the assets of the Target Stores business or the CFL business has been created or disposed of.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the Target Stores business and the CFL business have been operated and updated separately and any negotiations and/or agreements with existing or potential customers or suppliers will be undertaken and/or entered into separately).
- (i) All existing contracts of the Target Stores business and the CFL business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Target Stores business or the CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology.
- (k) No key staff have been transferred between the Target Stores business and the CFL business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Target Stores business and the CFL business areas which constrain the businesses of the Target Stores as per the CGL/Somerfield methodology.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Target Stores

business (or any of its employees, directors, agents or affiliates) to the CGL business (or any of its employees, directors, agents or affiliates), or vice versa.

- (n) Except as listed in paragraph (o) below, there have been no:
- (i) key staff that have left or joined the Target Stores business or the CFL business;
 - (ii) interruptions of the Target Stores business or the CFL business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Target Stores business or the CFL business; or
 - (iv) substantial changes in the Target Stores or CFL business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. CFL/CGL and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Target Stores or the CGL business in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF CFL/CGL

Signature

Name

Title

Date