

**ANTICIPATED ACQUISITION BY ASDA STORES LIMITED
OF NETTO FOODSTORES LIMITED**

**[PROPOSED] UNDERTAKINGS [TO BE] GIVEN BY ASDA STORES LIMITED
TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE
ENTERPRISE ACT 2002**

WHEREAS:

- (a) On 27 May 2010, Asda entered into a sale and purchase agreement under which Asda will acquire the entire share capital of Netto.
- (b) The OFT believes that, as a consequence of that transaction, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in the UK.
- (c) The OFT has a duty to refer an anticipated merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services.
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of Netto by Asda to the CC.
- (f) The OFT further considers that the undertakings given below by Asda are appropriate to remedy, mitigate or prevent the substantial

lessening of competition, or any adverse effect which may be expected to result from it, as specified in the Decision.

NOW THEREFORE Asda hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by Asda, they are accepted by the OFT or the date on which the Acquisition completes, whichever is the latest.

Divestment of the Stage One Divestment Businesses

- 2.1 Asda shall, prior to acceptance of these undertakings by the OFT, enter into legally binding agreements to divest to the satisfaction of the OFT each of the Stage One Divestment Businesses as a going concern to the relevant Proposed Stage One Divestment Purchaser on terms approved by the OFT in advance of acceptance of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, Asda shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Stage One Divestment Businesses.
- 2.3 Asda shall be deemed to have complied with the obligation at paragraphs 2.1 and 2.2 if, prior to acceptance of these undertakings by the OFT, it has entered into a legally binding agreement or agreements with the Proposed Stage One Divestment Purchasers, conditional on OFT approval and completion of the Acquisition, provided that the completion of the divestment of each of the Stage One Divestment Businesses contemplated by such agreements takes place:
 - (a) within a period not exceeding three months after the approval of the relevant purchaser or purchasers by the OFT (or within three months of the effective date of these undertakings, as set out in paragraph 1.1 above, whichever is later) or

- (b) within a period not exceeding 10 Working Days after all the necessary approvals and consents from third parties have been obtained,

whichever is later.

2.4 Without prejudice to the generality of paragraph 2.1 above, Asda shall take the following measures to the extent they may be necessary in the opinion of the OFT to effect the sale of the Stage One Divestment Businesses in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
- (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
- (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
- (d) the formation or winding up of a company,

provided that, for the avoidance of doubt, nothing in this paragraph 2.4 shall be interpreted as (i) preventing or precluding Asda from using the Netto (or similar) brand used to denote stores or (ii) requiring Asda to transfer or licence any such brand to a third party.

2.5 Where Asda divests a Stage One Divestment Business over which it holds or Netto held a freehold interest by way of the grant of a long lease on normal commercial terms of not less than 25 years duration to the relevant Proposed Stage One Divestment Purchaser, it shall in addition sell the freehold interest in that Stage One Divestment Business to a person independent of and unconnected to Asda and the Group of Interconnected Bodies Corporate to which Asda belongs and any Associated Person or Affiliate of Asda or such Group of Interconnected Bodies Corporate with the completion of that sale

occurring within a period not exceeding three months from the date of the commencement of the lease.

- 2.6 Asda shall ensure that each sale and purchase agreement entered into for the purposes of paragraphs 2.1 and 2.3 above include a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the relevant Divestment Business as part of a viable and active business in competition with Asda and other competitors in the provision of grocery retailing.
- 2.7 In the event that Asda fails to divest one or more of the Stage One Divestment Businesses in accordance with paragraphs 2.1, 2.2, 2.3 and 2.5 above, the OFT may, whether or not initiating the Trustee Functions set out below, require Asda to divest that or those Stage One Divestment Businesses as a going concern to a purchaser or purchasers approved by the OFT.

Divestment of the Stage Two Divestment Businesses

- 3.1 Asda shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, effect to the satisfaction of the OFT the divestment of each of the Stage Two Divestment Businesses as a going concern by the end of the Divestment Period to a purchaser or purchasers approved by the OFT in accordance with the provisions of these undertakings.
- 3.2 Without prejudice to the generality of paragraph 3.1 above, Asda shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Stage Two Divestment Businesses.
- 3.3 Asda shall be deemed to have complied with the obligation at paragraphs 3.1 and 3.2 if, prior to the acceptance of these undertakings by the OFT, or as soon as reasonably practicable after that time but in any event by the end of the Divestment Period, it has entered into a legally binding agreement or agreements with a purchaser or purchasers approved in advance by the OFT in writing pursuant to these undertakings (or a legally binding agreement or agreements conditional on such approval) provided that the completion of the divestment of each of the Stage Two Divestment

Businesses contemplated by such agreement or agreements, if later than the end of the Divestment Period, takes place

- (a) within a period not exceeding three months after the approval of the relevant purchaser or purchasers by the OFT (or within three months of the effective date of these undertakings, as set out in paragraph 1.1 above, whichever is later) or
- (b) within a period not exceeding 10 Working Days after all the necessary approvals and consents from third parties have been obtained,

whichever is later.

3.4 Without prejudice to the generality of paragraph 3.1 above, Asda shall take the following measures to the extent they may be necessary in the opinion of the OFT to effect the sale of the Stage Two Divestment Businesses in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
- (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
- (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
- (d) the formation or winding up of a company,

provided that, for the avoidance of doubt, nothing in this paragraph 3.4 shall be interpreted as (i) preventing or precluding Asda from using any Netto (or similar) brand used to denote stores or (ii) requiring Asda to transfer or licence any such brand to a third party.

3.5 Where Asda divests a Stage Two Divestment Business over which it holds or Netto held a freehold interest by way of the grant of a long

lease on normal commercial terms of not less than 25 years duration to the relevant purchaser, it shall in addition sell the freehold interest in that Stage Two Divestment Business to a person independent of and unconnected to Asda and the Group of Interconnected Bodies Corporate to which Asda belongs and any Associated Person or Affiliate of Asda or such Group of Interconnected Bodies Corporate with the completion of that sale occurring within a period not exceeding three months from the date of the commencement of the lease.

- 3.6 Asda shall ensure that each sale and purchase agreement entered into for the purposes of paragraphs 3.1 and 3.3 above include a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the relevant Divestment Business as part of a viable and active business in competition with Asda and other competitors in the provision of grocery retailing.
- 3.7 In the event that Asda fails to divest one or more of the Stage Two Divestment Businesses in accordance with paragraphs 3.1, 3.2, 3.3 and 3.5 above, the OFT may, whether or not initiating the Trustee Functions set out below, require Asda to divest that or those Stage Two Divestment Businesses as a going concern to a purchaser or purchasers approved by the OFT.
- 3.8 Asda shall notify the OFT in writing of the identity of each proposed purchaser that makes an offer for any of the Stage Two Divestment Businesses together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.

Approval of purchaser and terms of divestment

- 4.1 For the purposes of the OFT approving a Divestment Purchaser in accordance with these undertakings, Asda shall, save as required or permitted by the OFT, satisfy the OFT that:
- (a) the acquisition by the Divestment Purchaser remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have

resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (b) the Divestment Purchaser is independent of and unconnected to Asda and the Group of Interconnected Bodies Corporate to which Asda belongs and any Associated Person or Affiliate of Asda or such Group of Interconnected Bodies Corporate;
- (c) the Divestment Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the relevant Divestment Business as part of a viable and active business in competition with Asda and other competitors in the provision of grocery retailing;
- (d) the Divestment Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority including landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Divestment Purchaser of the relevant Divestment Business (or Divestment Businesses) does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

4.2 The OFT may require Asda to provide it with such information and documentation as it may reasonably require to satisfy the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 4.1 above.

Appointment of a Trustee

5.1 The provisions of paragraphs 5.2 to 5.7 below shall apply only as long as Asda has not satisfied, or where the OFT has reasonable grounds for believing that Asda will not satisfy, all or any part of the obligation to divest each of the Stage One Divestment Businesses in accordance with paragraphs 2.1, 2.2, 2.3 and 2.5 above and each of

the Stage Two Divestment Businesses in accordance with paragraphs 3.1, 3.2, 3.3 and 3.5 above.

- 5.2 Within 15 Working Days of the OFT notifying in writing Asda that it must do so, Asda shall propose to the OFT for approval:
- (a) the names of at least two individuals to exercise the Trustee Functions; and
 - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 5.3 Asda and/or any individuals nominated pursuant to paragraph 5.2 shall satisfy the OFT that, save as required or permitted by the OFT:
- (a) such nominated individuals are each EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
 - (b) such nominated individuals are each independent of Asda and of the Group of Interconnected Bodies Corporate to which Asda belong and of any Associated Person or Affiliate of Asda or of such Group of Interconnected Bodies Corporate and of any proposed purchasers of the Stage Two Divestment Businesses and, in the reasonable opinion of Asda, are appropriate to be appointed as Trustee; and
 - (c) such nominated individuals neither are nor are likely to become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.
- 5.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the persons nominated by Asda and their proposed mandates pursuant to paragraph 5.2 above, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, Asda shall use its best endeavours to appoint

from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the OFT pursuant to paragraph 5.2.

5.5 In the event that:

- (a) Asda fails to propose any person or persons in accordance with paragraph 5.2 above; or
- (b) none of the persons proposed by Asda pursuant to paragraph 5.2 is approved by the OFT; or
- (c) Asda are unable for any reason to appoint within the time limit stipulated in paragraph 5.4 any such person following approval by the OFT, Asda shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions on the terms of a mandate approved by the OFT. Asda shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT.

5.6 The appointment of the Trustee pursuant to paragraph 5.4 or 5.5 shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

5.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 5.6 above, Asda shall, if requested to do so in writing by the OFT, use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. Asda shall use its best endeavours to make such appointment

within seven Working Days of receiving the nominations from the OFT. Where required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

The Mandate

6. The terms of the mandate proposed by Asda pursuant to paragraph 5.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:
 - (a) an exclusive, irrevocable mandate to sell any of the Divestment Businesses as required by paragraph 7.1 below to a purchaser or purchasers approved in writing in advance by the OFT at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
 - (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
 - (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of such Divestment Businesses;
 - (d) a mandate to comply with any orders and/or directions given by the OFT; and
 - (e) a mandate to appoint at Asda's expense such advisers as the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

Functions of Trustee

- 7.1 The Trustee shall seek to procure, within such period as may be specified in writing by the OFT, the completion of the sale of the Divestment Businesses at no minimum price, to a purchaser or

purchasers approved by the OFT in accordance with paragraph 7.3 below.

- 7.2 Without prejudice to the generality of paragraph 7.1, the Trustee shall take any of the measures set out in paragraphs 2.4 and 3.4 above in relation to the Divestment Businesses to the extent to which such measures may be necessary to effect the divestment of the Divestment Businesses in accordance with that provision.
- 7.3 The Trustee shall not sell or permit the divestment of any of the Divestment Businesses to a proposed purchaser unless it has obtained the OFT's prior written approval in respect of the identity of that proposed purchaser. The Trustee shall notify the OFT of the identity of a proposed purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 7.4 Pending the divestment of the Divestment Businesses pursuant to paragraph 7.1 above, the Trustee shall monitor Asda's compliance with their obligations under paragraphs 8.1 and 8.2 of these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 7.5 The Trustee may give written directions to Asda to take such steps as may be specified or described in the directions for the purpose of securing Asda's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Asda to accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Businesses which would be unusual in scope, duration or financially having regard to the price and usual market practice in relation to similar disposals.
- 7.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the OFT for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require. The Trustee shall

promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that Asda is failing to comply with any of its obligations under these undertakings.

- 7.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Asda nor shall the Trustee Functions be extended or varied in any way by Asda save with the prior express written consent of the OFT.

Obligations of Asda following appointment of Trustee

- 8.1 Asda shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 8.2 Asda shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 7.5 above; and
 - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

Remuneration of Trustee

9. Asda shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 6 above.

Interim action

10. Pending the divestment of the Divestment Businesses to the satisfaction of the OFT in accordance with the provisions of these undertakings, Asda shall ensure that:
 - (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time the Acquisition completes, each of the Divestment Businesses is maintained as a going concern and sufficient resources are made available for the development of each of the Divestment Businesses on the basis of its pre-merger plans;
 - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Divestment Businesses or the management responsibilities within the Divestment Businesses;
 - (c) except with the prior written consent of the OFT, the Divestment Businesses are maintained and preserved, including facilities and goodwill;
 - (d) the nature, description, range and standard of goods and services currently supplied by the Divestment Businesses are maintained and preserved;
 - (e) except in accordance with paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7 or 7 above, no assets of the Divestment Businesses are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
 - (f) there is no integration of the information technology used by Asda with that used by any of the Divestment Businesses and the software and hardware platforms of the Divestment Businesses shall remain essentially unchanged, except for routine changes and maintenance;

- (g) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Businesses; and
- (h) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to any of the Divestment Businesses shall pass, directly or indirectly from any of the Divestment Businesses (or any employees, directors, agents or Affiliates of the Divestment Businesses) to Asda (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
 - (i) the transfer of any accounting information necessary to allow Asda's Chief Executive, Chief Financial Officer and Group Secretary, the Asda Board and Asda's Small Stores Director to monitor and review the financial performance of the Divestment Businesses provided that such accounting information is not passed on to any other person within Asda;
 - (ii) the transfer of any information required in connection with Asda's dealings with the OFT;
 - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the businesses and including for the avoidance of doubt the compilation of consolidated accounts in line with Asda and Netto's existing accounting practices; and
 - (iv) any steps necessary in order for Asda to comply with these undertakings, including the transfer of information necessary for the divestment process,

provided that, upon divestment of any of the Divestment Businesses, any records or copies (electronic or otherwise) of Confidential Information held by Asda in relation to that Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be

necessary for the purposes of compliance with the obligations in sub-paragraph (iii) of paragraph 10(h) above).

Continued separation

11.1 Except with the prior written consent of the OFT, following the divestment of a Divestment Business, Asda or any member of the Group of Interconnected Bodies Corporate to which Asda belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in that Divestment Business other than (a) any freehold interest in the property associated with a Divestment Business pending divestment of that freehold proprietary interest pursuant to paragraph 2.5 or paragraph 3.5, or (b) any leasehold reversionary interest of that Divestment Business where that Divestment Business is divested by way of granting a sublease, or (c) any overriding leasehold interest reversionary to a leasehold interest of that Divestment Business granted pursuant to section 19 Landlord and Tenant (Covenants) Act 1995; or (d) any leasehold interest in a property associated with a Divestment Business following a default by the owner of the relevant Divestment Business in complying with the terms of the relevant lease; or (e) the long leasehold interest held by Asda in respect of the Divestment Business Property at Athersley, Barnsley (row number 3 in the table in Annex 1);
 - (ii) any Interest in any company carrying on or having Control of that Divestment Business (other than (a) any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Asda or of any members of the Group of Interconnected Bodies Corporate to which Asda belongs which are managed on a discretionary basis; or (b) any investments made in the ordinary course of the operation of any of the other employee benefit and pension schemes of Asda or of any members of the

Group of Interconnected Bodies Corporate to which Asda belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or

(iii) other than in the ordinary course of business, any of the assets of that Divestment Business;

- (b) shall procure that no employee or director of Asda or of any member of the Group of Interconnected Bodies Corporate to which Asda belongs, for so long as they are an employee or director of Asda or of any member of the Group of Interconnected Bodies Corporate to which Asda belongs, holds or is nominated to any directorship or managerial position in that Divestment Business or any company or other undertaking utilising or having Control of that Divestment Business without the OFT's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of that Divestment Business or any company or other undertaking carrying on or having Control of that Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Asda or of any member of the Group of Interconnected Bodies Corporate to which Asda belongs directly or indirectly acquiring that Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

11.2 Where Asda (or any member of the Group of Interconnected Bodies Corporate to which Asda belongs) divests a Divestment Business by way of granting a sub-lease and remains the landlord of the purchaser of the Divestment Business (or the purchaser's successor where the

Divestment Business Property continues to be used for carrying on a business of a grocery store), then for the duration of the sub-lease, Asda shall within 10 working days of being requested to do so (unless agreed otherwise by the OFT):

- (a) consent to any matter requiring landlord's approval under the terms of the lease between Asda and the purchaser of the Divestment Business (except where Asda is required to obtain such consent from another person); and/or
- (b) pass on any request for consent to the freehold owner of the property or relevant third party, as appropriate.

New Divestment if Asda obtains possession of a Divestment Business Property

12.1 In the event that, following divestment of a Divestment Business in a manner that has involved Asda assigning an existing lease or granting a sub-lease to the purchaser of the Divestment Business, Asda benefits from or becomes subject to an Occupation Interest (so long as Asda so benefits or becomes so subject during the term of the lease assigned or sub-lease granted by Asda as part of such divestment), Asda shall:

- (a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the OFT in writing of that fact; and
- (b) using its best endeavours and acting in good faith comply with such written directions as the OFT may give to Asda to effect a new divestment of the Occupation Interest to a new purchaser approved by the OFT in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Divestment Business.

12.2 In determining, for the purposes of paragraph 12.1(b), whether to require Asda to effect a new divestment of the Occupation Interest to a new purchaser approved by the OFT in accordance with the

provisions of these undertakings, the OFT may have regard to any change of circumstances since the Decision.

- 12.3 In the event that Asda fails to divest the Occupation Interest in accordance with paragraph 12.1 above, the OFT may, whether or not initiating the Trustee Functions set out in these undertakings, require Asda to divest the Occupation Interest at no minimum price to a purchaser approved by the OFT.
- 12.4 Asda shall notify the OFT in writing of the identity of each proposed purchaser that makes an offer for the Occupation Interest together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.
- 12.5 In the event that the OFT gives written directions under paragraph 12.1 for Asda to effect a new divestment of the Occupation Interest, paragraphs 4, 5, 6, 7, 8 and 9 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to 'Divestment Business' in those paragraphs shall be construed as references to 'Occupation Interest'.

Compliance

- 13.1 Asda shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 13.2 Asda shall procure that any member of the same Group of Interconnected Bodies Corporate as Asda complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as

Asda shall be attributed to Asda for the purposes of these undertakings.

- 13.3 Where any Affiliate of Asda is not a member of the same Group of Interconnected Bodies Corporate as Asda, Asda shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Extension of time limits

14. The OFT may, in response to a written request from Asda, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

Provision of Information

15. Asda shall furnish promptly to the OFT such information within its possession or control, or the possession or control of a member of the same Group of Interconnected Bodies Corporate as Asda, as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

Interpretation

- 16.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 16.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 16.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 16.4 For the purposes of these undertakings:

"Acquisition" means the anticipated acquisition by Asda of Netto pursuant to a sale and purchase agreement dated 27 May 2010;

"the Act" means the Enterprise Act 2002;

"Affiliate" 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 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;

"Asda" means Asda Stores Limited;

"Associated Person" means a person or persons associated with Asda within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"business" has the meaning given by section 129(1) and (3) of the Act;

"CC" means the Competition Commission;

"Confidential Information" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"Decision" means the OFT's decision under section 33 of the Act dated 23 September 2010 in connection with the Acquisition;

"Divestment" shall include, in addition to the sale of freehold property, the transfer of a leasehold interest or the grant of a long lease on normal commercial terms of not less than 25 years duration and the word "divest"

and its derivatives shall be construed accordingly; and "purchase", "purchaser", "acquire" and "acquisition" and "attempted divestment" shall be construed to include both freehold and leasehold transactions;

"Divestment Business Property" means the relevant property associated with each of the Divestment Businesses as at the date of these undertakings.

"Divestment Businesses" means the Stage One Divestment Businesses and the Stage Two Divestment Businesses;

"Divestment Period" means the period of time determined by the OFT and notified in writing to Asda by the OFT;

"Divestment Purchaser" means a Proposed Stage One Divestment Purchaser for the relevant Stage One Divestment Business or a proposed purchaser for a Stage Two Divestment Business;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Key Staff" means staff within the Divestment Business in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

"Netto" means Netto Foodstores Limited;

"Occupation Interest" means an interest in the Divestment Business Property by virtue of which Asda enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Business Property provided always that: (i) the original purchaser (or his successor) is not in

occupation of the Divestment Business Property; and/or (ii) before such interest in the Divestment Business Property arose, the most recent use to which the Divestment Business Property had been put was that of carrying on a grocery store;

“**OFT**” means the Office of Fair Trading;

“**Proposed Stage One Divestment Purchaser**” means the proposed purchaser for the relevant Stage One Divestment Business as listed in Annex 1;

“**Stage One Divestment Business**” means the Netto business from each numbered row of the table in Annex 1 comprising, in respect of each such business, the whole or substantially the whole of the rights, assets, interests and obligations of or associated with that business as operated immediately prior to the date of the Acquisition, including without prejudice to the foregoing, save as required or permitted by the OFT:

- (a) where capable of being transferred, all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of the business;
- (b) where capable of being transferred, all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of the business;
- (c) where capable of being transferred, all or substantially all contracts, leases, commitments and customer orders of or associated with the business; and
- (d) all customer, credit and other records of the business,

provided that:

- (i) where any of those assets, licences and/or contracts listed in (a) to (c) above are not used exclusively in relation to a particular Divestment Business, the only requirement shall be to seek to provide the benefit of such assets, licences and/or contracts in connection with that business, subject to any restrictions which may apply, and

- (ii) for the avoidance of doubt, nothing in this definition shall be interpreted as (i) preventing or precluding Asda from using any Netto (or similar) brand used to denote stores or (ii) requiring Asda to transfer or licence any such brand to a third party.

“Stage Two Divestment Business” means the Netto business from each numbered row of the table in Annex 2 comprising, in respect of each such business, the whole or substantially the whole of the rights, assets, interests and obligations of or associated with that business as operated immediately prior to the date of the Acquisition, including without prejudice to the foregoing, save as required or permitted by the OFT:

- (a) where capable of being transferred, all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of the business;
- (b) where capable of being transferred, all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of the business;
- (c) where capable of being transferred, all or substantially all contracts, leases, commitments and customer orders of or associated with the business; and
- (d) all customer, credit and other records of the business,

provided that:

- (i) where any of those assets, licences and/or contracts listed in (a) to (c) above are not used exclusively in relation to a particular Divestment Business, the only requirement shall be to seek to provide the benefit of such assets, licences and/or contracts in connection with that business, subject to any restrictions which may apply, and
- (ii) for the avoidance of doubt, nothing in this definition shall be interpreted as (i) preventing or precluding Asda from using any Netto (or similar) brand used to denote stores or (ii) requiring Asda to transfer or licence any such brand to a third party.

"Subsidiary" shall be construed in accordance with section 1159 of the Companies Act 2006, unless otherwise stated;

"Trustee" means the person appointed pursuant to paragraph 5.4, 5.5 or 5.7 to carry out the Trustee Functions;

"Trustee Functions" means the functions set out in paragraph 7;

"UK" means the United Kingdom of Great Britain and Northern Ireland;
and

"Working day" means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England.

FOR AND ON BEHALF OF ASDA STORES LIMITED

..... Signature

..... Name

..... Title

..... Date

Authorised Signatory

**Annex 1 - Stage One Divestment Businesses and corresponding
Proposed Stage One Divestment Purchasers**

Number	Netto ID	Town Location	Postcode	Proposed Purchaser
1	105	Accrington	BB5 6RQ	Morrisons
2	78	Ashington	NE63 9AA	Haldanes
3	89	Athersley, Barnsley	S71 3AA	Haldanes
4	90	Blackburn	BB2 1EH	Haldanes
5	35	Boothferry, Hull	HU3 6UU	Haldanes
6	9	Bradford	BD4 9RD	Haldanes
7	84	Bransholme, Hull	HU7 4EE	Morrisons
8	146	Carcroft	DN6 8DN	Haldanes
9	65	Castletown	SR5 3BQ	Morrisons
10	92	Eston, Middlesbrough	TS6 8BL	Haldanes
11	128	Hartlepool	TS24 0RE	Haldanes
12	127	Hull	HU9 5HG	Haldanes
13	133	Hull	HU3 4BG	Haldanes
14	28	Kirkby	L32 8US	Haldanes
15	34	Liverpool	L7 1RJ	Haldanes
16	15	Lundwood, Barnsley	S71 5PN	Haldanes
17	75	Monk Bretton	S71 2QR	Haldanes
18	177	Nuneaton	CV11 4BL	Haldanes

19	18	Retford	DN22 6AE	Haldanes
20	64	Rotherham	S65 1EN	Haldanes
21	168	Rugby	CV21 2DQ	Morrisons
22	57	Stanley	DH9 8AD	Haldanes
23	-	Telford	TF2 8EA	Morrisons
24	184	West Bromwich	B70 7QZ	Morrisons
25	130	Wigan	WN2 5PD	Iceland

Annex 2 - Stage Two Divestment Businesses

Number	Netto ID	Town Location	Postcode
26	66	Barrow In Furness	LA13 9RA
27	30	Bedlington	NE22 6LA
28	50	Birtley	DH3 2PF
29	117	Bolton	BL2 6QT
30	119	Boston	PE21 9BD
31	106	Burnley	BB11 1HA
32	46	Bury	BL8 1AJ
33	16	Castleford	WF10 1QX
34	164	Dunstable	LU5 5DS
35	6	Keighley	BD21 4AJ
36	25	Manchester	M16 8EE
37	14	Armthorpe	DN3 3AG
38	71	Newton Le Willows	WA12 9SE
39	176	Oldbury	B68 9HB
40	51	Ravensthorpe	WF133JR
41	45	Sheffield	S5 0QF
42	62	Sildon	DL4 1DS
43	98	Spennymoor	DL16 6YQ
44	137	Stanton Hill	NG17 3GA

45	193	Tamworth	B79 7NU
46	94	Wallasey	CH44 9DE
47	109	Worsley, Manchester	M38 0FH