

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

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 26 October 2022

Completed acquisition by Asda Stores Limited ('Asda') of Arthur Foodstores Limited ('Arthur') ('the Acquisition').

We refer to your submissions of 20 October 2022 requesting that the CMA consents to derogations to the Initial Enforcement Order of 26 October 2022 (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, Mr Zuber Issa, Mr Mohsin Issa, TDR Capital LLP, TDR Capital III Portfolio No. 2 L.P., TDR Capital III Investments (2019) L.P., Asda Group Limited, Asda (the '**Acquirers**'), as well as Co-operative Group Limited ('**Co-op**') and Arthur (together with the Acquirers, the '**Addressees**') are required to hold separate the Arthur business from the Asda business and refrain from taking any action which might prejudice a reference under section 22 or 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, the CMA consents to the Addressees carrying out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(c), 6(i), 6(j) and 6(k) of the Initial Order – Appointment of an independent managing director, chief financial officer and two new non-executive directors

The Acquirers submitted that upon completion the existing directors of Arthur, as nominees of Co-op, will step down. The sites held by Arthur were managed as part of the Co-op business by Co-op's senior management pre-completion. [X] from completion until the conclusion of the CMA's review (the '**Initial Order Period**') [X] transferring petrol fuel stations ('**PFSs**') [X].

The Parties therefore seek derogation to paragraphs 6(c), 6(i), 6(j) and 6(k) of the Initial Order to enable Arthur to appoint:

- an independent managing director,
- an independent Chief Financial Officer (**'CFO'**) and
- two non-executive directors (**'Non-Executive Directors'**), subject to approval by the CMA of the relevant candidates.

The CMA consents to a derogation from paragraphs 6(c), 6(i), 6(j) and 6(k) of the Initial Order to permit the above actions, strictly on the basis that:

- a) The appointment of the independent managing director, the independent CFO and the Non-Executive Directors will not have any impact on the ability of Arthur to compete independently of Asda.
- b) The appointment of the Non-Executive Directors has been carried out for administrative purposes only.
- c) The Non-Executive Directors shall not receive any confidential or commercially sensitive information relating to the Arthur business whilst the Initial Order is in force.
- d) The Non-Executive Directors shall not exert any influence over or advise either Arthur's independent managing director or Arthur's independent CFO.
- e) This derogation shall not result in any integration between Asda and Arthur.
- f) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

2. Paragraphs 6(a), 6(g), 6(h) and 6(l) – Insurance

The Acquirers submitted that upon completion, Asda will become responsible for ensuring that Arthur has effective access to group insurance coverage. The Acquirers submitted that the most effective way to ensure that Arthur has all the necessary insurance cover immediately upon completion is to include Arthur in Asda's group insurance coverage.

The CMA consents to a derogation from paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order to permit (i) Asda to extend Asda's existing group insurance coverage to Arthur; and (ii) Asda to receive information pertaining to Arthur in order to put in place and maintain the requisite insurance coverage for Arthur. The CMA grants this derogation strictly on the basis that:

- a) Any necessary information required to put in place coverage will only be shared with the Authorised Individuals listed in Annex 1 (Part A), which can only be amended with written consent from the CMA (including via email), as

well as with outside counsel and experts hired by the Addressees in connection with the Acquisition (**'External Advisers'**).

- b) The Arthur information provided to Asda will be limited to what is strictly necessary to allow Asda to provide the appropriate insurance cover to Arthur.
- c) The Authorised Individuals and External Advisers must not discuss this information with any other individuals at Asda.
- d) The Authorised Individuals and External Advisers will be subject to a non-disclosure agreement, in a form approved by the CMA, to ensure that the information is not shared with the wider Asda business.
- e) All electronic files and emails exchanged in this context will be password protected, adequately ring-fenced, and only accessible to the Authorised Individuals listed in Annex 1 (Part A) and External Advisers.
- f) The individuals listed in Annex 1 (Part A) do not have any responsibility for the commercial or strategic operations of the Arthur sites and shall not use any information provided as a result of this derogation to intervene in the management or operation of the Arthur business.
- g) The inclusion of Arthur in Asda's insurance arrangements:
 - a. will not be difficult or costly to reverse; and
 - b. will have no influence upon the commercial direction of the Arthur business during the term of the Initial Order.
- h) Should remedial action be required by the CMA, Asda will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from Arthur for the purposes of this derogation will be returned to Arthur, as applicable to the relevant remedial action, and any copies destroyed, except to the extent that record retention is required by law or regulation.

3. Paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order – Access Asda's utilities contracts

The Acquirers submitted that upon completion, Asda will become responsible for ensuring that Arthur has effective access to utilities. [§<]. These arrangements must therefore be replaced on completion to ensure the continued supply of utilities to Arthur

post-closing, including ensuring the continuation of basic functions such as lighting and refrigeration.

The Acquirers submitted that granting Arthur access to Asda's existing utilities arrangements is the only practicable solution to ensure Arthur's continuing operation as a going concern and continued viability as an independent business. [REDACTED].

The CMA consents to a derogation from paragraphs 6(a), 6(g), 6(h) and 6(i) of the Initial Order to permit Arthur to access Asda's existing utilities supply arrangements (which includes the supply of [REDACTED]); and (ii) Asda to receive information pertaining to Arthur in order to extend and maintain the requisite arrangements for Arthur. The CMA grants this derogation strictly on the basis that:

- a) The exchanged information will only be shared with the Authorised Individuals listed in Annex 1 (Part B), which can only be amended with written consent from the CMA (including via email), and External Advisers.
- b) The exchanged information is no more than is strictly necessary to allow the Authorised Individuals and External Advisers to reach a view on the specific matter at hand.
- c) The Authorised Individuals and External Advisers must not discuss this information with any other individuals at Asda.
- d) The Authorised Individuals and External Advisers will be subject to a non-disclosure agreement, in a form approved by the CMA, to ensure that the information is not shared with the wider Asda business.
- e) All electronic files and emails exchanged in this context will be password protected, adequately ring-fenced, and only accessible to the Authorised Individuals listed in Annex 1 (Part B) and External Advisers.
- f) The individuals listed in Annex 1 (Part B) do not have any responsibility for the commercial or strategic operations of the Arthur sites and shall not use any information provided as a result of this derogation to intervene in the management or operation of the Arthur business
- g) The inclusion of Arthur in Asda's utilities contracts:
 - a. will not be difficult or costly to reverse; and
 - b. will have no influence upon the commercial direction of the Arthur business during the term of the Initial Order.
- h) Should remedial action be required by the CMA, Asda will ensure that any records or copies (electronic or otherwise) of business secrets, know-how,

commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from Arthur for the purposes of this derogation will be returned to Arthur, as applicable to the relevant remedial action, and any copies destroyed, except to the extent that record retention is required by law or regulation.

4. Paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order – Asda [X]with respect to certain existing contractual arrangements [X]

The CMA understands that upon completion, Arthur will be covered by a number of Co-op's group contracts and will [X]. Asda anticipates that [X].

The Acquirers submitted that [X]under these contracts would be the most effective solution to ensure the uninterrupted operation of Arthur as a going concern and terms that preserve the financial and commercial position of Arthur as it was prior to the Acquisition.

The CMA consents to a derogation from paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order to permit (i) [X] Arthur's [X] listed in Table 1; and (ii) Asda to receive information pertaining to Arthur in order to extend and maintain the requisite arrangements for Arthur.

Table 1

No.	Area	[X]
1	[X]	[X]
2	[X]	[X]
3	[X]	[X]

The CMA grants this derogation strictly on the basis that:

- a) Any necessary information required to put in place [X] will only be shared with the Authorised Individuals listed in Annex 1 (Part C), which can only be amended with written consent from the CMA (including via email), and External Advisers.
- b) The exchanged information is no more than is strictly necessary to allow Asda to provide the [X].
- c) The Authorised Individuals and External Advisers must not discuss this information with any other individuals at Asda.

- d) The Authorised Individuals and External Advisers will be subject to a non-disclosure agreement, in a form approved by the CMA, to ensure that the information is not shared with the wider Asda business.
- e) All electronic files and emails exchanged in this context will be password protected, adequately ring-fenced, and only accessible to the Authorised Individuals listed in Annex 1 (Part C) and External Advisers.
- f) The individuals listed in Annex 1 (Part C) do not have any responsibility for the commercial or strategic operations of the Arthur sites and shall not use any information provided as a result of this derogation to intervene in the management or operation of the Arthur business.
- g) The provision of [X], as described above:
 - a. will not be difficult or costly to reverse; and
 - b. will have no influence upon the commercial direction of the Arthur business during the term of the Initial Order.
- h) Should remedial action be required by the CMA, Asda will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from Arthur for the purposes of this derogation will be returned to Arthur, as applicable to the relevant remedial action, and any copies destroyed, except to the extent that record retention is required by law or regulation.

5. Paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order – access to financial support from Asda to engage third party support for [X] functions

The Acquirers submitted that upon completion, Asda will become responsible for ensuring that Arthur can continue to operate as a going concern on a standalone basis. The sites held by Arthur were managed as part of the Co-op business and these functions were provided internally by Co-op. [X].

As Arthur [X] to provide these functions following completion. In appropriate circumstances, Arthur's management may decide it is in the best interests of the Arthur business to take advice from Asda's [X].

The Acquirers submitted that permitting (i) Asda to provide funding to Arthur to engage third party support for [X] functions and (ii) in appropriate circumstances, Arthur to request such support from Asda, would be the most effective solution to

ensure the uninterrupted operation of Arthur as a going concern and would ensure that the value of the Arthur business is maintained.

The CMA consents to a derogation from paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order to permit (i) Asda to provide funding to Arthur to engage third party support for certain [X] functions; (ii) Arthur to request such support from Asda and (iii) Asda to receive information pertaining to Arthur in order to extend and maintain the requisite arrangements for Arthur. The CMA grants this derogation strictly on the basis that:

- a) Any necessary information required to put in place the funding will only be shared with the Authorised Individuals listed in Annex 1 (Part D), which can only be amended with written consent from the CMA (including via email), and External Advisers.
- b) The exchanged information is no more than is strictly necessary to allow these actions to take place.
- c) The Authorised Individuals and External Advisers must not discuss this information with any other individuals at Asda.
- d) The Authorised Individuals and External Advisers will be subject to a non-disclosure agreement, in a form approved by the CMA, to ensure that the information is not shared with the wider Asda business.
- e) All electronic files and emails exchanged in this context will be password protected, adequately ring-fenced, and only accessible to the Authorised Individuals listed in Annex 1 (Part D) and External Advisers.
- f) The individuals listed in Annex 1 (Part D) do not have any responsibility for the commercial or strategic operations of the Arthur sites and shall not use any information provided as a result of this derogation to intervene in the management or operation of the Arthur business.
- g) Arthur's access to financial support from Asda, as described above:
 - a. will not be difficult or costly to reverse; and
 - b. will have no influence upon the commercial direction of the Arthur business during the term of the Initial Order.
- h) Should remedial action be required by the CMA, Asda will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from Arthur for the purposes of this derogation will be

returned to Arthur, as applicable to the relevant remedial action, and any copies destroyed, except to the extent that record retention is required by law or regulation.

- i) Arthur may only seek direct support from Asda in relation to urgent [X] in particular in relation to [X], following CMA consent, which may be given by email.

6. Paragraphs 6, 7, 8 and 9 of the Initial Order – exclusion of non-UK EG entities

The Acquirers have sought the CMA's consent to limit the application of the above mentioned provisions of the Initial Order so that they shall apply only to EG entities which engage in activities relating to the UK ('**EG UK Business**'). Accordingly, every other business and legal entity within EG (together the '**EG Excluded Businesses**') would be exempt from the provisions contained in paragraphs 6, 7, 8 and 9 of the Initial Order. The EG Excluded Businesses are as follows:

- i. EG Dutch Finco B.V.
- ii. EG Holdings BV, and its subsidiaries.
- iii. EG AsiaPac Ltd, and its subsidiaries.
- iv. EG America, LLC, and its subsidiaries.

The Acquirers confirmed that none of the above legal entities have any activities that affect the UK, their roles being confined to their respective jurisdictions. In particular, none of these entities:

- i. employ UK-based EG staff,
- ii. hold UK customer/supplier contracts,
- iii. hold assets used for EG's UK operations,
- iv. are in any other way active in EG's UK operations,
- v. provide EG's UK Business with funding or key support services,
- vi. interact professionally with EG's UK Business,
- vii. share tangible or intangible assets with EG's UK Business, or
- viii. share IT systems with EG's UK Business which cannot be effectively ringfenced.

Therefore, based on the information provided to the CMA by the Acquirers, the CMA consents to the obligations in paragraphs 6, 7, 8 and 9 of the Initial Order, ceasing to apply to the EG Excluded Businesses. For the avoidance of doubt, these obligations continue to apply to EG and every one of its subsidiaries bar the EG Excluded Businesses and their respective subsidiaries. The CMA's consent is conditional on the understanding that:

- a) EG's UK Business will ringfence IT systems in order to prevent employees of the EG Excluded Businesses from accessing UK-related commercially sensitive information, and will ensure that this is implemented through EG's training and guidance on implementing compliance with the Initial Order.
- b) Granting this derogation will not have any impact on EG's UK Business operations or on the Arthur business.
- c) There will be no integration between the EG Excluded Businesses and the Arthur business.
- d) Granting this derogation will not prejudice the CMA's remedial options.

Yours sincerely,

[✂]

Adam Phillimore

Assistant Director, Mergers

28 October 2022

Annex 1: Authorised Individuals

Name	Title
Part A: Group Insurance	
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
Part B: Utilities arrangements	
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
Part C: Access to Asda [✂]	
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
Part D: Access to Asda funding to contract [✂]	
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
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