

ANTICIPATED ACQUISITION BY TESCO PLC OF BOOKER GROUP PLC

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 Tesco Plc (**Tesco**) and Booker Group Plc (**Booker**) ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 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
- (d) 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 Booker (the **Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 30 May 2017.
2. This Order applies to Booker.
3. This Order applies only in respect of the following assets and associated businesses:
 - (a) The Budgens store at Arbury Road, Arbury Court, Cambridge, CB4 2JQ;

- (b) The Budgens store at 4 Station Road, Chingford, London E4 7BE; and
 - (c) The Budgens store at 99-90 High Street, Honiton, Devon EX14 1JW (together, the **Relevant Stores**).
4. 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 Booker to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Relevant Store businesses until determination of proceedings

5. Except with the prior written consent of the CMA, Booker shall not, during the specified period, take any action in relation to the Relevant Stores 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 any Relevant Store with any business falling outside of the Booker business;
 - (b) transfer the ownership or control of a Relevant Store; or
 - (c) otherwise impair the ability of a Relevant Store to compete independently of any business falling outside of the Booker business, in the relevant local market.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 4, Booker shall at all times during the specified period procure that, except with the prior written consent of the CMA:
- (a) the business of each Relevant Store is carried on separately from any business falling outside of the Booker business;
 - (b) each Relevant Store's sales or brand identity is maintained;
 - (c) each Relevant Store is maintained as a going concern and sufficient resources are made available for its development, on the basis of its respective pre-transaction business plans;
 - (d) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities pertaining to, the Relevant Store businesses;

- (e) the nature, description, range and quality of goods supplied by each of the Relevant Stores are maintained and preserved in accordance with usual practice;
- (f) except in the ordinary course of business for the separate operation of the Relevant Stores:
 - (i) all of the assets of the Relevant Stores are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Relevant Stores are disposed of; and
 - (iii) no interest in the assets of the Relevant Stores is created or disposed of;
- (g) there is no integration of the information technology of the Relevant Stores with that of any business falling outside of the Booker business, and the software and hardware platforms of the Relevant Stores shall remain essentially unchanged, except for routine changes and maintenance;
- (h) the supplier lists of the Relevant Stores shall be operated and updated separately from those of any business falling outside of the Booker business and any negotiations with any existing or potential suppliers in relation to the Relevant Stores will be carried out by the Booker business;
- (i) all existing contracts of the Relevant Stores continue to be serviced by the business to which they were awarded;
- (j) no changes are made to key staff of the Relevant Stores;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Relevant Store; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to any of the Relevant Stores shall pass, directly or indirectly, from a Relevant Store (or any of its employees, directors, agents or affiliates) to any prospective purchaser (or any of its employees, directors, agents or affiliates), or vice versa, except:
 - (i) where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations); or

- (ii) to the extent strictly necessary for a prospective purchase to evaluate a store, provided always that such information is held and used in accordance with usual safeguards (such as clean team procedures in the case of a trade buyer).

and on the basis that, should the sale of the Relevant Store not complete, 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. Booker shall procure that each of its subsidiaries complies with this Order as if the Order had been issued to each of them.
8. Booker 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 Booker and its subsidiaries with this Order. In particular, on 13 June 2017 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 Booker or other persons as agreed with the CMA shall, on behalf of each of Booker, 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, Booker shall actively keep the CMA informed of any material developments relating to the Relevant Stores, which includes but is not limited to:
 - (a) details of key staff who leave;
 - (b) any interruption of the business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented a Relevant Store from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial changes to sales revenues of the Relevant Stores; and
 - (d) changes in the contractual arrangements or relationships with key suppliers which are expected to have a material effect on any of the Relevant Stores; and
 - (e) any developments with respect to Booker's attempts to sell any of the Relevant Stores, including any steps taken to market the stores, firm expressions of interest from any potential buyers, steps by Booker to

evaluate those potential buyers and subsequent contractual developments relating to the sale of any Relevant Store).

10. If Booker has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Booker 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. Booker 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;

'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;

'Booker' means Booker Group Plc, company number 05145685;

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

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

'commencement date' means 30 May 2017;

'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;

'the ordinary course of business' means matters connected to the day-to-day supply of goods in connection with the Relevant Stores and does not include matters involving significant changes to the organisational structure or related to the integration of the Relevant Stores with any business falling outside of the Booker business;

'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 arrangements that are in progress or in contemplation which, if carried into effect, will result in Tesco and Booker ceasing to be distinct within the meaning of section 23 of the Act;

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

Greg Bonne
Assistant Director, Mergers

Compliance statement for Booker

I [insert name] confirm on behalf of Booker that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Booker has complied with the Order made by the CMA on 30 May 2017 in relation to the transaction (the **Order**).
 - (b) Booker's subsidiaries have also complied with this Order.
2. Subject to paragraph 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Booker in relation to the Relevant Stores that might prejudice a reference of the transaction under section 22 or 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 any Relevant Store with any business falling outside of the Booker business;
 - (ii) transfer the ownership or control of a Relevant Store; or
 - (iii) otherwise impair the ability of a Relevant Store to compete independently of any business falling outside of the Booker business, in the relevant local market.
 - (b) The business of each Relevant Store has been carried on separately from any business falling outside of the Booker business.
 - (c) Each Relevant Store's sales or brand identity has been maintained.
 - (d) Each Relevant Store has been maintained as a going concern and sufficient resources have been made available for its development, on the basis of its pre-transaction business plans.
 - (e) No substantive changes have been made to the organisational structure of, or the management responsibilities pertaining to, the Relevant Store businesses, except in the ordinary course of business.

- (f) The nature, description, range and quality of goods supplied by each of the the Relevant Stores have been maintained and preserved in accordance with usual practice.
- (g) Except in the ordinary course of business for the separate operation of the Relevant Stores:
 - (i) all of the assets of the Relevant Stores, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Relevant Stores have been disposed of; and
 - (iii) no interest in the assets of the Relevant Stores has been created or disposed of.
- (h) There has been no integration of the information technology of the Relevant Stores with any business falling outside of the Booker business, and the software and hardware platforms of the Relevant Stores have remained essentially unchanged, except for routine changes and maintenance.
- (i) Subject to integration which had occurred prior to the commencement date, the supplier lists of the Relevant Stores have been operated and updated separately from those of any business falling outside of the Booker business and any negotiations with any existing or potential suppliers in relation to the Relevant Stores have been carried out by the Booker business.
- (j) All existing contracts of the Relevant Stores have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (k) No changes have been made to key staff of the Relevant Stores.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Relevant Stores.
- (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 any of the Relevant Stores has passed, directly or indirectly, from a Relevant Store (or any of its employees, directors, agents or affiliates) to any prospective purchaser (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 the Relevant Stores;
 - (ii) interruptions of the Relevant Stores (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented a Relevant Store from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial changes to sales revenue of the Relevant Stores;
 - (iv) changes in the contractual arrangements or relationships with key suppliers which are expected to have a material effect on any of the Relevant Stores; or
 - (v) material developments with respect to Booker's attempts to sell any of the Relevant Stores, including any steps to market the stores, firm expressions of interest from any potential buyers, steps by Booker to evaluate those potential buyers or subsequent contractual developments relating to the sale of any Relevant Store.
- (o) *[list of material developments]*.

3. Booker 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 Relevant Stores 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 BOOKER

Signature

Name

Title

Date