

DEROGATION LETTER

IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED

PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

ANTICIPATED ACQUISITION

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ("CMA") on 23 November 2018

Anticipated merger of Lakeland Dairies Co-Operative Society Limited and LacPatrick Co-Operative Society Limited

We refer to your letter dated 23 November 2018, and your email dated 28 November 2018, requesting that the CMA consents to derogations to the Initial Enforcement Order of 23 November 2018 (the "Initial Order"). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Lakeland Dairies (N.I.) Limited, Lakeland Dairies Co-Operative Society Limited ("Lakeland") and LacPatrick Co-Operative Society Limited ("LacPatrick"), (together, the "Parties") are required to hold separate all of their business from that of the other party and refrain from taking any action which might prejudice a reference under section 33 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Lakeland and LacPatrick may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a), 5(c), 6(a) and 6(b) of the Initial Order

Prior to the Initial Order commencement date, Lakeland provided LacPatrick financial support ("Lakeland financial support") in the form of:

- [X][X]
- a stock sale agreement between Lakeland and LacPatrick dated 24 October 2018, pursuant to which Lakeland purchased £[X] worth of bulk milk powder stock from LacPatrick.

[REDACTED]

In respect of [REDACTED], on the basis of the information provided to the CMA in a letter dated 23 November 2018, your email dated 28 November 2018 and your submissions to the CMA dated 31 October 2018, 13 and 20 November 2018, [REDACTED], the CMA provides consent for:

a) [REDACTED]

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]

b) [REDACTED]

2. Paragraphs 5(a), 5(c) 6(a), 6(b), 6(e), 6(g) and 6(l) of the Initial Order

Stock sale arrangement

We understand that the Parties will require the ability to continue to sell items of stock which make up the £[REDACTED] worth of bulk milk powder stock that Lakeland purchased from LacPatrick under the stock sale agreement dated 24 October 2018. This stock, though physically held by LacPatrick, is Lakeland's property and is sold to LacPatrick customers by LacPatrick staff using Lakeland invoices, instructing customers to pay the monies due to a Lakeland bank account. We understand that around £[REDACTED] worth of stock has been sold, with the balance to be sold in the ordinary course over the next few weeks.

On the basis of the information provided to the CMA in a letter dated 23 November 2018, your email dated 28 November 2018 and your submissions to the CMA dated 31 October 2018, 13 and 20 November 2018, [REDACTED] the CMA provides consent for the Parties to continue to sell items of stock which make up the £[REDACTED] worth of bulk milk powder stock under the stock sale agreement dated 24 October 2018, subject to the following conditions:

- (a) a separate cover letter on LacPatrick headed paper (in a form approved by the CMA) shall be physically attached to the front of each invoice issued to LacPatrick customers under the stock sale arrangement, which will state that:
 - (i) Lakeland's invoice arrangement is temporary and limited only to products covered under the stock sale arrangement, for limited stock amounts, and for a limited time;
 - (ii) all existing customer contracts with LacPatrick remain in full force and that this temporary arrangement does not constitute a change to those agreements;
 - (iii) all invoice queries from customers should be directed to LacPatrick (providing the relevant contact details at LacPatrick); and
 - (iv) Lakeland employees are not permitted by the CMA to discuss the contents of their invoices with customers;

- (b) the stock subject to the stock sale arrangement will not be transferred to any of Lakeland's sites, collected by Lakeland or transported or distributed by Lakeland;
- (c) the stock sale agreement will be operated by a limited number of individuals at Lakeland and LacPatrick bound by non-disclosure agreements (see below); and
- (d) the Parties will not make any amendments to the terms of the stock sale agreement without prior approval from the CMA.

3. Paragraph 6(l) of the Initial Order

Individuals managing stock sale arrangements

We understand based on information provided by the Parties that the following staff at each of Lakeland and LacPatrick are necessary for the operation and/or supervision of the actions and decisions regarding the £[REDACTED] stock sale agreement:

(a) Lakeland stock-sale staff: (a) [REDACTED]; (b) [REDACTED]; (c) [REDACTED]; (d) [REDACTED]; and (e) [REDACTED]; and

(b) LacPatrick stock-sale staff: (a) [REDACTED]; (b) [REDACTED]; (c) [REDACTED]; (d) [REDACTED]; (e) [REDACTED]; (f) [REDACTED]; and (g) [REDACTED].

We understand that other than [REDACTED] the above employees of Lakeland and LacPatrick are not involved with the day-to-day commercial or strategic responsibilities (including pricing responsibilities) of Lakeland or LacPatrick, respectively. We understand that [REDACTED] were previously involved in the decision-making process to enter into the stock sale agreement with Lakeland, including negotiation of the terms of the agreement, and that their continued involvement in the stock sale arrangement is solely in respect of acting in an oversight role, in relation to which they have entered into non-disclosure agreements. We also understand that while [REDACTED] has some strategic responsibilities within Lakeland, his role in the stock sale arrangement would be limited to acting as a conduit for information, advising on compliance with the stock sale arrangement and the Initial Order, and has entered into a non-disclosure agreement in respect of his role.

The CMA provides consent for the above employees of Lakeland and LacPatrick (as amended from time to time with the prior approval of the CMA) to operate the stock sale agreement, subject to each employee entering into individual non-disclosure agreements in a form approved by the CMA, which will require that the individuals subject to them: (a) only discuss matters that are strictly necessary for the functioning of the stock sale agreement; and (b) not to disclose any information they receive more widely within their respective organisations, including to those with management responsibilities.

Assistant Director
Mergers