

**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 14 January 2022 and 7 February 2022 requesting that the CMA consents to a derogation 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 a derogation 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. Paragraphs 6(a), 6(c), 6(e), 6(l) – Transfer of Morrisons properties to Morrisons pension schemes

The CMA understands that on 27 October 2021, Safeway Pensions Trustees Limited, Wm Morrisons Pension Trustee Limited, Morrisons, Safeway Limited and Bidco entered into a replacement memorandum of understanding (‘**MOU**’) which requires Morrisons to transfer properties to Wm Morrison Property Partnership LP (the ‘**Transfer**’). The MOU requires that the Transfer is made as soon as reasonably practicable and in any case within 90 days following completion of the Acquisition.

The CMA understands that the Transfer is required to ensure that the Morrisons Retirement Saver Plan and the Safeway Pension Scheme (together, the '**Pension Schemes**') continue to be provided with appropriate funding and covenant protection in accordance with applicable statutory requirements and, that, if a debt were to become due to the Pension Schemes under section 75 of the Pensions Act 1995, the Pension Schemes would be able to recover sufficient funds to ensure that the Pension Schemes could be wound up without a funding deficit. [§<].

The CMA consents to a derogation from paragraphs 6(a), 6(c), 6(e) and 6(l) of the Initial Order to permit Morrisons to take the necessary action to give effect to the transfer of properties to Wm Morrison Property Partnership LP, including the sharing of the strictly necessary information to assess the suitability of the properties to be transferred and to prepare the transaction documentation to give effect to the Transfer, and discussions between Morrisons and the Acquirer Group to determine the properties to be transferred to Wm Morrison Property Partnership LP (the '**Permitted Purpose**').

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

- (a) The Transfer does not undermine the Morrisons business' ability to pursue its pre-Acquisition 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 Transfer.
- (c) Any confidential or commercially sensitive information shared under this derogation will be limited to what is strictly necessary for the Permitted Purpose and, in any event, will not include revenues or margins of individual retail or business units of Morrisons.
- (d) Any confidential or commercially sensitive information shared under this derogation will be shared with no Acquirer Group individuals other than the individuals listed in Annex 1 (the '**Annex 1 Individuals**'). Each of the Annex 1 Individuals will receive the information necessary to assess the Transfer under the terms of 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 this derogation.

- (e) 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.
- (f) The Annex 1 Individuals, and any representatives from the Acquirer Group's external advisers, will use any Morrisons information they receive under this derogation exclusively for the Permitted Purpose.
- (g) No further changes to the Annex 1 Individuals are permitted without the prior written consent of the CMA (including via email).
- (h) Should the Acquirer Group be required to divest all, or part, of the Morrisons business, the Acquirer Group 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.
- (i) This derogation will not result in any integration between the Morrisons business and the Acquirer Group business.
- (j) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

Yours sincerely,

Alex Hazell

Assistant Director, Mergers

14 February 2022

Annex 1

[illegible]