

## 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 25 July 2023, 7 August 2023, and 23 August 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 and any directions issued under 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(c), 6(i), 6(k) and 6(l) of the Initial Order**

[REDACTED]. Later in April 2023, Scotbeef's board began discussing the possibility of significant redundancies at the Target business in response to losing revenue from [REDACTED]. On 13 July 2023, Scotbeef notified the Secretary of State for Business and Trade of [REDACTED] proposed redundancies at the [REDACTED] site.

ABP submits that it is uncertain whether the Target business will be able to win a new contract with [REDACTED] or anyone else in the short term. This is a view shared by the Target business' HSM. In addition:

- (i) ABP submits that, as is usual in the food processing industry, there would typically be a lead-in time of at least 3 - 6 months for any new contract (and

longer for a large contract), including because a new customer usually needs to provide a period of notice to their incumbent supplier. Accordingly, ABP is confident that there would be ample time for the Target business to scale up resources in the event a new contract was won. By way of examples, ABP won a new contract with [REDACTED] in June 2021, with the handover from the pre-existing supplier then taking another 12 months to finalise; ABP also won a new contract with [REDACTED] in March 2022, with ABP only starting to supply [REDACTED] at the end of May 2022.

- (ii) ABP submits that [REDACTED] ABP fully expects that it would be straightforward to identify and put in place additional resource (either using agency staff or by hiring new employees directly) when required.

ABP further submits that the proposed redundancies are fundamental to ensuring the Target business' continuing viability and competitiveness, while the Initial Order is in force and more generally.

ABP submits that the current labour costs for the pool of employees subject to the proposed redundancies are approximately £[REDACTED] / week, and that there is insufficient meaningful work for each of these employees to do. The HSM has corroborated this.

Finally, ABP submits that the Target business' ability to win new business is contingent on its ability to commence viable and economic operations in light of its current circumstances, and ABP does not consider that it would be able to do so without the proposed redundancies.

ABP therefore requests a derogation to permit:

- (i) The Target business to implement redundancies that are no greater in scale than what Scotbeef had begun planning pre-Merger. The Target business' management plans to make approximately [REDACTED] of the [REDACTED] staff based at the Target business' [REDACTED] site redundant. It does not plan to implement any redundancies at the [REDACTED] site.
- (ii) ABP to receive information from the Target business for the purpose of monitoring, and complying with its own obligations with respect to, the redundancy process.

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

- a) it is strictly necessary in order to preserve the Target business' viability in the short term;
- b) the scale of the redundancies is no greater than what Scotbeef's management

had discussed and planned independently of ABP or the Merger, and, for the avoidance of doubt, the Target business will not implement any additional material redundancy programs without first receiving separate CMA consent;

- c) the Target business will retain a sufficient number of employees to sustain its current levels of service to its existing customers, as well as a buffer of employees which would enable it to meet unexpected increases in demand;
- d) the Target business has a credible plan in place to hire new employees in a timely manner should it succeed in winning new contracts;
- e) the redundancy process will be led by the Target business' management, including the HSM, with ABP's involvement being limited to ensuring its own compliance with employment law;
- f) any information provided to ABP UK by the Target business in connection with the redundancy process is limited to that which is strictly necessary to enable ABP UK to comply with employment law and [X];
- g) such information would be shared only with [X], ABP UK and [X], Linden Foods (**Linden**, a subsidiary of ABP) (together the **Redundancy Authorised Individuals**), who are not directly engaged in, nor are they responsible for making commercial or strategic decisions with regards to, ABP's business. The identity of the Redundancy Authorised Individuals cannot be changed except through written consent by the CMA (which can be given via email);
- h) the Redundancy 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 redundancy process from being shared with any part of ABP's business;
- 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;
- j) all electronic files and emails exchanged in this context will be password protected, adequately ring-fenced, and only accessible to the Redundancy Authorised Individuals; and
- k) 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(a), 6(g) and 6(l) of the Initial Order

ABP submits that the Target business and the ABP business (via Linden) each independently supply products to members of the [X] group ([X]).

ABP further submits that a normal, ordinary course of business feature of the relationship between any retail customer and its meat suppliers is ongoing dialogue between that customer and its suppliers in order to plan and manage volumes on an ongoing basis, in light of the customer's demand. Consequently, [X] continues to work with the Target business and is in regular discussions with the Target business management team in order to manage (and, potentially, increase) order volumes from the Target business. [X] similarly engages with Linden for the purpose of managing its order volumes from ABP.

ABP and [X] submit that it is critical for planning purposes, especially in the lead up to particularly busy periods like Christmas, that it is able to hold joint meetings with suppliers responsible for supplying the same SKUs. This is to ensure consistency in quality, and also to receive the necessary assurances that the various suppliers will be able to meet [X]'s demands. Importantly, these meetings enable suppliers to prepare contingency plans they can all work towards to ensure [X] is fully stocked even if one of the suppliers, for whatever reason, is unable to supply [X] in full.

[X] further submits that it already holds meetings comparable to the ones described above (ie limited to production planning and quality control) involving competing suppliers who supply [X] with the same SKUs.

ABP therefore requests a derogation to permit it to meet with [X] jointly with the Target business in order to engage in production planning (the **Joint [X] Discussions**).

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

- a) the Joint [X] Discussions will be strictly limited to production planning;
- b) commercial terms will not be discussed during the Joint [X] Discussions;
- c) the MT will be present, virtually or in person, during the Joint [X] Discussions;
- d) only the following staff will be involved in the Joint [X] Discussions:
  - (i) for the Target business: [X];
  - (ii) for Linden: [X];

Together, the **Planning Personnel**;

- e) to the extent that any confidential information is exchanged between ABP and the Target business, this will be limited to the extent strictly necessary for production planning and scheduling;
- f) each of the Planning Personnel will sign an NDA in a form approved by the CMA which will make clear that the only permitted topic of discussion at the Joint [X] Discussions is production planning / scheduling; and that any matters relating to commercial terms in place (or otherwise contemplated) between each of the Target Business and ABP on the one hand, and [X] on the other hand, is expressly prohibited;
- 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.

### **3. Paragraphs 6(c), 6(i) and 6(j) of the Initial Order**

ABP submits that [X], the Target business' [X], is taking a period of annual leave from 28 August 2023 to 10 September 2023 inclusive. [X] has overall responsibility for overseeing the Target business' accounting activities and ensuring that its accounting ledgers accurately reflect the transactions it enters into. She is also responsible for monitoring the Target business' cashflow position and ensuring that it requests sufficient funding from ABP to allow it to pay its debts as they fall due in accordance with the terms of the sixth derogation granted by the CMA on 29 July 2023 (the **Financial Support Derogation**). It is therefore crucial that appropriate holiday cover be put in place during [X] absence from work.

In addition, [X] was appointed as the Target Business' primary planning manager at the Bridge of Allan site after the CMA approved the second derogation of 29 July 2023 (the **Planning Appointments Derogation**). ABP submits that since his appointment, [X] has been consistently working overtime outside of normal business hours to ensure that the Bridge of Allan site continues to operate efficiently and within service levels agreed with the Target business' remaining customers. However, it is not sustainable for him to continue to do so unsupported and it is therefore proposed that an assistant be appointed to support [X] in discharging his responsibilities.

ABP therefore requests a derogation to permit ABP to appoint:

- (i) [X] to temporarily perform [X] role [X] during her period of annual leave from 28 August 2023 to 10 September 2023 inclusive. [X] key responsibilities will be to oversee the accounting activities of the Target business and ensure that its accounting ledgers accurately reflect the transactions it enters into. He will

also be responsible for monitoring the Target business' cashflow position and ensuring that it requests sufficient funding from ABP to allow it to pay its debts as they fall due in accordance with the terms of the Financial Support Derogation. [X] would return to his usual role as a [X] at ABP when [X] returns to work on 11 September 2023.

- (ii) [X] as Primary Planning Assistant Manager (Bridge of Allan), to support [X] in his capacity as [X]. [X] key responsibility would be to support the efficient running of the Bridge of Allan site – in particular to assist [X] to ensure that:
  - (i) service levels agreed with customers are maintained and appropriate production specifications are satisfied, including scheduling kill plans and loading plans, identifying products available for third party sale and advising the commercial team of up-to-date plans; and
  - (ii) that livestock purchasing is matched with production scheduling (across both the abattoir and boning hall at Bridge of Allan) in order to meet the downstream demand at the Queenslie retail packing site.

ABP submits that these proposed appointments cannot, in the circumstances, be realistically filled by individuals other than ABP appointees in the time available and are both time-critical.

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) [X] will be solely allocated to the Target business and will not have any involvement with ABP's business while the Initial Order is in force;
- d) [X] will be solely allocated to the Target business, and will have no involvement with the ABP business, during the entirety of his appointment at the Target business;
- e) 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 (and in the case of [X] for the entire duration of his appointment at the Target business);
- f) while they are allocated to the Target business neither of the appointees will have lines of communication with ABP, other than: (i) with respect to Consent

Matters, as defined in the third derogation granted by the CMA on 29 July 2023 (the **Delegation of Authority Derogation**); and (ii) with respect to [X] only, in relation to the provision of certain financial information to ABP in accordance with the derogation granted by the CMA on 23 August 2023 (the **Financial Information Derogation**), and requests to ABP for financial support for the Target business in connection with the sixth derogation granted by the CMA on 29 July 2023 (the **Financial Support Derogation**). When pursuing these lines of communication, each of the appointees will follow each of the conditions of the Delegation of Authority Derogation, the Financial Information Derogation and the Financial Support Derogation (as applicable);

- g) neither of the 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);
- h) neither appointment will result in the integration of ABP's business with the Target business;
- i) neither appointment will prevent any action the CMA may need to take in order to ensure compliance with the Initial Order; 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.

Yours sincerely,

Matteo Alchini

Assistant Director, Remedies Business and Financial Analysis

24 August 2023