

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 8 June 2018

Completed acquisition by Nicholls' (Fuel Oils) Limited of the Oil Distribution Business of DCC Energy Limited in Northern Ireland

We refer to the emails and accompanying further information dated 14, 18 and 21 September 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 8 June 2018 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Nicholls is required to hold separate the acquired DCC business from the Nicholls 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 the request for derogations from the Initial Order, based on the information received and in the particular circumstances of this case, Nicholls and the acquired DCC business may carry out the following actions, in respect of the specific paragraphs, provided that in each case they do not share any confidential information more widely than is strictly necessary to carry out the relevant action:

1. Paragraph 5(c) of the Initial Order

Prior to completion, the acquired DCC business was a business division within DCC Energy Limited and its truck fleet was registered under an operating licence held by DCC plc, which did not transfer as part of the merger. From 1 May 2018, all trucks operated by the acquired DCC business were registered under the Nicholls operating licence, held by [redacted].

In order to ensure the viability of both businesses and to ensure compliance with the Nicholls operating licence, it is necessary for [redacted] to oversee the maintenance of the acquired DCC business' truck fleet and specifically to inspect the truck fleet and approve of and check any repairs required and made at the [redacted].

The CMA now consents to [redacted] continuing to be responsible for the maintenance of the acquired DCC business' fleet on condition that the

acquired DCC business may escalate any concerns which arise in this regard to the Monitoring Trustee and the CMA.

2. Paragraphs 5(a) and (i) and (j) of the Initial Order

To ensure the viability of the acquired DCC business and in response to the current shortage of suitable truck drivers in Northern Ireland, the CMA consents to an arms-length commercial secondment agreement to be entered into between Nicholls and the acquired DCC business to allow Nicholls to make available a number of truck drivers on an interim basis to the acquired DCC business in a form agreed with the CMA.

This arrangement is subject to the following safeguards:

- a. Nicholls drivers seconded to the acquired DCC business will be under the control and direction of the acquired DCC business and the Acting General Manager during the period under which they are seconded;
and
- b. Nicholls drivers seconded to the acquired DCC business will remain employed by Nicholls and Nicholls remains responsible for all employment and HR related matters.