

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 6(a), 6(c), 6(e), 6(f) and 6(g) of the Initial Order

[X]. Accordingly, ABP requests a derogation from paragraphs 6(a), 6(c), 6(e), 6(f) and 6(g) of the Initial Order in order to take steps to rectify these deficiencies. These steps involve:

- (i) the installation of [X] at the Bridge of Allan and Queenslie sites (the **IT Systems**);
- (ii) the installation, across the Bridge of Allan and Queenslie sites, of [X] (collectively, the **De-boning Equipment**); and
- (iii) the provision of training to the Target business' employees by a combination of supplier personnel and ABP UK personnel on the operation of the IT

Systems and the De-boning Equipment to ensure that they are used safely and effectively.

ABP submits that these remedial measures are crucial to retaining or regaining the Target business' Key Customers, without which the Target business will cease to be viable as a going concern in the short term.

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

- a) it is strictly necessary to retaining or regaining the Target business' Key Customers, without which the Target business will cease to be viable as a going concern in the short term;
- b) it is limited to the IT Systems and De-boning Equipment, which are required to secure the Target business' ongoing viability and competitiveness while the Initial Order is in force;
- c) no other aspects of the Target business' IT Systems will be upgraded while the Initial Order is in force without the separate written consent of the CMA (which can be provided by email);
- d) any training provided by ABP staff to the Target business' staff will be limited to the operation of the IT Systems and the De-boning Equipment;
- e) there will be no exchange of confidential information between the Target business and ABP's business as a result of the proposed IT Systems and Equipment upgrades;
- f) the installation and subsequent maintenance of the Target business' IT Systems will not result in any integration with the ABP business;
- g) the Target business' IT Systems can be promptly transferred to, or replaced by, a third party purchaser should this be necessary as part of a divestment by ABP of the Target business; 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(c), 6(i), 6(j) and 6(k) of the Initial Order

ABP submits that several operational management positions in the Target business are currently vacant or will become vacant on completion of the Transaction. These positions are, or were, occupied by Scotbeef staff. Addressing these vacancies

immediately on completion of the Transaction is necessary to ensuring the continued viability of the Target business in the short term.

ABP submits that it has explored options to fill these vacancies with candidates who are not existing ABP UK employees where possible, by looking to retain the Target business' employees and looking to appoint third parties to fill the vacancies. However, ABP submits that it has not been possible to fill all the vacancies this way. ABP submits that Scotbeef has limited resources to operate its own business and so would be unable to reallocate its staff to the Target business (even on a temporary basis). As such, ABP submits that there are no other viable candidates among Scotbeef's retained employees who could be temporarily seconded to the Target business while the Initial Order is in force. ABP also submits that there is insufficient time available to appoint third parties to fill all these vacancies without compromising the operational capacity of the Target business in the short term.

ABP therefore requests a derogation from paragraphs 6(c), 6(i), 6(j) and 6(k) to allow it to fill certain management positions in the Target business with effect from completion of the Transaction. Specifically, it seeks consent to appoint:

- (i) [REDACTED] as CEO;
- (ii) [REDACTED] as Technical Manager for both the Bridge of Allan and Queenslie sites;
- (iii) [REDACTED] as HR Director for both sites;
- (iv) [REDACTED] as IT Manager;
- (v) [REDACTED] as COO for the Queenslie site;
- (vi) [REDACTED] as the primary Managing Director for the Bridge of Allan site;
- (vii) [REDACTED] as Site Procurement Manager for the Bridge of Allan site; and
- (viii) [REDACTED] as Financial Controller.

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] are each referred to henceforth as the **'ABP UK Appointees'**.

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

- a) these appointments are strictly necessary to preserve the viability and competitive capability of the Target business;
- b) there are no alternative viable staffing options within the limited timeframe available and each appointee has the necessary experience and expertise to

assume their respective role within the Target business;

- c) each appointee, including each ABP UK Appointee, will be solely allocated to the Target business from completion of the Transaction and will not have any involvement with ABP's business while the Initial Order is in force;
- d) each appointee will be dedicated to the Target business and, as such, will act in the best commercial interests of the Target business while the Initial Order is in force;
- e) none of the appointees, including the ABP UK Appointees, will have lines of communication with ABP, other than with respect to Consent Matters, as defined in the Delegation of Authority derogation below. When pursuing these lines of communication, each of the appointees will follow each of the conditions of the Delegation of Authority derogation;
- f) none of the ABP UK Appointees will be involved in any activities related to bidding for new contracts (including pricing), unless the CMA provides written consent (which can be provided via email);
- g) such appointments will not result in the integration of ABP UK's business with the Target business;
- h) such appointments will not prevent any action the CMA may need to take in order to ensure compliance with the Initial Order (e.g. requiring ABP to appoint a hold separate manager); 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.

3. Paragraph 6(a), 6(c) and 6(l) of the Initial Order

ABP submits that it must be able to exercise some level of oversight over the Target business in circumstances where the Target business is proposing to incur material unexpected expenditure or material new liabilities, or in the event that the senior managers of the Target business were incurring material expenses.

ABP therefore requests a derogation from paragraphs 6(a), 6(c) and 6(l) to allow it to exercise oversight over the Target business in relation to certain key matters, by requiring the Target business to seek the consent of ABP's [REDACTED] (the proposed **Authorised Individual**), prior to giving effect to any of the actions (the **Consent Matters**) set out in Schedule 1 (*Consent Matters*) (the **Delegation of Authority**). ABP UK submits that the thresholds for the Consent Matters are set at a level which enables

ABP to comply with its obligation to maintain the Target business as a going concern, while ensuring that the Target business can operate independently of ABP while the Initial Order is in force.

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

- a) the Delegation of Authority is necessary to preserve the viability and competitive capability of the Target business;
- b) ABP UK has selected a designated person who is a representative of ABP (not ABP UK) and is not engaged in a commercial or strategic role;
- c) the identity of the Authorised Individual cannot be changed except through written consent by the CMA (which can be given via email);
- d) the thresholds for the level of expenditure that classifies as a Consent Matter can be amended by the CMA via email if the CMA reaches a view that they are leading to frequent reporting which unnecessarily compromises the Target business' independence;
- e) the Authorised Individual must not consult with any other individual in the ABP business in taking decisions on the Consent Matters, and will sign a non-disclosure agreement in a form agreed with the CMA, which:
 - a. covers the treatment of any commercially sensitive information they receive as a result of the Delegation of Authority; and
 - b. ensures that any Target business information accessed for the purposes of the Delegation of Authority would only be used for decisions on Consent Matters, and not for any other business purposes.
- f) the Authorised Individual must not communicate with employees of the Target business except in response to requests for approval of Consent Matters;
- g) ABP UK will notify the CMA of each instance of a Consent Matter being reported to the Authorised Individual and, should the CMA request this, provide the CMA with a summary of the information shared between the Target business and the Authorised Individual concerning each instance of reporting;
- h) in the event of a proposed veto, the Authorised Individual is required to explain his reasoning, and ABP will share this reasoning with the CMA at least one working day in advance of the proposed veto being exercised;
- i) 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; and

- j) 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.

4. Paragraphs 6(a), 6(g), 6(h) and 6(l) of the Initial Order

ABP submits that procuring insurance cover for the Target business is necessary to ensure that the Target business has sufficient protection against relevant risks to its operations, with a view to preserving the Target business as a going concern while the Initial Order is in force. ABP will not acquire any Scotbeef legal entities in connection with the Transaction which could otherwise act as the insured party in respect of the Target business. Accordingly, ABP submits that there is no alternative arrangement for ensuring the Target business has the necessary insurance coverage.

ABP therefore requests a derogation from paragraphs 6(a), 6(g), 6(h) and 6(l) to allow it to procure insurance cover for the Target business while the Initial Order is in force.

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

- a) ABP procures insurance policies for the Target business covering the following heads of potential liability only:
 - (i) [REDACTED];
 - (ii) [REDACTED];
 - (iii) [REDACTED];
 - (iv) [REDACTED];
 - (v) [REDACTED];
 - (vi) [REDACTED];
 - (vii) [REDACTED];
 - (viii) [REDACTED];
 - (ix) [REDACTED];

(x) [REDACTED];

(xi) [REDACTED]; and

(xii) [REDACTED].

- b) any information provided to ABP by the Target business in connection with the insurance procurement process is limited to that which is strictly necessary to secure the necessary insurance cover for the benefit of the Target business;
- c) such information would be shared only with [REDACTED] and [REDACTED] (together the **Insurance Authorised Individuals**) who are representatives of ABP and are not directly engaged in, nor responsible for making commercial or strategic decisions with regards to, ABP UK's business. The identity of the Insurance Authorised Individuals cannot be changed except through written consent by the CMA (which can be given via email);
- k) the Insurance 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 insurance process from being shared with any part of ABP's business;
- d) 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;
- e) all electronic files and emails exchanged in this context will be password protected, adequately ring-fenced, and only accessible to the Insurance Authorised Individuals;
- f) this derogation will not result in any disruption to, or impact the viability of the ABP business or the Target business; and
- g) 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.

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

ABP submits that the Target business currently uses bank accounts that are owned and operated by Scotbeef. These will not be available to the Target business following completion of the Transaction. Given that the Target business is not a person or legal entity, it is not in a position to establish its own bank accounts. ABP submits that, accordingly, the only viable means of securing bank accounts for the Target business is for ABP UK to establish and operate those bank accounts.

ABP therefore requests a derogation from paragraphs 5(a), 6(a) and 6(l) to allow it to establish and operate two dedicated bank accounts for the sole benefit of the Target business.

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

- a) the Target business' financial information is appropriately ring-fenced;
- b) ABP authorises members of the Target business' new senior management to act as signatories in respect of the bank accounts, to ensure that the Target business can operate independently of ABP UK;
- c) no employee of the ABP business will monitor either bank account, unless the CMA provides explicit written consent (which can be given via email);
- d) 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; and
- e) 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.

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

ABP submits that the Target business is expected to [X].

ABP therefore requests a derogation from paragraphs 5(a) and 6(a) to allow it to provide financial support to the Target business to satisfy working capital requirements while the Initial Order is in force.

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

- a) ABP provides financial support to the Target business only for the purposes of satisfying working capital requirements while the Initial Order is in force;
- b) ABP will provide the CMA with fortnightly summaries of any funding provided to the Target business, which will include a description of what the funds are being used for; and
- c) 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.

7. Paragraphs 6(a) and 6(l) of the Initial Order

ABP submits that approximately [X] of the Target business' employees (the **Participating Employees**) participate in Scotbeef's section of the People's Pension Scheme, an occupational pension scheme established as a master trust and provided by BC&E (the **People's Pension Plan**). On completion of the Transaction: (i) the Participating Employees will cease to participate in Scotbeef's section of the People's Pension Plan; and (ii) ABP UK will have statutory auto-enrolment obligations to assess whether such employees meet the qualifying criteria for enrolment in a qualifying auto-enrolment pensions arrangement and to enrol any qualifying Participating Employees in a qualifying pensions arrangement. To comply with that obligation, ABP UK intends to assess Participating Employees and enrol them in one of the ABP's existing pension schemes on and from completion (an **ABP Pension Scheme**).

ABP submits that, separately, Scotbeef currently makes employer contributions in respect of [X] employees of the Target business into plans operated by private third-party pension providers (as opposed to the People's Pension Plan). Whilst ABP UK intends to continue to pay those contributions, ABP UK may need to conduct an assessment, as required by applicable auto-enrolment legislation, of whether these employees meet the qualifying criteria for enrolment in a qualifying auto-enrolment pensions arrangement (which may or not result in a need to enrol one or more of these employees in an ABP Pension Scheme). Were this to be the case they would be treated as Participating Employees.

ABP therefore requests a derogation from paragraphs 6(a) and 6(l) of the Initial Order to permit ABP to assess Participating Employees and enrol them in an ABP Pension Scheme.

The CMA consents to the requested derogation strictly on the basis that:

- a) any information provided to ABP in connection with the pension scheme assessment and enrolments would be limited to that which is strictly necessary

to achieve the aims outlined above;

- b) such information would be shared only with [X] and [X] (together the **Pension Authorised Individuals**), none of whom are directly engaged in, or responsible for making commercial or strategic decisions with regards to, the ABP business;
- c) the identity of the Pension Authorised Individuals cannot be changed except through written consent by the CMA (which can be given via email);
- d) the Pension Authorised Individuals enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing any information received from the Target business and/or any of the Participating Employees in connection with the pension scheme enrolments from being shared with any part of the ABP business; and
- e) 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.

8. Paragraphs 6(a) and 6(l) of the Initial Order

ABP submits that certain senior managers of the Target business (each an **Insured Employee**) have a contractual right to participate in Scotbeef's private medical insurance scheme operated by BUPA. On completion of the Transaction, the Insured Employees' employment will TUPE transfer to ABP UK, and thereafter ABP UK will, pursuant to TUPE, be obliged to honour the Insured Employees' existing contractual rights to have the benefit of private medical insurance cover. To comply with that obligation, ABP UK intends to enrol the Insured Employees in the ABP group's own private medical insurance scheme, which is also operated by BUPA (the **ABP PMI Scheme**).

ABP further submits that it will need to receive information from the Target business and/or individual Insured Employees to allow it to enrol them in the ABP PMI Scheme.

ABP therefore requests a derogation from paragraphs 6(a) and 6(l) of the Initial Order to permit it to enrol the Insured Employees in the ABP PMI Scheme, and to receive information from the Target business and/or individual Insured Employees to allow it to enrol them in the ABP PMI Scheme.

The CMA consents to the requested derogation strictly on the basis that:

- a) any information provided to ABP UK in connection with the pension scheme assessment and enrolments would be limited to that which is strictly necessary

to achieve the aims outlined above;

- b) such information would be shared only with [X] and [X] (together the **BUPA Authorised Individuals**), who are not directly engaged in, nor are they responsible for making, commercial or strategic decisions with regards to the ABP business;
- c) the identity of the BUPA Authorised Individual cannot be changed except through written consent by the CMA (which can be given via email);
- d) each of the BUPA Authorised Individuals will enter into non-disclosure agreements in a form agreed with the CMA, with a view to preventing any information received from the Target business and/or any of the Participating Employees in connection with the pension scheme enrolments from being shared with any part of ABP's business; and
- e) 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

29 July 2023

Schedule 1 (*Consent Matters*)

1. Any capital expenditure in excess of £50,000.
2. All contracts where the level of expenditure exceeds £50,000.
3. The approval of expenses of senior management of the Target business above £10,000.
4. The initiation, engagement, settling or any material decision in relation to any legal proceedings, the value or cost of which might reasonably be expected to exceed £50,000 or which might have criminal liability for any party thereto, except in respect of debt collection in the ordinary course of business.