

**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 31 October 2021, 2 November 2021, 3 November 2021 and 15 November 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 (‘**MFG**’), CD&R Firefly Holdco Limited, Market Bidco Limited (‘**Bidco**’) 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 5(b), 6(e), 6(g) and 6(l) – Financing arrangements

The CMA understands that in order to finance the Acquisition, Bidco entered into a senior facilities arrangement and two bridge facility agreements on 3 November 2021 (the ‘**Financing Arrangements**’). CD&R drew down on some of the facilities [REDACTED].

The Addressees submit that as part of the Financing Arrangements, the lenders require a guarantee from Bidco, as well as taking security over all material assets of Morrisons. In addition, as part of the Financing Arrangements, [REDACTED]. The Addressees further submit that the Financing Arrangements expressly permit the Acquirer Group to divest any

Morrisons assets, should the CMA require it pursuant to an order. Any such divestment is subject to the conditions that either [X].

The CMA consents to a derogation from paragraphs 5(b), 6(e), 6(g) and 6(l) of the Initial Order to permit the necessary arrangements relating to:

- (i) The sharing of certain financial information between Morrisons and Bidco which must be shared in order to comply with the terms of the Financing Arrangements.
- (ii) Morrisons issuing a new class of [X] preference shares [X].
- (iii) Refinancing [X].
- (iv) The transfer of funds between the Acquirer Group and Morrisons [X].
- (v) The granting of guarantees in relation to the Financing Arrangements by Bidco.
- (vi) The creation and/or perfection by Bidco and/or Morrisons of any and all guarantees and security interests granted and/or required under the Financing Arrangements.

The CMA grants this derogation strictly on the basis that:

- (a) The debt service costs payable by Morrisons does not undermine the Morrisons business's ability to pursue its pre-merger business plan;
- (b) Pursuant to any order of the CMA requiring the divestment of all or part of the Morrisons business, the Addressees will take all necessary steps to ensure that there is no impediment to compliance with any such order as a result of the operation of the Finance Arrangements.
- (c) Any confidential or commercially-sensitive information shared under this derogation will be limited to what is strictly necessary for the purposes set out in paragraphs (i) to (vi) above;
- (d) Any financial information of the Morrisons business disclosed to the Acquirer Group pursuant to this derogation will:
 - I. Not contain granular revenue and cost data or margins on specific products or services.

- II. Be shared only with the individuals in Annex 1 (the '**Annex 1 Individuals**').
 - III. The sharing of information with the Annex 1 Individuals will be governed by the non-disclosure agreement submitted to the CMA on 8 December 2021 which contains appropriate safeguards on the use, treatment and storage of confidential financial information, as well as the necessary IT firewalls to prevent unauthorised individuals from accessing any information shared pursuant to the derogation).
 - IV. Each of the Annex 1 Individuals shall enter into an individual NDA/confidentiality undertaking in the form submitted to the CMA on 8 December 2021.
 - V. Any management commentary on financial data will be limited to responses to specific questions by the Annex 1 Individuals with respect to information provided for the purposes set out in paragraphs (i) to (vi) above. For the avoidance of doubt, any management commentary will be compliant with conditions I, II, III, and IV above
- (e) No further changes to the Annex 1 Individuals are permitted without the prior written consent from the CMA (including via email).
 - (f) The derogation will not result in any changes to staff/management of Morrisons.
 - (g) Should the Acquirer Group be required to divest all, or part of, the Morrisons business, the Acquirer Group business will ensure that any confidential information received from the Morrisons business for the purposes of this derogation will be returned to the Morrisons business and any copies destroyed, except to the extent that record retention is required by law or regulation.
 - (h) This derogation will not result in any integration between the Morrisons business and the Acquirer Group business.
 - (i) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

2. Paragraphs 5(b), 6(e), 6(g) and 6(l) – Issue of notes

The CMA understands that, in connection with the financing of the Acquisition, it is intended that the Acquirer Group offers [X] notes (the '**Offering**') to repay certain facility agreements under the Financing Arrangements. In order for the Acquirer Group to

undertake the Offering, Morrisons will need to participate in the preparation of the offering memorandum and investor presentations. Morrisons will also need to enter into a customary purchase agreement governing the purchase of the notes by the initial purchasers (**'Purchase Agreement'**).

The CMA consents to a derogation from paragraphs 5(b), 6(e), 6(g) and 6(l) of the Initial Order to permit the necessary arrangements relating to:

- (i) the preparation of the offering memorandum and investor presentations, including the provision of information by Morrisons to the Acquirer Group; and
- (ii) entering into the Purchase Agreement, including the provision of certain strictly necessary diligence information by Morrisons to the Acquirer Group.

The CMA grants this derogation strictly on the basis that:

(a) Any confidential or commercially-sensitive information shared under this derogation will be limited to what is strictly necessary for the purposes of producing the offering memorandum, preparing for the investor presentations, and arranging the Purchase Agreement (the **'Permitted Purposes'**);

(b) Any Morrisons information shared for the above Permitted Purposes will:

- I. Not contain granular revenue and cost data, management commentary on financial data, or margins on specific products or services.
- II. Be shared only with the individuals in Annex 2 (the **'Annex 2 Individuals'**).
- III. The sharing of information with the Annex 2 Individuals will be governed by the non-disclosure agreement submitted to the CMA on 8 December 2021 which contains appropriate safeguards on the use, treatment and storage of confidential financial information, as well as the necessary IT firewalls to prevent unauthorised individuals from accessing any information shared pursuant to the derogation.
- IV. Each of the Annex 2 Individuals shall enter into an individual NDA/confidentiality undertaking in the form submitted to the CMA on 8 December 2021.
- V. Any management commentary on financial data will be limited to

responses to specific questions by the Annex 2 Individuals with respect to information provided for the Permitted Purposes. For the avoidance of doubt, any management commentary will be compliant with conditions I, II, III, and IV above.

- (c) No further changes to the Annex 2 Individuals are permitted without the prior written consent from the CMA (including via email).
- (d) The derogation will not result in any changes to staff/management of Morrisons.
- (e) The Purchase Agreement will not include any restrictions on any divestments which may be required by the CMA, including but not limited to the divestment of the entirety of Morrisons.
- (f) Should the Acquirer Group be required to divest all, or part of, the Morrisons business, the CD&R business will ensure that any confidential information received from the Morrisons business for the purposes of this derogation will be returned to the Morrisons business and any copies destroyed, except to the extent that record retention is required by law or regulation.
- (g) This derogation will not result in any integration between the Morrisons business and the Acquirer Group business.
- (h) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

Yours sincerely,

Anna Caro

Assistant Director, Mergers

9 December 2021

Annex 1

Authorised individuals	Role at CD&R
[X]	[X]

Annex 2

Authorised individuals	Role at CD&R
[X]	[X]