

## **NOTICE OF PROPOSAL TO ACCEPT FINAL UNDERTAKINGS**

### **ACQUISITION BY SOMERFIELD PLC OF CERTAIN RETAIL STORES AND OTHER BUSINESS ASSETS OF WM MORRISON SUPERMARKETS PLC**

### **NOTICE OF PROPOSAL TO ACCEPT UNDERTAKINGS REQUIRED TO BE GIVEN IN ACCORDANCE WITH THE ENTERPRISE ACT 2002, SCHEDULE 10**

#### **Introduction**

1. On 23 March 2005 the Office of Fair Trading referred the completed acquisition by Somerfield plc of certain retail stores and other business assets of Wm Morrison Supermarkets plc to the Competition Commission (CC) for investigation and report under section 22 of the Enterprise Act 2002 (the Act).
2. In its report entitled *Somerfield plc and Wm Morrison Supermarkets plc: a report on the acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc* (the report) published on 2 September 2005, the CC concluded that the acquisition resulted in the creation of a relevant merger situation; and that the creation of that situation would be expected to result in a substantial lessening of competition in each of the local markets served by 12 stores.
3. For the purpose of remedying, mitigating or preventing the substantial lessening of competition and any other adverse effects that result from or may be expected to result from the substantial lessening of competition, the CC concluded that Somerfield plc should give undertakings to divest the relevant stores.

#### **Notice of proposal to accept undertakings**

4. The CC, in exercise of the powers conferred by sections 41 and 82 of the Act, proposes to accept undertakings (the Undertakings) from Somerfield Ltd (Somerfield), formerly registered as Somerfield plc, for the purpose of remedying mitigating or preventing the substantial lessening of competition and any other adverse effects that result from or may be expected to result from the substantial lessening of competition identified in the report.
5. A copy of the undertakings is annexed to this Notice (see note (i)). The purpose of the Undertakings is to:
  - require Somerfield to divest the relevant stores to a suitable purchaser who will be independent from Somerfield and have the incentive, financial resources and expertise to maintain and develop the relevant stores as a viable and active business in competition with Somerfield and other competitors in the relevant local grocery retail markets; and
  - ensure that Somerfield will preserve the economic viability, marketability and competitiveness of the relevant stores pending divestiture.
6. The Undertakings may be varied, superseded or released by the CC in accordance with section 82(2) of the Act.

## The next steps

7. In accordance with Schedule 10 of the Act, and consistently with the CC's guidance, the CC is issuing this Notice to provide an opportunity for representations to be made in relation to the Undertakings. However, in accordance with paragraph 9 of Schedule 10, the CC considers that there are special reasons in the context of this merger reference to dispense with the requirements of paragraph 2(2)(f) of Schedule 10 (see note (ii)) and, for the reasons set out in paragraph 8 below, is accelerating the consultation process (see note (iii)).
8. The CC considers that the Undertakings closely reflect the detailed exposition in the report which has been available to interested parties since September 2005. Implementation of remedies was delayed by the litigation brought by Somerfield which was resolved when the Competition Appeal Tribunal upheld the CC's decisions in its judgment of 13 February 2006 (published on 23 February 2006). Further, the importance of implementing remedies quickly and effectively is recognized in the report and the CC's published guidance. In addition, Somerfield has, for business reasons, asked the CC to act quickly.
9. Comments are therefore invited and should be received by the CC no later than 5.00 pm on Tuesday 7 March 2006 (see note (iii)) and should be addressed to:

Anne Jolly  
Inquiry Secretary, Somerfield  
Competition Commission  
Victoria House  
Southampton Row  
London  
WC1B 4AD  
Or email: [anne.jolly@competition-commission.gsi.gov.uk](mailto:anne.jolly@competition-commission.gsi.gov.uk)
10. Before accepting the proposed Undertakings, the CC will have regard to any representations made in accordance with this Notice and may make modifications to them as a result of such representations.

Signed



CHRISTOPHER CLARKE  
Group Chairman  
28 February 2006

### Notes

- (i) The CC has excluded from the Undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. The omissions are indicated by [X].
- (ii) Paragraph 2(2)(f) of Schedule 10 requires that consultation extends for a period of not less than 15 days starting with the date of publication of this Notice.
- (iii) Paragraph 9 of Schedule 10 provides that the CC may dispense with any or all of the requirements of Schedule 10 if it considers that it has special reasons for doing so.

[Date] 2006

**ACQUISITION BY SOMERFIELD PLC OF CERTAIN RETAIL STORES AND OTHER  
BUSINESS ASSETS OF WM MORRISON SUPERMARKETS PLC**

**FINAL UNDERTAKINGS GIVEN BY SOMERFIELD LIMITED TO THE COMPETITION  
COMMISSION PURSUANT TO SECTION 82 OF THE ENTERPRISE ACT 2002**

Pursuant to sections 41 and 82 of the Enterprise Act 2002 (the Act) and following the reference to the Competition Commission (the CC) on 23 March 2005 of the completed acquisition by Somerfield plc (now registered as Somerfield Ltd (Somerfield)) of certain retail stores and other business assets of Wm Morrison Supermarkets plc and the CC's decision that the merger situation would be expected to result in a substantial lessening of competition (the Decision), Somerfield hereby gives to the CC the following undertakings (the Undertakings) for the purpose of remedying, mitigating or preventing the substantial lessening of competition and any other adverse effects that result from, or may be expected to result from, the substantial lessening of competition that the CC has identified.

On 13 May 2005, the CC accepted interim undertakings from Somerfield pursuant to section 80 of the Act, which were subsequently varied on 31 May 2005 and on 21 September 2005. Those interim undertakings shall cease to be in force on acceptance of these Undertakings.

**Section A: Interpretation and definitions**

Except where words and expressions are expressly defined otherwise, the Interpretation Act 1978 shall apply to the Undertakings as it does to Acts of Parliament.

For the purposes of the Undertakings, the following terms shall have the following meaning:

**Acquired Store:** In Filey, Middlesbrough Linthorpe, Newark, Pocklington, Poole, Whitburn, South Shields, Johnstone, Peebles and Yarm, the acquired store described below:

Filey, 3 Murray Street, Store ID 3912

Middlesbrough Linthorpe, 469 Linthorpe Road, Store ID 3872

Newark, Balderton Shopping Centre, Store ID 3873

Pocklington, The Balk, Store ID 3908

Poole Bearwood, King John's Avenue, Store ID 3801

Whitburn, 25 Westmain Street, Store ID 3905

South Shields, 335 Prince Edward Road, Store ID 3820

Johnstone, Houston Square, Store ID 3916

Peebles, Dovcot Road, Store ID 3901

Yarm, 88 High Street, Store ID 3907

**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 from time to time 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;

**Associated Person:** a person associated with Somerfield within the meaning of section 127(4) of the Act including any subsidiary of such a person or persons;

**Commencement Date:** the date of acceptance of the Undertakings by the CC;

**Closed Store:** In Kelso and Littlehampton, the closed store described below:

Kelso, 41 Bowmont Street, Store ID 5351

Littlehampton, 19-23 High Street, Store ID 1472

**Divestiture Trustee:** the person appointed pursuant to paragraphs 23 to 28 to carry out functions during the Trustee Divestiture Period;

**Existing Store:** In [✂], Johnstone, Peebles and Yarm, the existing store described below:

[✂]

Johnstone, High Street, Store ID 3421

Peebles, Northgate, Store ID 3046

Yarm, 9 Healaugh Park, Store ID 2480

**Divestiture Trustee Functions:** the functions referred to in paragraphs 14 to 22 below;

**Final Closing:** the transfer of the legal title of a Relevant Store to a purchaser;

**First Divestiture Period:** the period of [✂] from the Commencement Date or such longer period as the CC may by notice in writing to Somerfield direct and the longer period may be different for individual Relevant Stores;

**Initial Divestiture Period:** the period of [✂] from the Commencement Date;

**Monitoring Trustee:** the person appointed pursuant to paragraphs 33 to 35 of the Undertakings to monitor Somerfield's compliance with its obligations under the Undertakings.

**OFT:** the Office of Fair Trading;

**Relevant Stores** means:

- (a) the acquired stores at Filey, Middlesbrough, Newark, Pocklington, Poole and Whitburn;
- (b) the acquired store at South Shields [✂];
- (c) [✂]
- (d) the existing closed stores at Kelso and Littlehampton; and

(e) either the acquired or existing store at each of Johnstone, Peebles and Yarm respectively as Somerfield or the Divestiture Trustee shall choose.

and references to 'a Relevant Store' or 'the Relevant Store' are to one of the Relevant Stores.

**Report:** the report of the CC on the acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc dated September 2005 and published on 2 September 2005;

**Somerfield:** Somerfield Limited (Company No 01162517), formerly registered as Somerfield plc;

**Subsidiary:** unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended);

**Trustee Divestiture Period:** the period of [~~3~~] from the end of the First Divestiture Period or such other longer period as the CC may by notice in writing direct;

**Working Day:** any day of the week other than a Saturday, Sunday or any other day that is a public holiday in England or Scotland.

## **Section B: Obligation to divest the relevant stores**

1. In order to remedy the substantial lessening of competition and any other adverse effects identified in the report, Somerfield undertakes to divest or procure the divestiture of the Relevant Stores by the end of the First Divestiture Period to one or more purchasers and on terms of sale approved by the CC in accordance with the procedure described in Section C.
2. To carry out the divestiture, Somerfield undertakes to use all reasonable endeavours to find a purchaser and to enter into a legally binding sale and purchase agreement for each of the Relevant Stores by the end of the First Divestiture Period. If Somerfield has not entered into a legally binding sale and purchase agreement with a purchaser for each of the Relevant Stores before the end of the First Divestiture Period in accordance with Section C below, the CC may, after consulting Somerfield, require Somerfield to grant the Divestiture Trustee an exclusive mandate to sell the remaining Relevant Stores in accordance with the procedure described in Section C by the end of the Trustee Divestiture Period.
3. Somerfield shall be deemed to have complied with its obligation to divest if by the end of the First Divestiture Period either:
  - (i) it has obtained a Final Closing in relation to each Relevant Store; or
  - (ii) it has entered into a legally binding sale and purchase agreement for all of the Relevant Stores with a purchaser or purchasers approved in advance by the CC and the Final Closing in respect of the sale of the Relevant Stores takes place within a period not exceeding two months after the approval of the relevant purchase by the CC.

## **Section C. Terms and conditions for the divestment of the relevant store**

4. Somerfield shall only divest a Relevant Store to a purchaser approved in advance by the CC in writing to Somerfield and shall not sell or permit the sale of any Relevant Store unless it has obtained the CC's prior approval in writing.
5. Somerfield shall, within the first three weeks of the Initial Divestiture Period, invite offers (whether conditional or unconditional) to be submitted by a date no later than the last day of the Initial Divestiture Period for the purchase of the Relevant Stores. An invitation may relate to an individual Relevant Store or a number of Relevant Stores taken together. Somerfield shall inform the CC as to which of the stores at Johnstone, Peebles and Yarm it has chosen to invite offers.
6. Somerfield will divest such Relevant Stores to any of the purchasers making offers in accordance with paragraph 5 above, who satisfy the requirements in paragraph 8 below and who have been approved by the CC to acquire such stores in each case.
7. Somerfield shall ensure that the sale and purchase agreement for each Relevant Store shall include the condition that the purchaser shall not within a period of two years of the date of purchase, divest the store, unless approved by the CC in advance in writing.
8. A proposed purchaser, identified in accordance with paragraph 6 above, will need to satisfy the CC that:
  - (a) it is independent of and unconnected with Somerfield;
  - (b) it has the incentive, resources and expertise to maintain and develop the Relevant Store as a viable and active competitor to the stores in the relevant local market and can demonstrate that it offers prices, product quality, product range and customer service comparable to those previously held by the Relevant Stores before the merger as set out in paragraphs 11.26 and 11.30 of the report;
  - (c) it will not be likely, by its acquisition of the Relevant Store, to create an expectation of a substantial lessening of competition in the relevant local market. (In this regard Appendix G to the report identifies certain purchasers that are excluded from acquiring certain named stores.)
9. The CC may require Somerfield or a proposed purchaser or both to provide it with such information and documentation as it may reasonably require to demonstrate to the CC that the proposed purchaser will fulfil the requirements set out in paragraph 8 above and that the Relevant Store in question is being sold in a manner consistent with these Undertakings.
10. In order to determine whether a purchaser meets the requirements of paragraph 8 above or paragraph 12 below, the CC shall have regard to the conclusions contained in paragraphs 11.24 to 11.30 of the report.
11. Somerfield may divest the Relevant Stores individually or in packages, and with any other assets which the CC approves in advance in writing, having regard to the obligations of Somerfield to use its best endeavours and act in good faith to dispose of all the Relevant Stores in accordance with the terms and conditions of these Undertakings.
12. In the event that Somerfield has not within the Initial Divestiture Period, in relation to any Relevant Store received an offer (whether unconditional or conditional) from a person who satisfies the requirements of paragraph 8(b) above, then, after notifying

the CC accordingly, it would be open to Somerfield to market such a Relevant Store to any other person or body provided that person or body:

- (a) is independent of and unconnected with Somerfield;
  - (b) has the incentive, resources and expertise to maintain and develop the Relevant Store as a viable and active competitor to the stores in the relevant local market; and
  - (c) would not be likely as a result of the purchase to create an expectation of substantial lessening of competition in the relevant local market.
13. In the event that Somerfield has not divested a Relevant Store to a purchaser approved by the CC by the end of the First Divestiture Period (or earlier with the agreement of both the CC and Somerfield), the CC may require Somerfield to appoint a Divestiture Trustee in accordance with the procedure set out in paragraphs 23 to 28.

### ***Appointment and functions of the divestiture trustee***

14. The CC may require Somerfield, at any time after the end of the First Divestiture Period, to grant an exclusive mandate, approved in advance by the CC, to a Divestiture Trustee, on such terms and conditions as are approved by the CC following the procedures set out in paragraphs 23 to 28 below and/or on such additional or varied terms as the CC may approve from time to time and remunerated by Somerfield. Somerfield undertakes to ensure that the Divestiture Trustee's mandate shall include the power to:
- (a) negotiate the sale of one or more of the remaining Relevant Stores;
  - (b) negotiate the sale of one or more of the remaining Relevant Stores [✕] and on condition that the purchaser shall not within a period of two years of the date of purchase, divest the store, unless approved by the CC in advance in writing;
  - (c) take any other steps necessary for, or incidental to, the sale of one or more of the remaining Relevant Stores and, where Somerfield agrees, the sale of any other assets pursuant to paragraph 11 above; and
  - (d) carry out such analysis and take any steps as the CC may require in relation to a potential direction by the CC that Somerfield may retain one or more of the Relevant Stores.
15. The Divestiture Trustee may sell a Relevant Store to a purchaser who does not satisfy the requirements in paragraphs 8(b) above provided the purchaser satisfies the requirements of paragraph 12(a) to (c) above.
16. Somerfield undertakes to ensure that the Divestiture Trustee's mandate shall include an obligation on the Divestiture Trustee to sell the remaining Relevant Stores to one or more purchasers within the Trustee Divestiture Period, providing that the CC has given prior written approval of both the proposed purchaser and the terms of the final sale and purchase agreement.
17. The Divestiture Trustee shall, whenever requested by the CC to do so, notify the CC of the identity of each proposed purchaser of one or more of the Relevant Stores as soon as reasonably practicable and in any event at least ten Working Days in

advance of the proposed completion of the proposed sale and purchase agreement in question.

18. In the event that the Divestiture Trustee notifies the CC that it is unable to divest a Relevant Store, the CC may direct the Divestiture Trustee not to divest the Relevant Store.
19. Somerfield undertakes to ensure that the Divestiture Trustee's mandate shall require the Divestiture Trustee to take such measures as it considers necessary to ensure Somerfield's compliance with the undertakings. In particular, the Divestiture Trustee shall be empowered to give written directions to Somerfield to take such steps within its competence as may be specified or described in the directions for the purposes of securing Somerfield's compliance with its obligations under these undertakings or enabling the Divestiture Trustee to carry out the Divestiture Trustee Functions.
20. Somerfield undertakes to ensure that the Divestiture Trustee's mandate shall require the Divestiture Trustee, as soon as reasonably practicable, to comply at all times with any reasonable instructions or written directions made by the CC for the purposes of carrying out or securing compliance with these undertakings (or any matter incidental thereto) and to provide to the CC such information and reports in relation to the carrying out of the Divestiture Trustee Functions and the progress of the divestment process as the CC may require from time to time. In addition, the Divestiture Trustee should be required promptly to report in writing to the CC if the Divestiture Trustee concludes on reasonable grounds that Somerfield is failing to comply with any of its obligations under these undertakings.
21. For the purposes of fulfilling the functions of the Divestiture Trustee, Somerfield undertakes to ensure that the Divestiture Trustee shall not be bound by any instructions or requests from Somerfield nor shall the Divestiture Trustee Functions be extended, varied, waived or released in any way by Somerfield save with the express prior written consent of the CC.
22. Pending the sale of all of the Relevant Stores, Somerfield undertakes to ensure that the Divestiture Trustee monitors Somerfield's compliance with its obligations under these undertakings and takes such measures as it considers necessary to ensure such compliance.

### ***Procedure for the appointment of the divestiture trustee***

23. Within 15 Working Days of the CC notifying Somerfield that it must do so, Somerfield shall propose to the CC the names of at least two persons to exercise the Divestiture Trustee Functions and the full terms of their proposed mandates.
24. The persons nominated by Somerfield pursuant to paragraph 23 above shall meet the following requirements:
  - (a) they shall each have the necessary qualifications to carry out their mandates, and be employees or partners of an investment bank, bank, building society, firm of chartered surveyors, law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or another EU member state;
  - (b) they shall each be independent from Somerfield and the proposed purchasers of the Relevant Stores, and, in the opinion of Somerfield, appropriate to be appointed as Divestiture Trustees; and

- (c) they shall neither be nor 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 Divestiture Trustee Functions.
25. Within 20 Working Days of the CC notifying Somerfield that it must grant an exclusive mandate to a Divestiture Trustee, and subject to any modifications to the mandate that the CC deems necessary for the Divestiture Trustee to carry out the Divestiture Trustee Functions, Somerfield shall use all reasonable endeavours to appoint from the person or persons approved by the CC one person to carry out the Divestiture Trustee Functions, in accordance with the mandate approved by the CC.
26. In the event that:
- (a) Somerfield fails to nominate any person or persons in accordance with the provisions of paragraph 21 above; or
  - (b) none of the persons nominated by Somerfield pursuant to paragraph 21 above is approved by the CC; or
  - (c) Somerfield is unable for any reason to conclude within the time limit stipulated in paragraph 23 above the appointment of any such person following approval by the CC;

Somerfield shall use its best endeavours to appoint from persons nominated by the CC one person to carry out the Divestiture Trustee Functions in accordance with such mandate as is approved by the CC. Somerfield shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CC.

27. The appointment of the Divestiture Trustee pursuant to paragraphs 23 or 26 above shall be irrevocable unless (a) a conflict of interest that, in the CC's view, impairs or may be likely to impair the objectivity or independence of the Divestiture Trustee in discharging the Divestiture Trustee Functions arises; or (b) the CC is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Divestiture Trustee Functions.
28. In the event that the appointment of the Divestiture Trustee is terminated under paragraph 27 above, Somerfield shall use its best endeavours to appoint from persons nominated by the CC one person to carry out the Divestiture Trustee Functions in accordance with such mandate as is approved by the CC. Somerfield shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CC. Where required by the CC, the outgoing Divestiture Trustee shall continue as Divestiture Trustee until a new Divestiture Trustee is in place and a full handover of all relevant information has taken place.

***Somerfield's obligations in respect of the divestiture trustee***

29. Somerfield shall not give any instruction or request to the Divestiture Trustee which conflicts with the Divestiture Trustee Functions.
30. Somerfield shall take all such steps as are necessary or reasonably required to enable the Divestiture Trustee to carry out the Divestiture Trustee Functions and shall take all such steps, including complying with such written directions as the Divestiture Trustee may give from time to time, and provide the Divestiture Trustee

with all such assistance and information, including any confidential information and copies of all relevant documents, as it may require in carrying out the Divestiture Trustee Functions.

31. Somerfield shall pay the Divestiture Trustee a reasonable remuneration for the services it provides in carrying out the Divestiture Trustee Functions, and shall pay the Divestiture Trustee in a way that does not impede the independent and effective fulfilment of its mandate.

#### **Section D: Supplemental**

32. Paragraph 33 applies to the following stores:
- (a) the acquired stores at Filey, Middlesbrough, Newark, Pocklington, Poole and Whitburn;
  - (b) the acquired store at South Shields [~~☒~~];
  - (c) the existing closed stores at Kelso and Littlehampton; and
  - (d) the acquired and the existing stores at each of Johnstone, Peebles and Yarm respectively.
33. From the Commencement Date and pending the sale of any of the stores mentioned in the paragraph above, Somerfield:
- (a) shall ensure that the economic viability, marketability and competitiveness of any such stores are preserved in accordance with good business practice;
  - (b) shall minimize any risk of loss of competitive potential of any such stores;
  - (c) shall not, in its operation of any such stores, discriminate between them; and
  - (d) shall not, except with the prior written consent of the CC, dispose of any assets of such stores or create any interest or dispose of any interest in any assets of such stores, other than in the ordinary course of business.
34. The obligations set out in paragraph 33 above shall cease to apply to the store remaining under Somerfield's control when Somerfield has divested, in accordance with these undertakings, a Relevant Store in each of the areas of Johnstone, Peebles and Yarm [~~☒~~].
35. For the purposes of paragraph 33 above, the CC may require Somerfield to appoint as soon as reasonably practicable and in any event within 20 Working Days of the CC's request, a Monitoring Trustee nominated by Somerfield and approved by the CC in advance in writing on such terms as are approved by the CC in advance in writing and remunerated by Somerfield, to monitor compliance by Somerfield with all the requirements of these Undertakings and to report to the CC as appropriate.
36. In the event that:
- (a) Somerfield fails to nominate any person or persons in accordance with the provisions of paragraph 35 above within 20 Working Days of the request from the CC; or

- (b) none of the persons nominated by Somerfield pursuant to paragraph 35 above is approved by the CC; or
- (c) Somerfield is unable for any reason to conclude within the time limit stipulated in paragraph 35 above the appointment of any such person following approval by the CC;

Somerfield shall use its best endeavours to appoint from persons nominated by the CC one person to act as Monitoring Trustee in accordance with such mandate as is approved in advance in writing by the CC. Somerfield shall use its best endeavours to make such appointment within seven Working Days of receiving nominations from the CC.

37. In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the sale of all of the Relevant Stores pursuant to these Undertakings, Somerfield shall, upon the direction of the CC, use its best endeavours to appoint from persons nominated by the CC another person to act as Monitoring Trustee in accordance with such mandate as is approved by the CC. Somerfield shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CC. Where required by the CC, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.

### ***Continued separation***

38. Following the sale of a Relevant Store and except with the prior written consent of the CC, Somerfield shall not at any time within two years of the Final Closing, directly or indirectly, hold, acquire or use:
- (a) any interest in such a Relevant Store, other than the reversionary interest of any Relevant Store that is divested by way of a leasehold interest;
  - (b) any interest in any person having control of such a Relevant Store (other than investments made in the ordinary course of the operation of any Somerfield related employee benefit and pension fund of not more than 3 per cent in aggregate of the issued equity share capital in any such person having control of such a Relevant Store, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than 3 per cent of the voting rights exercisable at meetings of such person); or
  - (c) any of the assets or any part thereof, or any interest in or derived from any of the assets or any part thereof of such a Relevant Store.
39. Somerfield:
- (a) shall procure that none of its employees or directors holds any directorship or managerial position in such a Relevant Store or in any company or other business carrying on or having control of such a Relevant Store from time to time, unless that person has ceased to be an employee or director of Somerfield; and
  - (b) shall not nominate any person to any such directorship or managerial position.
40. Somerfield shall not participate in the formulation or making of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of such a

Relevant Store or the policy of any person carrying on or having control of a Relevant Store.

41. Except with the prior written consent of the CC, Somerfield 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, directly or indirectly, doing any of the things listed in paragraphs 36 to 38 above.

### ***Provision of information***

42. Somerfield shall provide promptly to the OFT and the CC such information as either may from time to time require for the purposes of monitoring compliance by Somerfield with the Undertakings.
43. Somerfield shall provide promptly to the CC such information as the CC may reasonably require for the purposes of performing any of its functions under the Act.

### ***Compliance, reporting and co-operation***

44. Somerfield shall:
  - (a) within seven working days of the Commencement Date prepare an information memorandum for each Relevant Store containing such information as the CC may direct in writing in relation to the sale of the Relevant Stores as well as any information which Somerfield considers would facilitate the sale of the Relevant Stores;
  - (b) promptly provide such information memorandum to each person or body expressing an interest in the Relevant Store unless that person or body has been identified in Appendix G to the report in relation to the store in question;
  - (c) keep the CC (and, if appointed, the Monitoring Trustee) informed by submitting written summary reports to the CC (the format of which has been approved by the CC) on progress in the divestment of the Relevant Stores. Such reports shall contain, inter alia, the identity of each person or body expressing an interest in a Relevant Store together with the value and terms of such offers. A report shall be prepared for the first two weeks beginning on the Commencement Date and thereafter for each three-week period (or other period requested by the CC) until the Final Closing on all the Relevant Stores. Each report shall be submitted to the CC within seven days of the end of the period to which the report relates (or within such other period specified by the CC); and
  - (d) until Final Closing on all the Acquired, Closed and Existing Stores shall provide a statement at the end of each calendar month to the CC (and, if appointed, to the Monitoring Trustee) confirming compliance with the Undertakings, signed by any Executive Director of Somerfield or any person exercising the equivalent functions. The officer shall confirm compliance in respect of preserving, in accordance with good business practice, the economic viability, marketability and competitiveness of the Relevant Stores prior to Final Closing.
45. Somerfield shall comply with such written directions as the CC may from time to time give:

- (a) to take such steps within its competence 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 might be required by these Undertakings.

46. Somerfield will cooperate fully with the CC when:

- (a) monitoring compliance with these Undertakings; and
- (b) investigating potential breaches of these Undertakings.

***Groups and subsidiaries***

47. Somerfield shall procure that each of its subsidiaries and its affiliates complies with these Undertakings as if it had given them as well as using its reasonable endeavours to procure that all members of the Somerfield Group of Companies comply with these undertakings as if they had given them.

***Extension of time limits***

48. The CC may, where appropriate, in response to a written request from Somerfield showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Undertakings within which Somerfield must take any action.

FOR AND ON BEHALF OF SOMERFIELD LIMITED

..... Signature (Director)      Date .....

..... Name

..... Title

..... Signature (Director/Secretary)      Date .....

..... Name

..... Title