

**DEROGATION LETTER  
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED PURSUANT TO  
SECTION 72(2) ENTERPRISE ACT 2002**

**Consent under section 72(3C) of the Enterprise Act 2002 (the ‘Act’) to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (‘CMA’) on 26 October 2021.**

**Completed acquisition by Clayton, Dubilier and Rice of Wm Morrison Supermarkets Plc (‘Morrisons’) (the ‘Acquisition’).**

We refer to your submissions of 25 October 2021 requesting that the CMA consents to derogations from the Initial Enforcement Order of 26 October 2021 (the ‘**Initial Order**’). Unless otherwise stated, 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, Clayton, Dubilier & Rice Holdings, LLC (‘**CD&R**’), Motor Fuel Limited, CD&R Firefly Holdco Limited, Market Bidco Limited and Market Topco Limited (collectively referred to as the ‘**Acquirer Group**’), and Morrisons (together with the Acquirer Group the ‘**Addressees**’) are required to hold separate the Acquirer Group business from the Morrisons business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, the CMA consents to the Addressees carrying out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 6(c), 6(i) and 6(k) – Non-executive director resignations**

The CMA understands that at completion of the Acquisition the following non-executive directors of Morrisons (the ‘**Non-executive Directors**’) plan to resign:

- (i) Andrew Higginson;
- (ii) Rooney Anand;
- (iii) Lyssa McGowan;

- (iv) Susanne Given;
- (v) Kevin Havelock; and
- (vi) Jeremy Townsend.

The CMA understands that the Non-executive Directors' primary function was to serve on a combination of Morrisons' governance committees, namely: (i) the Audit Committee, (ii) the Corporate Compliance and Responsibility Committee, (iii) the Remuneration Committee, and (iv) the Nomination Committee. Some of their responsibilities within these committees are tied to Morrisons' status as a publicly-listed company.

Following completion of the Acquisition, Morrisons submits that the functions of the four above committees, to the extent that Morrisons still requires them as a private company, will be absorbed by a combination of (i) CD&R (subject to the CMA granting a delegation of authority derogation) and (ii) the remaining members of Morrisons' board (namely David Potts (CEO), Trevor Strain (COO) and Michael Gleeson (CFO)). Accordingly, Morrisons does not consider it necessary to appoint any replacement directors.

The CMA consents to a derogation from paragraphs 6(c), 6(i) and 6(k) of the Initial Order to permit the resignation of the Non-executive Directors. The CMA grants this derogation strictly on the basis that:

- a) The departure of the Non-executive Directors will not have an impact on Morrisons' operations or strategic direction, which will continue to be the responsibility of Morrisons' existing management.
- b) The remaining board members will continue to perform the board functions which will continue to be necessary for Morrisons as a private company.
- c) Any oversight of the Morrisons business by CD&R will be subject to prior CMA approval via a separate delegation of authority derogation.
- d) This derogation will not affect the viability of the Morrisons business.
- e) This derogation will not result in any integration between the Acquirer Group business and the Morrisons business.
- f) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

## **2. Paragraph 6(c) – Change to Morrisons' accounting reference date**

The CMA understands that Morrisons' financial year currently ends on 31 January. Following completion of the Acquisition, Morrisons intends to change the accounting reference date of the Morrisons business (ie including Morrisons' subsidiaries) from 31 January to 31 October and is seeking a derogation to do so.

The CMA consents to a derogation from paragraph 6(c) of the Initial Order to permit Morrisons to change its accounting reference date as described above. The CMA grants this derogation strictly on the basis that:

- (a) This derogation will not affect Morrisons' assets (tangible or intangible).
- (b) This derogation will not result in any changes to staff/management of Morrisons (other than as expressly agreed with the CMA).
- (c) This derogation will not result in any changes to customer and/or supplier contracts.
- (d) This derogation will not affect the viability of the Morrisons business.
- (e) This derogation will not result in any integration between the Morrisons business and the Acquirer Group business.
- (f) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

Yours sincerely,

 [Redacted signature]

Anna Caro

Assistant Director, Mergers

27 October 2021