

## **ANTICIPATED ACQUISITION BY CELESIO AG OF SAINSBURY'S PHARMACY BUSINESS**

### **Directions issued pursuant to paragraph 11 of the Lloyds' interim undertakings accepted by the Competition and Markets Authority on 25 August 2016 pursuant to section 80 of the Enterprise Act 2002**

On 29 July 2015 Lloyds Pharmacy Limited (Lloyds) entered into (i) a Business Sale Agreement (which was on 30 June 2016 replaced by an amended Business Sale Agreement) and (ii) a Cooperation Agreement to acquire Sainsbury's Supermarkets UK Pharmacy Business (the Target).

On 29 December 2015, the Competition and Markets Authority (CMA) referred the proposed acquisition by Lloyds of the Target for further investigation and report by a Group of CMA Panel Members (the Group) under section 33(1) of the Enterprise Act 2002 ('the Act').

On 27 June 2016 the CMA accepted from Lloyds interim undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action prior to the reference being finally determined. It accepted equivalent undertakings from Sainsbury's Supermarkets Limited (Sainsbury's) on 7 July 2016. On 7 July 2016 the CMA also accepted from Celesio AG (Celesio) an undertaking in accordance with section 80 of the Act to refrain from any action that would frustrate Lloyds' ability to comply with its interim undertakings.

On 29 July 2016, the CMA published its final report concluding that the anticipated acquisition may be expected to result in a substantial lessening of competition (SLC) in 12 local areas (the 'Relevant Areas') and that this may be expected to lead to an adverse effect for customers in terms of a reduction in the quality of pharmacy services in the Relevant Areas. The final report stated that, with the exception of Christchurch and Sandy, the divestiture of a particular Lloyds' store in each of the Relevant Areas, as listed in Annex 2 of the Lloyds' Interim Undertakings (Divestment Stores), would be an effective and proportionate remedy to address the SLC that had been identified. In Christchurch and Sandy the divestiture of either of two particular Lloyds' stores in these areas, as listed in Annex 2 of the Lloyds' Interim Undertakings would be an effective and proportionate remedy to address the SLC that had been identified.

The CMA wishes to ensure that no action is taken pending final determination of the reference 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. The reference has not been finally determined in accordance with section 79(1) and (2) of the Act.

The CMA now issues written directions under paragraph 11 of the Lloyds' Interim Undertakings that, for the purpose of securing compliance with the Lloyds' Interim Undertakings, Lloyds must appoint a monitoring trustee in accordance with the terms provided for in the Annex and must comply with the obligations set out in the Annex.

Signed by authority of the CMA

*(signed)* SIMON POLITO

*Group Chair*

25 August 2016

## Annex

### Directions to appoint a monitoring trustee

#### Interpretation

1. In these Directions:

**'the Act'** means the Enterprise Act 2002;

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

**'the CMA'** means the Competition and Markets Authority;

**'the decisions'** means the decisions of the CMA on the questions which it is required to answer by virtue of section 36 of the Act;

**'the Divestment Stores'** means those stores listed in Annex 2 of the Lloyds' Interim Undertakings;

**'the proposed acquisition'** means the proposed acquisition by Lloyds of the Target;

**'Relevant Areas'** means Beaconsfield; Bracknell; Cardiff; Christchurch; Kempston; Kidlington; Leeds; Liverpool; Luton; Reading/Theale; Sandy; and Warlingham (as in Appendix K of the Final Report);

**'written consent'** shall include consent given by email;

**'Celesio'** means the company incorporated under the laws of Germany, with its business seat at Neckartalstrasse 155, 70376 Stuttgart, registered with the commercial register of the local court of Stuttgart under HRB 9517;

**'Lloyds'** means the company incorporated and registered in England and Wales with the registration number 00758153, whose registered office is located at Sapphire Court, Walsgrave Triangle, Coventry, Great Britain, CV2 2TX;

**'the Target'** means the UK Pharmacy Business of Sainsbury's Supermarkets Limited, a company incorporated and registered in England and Wales with the registration number 03261722, whose registered office is located at 33 Holborn, London, EC1 2HT;

**'MT'** means the monitoring trustee appointed in accordance with paragraph 2 below:

**'Lloyds' Interim Undertakings'** means the interim undertakings from Lloyds accepted by the CMA on 25 August 2016 pursuant to section 80 of the Act;

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

Terms and expressions defined in the Lloyds' Interim Undertakings have the same meaning in these Directions, unless the context requires otherwise.

### **Appointment**

2. Lloyds shall appoint an MT in accordance with the requirements set out in paragraph 11 of the Lloyds' Interim Undertakings.

### **Functions**

3. The functions of the MT shall be as provided for in paragraphs 9 and 13 of Annex 1 of the Lloyds' Interim Undertakings. The MT shall also be required to provide such assistance as the CMA may require in taking any remedial action which may be required.

### **Obligations of Lloyds**

4. Lloyds shall cooperate fully with the MT as provided for in paragraphs 10 to 12 of Annex 1 of the Lloyds' Interim Undertakings.

### **Reporting functions**

5. The MT shall provide an initial written report to the CMA no later than 5pm (UK time) on 15 September 2016, giving details of compliance with the Lloyds' Interim Undertakings.
6. The MT shall also provide a written statement to the CMA no later than 5pm (UK time) on the date which falls every month following the date of the initial written report (or otherwise as required in writing by the CMA) stating whether, in his or her view, Lloyds have complied with the Lloyds' Interim Undertakings. At the same time, the MT shall provide the CMA with a report setting out the basis for the MT's view as to whether the Lloyds' Interim Undertakings have been complied with and in particular:
  - (a) whether anything has caused him or her to be concerned as to whether Lloyds have complied with the Lloyds' Interim Undertakings, and if anything has caused such concerns, whether those concerns have been resolved and how;

- (b) whether he or she has any remaining doubts or uncertainties as to whether Lloyds have complied with the Lloyds' Interim Undertakings;
  - (c) whether anything causes him or her to be concerned about a possible future breach of the Lloyds' Interim Undertakings (whether deliberate or inadvertent);
  - (d) the extent to which Lloyds have cooperated with the MT in his or her task of monitoring their compliance with the Lloyds' Interim Undertakings and details of any aspects of the cooperation of Lloyds that he or she considers could be improved;
  - (e) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Lloyds with the Lloyds' Interim Undertakings and if there is anything that the MT considers would assist him or her further in monitoring compliance;
  - (f) whether there are any current or anticipated requests for a derogation from the Lloyds' Interim Undertakings; and
  - (g) the information the MT used to compile the report.
7. When providing a report to the CMA the MT shall ensure that he or she does not disclose any information or documents to the CMA which any of Lloyds has identified to the MT as information or documents which the relevant party would be entitled to withhold from the CMA on the grounds of legal privilege.
8. The MT shall immediately notify the CMA in writing if he or she forms a reasonable suspicion that the Lloyds' Interim Undertakings have been breached. In addition, the MT shall immediately notify the CMA in writing if he or she considers that he or she is no longer in a position effectively to carry out his or her functions. In that situation, the MT shall give reasons for his or her view, including any supporting evidence available (subject to complying with paragraph 7 above).
9. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 5 and 6) shall be treated as confidential and shall not be disclosed to Lloyds or Celesio, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.