

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 28 November 2023**

COMPLETED ACQUISITION BY PHARMACY2U LIMITED OF METABOLIC HEALTHCARE LTD

We refer to your letters and accompanying annexes dated 10 November 2023, 20 November 2023, 24 November 2023 and 11 January 2024 requesting that the CMA consents to derogations from the Initial Enforcement Order of 28 November 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, the Acquirer Group and Lloyds Direct are required to hold separate the Lloyds Direct business from the Acquirer Group 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, the Acquirer Group and Lloyds Direct may carry out the following actions, in respect of the specific paragraphs:

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

In November 2023 P2U submitted that, pre-merger, Lloyds Direct bought most of the medicines it needed from three major suppliers of generic medicines: [X]. It did so through AAH Pharmaceuticals, a wholesaler with the same parent company as Lloyds Direct. [X] are among the top suppliers of generic medicines and, together, are expected to account for the majority of the supply of generic medicines in the UK.

P2U further submitted that, in response, P2U opened an account with [X] on behalf of Lloyds Direct and in Lloyds Direct's own name, with an invoice address/name of Lloyds Direct at Perivale, and delivery address for the medicines at Perivale. Since P2U established these accounts, Lloyds Direct has been using them to order medicines from [X].

In November 2023 P2U submitted that if Lloyds Direct were forced to cease buying medicines from [X] through these accounts there is a significant risk that Lloyds Direct will be unable to secure the supplies it needs in order to meet customer demand during the immediate term (including over the Christmas period when demand is particularly high). This is due to the following reasons:

- AAH Pharmaceuticals – and any other wholesalers or manufacturers – must first honour guaranteed levels of supply with their existing customers, and will only supply third party/ad hoc customers trading with them on standard terms, if they have any supplies left.
- Suppliers of generic medicines, and their account managers in particular, have told P2U that they do not have the capacity to take on any new accounts (including a stand-alone account for Lloyds Direct, which has never had an account with either [X]).

On 28 November 2023, the CMA consented to a derogation in order for Lloyds Direct to continue to have access to its P2U group account with [X] and to allow Lloyds Direct to place orders with these suppliers using the P2U group account. One of the conditions for agreeing this derogation was that it would lapse once Lloyds Direct had succeeded in establishing direct supply agreements (ie with its own stand-alone accounts) and, in any event, by Monday 15 January 2024.

On 11 January 2024, P2U submitted that Lloyds Direct had been unable to make progress negotiating independent supply arrangements with [X] because:

- (i) The festive period and the spike in demand for generic medicines has absorbed the time and resources of Lloyds Direct's Supply Chain Lead Seconded (defined in derogation (3) of 28 November 2023 and henceforth as the '**Seconded**') and Head of Supply Chain and Logistics to ensure that medicines could be sourced in quantities required. In addition to the ordinary demand increases at this time of year, the pharmacy market is currently experiencing specific stock shortages related to [X] supplies which have involved dedicated procurement activities to source. For this reason, diverting internal resource to the negotiation of new supply arrangements has not been feasible.
- (ii) [X] do not normally deal with pharmacies directly but primarily with wholesalers. Lloyds Direct submits that it would take at least another three months, and probably longer, to be able to negotiate and conclude new independent supply arrangements that are on terms suitable for Lloyds Direct to operate viably under. Suitable terms include payment terms and credit terms extended by any supplier.

- (iii) [X] has threatened not to deal with Lloyds Direct on its own account or under P2U group account terms (despite derogation (5) of 28 November 2023), in part due to Lloyds Direct's financial position.

P2U submits that ultimately, if Lloyds Direct is not able to continue with the current supply arrangements under the P2U group account after 15 January 2024, Lloyds Direct's ability to continue trading in the ordinary course of business will be prejudiced.

P2U therefore requests a further derogation from paragraphs 5(a), 5(g) and 5(l) of the Initial Order in order for Lloyds Direct to continue to have access to its P2U group account with [X] and to allow Lloyds Direct to place orders with these suppliers using the P2U group account.

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

- (a) the accounts with [X] would be in Lloyds Direct's name;
- (b) orders would be made directly by Lloyds Direct (through the Seconded);
- (c) orders would be made in Lloyds Direct's own name;
- (d) supplies would be made directly to, and received directly by, Lloyds Direct;
- (e) P2U would have no visibility of the orders placed and received by Lloyds Direct;
- (f) the terms made available to Lloyds Direct are equivalent or better than the supply terms that were available to Lloyds Direct pre-merger;
- (g) this derogation will cover only the agreements with [X];
- (h) the CMA's consent to this derogation will lapse once Lloyds Direct has succeeded in establishing direct supply agreements (ie with its own stand-alone accounts) and, in any event, by Thursday 28 March 2024;
- (i) only the Authorised Individual (defined in derogation (1) of 28 November 2023) would be able to access the Financial Information (as defined in derogation (2) of the 28 November 2023 derogation consent letter) relating to the orders placed by Lloyds Direct under the P2U group account, in aggregated form (and not on a product level) and for the sole purpose of legitimate financial oversight;
- (j) should remedial action be required by the CMA in relation to the Lloyds Direct 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 Lloyds Direct business for the purposes of

this derogation will be returned to the Lloyds Direct business and any copies destroyed, except to the extent that record retention is required by law or regulation; 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.

Yours sincerely,

Matteo Alchini

Assistant Director, Remedies Business and Financial Analysis

16 January 2024