

## THE SAINSBURY'S AND ASDA MERGER INQUIRY ORDER 2019

### Background

1. On 19 September 2018, the Competition and Markets Authority (CMA), exercising its powers under [section 33](#) of the Enterprise Act 2002 (the Act) referred the anticipated merger between J Sainsbury PLC (Sainsbury's) and Asda Group Ltd (Asda), part of Walmart Inc. (Walmart), for further investigation and report by a group of CMA panel members.
2. The CMA published '[Anticipated merger between J Sainsbury PLC and Asda Group Ltd, Final report](#)' (the Report) on 25 April 2019. In the Report, the CMA decided, in accordance with [section 36](#) of the Act, that:
  - (a) a relevant merger situation would be created as a result of the merger;
  - (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within the following markets:
    - (i) the retail supply of groceries in both Sainsbury's and Asda supermarkets on a national basis, ie in every local market in which one of the Parties is, or both of the Parties are, present;
    - (ii) the retail supply of groceries in supermarkets on a local basis in 537 of the local markets in which both Parties are present;
    - (iii) the retail supply of groceries in Asda convenience stores on a national basis, ie in every local market in which an Asda convenience store is present;
    - (iv) the retail supply of groceries in convenience stores on a local basis in 18 of the local markets in which both Parties are present;
    - (v) the retail supply of groceries ordered online and delivered to the customer's location (online delivered groceries) for Sainsbury's and Asda on a national basis, ie in every local market served by one or both of the Parties;
    - (vi) the retail supply of online delivered groceries for Asda customers on a national basis, ie in every local market served by Asda;

- (vii) the retail supply of online delivered groceries for Asda customers on a local basis in 143 local markets served by both Parties;
    - (viii) the retail supply of online delivered groceries on a local basis through coordinated effects in 108 delivery areas served by both Parties;
    - (ix) the retail supply of fuel on a local basis in 127 of the local markets in which both Parties operate petrol filling stations;
  - (c) the CMA should take action for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, each SLC; and
  - (d) the prohibition of the merger would be the only effective and proportionate remedy to the SLC and any adverse effects which have resulted from, or may be expected to result from, each SLC.
- 3. The CMA published a notice on 23 May 2019 of its intention to make an order to remedy the adverse effects on competition that it had identified. The CMA did not receive any representations, and now makes this Order.
- 4. On the making of this Order the reference is finally determined.

# THE ORDER

The CMA makes this Order in performance of its duty under [section 41](#) of the Act and in exercise of its powers under [section 84\(1\), \(2\) and \(3\)](#), [section 86\(1\), \(3\) and \(4\)](#), [section 87](#) of the Act and paragraphs 2, 12, 19, 21 and 22 of [Schedule 8](#) to the Act, for the purpose of remedying, mitigating or preventing the substantial lessening of competition specified in the Report and any adverse effects which have resulted from, or may be expected to result from, the substantial lessening of competition specified in the Report.

## **Title, Commencement, Application and Interpretation**

1. This Order may be cited as ‘The Sainsbury’s and Asda Merger Inquiry Order 2019’.
2. This Order comes into force on 9 July 2019.
3. This Order ceases to have effect at the end of the Prohibition Period.
4. This Order applies to Asda, Sainsbury’s and Walmart.
5. The purpose of this Order is to give effect to the Report and this Order is to be construed consistently with the Report and so as to give effect to its conclusions. In the event of conflict between this Order and the Report, this Order prevails.
6. Any words or expressions used in this Order or the recitals of this Order shall, unless otherwise defined or the context otherwise requires, have the same meaning as in the Act and the Report.<sup>1</sup> In the event of conflict between the Order and the Report, the Order prevails; and in the event of conflict between the Order and the Act, the Act prevails.
7. 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.
8. References to recitals, paragraphs and subparagraphs are references to the recitals to, paragraphs and subparagraphs of this Order.
9. In this Order, any reference to a government department or non-departmental public body or organisation or person includes a reference to its successor.

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<sup>1</sup> Certain terms used in this Order such as Group of Interconnected Bodies Corporate and Subsidiary are therefore not further defined as they have the same meaning in this Order as in the Act.

10. The Interpretation Act 1978 applies to this Order as it does to Acts of Parliament.

11. In this Order:

**Act** means the Enterprise Act 2002;

**Asda** means Asda Group Limited, a private company limited by shares incorporated and registered in England and Wales with the company number 01396513 whose registered office is located at Asda House, South Bank, Great Wilson Street, Leeds, LS11 5AD;

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

**Interest** means any interest conferring control within the meaning of [section 26](#) of the Act which includes the ability, directly or indirectly, *de jure* or *de facto*, to control or materially influence the policy of a body corporate, or the policy of any person in carrying on an Enterprise but without having a controlling interest in that Body Corporate or that Enterprise;

**Prohibition Period** means the period starting on 9 July 2019 and ending on 8 July 2029;

**Report** means the report entitled 'Anticipated merger between J Sainsbury PLC and Asda Group Ltd, Final report', published on 25 April 2019;

**Sainsbury's** means J Sainsbury plc a public company registered in England and Wales with registered number 00185647 and having its registered office at 33 Holborn, London, EC1N 2HT;

**Walmart** means Walmart Inc. a Delaware corporation, file number 732109.

## **Prohibition**

12. Except with the prior written consent of the CMA, for the duration of the Prohibition Period, Sainsbury's and all members of the Group of Interconnected Bodies Corporate to which it may belong must not:

- (1) acquire an Interest in Asda or any of its Subsidiaries;
- (2) acquire an Interest in an enterprise holding an Interest in Asda or carrying on the business of Asda from time to time; or
- (3) hold an option to acquire an Interest referred to in subparagraphs (1) and (2) above.

13. Except with the prior written consent of the CMA, for the duration of the Prohibition Period, Asda and all members of the Group of Interconnected Bodies Corporate to which it may belong must not:
  - (1) acquire an Interest in Sainsbury's or any of its Subsidiaries;
  - (2) acquire an Interest in an enterprise holding an Interest in Sainsbury's or carrying on the business of Sainsbury's from time to time; or
  - (3) hold an option to acquire an Interest referred to in subparagraphs (1) and (2) above.
  
14. Except with the prior written consent of the CMA, for the duration of the Prohibition Period and provided Walmart holds an Interest in Asda, Walmart and all members of the Group of Interconnected Bodies Corporate to which it may belong must not:
  - (1) acquire an Interest in Sainsbury's or any of its Subsidiaries;
  - (2) acquire an Interest in an Enterprise holding an Interest in Sainsbury's or carrying on the business of Sainsbury's from time to time; or
  - (3) hold an option to acquire an Interest referred to in subparagraphs (1) and (2) above.
  
15. Each of Sainsbury's, Asda and Walmart must ensure that each of their Subsidiaries comply with this Order.

#### **Provision of information to the CMA**

16. Any person to whom this Order applies must promptly provide to the CMA such information as the CMA may reasonably require for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order; to review the effectiveness of the operation of this Order, or any provision of this Order; or perform any of its functions under this Order or sections 84 and 92, 93 or 94 of the Act.
  
17. Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.
  
18. Any person to whom this Order applies who has any reason to suspect that this Order is likely to be, has, or might have, been breached must notify the CMA as

soon as practicable and in any case within three calendar days from the day the suspicion arose.

19. Subject always to [Part 9](#) of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

### **Powers of direction**

20. The CMA may give directions falling within this Order to;
  - (1) A person specified in the directions; or
  - (2) A holder for the time being of an office so specified in any body or person corporate or unincorporated.
21. Directions fall within Article 20 if they are written directions;
  - (1) To take such steps as may be described in the directions for the purpose of, or being reasonably related to, carrying out or ensuring compliance with this Order; or
  - (2) To do, or refrain from doing, anything so described which the person might be required by this Order to do or refrain from doing.
22. The CMA may vary or revoke any directions so given.

### **Severability**

23. If any provision of this Order is or becomes contrary to law or invalid for any reason, Asda, Sainsbury's and Walmart must continue to observe the remaining provisions.

### **Governing Law**

24. This Order shall be governed and construed in all respects in accordance with English law.
25. Any dispute arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.
26. Any contractual obligations arising out of or in connection with this Order shall be governed and construed in all respects in accordance with English law.