

## **COMPLETED ACQUISITION BY HSH COLD STORES LIMITED OF ASSOCIATED COLD STORES & TRANSPORT LIMITED**

**Directions issued on 24 March 2023 pursuant to paragraph 10 of the Initial Enforcement Order imposed by the Competition and Markets Authority on 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, HSH Midco Limited, HSH Cold Stores Limited, and Associated Cold Stores & Transport Limited on 17 March 2023.**

Whereas:

- a) On 16 December 2022, 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, and Constellation Cold Logistics United Kingdom S.à.r.l, entered into a sale and purchase agreement to acquire the entire shareholding of Associated Cold Stores & Transport (the '**Transaction**').
- b) Following the Transaction, the CMA has reasonable grounds for suspecting that it is or may be the case that HSH Cold Stores Limited and Associated Cold Stores & Transport Limited have ceased to be distinct within the meaning of section 23 of the Enterprise Act 2002 (the '**Act**').
- c) On 17 March 2023, the Competition and Markets Authority ('**CMA**') made an Initial Enforcement Order (the '**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, HSH Midco Limited, HSH Cold Stores Limited, and Associated Cold Stores & Transport Limited (together, the '**Addressees**') in

accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action.

- d) the Order is still in force.
- e) The CMA now issues written directions under paragraph 10 of the Order that, for the purpose of securing compliance with the Order, the Addressees must appoint a monitoring trustee ('**MT**') in accordance with the terms provided for in Annex A and must comply with the obligations set out in Annex A. The terms defined in the Order have the same meaning in these written directions, unless otherwise specified or the context requires otherwise.

**Alex White**

Assistant Director, Mergers

Competition and Markets Authority

24 March 2023

## Annex A

### Directions to appoint a monitoring trustee

#### Interpretation

In these directions:

<b>‘Acquirer Group’</b>	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;
<b>‘the Act’</b>	means the Enterprise Act 2002;
<b>‘ACS&amp;T’</b>	Associated Cold Stores & Transport Limited (Company number 00553154) (and <b>‘the ACS&amp;T business’</b> shall be construed as meaning the business, trade and assets of ACS&T and its subsidiaries, carried on as at the Commencement Date);
<b>‘the Addressees’</b>	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, Constellation Cold Logistics United Kingdom S.à.r.l, and their subsidiaries, HSH Midco Limited, HSH Cold Stores Limited, and Associated Cold Stores & Transport Limited;
<b>‘an affiliate’</b>	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;
<b>‘business’</b>	has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act;
<b>‘CMA’</b>	means the Competition and Markets Authority;
<b>‘Commencement Date’</b>	means the commencement date of the Order, 17 March 2023;

<b>‘Derogations’</b>	means any derogations granted whether before or after the appointment of the MT by the CMA by which the Addressees may undertake certain actions that derogate from the Order;
<b>‘HSH Midco’</b>	means HSH Midco Limited (Company number 13076994) (and <b>‘the HSH Midco business’</b> shall be construed as meaning the business of <b>HSH Midco</b> and its subsidiaries but excluding the ACS&T business, carried on as at the Commencement Date);
<b>‘MT’</b>	means the monitoring trustee appointed in accordance with these directions;
<b>‘Order’</b>	means the initial enforcement order made by the CMA on 17 March 2023 and 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, HSH Midco Limited, HSH Cold Stores Limited, and Associated Cold Stores & Transport Limited;
<b>‘Transaction’</b>	means the transaction by which HSH and ACS&T have ceased to be distinct within the meaning of section 23 of the Act;
<b>‘subsidiary’</b> ,	has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and <b>‘subsidiaries’</b> shall be construed accordingly);

Terms and expressions defined in the Order have the same meaning in these directions, and the singular shall include the plural and vice versa, unless otherwise specified or the context requires otherwise.

## **Appointment**

1. The Addressees must appoint an MT in order to ensure their compliance with the Order, in particular to:
  - a. monitor and report to the CMA on compliance by the Addressees with the Order; and
  - b. support the CMA taking any action to ensure compliance with the Order and maintain the HSH Midco and ACS&T businesses as going concerns.

2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out its functions to the best of its abilities.
3. The Addressees must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of the Addressees as set out in these directions.

## General

4. The MT must possess appropriate qualifications and experience to carry out its functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. The Addressees shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out its functions.
7. The Addressees must appoint the MT as soon as is reasonably practicable and in any event by **5pm on Friday 31 March 2023** (or such longer period as the CMA may reasonably agree in writing, including via email) and the MT will continue to act either until the CMA reaches a decision to clear the Transaction or until the CMA directs that the MT is no longer required.
8. The appointment of an MT by the Addressees is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
  - a. the name and contact details of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on Tuesday 28 March 2023** (or such longer period as the CMA may reasonably agree in writing, including via email);
  - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on Tuesday 28 March 2023** (or such longer period as the CMA may reasonably agree in writing, including via email); and

- c. once the MT has been approved by the CMA and appointed, the Addressees must forthwith provide the CMA with a copy of the agreed terms and conditions of appointment.

## **Functions**

9. The functions of the MT will be to:
  - a. ascertain and report to the CMA in relation to the current level of compliance by the Addressees with the Order;
  - b. assess and report to the CMA in relation to the arrangements made by the Addressees for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
  - c. identify and supervise if necessary the arrangements made by the Addressees for ensuring compliance with the Order;
  - d. monitor compliance by the Addressees with the Order;
  - e. assist the CMA with the consideration of any derogation requests made by the Addressees, and monitor compliance by the Addressees with any derogations granted by the CMA; and
  - f. without prejudice to the right of the Addressees to directly contact the CMA, respond to any questions which the Addressees may have in relation to compliance with the Order, in consultation with the CMA.
10. The MT must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Acquirer Group or the HSH Midco business and the ACS&T business, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by the Addressees with the Order.

## **Obligations of the Addressees**

12. The Addressees, and their respective affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge its functions, including but not limited to:

- a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Acquirer Group, the HSH Midco business, and the ACS&T business as the MT may reasonably require; and
  - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If the Addressees are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification. However, for the avoidance of doubt, the MT has no authority, express or implied, to consent to any derogation or variation of the obligations in the Order, and any opinion of the MT regarding an action or communication does not bind the CMA nor indicate that the CMA has approved or sanctioned the action or communication. Derogations can only be granted by the CMA, and will always be granted in writing.
14. If any of the Addressees have any reason to suspect that the Order may have been breached, it must notify the MT and the CMA immediately.

### **Reporting functions**

15. The MT is required to provide an initial report to the CMA no later than **Tuesday 11 April 2023** (or such longer period as the CMA may reasonably agree in writing, via email), giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:
- a. details of the current extent of compliance with the Order by the Addressees;
  - b. a description of the current arrangements made for the operation of the HSH Midco business and the ACS&T business and for the preservation of the assets required to operate each business; and
  - c. recommendations as to what changes to those arrangements, if any, are necessary.
16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in the MT's view, the Addressees have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:
- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:

- i. anything has caused the MT to be concerned as to whether the Addressees have complied with the Order, and if it has, whether those concerns have been resolved and why;
    - ii. the MT has any remaining doubts or uncertainties as to whether the Addressees have complied with the Order; and
    - iii. anything causes the MT to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);
  - b. details of the performance of the HSH Midco business and the ACS&T business, including any factors that might indicate asset deterioration;
  - c. whether appropriate steps are being taken to maintain the HSH Midco business and the ACS&T business as separate businesses and as going concerns;
  - d. the extent to which the Addressees have cooperated with the MT in its task of monitoring their compliance with the Order and details of any aspects of the cooperation of the Addressees that the MT considers could be improved;
  - e. the extent to which the MT considers that it is in an appropriate position to monitor the Addressees' compliance with the Order and if there is anything that the MT considers would assist it in monitoring compliance;
  - f. any current or anticipated requests for consent to vary, or to seek a derogation from, the Order; and
  - g. the information the MT used to compile the report.
- 17. When providing reports to the CMA, the MT must ensure that it does not disclose any information or documents to the CMA which the Addressees would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires the Addressees to produce any information or documents to the MT which are privileged.
- 18. The MT must immediately notify the CMA in writing if it forms a reasonable suspicion that the Order has been breached, or if the MT considers that it is no longer in a position to effectively carry out its functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
- 19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should



not be disclosed to any of the Addressees, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.