

## ACQUISITION BY CD&R OF WM MORRISON SUPERMARKETS PLC

### Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority ('**CMA**') has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in Clayton, Dubilier and Rice and Wm Morrison Supermarkets Plc ('**Morrisons**') ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Clayton, Dubilier & Rice Holdings, LLC ('**CD&R**'); Motor Fuel Limited and CD&R Firefly Holdco Limited (referred to together as '**MFG**'); Market Bidco Limited and Market Topco Limited (referred to together as the '**Purchasers**') (CD&R, MFG and the Purchasers collectively are referred to as the '**Acquirer Group**'); and Morrisons ('**Order**').

#### Commencement, application and scope

1. This Order commences on the commencement date: being the date of completion of the transaction.
2. This Order applies to the Acquirer Group and Morrisons.

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige the Acquirer Group to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order does not prohibit the completion of the transaction provided that the Acquirer Group and Morrisons observe the restrictions set out below.

**Management of the Acquirer Group and Morrisons businesses until determination of proceedings**

5. Except with the prior written consent of the CMA, the Acquirer Group and Morrisons shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the Morrisons business with the Acquirer Group business;
  - (b) transfer the ownership or control of the Acquirer Group business or the Morrisons business or any of their subsidiaries; or
  - (c) otherwise impair the ability of the Morrisons business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, the Acquirer Group and Morrisons shall at all times during the specified period procure that, except with the prior written consent of the CMA:
  - (a) the Morrisons business is carried on separately from the Acquirer Group business and the Morrisons business's separate sales or brand identity is maintained;
  - (b) the Morrisons business and the Acquirer Group business are maintained as a going concern and sufficient resources are made available for the development of the Morrisons business and the Acquirer Group business, on the basis of their respective pre-merger business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management

responsibilities within, the Morrisons business or the Acquirer Group business;

- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Morrisons business and the Acquirer Group business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Morrisons business or the Acquirer Group business are disposed of; and
  - (iii) no interest in the assets of the Morrisons business or the Acquirer Group business is created or disposed of;
- (f) there is no integration of the information technology of the Morrisons or Acquirer Group businesses, and the software and hardware platforms of the Morrisons business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Morrisons business will be carried out by the Morrisons business alone and for the avoidance of doubt the Acquirer Group business will not negotiate on behalf of the Morrisons business (and vice versa) or enter into any joint agreements with the Morrisons business (and vice versa);
- (h) all existing contracts of the Morrisons business and the Acquirer Group business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Morrisons business or Acquirer Group business;
- (j) no key staff are transferred between the Morrisons business and the Acquirer Group business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Morrisons business and the Acquirer Group business; and

- (f) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Morrisons business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

## **Compliance**

7. The Acquirer Group and Morrisons shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
8. The Acquirer Group and Morrisons shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by the Acquirer Group and Morrisons and their subsidiaries with this Order. In particular, on 10 November 2021 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the relevant Director(s) of each of the addressees of the IEO that form part of the Acquirer Group) and the Chief Executive Officer of Morrisons or other persons of the Acquirer Group and Morrisons as agreed with the CMA shall, on behalf of each of the Acquirer Group and Morrisons, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
9. At all times, the Acquirer Group and Morrisons shall, or shall procure that Morrisons shall, each actively keep the CMA informed of any material developments relating to the Morrisons business or the Acquirer Group business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Morrisons business or the Acquirer Group business;
  - (b) any interruption of the Morrisons or Acquirer Group businesses (including without limitation its procurement, production, logistics, sales and

employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

- (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Morrisons or the Acquirer Group businesses including any substantial changes in customers' demand; and
  - (d) substantial changes in the Morrisons or the Acquirer Group businesses' contractual arrangements or relationships with key suppliers.
10. If the Acquirer Group or Morrisons has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that the Acquirer Group or Morrisons may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. The Acquirer Group and Morrisons shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

**'the Acquirer Group'** means CD&R, MFG and the Purchasers.

**'the Acquirer Group business'** means the businesses of CD&R, MFG, the Purchasers and their subsidiaries carried on as at the commencement date;

**'the Act'** means the Enterprise Act 2002;

**'an 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;

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

**‘CD&R’** means Clayton, Dubilier & Rice Holdings, LLC, a company registered in the Cayman Islands with the registration number MC-3019, registered offices at c/o Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands;

**‘commencement date’** means the date of completion;

**‘control’** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**‘the decisions’** means the decisions of the CMA on the questions which it is required to answer by virtue of sections 35 or 36 of the Act;

**‘key staff’** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**‘MFG’** means Motor Fuel Limited, a company registered in England and Wales with company number 05206547 and a registered office address at Gladstone Place, 36-38 Upper Marlborough Road, St Albans, Hertfordshire, United Kingdom, AL1 3UU and CD&R Firefly Holdco Limited, a company registered in England and Wales with company number 09548683 and a registered office address at Cleveland House, 33 King Street, London, United Kingdom, SW1Y 6RJ;

**‘Morrisons’** means Wm Morrison Supermarkets Plc, a company registered in England and Wales with company number 00358949, registered offices at Hilmore House, Gain Lane, Bradford, West Yorkshire, BD3 7DL;

**‘the Morrisons business’** means the business of Wm Morrison Supermarkets Plc and its subsidiaries carried on as at the commencement date;

**‘the ordinary course of business’** means matters connected to the day-to-day supply of goods and/or services by Morrisons or the Acquirer Group and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Morrisons and the Acquirer Group;

**‘specified period’** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'the transaction'** means the acquisition of the entire issued share capital of Morrisons by Market Bidco Limited and by which the Acquirer Group and Morrisons will cease to be distinct within the meaning of section 23 of the Act;

**'the two businesses'** means the Acquirer Group business and the Morrisons business;

**'the Purchasers'** means Market Bidco Limited, company number 13537474 (England and Wales) and a registered address at C/O Alter Domus (UK) Limited, 18 St Swithin's Lane, London, United Kingdom, EC4N 8AD and Market Topco Limited, company number 13537349 (England and Wales) and a registered address at C/O Alter Domus (UK) Limited, 18 St Swithin's Lane, London, United Kingdom, EC4N 8AD;

unless the context requires otherwise, the singular shall include the plural and vice versa.

[✂]

Anna Caro

*Assistant Director, Mergers*

## **Compliance statement for the Acquirer Group**

I [insert name] confirm on behalf of Clayton, Dubilier & Rice Holdings, LLC / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Motor Fuel Limited that:

### **Compliance in the Relevant Period**

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
  - (a) Clayton, Dubilier & Rice Holdings, LLC / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Motor Fuel Limited has complied with the Order made by the CMA in relation to the transaction on 26 October 2021 (the **Order**).
  - (b) Clayton, Dubilier & Rice Holdings, LLC's / CD&R Firefly Holdco Limited's / Market Bidco Limited's and Market Topco Limited's / Motor Fuel Limited's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Clayton, Dubilier & Rice Holdings, LLC / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Motor Fuel Limited that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Morrisons business with the Acquirer Group;
    - (ii) transfer the ownership or control of the Acquirer Group business or the Morrisons business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Morrisons business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
  - (b) The Morrisons business has been carried on separately from the Acquirer Group business and the Morrisons business's separate sales or brand identity has been maintained.



- (c) The Morrisons business and the Acquirer Group business have been maintained as a going concern and sufficient resources have been made available for the development of the Morrisons business and the Acquirer Group business, on the basis of their respective pre-merger business plans.
- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Morrisons business or the Acquirer Group business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Morrisons business and the Acquirer Group business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Morrisons business and the Acquirer Group business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Morrisons business or the Acquirer Group business have been disposed of; and
  - (iii) no interest in the assets of the Morrisons business or the Acquirer Group business has been created or disposed of.
- (g) There has been no integration of the information technology of the Morrisons or the Acquirer Group business, and the software and hardware platforms of the Morrisons business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Morrisons business have been carried out by the Morrisons business alone and, for the avoidance of doubt, the Acquirer Group business has not negotiated on behalf of the Morrisons business (and vice versa) or entered into any joint agreements with the Morrisons business (and vice versa).
- (i) All existing contracts of the Morrisons business and the Acquirer Group business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.

- (j) No changes have been made to key staff of the Morrisons business or the Acquirer Group business.
- (k) No key staff have been transferred between the Morrisons business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Morrisons business and the Acquirer Group business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Morrisons business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
  - (i) key staff that have left or joined the Morrisons business or the Acquirer Group business;
  - (ii) interruptions of the Morrisons business or the Acquirer Group business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Morrisons business or the Acquirer Group business; or
  - (iv) substantial changes in the Morrisons or Acquirer Group business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Clayton, Dubilier & Rice Holdings, LLC / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Motor Fuel Limited and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Morrisons or the Acquirer Group business in accordance with paragraph 9 of the Order.

## Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

### I understand that:

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finest, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [INSERT SIGNATORY ENTITY]

Signature .....

Name .....

Title .....

Date .....

## Compliance statement for Morrisons

I [insert name] confirm on behalf of Morrisons that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
  - (a) Morrisons has complied with the Order made by the CMA in relation to the transaction on 26 October 2021 (the **Order**).
  - (b) Morrisons' subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Morrisons that might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Morrisons business with the Acquirer Group business;
    - (ii) transfer the ownership or control of the Acquirer Group business or the Morrisons business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Morrisons business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
  - (b) The Morrisons business has been carried on separately from the Acquirer Group business and the Morrisons business's separate sales or brand identity has been maintained.
  - (c) The Morrisons business and the Acquirer Group business have been maintained as a going concern and sufficient resources have been made available for the development of the Morrisons business and the Acquirer Group business, on the basis of their respective pre-merger business plans.
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Morrisons business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Morrisons business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Morrisons business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Morrisons business have been disposed of; and
  - (iii) no interest in the assets of the Morrisons business has been created or disposed of.
- (g) There has been no integration of the information technology of the Morrisons or Acquirer Group business, and the software and hardware platforms of the Morrisons business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Morrisons business have been carried out by the Morrisons business alone and, for the avoidance of doubt, the Acquirer Group business has not negotiated on behalf of the Morrisons business (and vice versa) or entered into any joint agreements with the Morrisons business (and vice versa).
- (i) All existing contracts of the Morrisons business and the Acquirer Group business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Morrisons business.
- (k) No key staff have been transferred between the Morrisons business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Morrisons business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Morrisons business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Morrisons business;
- (ii) interruptions of the Morrisons business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Morrisons business; or
- (iv) substantial changes in the Morrisons business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Morrisons and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Morrisons or the Acquirer Group Business in accordance with paragraph 9 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

### **I understand that:**

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or

controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF MORRISONS

Signature .....

Name .....

Title .....

Date .....