

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 29 July 2023**

ACQUISITION BY ANGLO BEEF PROCESSORS UK OF CERTAIN ASSETS OF SCOTBEEF LIMITED

We refer to your letters and accompanying notes dated 18 July 2023 and 25 July 2023 requesting that the CMA consents to derogations to the Initial Enforcement Order of 29 July 2023 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save with the written consent of the CMA, ABP, Anglo Beef Processors and ABP UK are required to hold separate the Target business from the ABP business and refrain from taking any action which might prejudice a reference under section 22 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, ABP, Anglo Beef Processors and ABP UK may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a), 6(a) and 6(l) of the Initial Order

ABP submits that the Target business requires the following licences to conduct its business in accordance with applicable law:

- (i) a permit granted by the Scottish Environment Protection Agency to operate a 'Part A' installation under the Pollution Prevention and Control (Scotland) Regulations 2012 in respect of its operations at the Bridge of Allan site;
- (ii) a full approval granted by Food Standards Scotland under the Retained Food Hygiene Rules Regulation in respect of its operations at the Bridge of Allan site;

- (iii) a full approval granted by Food Standards Scotland under the Retained Food Hygiene Rules Regulation in respect of its operations at the Queenslie site; and
 - (iv) a separate, conditional approval granted by Food Standards Scotland under the Retained Food Hygiene Rules Regulation in respect of its operations at the Queenslie site,
- (together, the **Approvals**).

ABP further submits that each Approval is currently held by Scotbeef but, to remain valid, will need to be transferred / reissued to ABP UK (as the new owner of the Target business) as soon as possible following completion of the CMA's merger review. While the Approvals themselves will be transferred/reissued to ABP UK following completion of the CMA's merger review, a degree of preparatory work and ongoing engagement with the relevant regulatory bodies will be required while the Interim Order is in force to ensure the Approvals can be put in place at the right time. ABP submits that it would be unlawful for ABP UK to operate any of the Target sites without the requisite Approvals.

ABP UK therefore requests a derogation from paragraphs 5(a), 6(a) and 6(l) to allow it to acquire licences and approvals, including by carrying out preparatory work relating to such licences and approvals, that are necessary to operate the Target business, in each case with effect from the time at which the existing licence or approval held by Scotbeef lapses or is withdrawn by the relevant issuing authority.

The CMA consents to ABP UK's request for a derogation on the basis that:

- a) the Approvals are necessary for ABP to maintain the Target business as a going concern;
- b) any information provided to ABP by the Target business in connection with the Approvals is limited to that which is strictly necessary to secure the Approvals;
- c) such information would be shared only with [X] and [X] (together the **Approvals Authorised Individuals**) who are not directly engaged in, nor responsible for making commercial or strategic decisions with regards to, ABP UK's business. The identity of the Approvals Authorised Individuals cannot be changed except through written consent by the CMA (which can be given via email);
- d) the Approvals Authorised Individuals must enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing any

information received from the Target business in connection with the Approvals from being shared with any part of ABP's business;

- e) should remedial action be required by the CMA in relation to the Target business, 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 the Target business for the purposes of this derogation will be returned to the Target business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- f) all electronic files and emails exchanged in this context will be password protected, adequately ring-fenced, and only accessible to the Approvals Authorised Individuals;
- g) this derogation will not introduce incremental barriers to a divestment remedy, should one be required, as any prospective acquirer will need to obtain the Approvals to operate the Target business as currently conducted; and
- h) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

2. Paragraphs 6(b), 6(c), 6(d), 6(e), 6(h) and 6(i) of the Initial Order

ABP submits that, through its subsidiaries, it owns several businesses for which there are no horizontal overlaps or direct vertical relationships with the activities of the Target business (together, the **Unrelated Businesses**). ABP submits that the Unrelated Businesses comprise:

- (i) Olleco, a company incorporated in England and Wales (registered number 5878742) which has its registered office at Battlefield Road, Shrewsbury, Shropshire, SY1 4AH. Olleco's activities include: (i) the sale of cooking oil; (ii) the collection of used cooking oil and food waste from food service and food manufacturing businesses; and (iii) the conversion of used cooking oil into renewable energy sources. Olleco is active in the UK, Ireland and, more recently, in Spain and The Netherlands.
- (ii) C&D Foods, a company incorporated in Ireland (registered number 26191) which has its registered office at Edgeworthstown (Mostrim), Co. Longford, Ireland. C&D Foods is engaged in the manufacture of private label pet food and has manufacturing facilities in Ireland, the UK, France, The Netherlands, Spain, Denmark and Austria. Its customers comprise food retailing groups

and specialist petfood and pet supplies providers located in the UK and Europe.

ABP therefore requests a derogation to exclude the Unrelated Businesses from paragraphs 6(b), 6(c), 6(d), 6(e), 6(h) and 6(i) of the Initial Order, such that they cease to apply to the Unrelated Businesses.

The CMA consents to ABP's request for a derogation on the basis that:

- a) there is no horizontal overlap or direct vertical relationship with the activities of the Target business;
- b) the viability and competitive capability of ABP's UK meat processing business operated by ABP UK is not dependent on the Unrelated Businesses;
- c) ABP UK staff do not interact with staff from the Unrelated Businesses from an operational perspective, nor do staff have dual responsibilities in respect of both ABP's UK meat processing business operated by ABP UK and the Unrelated Businesses;
- d) the tangible and intangible assets (including intellectual property rights) of ABP's UK meat processing business operated by ABP UK are not also used by the Unrelated Businesses;
- e) customers and/or supplier contracts or relationships are not combined between the UK meat processing business conducted by ABP UK and the Unrelated Businesses;
- f) each Unrelated Business has its own discrete back-office support functions, and there is therefore no risk that commercially-sensitive, confidential or proprietary information belonging to ABP's UK meat processing business operated by ABP UK can flow back to the Unrelated Businesses;
- g) ABP's UK meat processing business operated by ABP UK operates on separate IT systems to those operated by the Unrelated Businesses;
- h) there are, in practice, no other material links between ABP's UK meat processing business operated by ABP UK and the Unrelated Businesses (and in particular the services provided by each business are not purchased together by their respective customers); and
- i) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be

justified by the CMA's decision on a reference.

Yours sincerely,

Matteo Alchini

Assistant Director, Remedies Business and Financial Analysis

8 August 2023