

ACQUISITION BY HSH COLD STORES LIMITED OF ASSOCIATED COLD STORES & TRANSPORT LIMITED

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 HSH Cold Stores Limited, a subsidiary of HSH Midco Limited, which is owned and/or managed by Arcus European Investment Manager LLP, AEIF 2 GP S.à.r.l, Arcus European Investment Manager Netherlands B.V., Arcus European Infrastructure Fund 2 SCSp, AEIF 2 Luxembourg Holdings S.à.r.l, AEIF 2 LH Sub 03 S.à.r.l, Constellation Cold Logistics S.à.r.l, Constellation Cold Logistics United Kingdom S.à.r.l, and Associated Cold Stores & Transport Limited have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 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 Arcus European Investment Manager LLP, AEIF 2 GP S.à.r.l, Arcus European Investment Manager Netherlands B.V., Arcus European Infrastructure Fund 2 SCSp, AEIF 2 Luxembourg

Holdings S.à.r.l, AEIF 2 LH Sub 03 S.à.r.l, Constellation Cold Logistics S.à.r.l, Constellation Cold Logistics United Kingdom S.à.r.l, and their subsidiaries (the **Acquirer Group**), HSH Midco Limited (**HSH Midco**), HSH Cold Stores Limited (**HSH**), and Associated Cold Stores & Transport Limited (**ACS&T**) (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 17 March 2023.
2. This Order applies to the Acquirer Group, HSH Midco, HSH, and ACS&T.
3. 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 the Acquirer Group, HSH Midco, HSH, or ACS&T 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 HSH Midco business and ACS&T business until determination of proceedings

4. Except with the prior written consent of the CMA, the Acquirer Group, HSH Midco, HSH, and ACS&T shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 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 the Acquirer Group or the HSH Midco business with the ACS&T business;
 - (b) transfer the ownership or control of the HSH Midco business or the ACS&T business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the ACS&T business or the HSH Midco business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, the Acquirer Group, HSH Midco, HSH, and ACS&T shall at all times during the specified period take all necessary steps to ensure that, except with the prior written consent of the CMA:

- (a) the ACS&T business is carried on separately from the Acquirer Group and the HSH Midco business, and the ACS&T business's separate sales or brand identity is maintained;
- (b) the ACS&T business and the HSH Midco business are maintained as a going concern and sufficient resources are made available for the development of the ACS&T business and the HSH Midco business, on the basis of their respective pre-merger business plans;
- (c) except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities within, the ACS&T business or the HSH Midco business;
- (d) the nature, description, range and quality of goods or services (or both) supplied in the UK by each of the HSH business and ACS&T business are maintained and preserved;
- (e) except in the ordinary course of business through the separate operation of the two businesses:
 - (i) all of the assets of the ACS&T business and the HSH Midco business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the ACS&T business or the HSH Midco business are disposed of; and
 - (iii) no interest in the assets of the ACS&T business or the HSH Midco business is created or disposed of;
- (f) there is no integration of the information technology of the Acquirer Group or the HSH Midco business with the ACS&T business, and the software and hardware platforms of the ACS&T business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the HSH Midco business and ACS&T business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the ACS&T business will be carried out by the ACS&T business alone and for the avoidance of doubt the Acquirer Group and the HSH Midco business will not negotiate on behalf of the ACS&T business (and vice versa) or enter into any joint agreements with the ACS&T business (and vice versa);
- (h) all contracts of the ACS&T business and the HSH Midco business continue to be serviced by the business to which they were awarded;

- (i) no changes are made to key staff of the ACS&T business or HSH Midco business;
- (j) no key staff are transferred between the ACS&T business and the HSH Midco business or the Acquirer Group;
- (k) all reasonable steps are taken to encourage all key staff to remain with the ACS&T business and the HSH Midco business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the ACS&T business (or any of its employees, directors, agents or affiliates) to the Acquirer Group or HSH Midco business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, 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

- 6. The Acquirer Group, HSH Midco, HSH and ACS&T shall take all necessary steps to ensure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 7. The Acquirer Group, HSH Midco, HSH and ACS&T 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 the Acquirer Group, HSH Midco, HSH and ACS&T and their subsidiaries with this Order. In particular, on 31 March 2023 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 the Acquirer Group, HSH Midco, HSH and ACS&T or other persons of the Acquirer Group, HSH Midco, HSH and ACS&T as agreed with the CMA shall, on behalf of the Acquirer Group, HSH Midco, HSH and ACS&T provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.

8. At all times, the Acquirer Group, HSH Midco, HSH and ACS&T shall actively keep the CMA informed of any material developments relating to the ACS&T business or the HSH Midco business, which includes but is not limited to:
 - (a) details of key staff who leave or join the ACS&T business or the HSH Midco business;
 - (b) any interruption of the ACS&T business or HSH Midco business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the ACS&T business or HSH Midco business including any substantial changes in customers' demand; and
 - (d) substantial changes in the ACS&T business's or HSH Midco business's contractual arrangements or relationships with key suppliers.
9. If the Acquirer Group, HSH Midco, HSH or ACS&T has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that the Acquirer Group, HSH Midco or HSH (or more than one of these) may be directed to appoint under paragraph 10.
10. 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.
11. The Acquirer Group, HSH Midco, HSH and ACS&T shall comply in so far as they are 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

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

'Acquirer Group' means Arcus European Investment Manager LLP, AEIF 2 GP S.à.r.l, Arcus European Investment Manager Netherlands B.V., Arcus

European Infrastructure Fund 2 SCSp, AEIF 2 Luxembourg Holdings S.à.r.l, AEIF 2 LH Sub 03 S.à.r.l, Constellation Cold Logistics S.à.r.l and Constellation Cold Logistics United Kingdom S.à.r.l and their subsidiaries, other than the ACS&T business and the HSH Midco Business;

'ACS&T' means Associated Cold Stores & Transport Limited (Company number 00553154);

'the ACS&T business' means the business of ACS&T and its subsidiaries carried on as at the commencement date;

'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;

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

'commencement date' means 17 March 2023;

'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;

'HSH' means HSH Cold Stores Limited (Company number 04874009);

'HSH Midco' means HSH Midco Limited (Company number 13076994);

'the HSH Midco business' means the business of HSH Midco and its subsidiaries but excluding the ACS&T business, carried on as at the commencement date;

'key staff' means staff in positions of (i) executive or managerial responsibility or (ii) whose performance affects the viability of the business;

'the ordinary course of business' means matters connected to the day-to-day supply of goods or services (or both) by the ACS&T business or HSH Midco business and does not include matters involving significant changes to

the organisational structure or related to the post-merger integration of ACS&T and HSH Midco;

'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 transaction by which HSH and ACS&T have ceased to be distinct within the meaning of section 23 of the Act; and

'the two businesses' means the HSH Midco business and the ACS&T business.

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

Alex White

Assistant Director, Mergers

Compliance statement for the Acquirer Group and HSH Midco / HSH

I [insert name] confirm on behalf of the Acquirer Group and HSH Midco / HSH that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) The Acquirer Group and HSH Midco / HSH has complied with the Order made by the CMA in relation to the transaction on 17 March 2023 (the Order).
 - (b) The Acquirer Group and HSH Midco's / HSH's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by the Acquirer Group or HSH Midco / HSH that might prejudice a reference of the transaction under section 22 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 the Acquirer Group or the HSH Midco business with the ACS&T business;
 - (ii) transfer the ownership or control of the HSH Midco business or the ACS&T business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the ACS&T business or the HSH Midco business to compete independently in any of the markets affected by the transaction.
 - (b) The ACS&T business has been carried on separately from the Acquirer Group and the HSH Midco business, and the ACS&T business's separate sales or brand identity has been maintained.
 - (c) The ACS&T business and the HSH Midco business have been maintained as a going concern and sufficient resources have been made available for the development of the ACS&T business and the HSH Midco business, on the basis of their respective pre-merger business plans.

- (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the ACS&T business or the HSH Midco business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the ACS&T business and the HSH Midco business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the ACS&T business and the HSH Midco business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the ACS&T business or the HSH Midco business have been disposed of; and
 - (iii) no interest in the assets of the ACS&T business or the HSH Midco business has been created or disposed of.
- (g) There has been no integration of the information technology of the ACS&T business or the Acquirer Group with the HSH Midco business, and the software and hardware platforms of the ACS&T business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the ACS&T business have been carried out by the ACS&T business alone and, for the avoidance of doubt, the Acquirer Group and HSH Midco business has not negotiated on behalf of the ACS&T business (and vice versa) or entered into any joint agreements with the ACS&T business (and vice versa).
- (i) All contracts of the ACS&T business and the HSH Midco business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the ACS&T business or the HSH Midco business.

- (k) No key staff have been transferred between the ACS&T business and the HSH Midco business or the Acquirer Group.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the ACS&T business and the HSH Midco business.
- (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 either of the two businesses, has passed, directly or indirectly, from the ACS&T business (or any of its employees, directors, agents or affiliates) to the Acquirer Group or HSH Midco business (or any of their 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 or joined the ACS&T business or the HSH Midco business;
 - (ii) interruptions of the ACS&T business or the HSH Midco business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the ACS&T business or the HSH Midco business; or
 - (iv) substantial changes in the ACS&T or HSH Midco business's contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. The Acquirer Group, HSH Midco and their subsidiaries remain in full compliance with the Order and will, or will take all necessary steps to ensure that ACS&T, continue actively to keep the CMA informed of any material developments relating to the ACS&T or the HSH Midco businesses in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

- 5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

- 6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF THE ACQUIRER GROUP, HSH MIDCO, HSH

Signature

Name

Title

Date

Compliance statement for ACS&T

I [insert name] confirm on behalf of ACS&T that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) ACS&T has complied with the Order made by the CMA in relation to the transaction on 17 March 2023 (the Order).
 - (b) ACS&T's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by ACS&T that might prejudice a reference of the transaction under section 22 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 the ACS&T business with the Acquirer Group and HSH Midco business;
 - (ii) transfer the ownership or control of the HSH Midco business or the ACS&T business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the ACS&T business or the HSH Midco business to compete independently in any of the markets affected by the transaction.
 - (b) The ACS&T business has been carried on separately from the Acquirer Group and HSH Midco business, and the ACS&T business's separate sales or brand identity has been maintained.
 - (c) The ACS&T business has been maintained as a going concern and sufficient resources have been made available for the development of the ACS&T business, on the basis of its pre-merger business plans.
 - (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the ACS&T business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the ACS&T business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the ACS&T business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the ACS&T business have been disposed of; and
 - (iii) no interest in the assets of the ACS&T business has been created or disposed of.
- (g) There has been no integration of the information technology of the ACS&T or the Acquirer Group with the HSH Midco business, and the software and hardware platforms of the ACS&T business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the ACS&T business have been carried out by the ACS&T business alone and, for the avoidance of doubt, the Acquirer Group and HSH Midco business has not negotiated on behalf of the ACS&T business (and vice versa) or entered into any joint agreements with the ACS&T business (and vice versa).
- (i) All contracts of the ACS&T business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the ACS&T business.
- (k) No key staff have been transferred between the ACS&T business and the HSH Midco business or the Acquirer Group.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the ACS&T business.
- (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 either of the

two businesses, has passed, directly or indirectly, from the ACS&T business (or any of its employees, directors, agents or affiliates) to the Acquirer Group or HSH Midco businesses (or any of their 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 or joined the ACS&T business;
 - (ii) interruptions of the ACS&T business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the ACS&T business; or
 - (iv) substantial changes in the ACS&T business's contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. ACS&T and its subsidiaries remain in full compliance with the Order and will, or will take all necessary steps to ensure that ACS&T, continue actively to keep the CMA informed of any material developments relating to the ACS&T business in accordance with paragraph 8 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fining, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF ACS&T

Signature

Name

Title

Date