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PARTNERSHIP

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By E-mail

To whom it may concern

Notification under Article 8 of the Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020, Statutory Instrument 2020 No. 369 (the “Order”)

In accordance with Article 8(2)(a) of the Order, we hereby submit notifications to the Secretary of State to apply for an exclusion from Chapter I of the Competition Act 1998, as contemplated in Article 5 of the Order (the “**Notifications**”).

Any term in the Notifications bears the definition ascribed to it in the Order, unless specified otherwise.

Waitrose & Partners confirms that the Notifications relate to “qualifying activity” (as contemplated in Article 3 of the Order) which, as contemplated in Article 8(2)(a);

- i) Is/was to prevent or mitigate the disruption to the supply of groceries to consumers in the UK (or any part of it) caused by a reason relating to coronavirus; and
- ii) does not otherwise have the object or effect of preventing, distorting or restricting competition.

As you will be aware, retailers have had to work at pace to identify and implement a series of complex arrangements to mitigate unprecedented disruptions, and ensure the continuity of supply of groceries for consumers across the UK during the coronavirus crisis. Often, these arrangements require ongoing management and adjustment to ensure they continue to address supply challenges across numerous grocery retailers as the crisis has evolved. For that reason, it is at times practically difficult to pinpoint the precise boundaries of a single agreement (which bears a broad definition, including a concerted practice which does not require the adoption of a common plan); and/or the date that agreement was made and implemented. Similarly, there may be instances where the retailers have agreed to consider proposed agreements to address the crisis, but ultimately decided not to pursue identical industry-wide action where it is subsequently found to be unfeasible or impractical in the circumstances. There is also some overlap between the qualifying activities listed in Article 3 of the Order.

Despite these challenges and in the spirit of transparency, we have sought to provide as much detail as possible relating to the qualifying activities listed in Article 3 in which we have been involved with to date, including preparatory discussions and/or ongoing actions required to properly implement or manage such activity.

We provide the details required pursuant to Article 8(1) of the Order in the tables within Annex I below.

Should we engage in any further activities which are contemplated by the Order, we will provide further notifications, to the extent that such activities are clearly new and/or differ in a material and significant respect to those listed in Annex I.

We would be grateful if you kindly acknowledge receipt.

Yours faithfully

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John Lewis Partnership

Annex I - Details of Agreements requiring notification as contemplated by Article 8 of the Order

Agreement 1: Sharing information on the day to day stock position and shortages of groceries and logistics services

<p>Names of the undertakings involved (the “Parties”)</p>	<p>Waitrose & Partners, Asda, Co-Op, Morrisons, Sainsbury’s, Tesco, Aldi, Lidl, Iceland, Ocado and M&S</p>
<p>Qualifying activity as described in Article 3(2) of the Order</p>	<p>3(2)(d): Sharing information on the day to day stock position and shortages of groceries within the UK.</p> <p>3(2)(e): Sharing information on services provided by logistics services providers.</p> <p>Note that information of this nature is/was required to identify and address shortages so as to prepare for and/or determine a possible approach to item limits on purchases; labour shortages; logistics; store hours and ways to support and protect vulnerable consumers in the UK. Accordingly, this conduct also relates to the qualifying activities listed in Article 3(2)(a), (b), (f), and (g).</p>
<p>Groceries to which the Agreement relates</p>	<p>All groceries offered by the Parties.</p>
<p>Description of the Agreement</p>	<p>Since 6 March 2020 the Parties have participated in discussions hosted by DEFRA and the BRC involving the exchange of information on the day-to-day stock position, shortages of groceries and trade patterns, to anticipate and address possible supply shortages and other supply challenges to meeting consumer demand for groceries. As above, information of this nature is/was required to identify and address shortages so as to prepare for and/or determine a possible approach to item limits on purchases; labour shortages; logistics; store hours and ways to support and protect vulnerable consumers in the UK (e.g. increasing click and collect capacity and online delivery slots).</p> <p>Whilst Waitrose & Partners has participated in these forums, we have taken our own independent decisions on how best to address the issues that have been raised e.g. store opening times, capping the number of items sold etc.</p> <p>The principal forum for these discussions are CEO meetings and the Food Resilience Forums facilitated by DEFRA. These meetings continue on a weekly and daily basis respectively.</p> <p>Discussions have involved exchanges of information and/or preparatory discussions relating to the activities listed in Article 3(2)(a), (b), (f) and (g) of the Order, some of which also forms the subject of separate notifications, as detailed below.</p> <p>The Parties will need to continue to engage in this conduct to continue to ensure continuity of supply of groceries throughout the disruption period.</p>

Date of the Agreement	The Parties have been in discussions on this since 6 March 2020.
Implementation date	6 March 2020
Date of this Notification	9 April 2020

Agreement 2: Coordination on assistance for particular groups of customers

<p>Names of the undertakings involved (the “Parties”)</p>	<p>Waitrose & Partners, Asda, Co-op, Morrisons, Sainsbury’s, Tesco</p>
<p>Qualifying activity as described in Article 3(2) of the Order</p>	<p>3(2)(f): Coordination on assistance for particular groups of consumers, including critical workers, the most clinically vulnerable and socially isolated groups of consumers, such as prioritising deliveries or opening stores at specific times to these groups or otherwise providing support to them.</p> <p>Note that in order to progress, support or implement this action, the Parties also have discussed or considered actions relating to item limits on purchases; labour shortages and additional labour resource; daily stock position and groceries shortages; and store hours. Accordingly, this conduct also relates to the qualifying activities listed in Article 3(2)(a), (b), (d), and (g).</p>
<p>Groceries to which the Agreement relates</p>	<p>All groceries offered by the Parties.</p>
<p>Description of the Agreement</p>	<p>The Parties have agreed with the UK government to coordinate activities to assist vulnerable consumers. This includes ensuring that all consumers identified by the NHS or DEFRA as clinically and socially isolated have access to groceries during the coronavirus crisis. A range of measures have been discussed and implemented at an individual retailer level such as prioritised grocery home shopping delivery slots, increased click and collect capacity, prioritised opening hours and/or designated checkouts for the elderly and NHS workers.</p> <p>In an attempt to identify all vulnerable customers, the Parties agreed to match the data provided by the Government Digital Service (“GDS”) on behalf of the UK government with their own grocery home shopping and/or loyalty scheme membership lists, and contacted those vulnerable customers that appeared on their own membership lists (the “matched customers”).</p> <p>The Parties have had several calls and email exchanges to prepare for, facilitate, implement and monitor the steps taken to support vulnerable consumers during the crisis.</p>
<p>Date of the Agreement</p>	<p>The Parties have been in discussions with DEFRA since 9 March 2020 to discuss the concept of supporting vulnerable customers, with Waitrose being actively involved in these discussions from 27 March onwards.</p>
<p>Implementation Date</p>	<p>Waitrose has been actively involved in discussions with DEFRA since 27 March, having taken a number of measures itself to prioritise and service vulnerable customers independently before this date.</p> <p>The agreement as regards the “matched customers” was implemented on April 3 when the first batch of data was received from the GDS and the Parties began to match customers and email them informing them that they could access the</p>

	prioritised grocery home shopping delivery slots. More matched customers will be contacted in due course as further data is provided by the GDS and matched against the Parties' membership lists.
Date of this notification	9 April 2020