

**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 15 November 2021 and 22 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, 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 paragraph:

1. Paragraph 6(I) – Sharing of strictly necessary financial information

The CMA understands that the provision of certain information by Morrisons to certain CD&R individuals will be strictly necessary for the purposes of monitoring Morrisons’ on-going financial performance in the ordinary course of business.

The CMA consents to a derogation to permit the individuals listed in Annex 1 (the ‘**Financial Information Recipients**’) to receive the following categories of information for the above purpose (defined collectively as the ‘**Strictly Necessary Financial Information**’):

- (i) Periodic balance sheets in the form of the template set out at Annex 2 providing an overview of Morrisons' assets (current and non-current), liabilities (current and non-current), and net debt position. [X]. This information does not give any granular details of Morrisons' business activities.
- (ii) Periodic cashflow statements in the form of the template set out at Annex 3 and Annex 4 providing an overview of Morrisons' cashflow situation and including consolidated cashflow, reconciliation of net debt, cashflow from operating activities and net debt forecast. [X].
- (iii) Periodic management profit and loss accounts in the form of the template set out at Annex 5 providing an overview of Morrisons' periodic and year-to-date performance. The information in this set of accounts includes: (i) group turnover broken down by high level business line (i.e. [X]), (ii) group commercial margin also broken down by high level business line, (iii) operating costs, (iv) group depreciation and (v) interest. This information provides a high-level overview of the operation of the Morrisons group businesses, [X].
- (iv) Aggregated budget- and performance-related information in the form of the templates set out at Annexes 6 and 7: budget for the following Fiscal Year, performance vs budget, and reforecasts / re-budgeting done in the course of the year. This information provides a high-level overview of the operation of the Morrisons group businesses, [X].

The CMA's consent is subject to the below conditions:

- (a) Any information disclosed pursuant to this derogation would not contain competitively sensitive information, including but not limited to site-specific or product-specific data relating to any one of Morrisons' business units. The aforementioned applies to any management commentary, which will be provided only in response to specific queries raised by the Financial Information Recipients with respect to the information received under categories (i) to (iv) above.
- (b) Only the Financial Information Recipients are authorised to receive and see information pursuant to this derogation.
- (c) No further changes to the Financial Information Recipients are permitted without the prior written consent of the CMA (including via email).
- (d) No further changes to the templates set out at Annexes 2, 3, 4, 5, 6 and 7 are permitted without the prior written consent of the CMA (including via email).

- (e) The sharing of information with the Financial Information Recipients 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 Strictly Necessary Financial Information pursuant to the derogation.
- (f) Each of the Financial Information Recipients shall enter into an individual NDA/confidentiality undertaking in the form submitted to the CMA on 8 December 2021.
- (g) The Strictly Necessary Financial Information to be provided to the Financial Information Recipients is confidential and cannot be shared more widely within the Acquirer Group. High-level summaries of such information may be shared within CD&R provided the information has been generalised or aggregated to such an extent that it is no longer competitively sensitive.
- (h) The Strictly Necessary Financial Information may not be used for any purpose other than the monitoring of the Morrisons' on-going business activities and performance.
- (i) Should the Acquisition be prohibited, or remedies required, the Acquirer Group will ensure that any confidential information received from Morrisons for the purposes of this derogation will be returned to Morrisons and any copies destroyed, except to the extent that record retention is required by law or regulation.
- (j) This derogation will not result in any integration between the Morrisons business and the CD&R business.
- (k) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

2. Paragraph 6(l) – Sharing of strictly necessary information regarding [X]

The CMA understands that as part of the overall financing arrangements to ensure the effective operation of Morrisons, the Addressees are considering [X].

The CMA consents to the individuals listed in Annex 8 (the '[X] Information Recipients') receiving information from Morrisons, and discussing necessary transaction arrangements with Morrisons, relevant to [X] (the 'Strictly Necessary [X] Information'), including:

- (i) [REDACTED].
- (ii) [REDACTED].
- (iii) [REDACTED].

The CMA consents to a derogation from paragraph 6(l) of the Initial Order with respect to the provision of Strictly Necessary [REDACTED] Information, strictly on the basis that:

- (a) Any information disclosed pursuant to this derogation will not contain any competitively sensitive information in relation to Morrisons' fuel business and will, in any event, be limited to what is strictly necessary for the purposes of [REDACTED].
- (b) The Addressees will not enter into any [REDACTED] agreements [REDACTED] without first obtaining a separate derogation from the CMA.
- (c) Only the [REDACTED] Information Recipients are authorised to receive and see information pursuant to this derogation.
- (d) No further changes to the [REDACTED] Information Recipients are permitted without the prior written consent of the CMA (including via email).
- (e) The sharing of information with the [REDACTED] Information Recipients 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 information, as well as the necessary IT firewalls to prevent unauthorised individuals from accessing any information shared pursuant to the derogation.
- (f) Each of the [REDACTED] Information Recipients shall enter into an NDA/confidentiality undertaking in the form submitted to the CMA on 8 December 2021.
- (g) Any information shared with the [REDACTED] Information Recipients pursuant to this derogation is confidential and cannot be shared more widely within CD&R, although high-level summaries of such information may be shared within CD&R provided the information has been generalised or aggregated to such an extent that it is no longer competitively sensitive.
- (h) Any information shared with the [REDACTED] Information Recipients pursuant to this derogation may not be used for any purpose other than [REDACTED].
- (i) Should the Acquisition be prohibited, or remedies required, CD&R will ensure that any confidential information received from Morrisons for the purposes of this

derogation will be returned to Morrisons and any copies destroyed, except to the extent that record retention is required by law or regulation.

(j) This derogation will not result in any integration between the Morrisons business and the CD&R business.

(k) 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 – Financial Information Recipients

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

Annex 2 – Sample Periodic Balance sheet submitted to the CMA on 22 November 2021

Annex 3 – Sample Periodic Cashflow Statement submitted to the CMA on 22 November 2021

Annex 4 – Sample Net Debt submitted to the CMA on 22 November 2021

Annex 5 – Sample Periodic Management Profit and Loss Accounts submitted to the CMA on 22 November 2021

Annex 6 – Aggregated budget and performance related information (1) submitted to the CMA on 2 December 2021.

Annex 7 – Aggregated budget and performance related information (1) submitted to the CMA on 2 December 2021.

Annex 8 – [X] Information Recipients

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