

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

### **Final Undertakings given by Lloyds Pharmacy Limited to the Competition and Markets Authority pursuant to Section 82 of the Enterprise Act 2002**

#### **1. Background**

- 1.1. 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) (the Transaction).
- 1.2. On 29 December 2015, the Competition and Markets Authority (CMA) referred the Transaction 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).
- 1.3. 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.
- 1.4. 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 pharmacy in each of the Relevant Areas, as listed in Annex 2 (Divestment Pharmacies), 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 pharmacies in these areas, as listed in Annex 2 (Divestment Pharmacies), would be an effective and proportionate remedy to address the SLC that had been identified.
- 1.5. The final report further concluded that the Transaction should be allowed to proceed on condition that Lloyds disposes of the pharmacies listed in Table

23 of the Final Report. However, pending the divestiture of the relevant pharmacies, safeguards would be put in place to ensure their continuing viability and the CMA would retain the discretion to require the appointment of a Divestiture Trustee to give effect to the divestitures in the event that Lloyds failed to do so.

- 1.6. Following publication of the Final Report, on 25 August 2016, the CMA accepted interim undertakings from Lloyds under section 80 of the Act for the purpose of preventing pre-emptive action prior to the reference being finally determined (Interim Measures).
- 1.7. On 30 August 2016, a Monitoring Trustee was appointed pursuant to directions given by the CMA on 25 August under the Interim Measures.
- 1.8. The Transaction was completed on 31 August 2016.
- 1.9. Now Lloyds hereby gives to the CMA the following Final Undertakings pursuant to section 82 of the Act for the purpose of remedying the SLC identified in the Final Report and any adverse effects resulting from it.

## **2. Interpretation**

- 2.1. The Annexes form part of these Final Undertakings.
- 2.2. The purpose of these Final Undertakings is to give effect to the Final Report and they shall be construed accordingly.
- 2.3. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Final Report (as appropriate).
- 2.4. In these Final 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.
- 2.5. The headings used in these Final Undertakings are for convenience and shall have no legal effect.
- 2.6. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.

- 2.7. References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to, these Final Undertakings unless otherwise stated.
- 2.8. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
- 2.9. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.
- 2.10. Further, in these Final Undertakings:

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

**'Approved Agreement'** means a binding agreement or agreements between Lloyds and an Approved Purchaser as approved by the CMA, which brings about Final Disposal, and which provides for the transfer to the Approved Purchaser(s) of all relevant key assets including:

- the pharmacy licence (to be approved by NHS England or NHS Wales as appropriate);
- the pharmacy premises, unless the Approved Purchaser demonstrates to the satisfaction of the CMA that it has appropriate premises to which the pharmacy licence can be transferred;
- Patient data including patient medical records and electronic prescription service data held by the relevant Divestment Pharmacy, including the **ODS code**;
- To the extent necessary to ensure that the Approved Purchaser is able to operate the relevant Divestment Pharmacy Effectively from Operational Commencement -
  - o All non-Lloyds-branded stock, including all pharmaceutical stock (**POMs** and **P-medicines**), **GSL** medicines and general stock;
  - o Staff to be transferred under Transfer of Undertakings (Protection of Employment) Regulations (TUPE);
  - o Such transitional arrangements regarding technology or other operational matters as may be necessary to ensure seamless continuity of patient care;

- **B2B** customers, but only where in the reasonable view of the CMA the transfer of this customer base is necessary to ensure the viability of the relevant Divestment Pharmacy (in accordance with paragraph 9.35 of the Final Report), and no such transfer shall be required if Lloyds demonstrates to the satisfaction of the CMA (acting reasonably) that such a transfer is not feasible given Lloyds' arrangements with the relevant B2B customers;

**'Approved Purchaser'** means any purchaser or purchasers approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 1;

**'Approved Timetable'** has the meaning given in paragraph 8.1;

**'Asset Maintenance Undertakings'** means those undertakings set out in paragraph 5;

**'Associated Person'** means a person who is an associated person within the meaning of section 127 of the Act;

**'B2B'** means non-retail business customers;

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

**'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;

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

**'Commencement Date'** means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;

**'community pharmacy'** means a pharmacy that provides services for the NHS irrespective of where they are situated, excluding outpatient and inpatient dispensaries;

**'confidential information'** means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary and non-public nature relating to the business of Lloyds, Celesio or the Target;

**'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;

**‘Direction’** means written directions given to Lloyds by the CMA as set out in paragraph 9.1;

**‘Divestiture Period’** means a period of up to [X] beginning with the Commencement Date or such longer period as the CMA may approve on request;

**‘Divestiture Trustee’** means a person appointed in accordance with paragraph 11;

**‘the Divestment Pharmacies’** means those pharmacies listed in Annex 2;

**‘Final Disposal’** means Operational Commencement of a Divestment Pharmacy following the completion of the sale of the Divestment Pharmacies under an Approved Agreement to an Approved Purchaser;

**‘Final Undertakings’** means these final undertakings;

**‘GSL’** means General Sales List ie medicines that can be sold without supervision of a pharmacist;

**‘Group of Interconnected Bodies Corporate’** means a group of interconnected bodies within the meaning of section 129(2) of the Act, as constituted from time to time;

**‘Heads of Terms’** means an agreement in principle to acquire one or more of the Divestment Pharmacies and which sets out the terms of the disposal, and that is expressed by all parties to be final (1) subject to contract (2) on all the issues that in the reasonable opinion of the parties will form the basis of a subsequent binding agreement;

**‘Interim Measures’** means the interim undertakings given by Lloyds and accepted by the CMA under section 80 of the Act on 25 August 2016;

**‘key staff’** means staff who are in positions of executive or managerial responsibility and/or whose performance affect the viability of the business;

**‘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;

**‘Monitoring Trustee (MT)’** means a person appointed in accordance with paragraph 7;

**‘ODS code’** means the unique code issued to a pharmacy that identifies it to NHS prescription services

**‘Operational Commencement’** means the date on which the relevant Approved Purchaser commences operation of the Divestment Pharmacy (described in the Final Report at paragraph 9.77 as the commencement date) or such earlier date on or after completion of the relevant Approved Agreement as the CMA may accept in accordance with paragraph 9.77 of the Final Report;

**‘the ordinary course of business’** means a parties’ customary commercial transactions and practices in the day-to-day supply of community pharmacy services by Lloyds, Celesio and the Target;

**‘pharmacy premises’** are premises as defined by the register on the General Pharmaceutical Council’s premises list.

**‘P-medicines’** means medicines available without a prescription which can only be provided by, or under the supervision of, a pharmacist;

**‘POM’** means medication only available to patients who have a prescription from their doctor;

**‘Purchaser Approval Criteria’** means the criteria set out in Annex 1

**‘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);

**‘SLC’** means a substantial lessening of competition pursuant to section 33 of the Act;

**‘subsidiary’**, unless otherwise expressly stated, has the meaning given by section 1159 of the Companies Act 2006;

**‘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;

**‘Target Pharmacies’** means those pharmacies acquired by Lloyds pursuant to the Transaction;

**‘Trustee Divestiture Period’** means a period of up to [X] for the Divestiture Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestiture Trustee;

**'Trustee Obligation'** means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of making the Final Disposal promptly and in any event within the Trustee Divestiture Period;

**'Working Day'** means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Final Undertakings to 'days' means calendar days;

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

### **3. Commencement**

3.1. These Final Undertakings will come into force on the Commencement Date.

### **4. Divestiture Undertakings**

4.1. Lloyds gives the following undertakings:

4.1.1. Lloyds undertakes that it will complete the sale of the Divestment Pharmacies to one or more Approved Purchasers, in each case pursuant to an Approved Agreement such that Final Disposal takes place in relation to all the Divestment Pharmacies within each of the Relevant Areas within the Divestment Period.

4.1.2. Lloyds undertakes to carry out the Divestiture Undertakings having due regard to the findings in the Final Report.

4.1.3. Lloyds undertakes that it will procure that any related person or any member of any Group of Interconnected Bodies Corporate to which it belongs will not for a period of ten years from the date of the Final Disposal bring under common ownership or control (as defined in section 26 of the Act) in whole or in part the Divested Stores without the prior written consent of the CMA.

### **5. Asset Maintenance Undertakings**

5.1. Lloyds undertakes that it shall comply with:

5.1.1. the obligations in paragraphs 5.3 and 5.4 in relation to each of the Divestment Pharmacies in each of the Relevant Areas; and

5.1.2. the obligations in paragraphs 5.3 and 5.5 in relation to each of the Target Pharmacies in each of the Relevant Areas.

5.2. From the date of Operational Commencement of a Divestment Pharmacy in a given Relevant Area, the obligations in paragraphs 5.3 and 5.4 shall cease to

apply to that Divestment Pharmacy and the obligations in paragraphs 5.3 and 5.5 shall cease to apply to the Target Pharmacy in that Relevant Area.

### **Management of the Divestment Pharmacies and the Target Pharmacies in the Relevant Areas**

5.3. Lloyds undertakes that it will:

5.3.1. procure that existing staffing levels are maintained (allowing existing vacancies to be filled) at the Divestment Pharmacies;

5.3.2. not initiate the transfer of Lloyds staff from the Divestment Pharmacies to any other Lloyds pharmacies or Target Pharmacies;

5.3.3. take all reasonable steps to encourage Lloyds staff at the Divestment Pharmacies to remain at their current store.

### **Divestment Pharmacies**

5.4. Lloyds undertakes that it will procure that, except with the prior written consent of the CMA:

5.4.1. the Divestment Pharmacies shall be maintained as a going concern;

5.4.2. stock levels in prescription-only medicines and pharmacy-only medicines at the Divestment Pharmacies shall be maintained at existing levels;

5.4.3. no changes shall be made to current opening hours of the Divestment Pharmacies;

5.4.4. training schedules for Lloyds staff at the Divestment Pharmacies shall be maintained;

5.4.5. no action will be taken to solicit the transfer of repeat prescription customers from any Divestment Pharmacies to other Lloyds pharmacies or the Target Pharmacies in the Relevant Areas;

5.4.6. no action is taken which might otherwise impair the ability of the Divestment Pharmacies to compete independently or that may significantly impact on the operation of the Divestment Pharmacies; and

5.4.7. no action is taken which may lead to a change of location of the Divestment Pharmacies.



## **The Target Pharmacies**

5.5. Lloyds undertakes that it will procure that, except with the prior written consent of the CMA, within the Relevant Areas:

5.5.1. the only customer-facing changes made to the Target Pharmacies will be those detailed in Annex 3; and

5.5.2. any physical changes to the Target Pharmacies are limited to the pharmacy premises itself, and any publicity for the change of ownership shall be available only at the pharmacy premises.

5.6. Lloyds undertakes that until the Final Disposal of all of the Divestment Pharmacies it will keep the CMA informed of any material developments relating to the Divestment Pharmacies and to the Target Pharmacies in the Relevant Areas, which includes but is not limited to:

5.6.1. details of staff who leave or join;

5.6.2. all substantial customer volumes won or lost including any substantial changes in customers' demand; and

5.6.3. substantial changes in contractual arrangements or relationships with key suppliers, in each case at the store level (i.e. excluding changes in contractual arrangements or relationships with key suppliers that are held at the national or regional level).

5.7. Lloyds undertakes that within a period of five Working Days from the Commencement Date, it will provide a written statement to the CMA confirming its compliance with these Asset Maintenance Undertakings and setting out any details of material developments for the purposes of paragraph 5.6 of these Final Undertakings. Thereafter, Lloyds will provide similar compliance statements to the CMA on a monthly basis until Final Disposal of all of the Divestment Pharmacies, with the first such monthly statement to be submitted to the CMA no later than 15 November 2016.

## **6. Procedure for consent and notification**

6.1. Lloyds undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact and matter within its knowledge that it believes is relevant to the CMA's decision.

6.2. Lloyds recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.

- 6.3. In the event that Lloyds discovers that an application for consent or approval has been made without full disclosure to the CMA in accordance with paragraph 6.1, Lloyds undertakes to:
- 6.3.1. inform the CMA in writing identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
  - 6.3.2. at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 6.3.1 above, provide to the CMA an application for consent that includes the missing information.
- 6.4. Lloyds shall use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of the Final Undertakings.
- 6.5. The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five-Working-Day period referred to in paragraph 6.4 above. This provision is without prejudice to the CMA's duties under the Act.

## **7. Monitoring Trustee**

- 7.1. Lloyds confirms that it has, and has provided the CMA with evidence that it has, notified the Monitoring Trustee (MT) appointed on 30 August pursuant to CMA Directions dated 25 August that from the Commencement Date:
- 7.1.1. The MT's appointment is extended until Final Disposal has taken place in relation to each of the Divestment Pharmacies in each of the Relevant Areas; and
  - 7.1.2. The functions of the MT during this period are:
    - 7.1.2.1. to monitor and report on compliance by Lloyds with the Asset Maintenance Undertakings set out at paragraph 5 of these Final Undertakings; and
    - 7.1.2.2. to support the CMA in taking action which may be required to give effect to the Asset Maintenance Undertakings.
- 7.2. The terms of appointment of the MT are subject to the requirements set out in Annex 4 to these Final Undertakings.

7.3. Lloyds undertakes to procure that the MT's mandate requires that the MT will promptly inform the CMA of any material developments arising from the operation of its functions and will provide to the CMA a written report once every month, the first such report to be provided within two weeks' of the MT's initial appointment.

## **8. Divestment Reporting Obligations**

- 8.1. Lloyds undertakes that within a period of five Working Days from the Commencement Date it will provide a written report to the CMA setting out the timetable that it proposes to adopt, subject to the CMA's approval, to ensure the Final Disposal of each of the Divestment Pharmacies (the 'Approved Timetable'). The report will outline the progress that Lloyds has made towards the Final Disposal of each of the Divestment Pharmacies and the steps that have otherwise been taken to comply with the Final Undertakings, and shall in particular report:
- 8.1.1. on the status of any discussions that have been held with potential purchasers of the Divestment Pharmacies;
  - 8.1.2. on the progress that has been made towards agreeing Heads of Terms (if applicable);
  - 8.1.3. on the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement has been distributed; and
  - 8.1.4. on such other matters as may be directed by the CMA from time to time.
- 8.2. Thereafter, Lloyds will provide similar reports to the CMA every two weeks, or on such other interval as agreed with the CMA, until Final Disposal of all of the Divestment Pharmacies. The reports will include an update on the progress that has been made against the Approved Timetable, in each of the Relevant Areas.
- 8.3. Lloyds undertakes that in the report to the CMA pursuant to paragraph 8.1 it shall, among other things, provide to the CMA:
- 8.3.1. the total number of persons who have lodged a formal bid with Lloyds for the acquisition of all or any of the Divestment Pharmacies since the publication of the CMA's Final Report;
  - 8.3.2. the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with Lloyds for the

acquisition of all or any of the Divestment Pharmacies since the publication of the CMA's Final Report and subsequently been short-listed by Lloyds as a preferred purchaser for any or all of the Divestment Pharmacies; and

8.3.3. details of the efforts taken by each of Lloyds and its financial advisers to solicit purchasers for the Divestment Pharmacies.

8.4. In the event that Lloyds does not meet a step as set out in the Approved Timetable, or is otherwise delayed in implementing the divestitures required pursuant to these Final Undertakings, Lloyds undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days from becoming aware that a step in the Approved Timetable has not been met.

## **9. Directions**

9.1. Lloyds will comply with such written Directions as the CMA may from time to time issue and will take such steps as may be specified or described in the Directions for complying with these Final Undertakings.

9.2. Any delay by the CMA in making a written Direction shall not affect the obligations of Lloyds at such time as the CMA makes any written Direction under paragraph 9.1.

## **10. Conditions for the appointment of a Divestiture Trustee**

10.1. Without prejudice to the CMA's order-making power under section 83 of the Act, Lloyds undertakes that it shall at the written Direction of the CMA appoint a Divestiture Trustee in accordance with paragraph 11 to give effect to the Trustee Obligation.

## **11. Divestiture Trustee – appointment procedure**

11.1. Lloyds recognises and acknowledges that the CMA may direct the appointment of a Divestiture Trustee at any time after the expiry of the Divestiture Period, or prior to the expiry of the Divestiture Period where the CMA considers that Lloyds has not complied with the Approved Timetable in such a way that Final Disposal in any Relevant Area may not be expected to take place within the Divestiture Period.

11.2. Lloyds undertakes that on the Direction of the CMA, and in accordance with such Directions as are given by the CMA as to the timing for taking these steps, Lloyds shall submit to the CMA for approval a list of two or more persons from who they propose to appoint a Divestiture Trustee. The

proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirement set out in paragraph 11.3 below and shall include among other things:

- 11.2.1. the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and
- 11.2.2. a schedule of the steps to be taken to give effect to the mandate.
- 11.3. Each person on the list referred to in paragraph 11.2 shall be independent of and unconnected to Lloyds, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 11.4. The CMA may approve or reject any or all of the proposed Divestiture Trustees (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one name is approved, Lloyds shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, Lloyds shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Lloyds undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 11.5. If all the proposed Divestiture Trustees are rejected by the CMA, Lloyds shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 11.2 and 11.3 above.
- 11.6. The provisions of paragraph 11.7 below shall apply only if:
  - 11.6.1. Lloyds fails to nominate persons in accordance with paragraph 11.2 above; or
  - 11.6.2. those further persons nominated by Lloyds in accordance with paragraph 11.5 above are rejected by the CMA; or
  - 11.6.3. Lloyds is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.

- 11.7. The CMA shall nominate one or more persons to act as a Divestiture Trustee, and Lloyds shall appoint or cause to be appointed such Divestiture Trustee within two Working Days starting with the date of such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

## **12. Divestiture Trustee – functions**

- 12.1. Lloyds undertakes to enable the Divestiture Trustee to carry out the Trustee Obligation.
- 12.2. Lloyds recognises and acknowledges that:
- 12.2.1. the CMA may, on its own initiative or at the request of the Divestiture Trustee, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Trustee Obligation to bring about the Final Disposal of any Divestment Pharmacy;
  - 12.2.2. the CMA may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and
  - 12.2.3. the Divestiture Trustee shall protect the legitimate financial interests of Lloyds subject to the Divestiture Trustee's overriding obligations to give effect to the Trustee Obligation.
- 12.3. Lloyds recognises and acknowledges that the Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Trustee Obligation and to that end the Divestiture Trustee may give written directions to Lloyds, as applicable. Lloyds undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may specify.
- 12.4. Lloyds recognises and acknowledges that in the performance of the Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Lloyds. Lloyds undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.

## **13. Divestiture Trustee – duties and obligations of Lloyds**

- 13.1. Lloyds undertakes to provide the Divestiture Trustee with such cooperation, assistance and information (including the production of financial or other information, whether or not such information is in existence at the time of the request, relevant to the Final Disposal of any Divestment Pharmacy but

excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Trustee Obligation.

- 13.2. Lloyds recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligations (save where material is properly the subject of legal privilege) and Lloyds undertakes to provide the Divestiture Trustee upon reasonable request with copies of any such items. On the reasonable request of the Divestiture Trustee, Lloyds undertakes to make available to the Divestiture Trustee one or more offices on its premises, and ensure personnel where necessary are available for meetings in order to provide the Divestiture Trustee with all information reasonably necessary for the performance of the Trustee Obligation, subject in each case to the Divestiture Trustee's compliance with Lloyds' internal policies.
- 13.3. Lloyds undertakes to grant reasonable comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation including by the appointment of advisers to assist with the disposal process. Lloyds undertakes that upon the reasonable request of the Divestiture Trustee Lloyds shall execute the documents required to give effect to the Trustee Obligation.
- 13.4. Lloyds undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation and Lloyds recognises and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Lloyds or any of its subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 13.5. Lloyds undertakes that at its expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Before appointing any such advisers, the Divestiture Trustee will consider using the advisers already appointed by Lloyds. Should Lloyds refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Lloyds, approve and direct the appointment of such advisers.

- 13.6. Lloyds undertakes to make no objection to the Final Disposal of any Divestment Pharmacy save on the grounds of either bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of Lloyds, subject to the Trustee Obligation; and where Lloyds wishes to make an objection on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial and business interests of Lloyds it shall submit to the CMA a notice setting out its objections within two Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

#### **14. Divestiture Trustee – replacement, discharge and reappointment**

- 14.1. Lloyds acknowledges that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CMA may, after consulting the Divestiture Trustee, require Lloyds to replace the Divestiture Trustee.
- 14.2. If the Divestiture Trustee is removed under paragraph 14.1 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 11 above.
- 14.3. Lloyds recognises and acknowledges that, other than in accordance with paragraph 14.1 above, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestiture Trustee has been entrusted have been met.

#### **15. Variations to these Final Undertakings**

- 15.1. The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.
- 15.2. Where a request for consent to vary the Final Undertakings is made to the CMA, the CMA will consider any such request in light of the Final Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
- 15.3. The consent of the CMA shall not be unreasonably withheld.



## **16. General obligation to provide information to the CMA**

- 16.1. Lloyds undertakes that it shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under the Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.
- 16.2. Lloyds undertakes that should it at any time be in breach of any provision of the Final Undertakings, it will notify the CMA within two Working Days starting with the date it becomes aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.
- 16.3. Where any person, including a MT or Divestiture Trustee must provide information in relation to Lloyds to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, Lloyds undertakes that it will take reasonable steps within its power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of Lloyds to any person other than to the CMA, without the prior written consent of both the CMA and Lloyds.

## **17. Acceptance of Service**

- 17.1. Lloyds hereby authorises Linklaters LLP, One Silk Street, London EC2Y 8HQ to accept on its behalf service of all documents, orders, requests, notifications or other communications connected with the Final Undertakings (including any such document which falls to be served on or sent to Lloyds in connection with proceedings in court in the United Kingdom).
- 17.2. Unless Lloyds informs the CMA that Linklaters LLP has ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on its behalf, any document, order, request, notification or other communication connected with the Final Undertakings shall be deemed to have been validly served on Lloyds if it is served on Linklaters LLP, One Silk Street, London EC2Y 8HQ (Reference: CMA Final Undertakings, attention (Simon Pritchard), and service or receipt shall be deemed to be acknowledged by Lloyds if it is acknowledged by email from Linklaters to the CMA.
- 17.3. Paragraph 17.1 has effect irrespective of whether, as between Linklaters and Lloyds and Lloyds and Linklaters has or continues to have any authority to accept and acknowledge service on behalf of Lloyds (unless Lloyds informs the CMA that Linklaters LLP has ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Lloyds (including a failure to notify Lloyds of the service of any document, order,

request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgement pursuant to these Final Undertakings.

**18. Effect of invalidity**

18.1. Lloyds undertakes that should any provision of the Final Undertakings be contrary to law or invalid for any reason, Lloyds shall continue to observe the remaining provisions.

**19. Extension of time**

19.1. Lloyds recognises and acknowledges that the CMA may, where it considers appropriate, in response to a written request from Lloyds showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Final Undertakings within which Lloyds, the MT and/or the Divestiture Trustee (as the case may be) must take action.

**20. Governing law**

20.1. These Final Undertakings shall be governed by and construed in all respects in accordance with English law.

20.2. Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

**21. Termination and release**

21.1. The variation, release or supersession of these Final Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

FOR AND ON BEHALF OF Lloyds

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date

## **Purchaser Approval Criteria**

These Purchaser Approval Criteria are to be construed as consistent with and giving effect to paragraph 9.57 of the Final Report.

### **1. Independence**

The proposed purchaser should have no significant connection to Celesio that may compromise the purchaser's incentives to compete with the merged entity. It must further be independent of and unconnected to Celesio and any Associated Person or Affiliate of Celesio or its Group of Interconnected Bodies Corporate and specifically Lloyds. We note that there may be a requirement for transitional services to be provided by Celesio or its Group of Interconnected Bodies Corporate. These will be assessed on a case-by-case basis. We also note that the purchaser may wish to use Celesio's wholesale business, AAH. We did not consider commercial arrangements of this nature on an arm's length basis to create independence issues.

### **2. Capability**

The proposed purchaser must have access to appropriate financial resources, expertise and assets to enable the divested business to be an effective competitor in the market. It must be able to show it has the necessary operational capability to provide pharmacy services. This should include but not be limited to:

- Clinical governance procedures /capability and supporting infrastructure;
- Ability to provide pharmacy services and develop the pharmacy business; and
- The ability to provide ongoing training and accreditation to employees to provide pharmacy services.

In addition we would need to be satisfied that the prospective purchaser satisfies the necessary regulatory requirements to operate the licence at the stated premises in the local market. The purchaser must meet all the necessary criteria to have an NHS pharmacy contract set out by either NHS England or NHS Wales (in respect of Cardiff) at the time of the transaction completing.

### **3. Commitment to the relevant market**

The proposed purchaser must have the intention to maintain and operate the divested business as a viable and active business in competition with Lloyds and other competitor in the relevant local market so as to remedy the SLC and any adverse effect. This shall be demonstrated by (among other things) a suitable business plan or such other evidence as the CMA considers appropriate.

### **4. Absence of competitive or regulatory concern**

In considering whether to approve any agreement the CMA shall consider whether the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material risk that the sale of the Divestment Stores would not remedy the SLC and any adverse effects likely to arise from it. In addition, the acquisition by the proposed purchaser must not raise competition concern within the local market.

## Required divestitures

Area	Lloyds pharmacy		
Beaconsfield	5 The Highway, Beaconsfield, Buckinghamshire HP9 1QD (Lloyds' New Town pharmacy)		
Bracknell	97 Liscombe, Birch Hill Rd, Bracknell, Berkshire RG12 7DE		
Cardiff	44 Station Road, Cardiff CF14 5LT		
Christchurch	344-346 Lymington Road, Christchurch, Dorset BH23 5EY	OR	248 Lymington Road, Christchurch, Dorset BH23 5ET
Kempston	242 Bedford Road, Kempston, Bedfordshire MK42 8PP		
Kidlington	18 The Parade, Kidlington, Oxfordshire OX5 1DB		
Leeds	2 The Avenue, Leeds, West Yorkshire LS17 7BE		
Liverpool	1-3 Rice Lane, Liverpool L9 1AD		
Luton	2 Whitehorse Vale, Luton, Bedfordshire LU3 4AD		
Reading/Theale	27 High Street, Theale, Berkshire RG7 5AH		
Sandy	5 Market Square, Sandy, Bedfordshire SG19 1HU	OR	4 Market Square, Sandy, Bedfordshire SG19 1HU
Warlingham	46-48 The Green, Warlingham, Surrey CR6 9NA		

**Permitted customer-facing changes to the Target Pharmacies  
in the Relevant areas**

1. Liability insurance to be displayed.
2. Communications with customers regarding the transfer of their personal data.
3. Dispensing labels to display pharmacy name (Lloyds Pharmacy).
4. Till receipt to include statement relating to Lloyds' prescription medicines on reverse.
5. Customers to receive identifying details that will allow them to know with whom they are dealing with respect to Electronic Funds Transfers.
6. Pharmacy practice leaflet to display pharmacy name (Lloyds Pharmacy).
7. Pharmacy to be registered under name of operator (Lloyds Pharmacy).
8. Pharmacy staff will wear Lloyds' uniforms, including badges.
9. Dispensing bags and carrier bags for all medicines dispensed and goods sold will be Lloyds-branded.
10. All branded point of sale materials which state 'Sainsbury's Pharmacy' will be replaced with Lloyds-branded point of sale materials, including shelf edge labels (which display prices), posters, leaflets, strut cards and balloons and sticks, with some featuring 'welcome' messaging.
11. Remerchandising of all counter bays and back-walls.
12. Replacement of Sainsbury's own-label products with Lloyds' range of own-label products.
13. Telephones in the pharmacies will be answered to reflect the change of ownership.
14. Alterations to the front counter 'merchandise bay(s)' at Leeds Moortown Sainsbury's pharmacy to enable the bay(s) to be shut when the pharmacy is closed.

## Monitoring Trustee Provisions

### General

1. The MT must act on behalf of the CMA, report solely to the CMA, and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
2. Lloyds must cooperate fully with the MT, in particular as set out below, and Lloyds must ensure that the MT's mandate reflects and gives effect to the functions and obligations of the MT.
3. The MT must possess appropriate qualifications and experience to carry out his or her functions.
4. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging his or her duties under these Monitoring Trustee Provisions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA. Where the MT has concerns that such a conflict of interest may have arisen, the MT must communicate those concerns to the CMA immediately.
5. Lloyds shall remunerate the MT and reimburse the MT for all reasonable costs properly incurred in accordance with its mandate and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
6. The appointment of a MT by Lloyds shall be subject to approval by the CMA including with respect to the identity of the MT and his or her mandate in their entirety.

### Obligations of Lloyds

7. Lloyds and each of its subsidiaries and its employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:

- (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of Lloyds and the Target (as available to Lloyds and the Target) as the MT may reasonably require; and
  - (b) the provision of such office and supporting facilities as the MT may reasonably require.
- 8. If Lloyds or any of its subsidiaries is in any doubt, as to whether any action or communication would infringe these Monitoring Trustee Provisions, it is required to contact the MT for clarification.
- 9. If Lloyds or any of its subsidiaries has any reason to suspect that these Monitoring Trustee Provisions may have been breached, it must notify the MT and the CMA immediately.

### **Reporting functions**

- 10. The MT is required to comply with such reporting obligations as may be specified in the MT's mandate and with the requirements of paragraph 7.3 of the Final Undertakings.