

ME/6966/21

**COMPLETED ACQUISITION BY CD&R OF WM MORRISON SUPERMARKETS
PLC**

UNDERTAKINGS IN LIEU OF A REFERENCE

ACQUISITION BY CD&R OF WM MORRISON SUPERMARKETS PLC

Undertakings given by Clayton, Dubilier & Rice Holdings, LLC ("CD&R") to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

WHEREAS:

- (A) CD&R, which exercises indirect sole control over the Motor Fuel Group ("MFG"), completed the acquisition of Wm Morrison Supermarkets plc ("**Morrisons**") on 27 October 2021 by way of the acquisition of the entire issued and to be issued share capital of Morrisons (the "**Transaction**") such that CD&R and Morrisons ceased to be distinct for the purposes of the Enterprise Act 2002 (the "**Act**");
- (B) Under section 22(1) of the Act the Competition and Markets Authority ("**CMA**") has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (C) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (D) As set out in the CMA's decision of 24 March 2022 (the "**Decision**"), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (E) The CMA considers that the undertakings given below by CD&R are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision; and
- (F) The CMA made an Initial Enforcement Order ("**IEO**") applying to CD&R, Motor Fuel Limited, CD&R Firefly Holdco Limited, Market Bidco Limited, Market Topco Limited and Morrisons on 26 October 2021 in respect of the Transaction pursuant to section 72 of the Act for the purposes of preventing pre-emptive action. Pursuant to section 72(6)(b) of the Act, this IEO ceases to be in force on the acceptance by the CMA of the undertakings given below by CD&R.

NOW THEREFORE CD&R hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

1. **EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by CD&R, they are accepted by the CMA.

2. **DIVESTMENT OF THE DIVESTMENT SITES**

- 2.1 CD&R shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, effect to the satisfaction of the CMA the divestment of the Divestment Sites as a going concern by the end of the Divestment Period to a purchaser (or purchasers) approved by the CMA in accordance with the provisions of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, CD&R shall use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of the Divestment Sites
- 2.3 CD&R shall be deemed to have complied with its obligations at paragraph 2.1 above if, as soon as reasonably practicable and in any event by the end of the Divestment Period, it has entered into a legally binding agreement (or agreements) with a purchaser (or purchasers) approved in advance by the CMA in writing pursuant to these undertakings, provided that the completion of the divestment of the Divestment Sites contemplated by such agreement (or agreements), if later than the end of the Divestment Period, takes place within a period not exceeding three months after the approval of the purchaser (or purchasers) by the CMA (or within three months of the effective date of these undertakings, as set out in paragraph 1 above, whichever is later).
- 2.4 Without prejudice to the generality of paragraph 2.1 above, CD&R shall take the following measures to the extent they may be necessary in the opinion of the CMA to effect the divestment of the Divestment Sites in accordance with the provisions of these undertakings:
 - (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (d) the formation or winding up of a company.
- 2.5 Where CD&R divests a Divestment Site over which MFG holds a freehold interest by way of the grant of a long lease on normal commercial terms to the purchaser (or purchasers), CD&R shall:
 - (a) ensure that the lease is of not less than 25 years duration (which may be subject to a break clause at year 15 exercisable at the option of the purchaser);
 - (b) not enter at any time into actual occupation of the Divestment Site for operation as a petrol filling station or for any other purpose;
 - (c) effect a new divestment of the Divestment Site in accordance with the provisions of paragraph 11 if CD&R becomes subject to an Occupation Interest

provided that, if required by the CMA, CD&R will in the alternative sell the freehold interest in the Divestment Site to a person independent of and unconnected to CD&R and the Group of Interconnected Bodies Corporate to which CD&R belongs and any Associated Person or Affiliate of CD&R or such Group of Interconnected Bodies Corporate, within a period not exceeding three months from the date of the commencement of the lease.

- 2.6 CD&R shall ensure that the divestment agreement entered into for the purposes of paragraph 2.1 and 2.3 above includes a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Sites as part of a viable and active business in competition with the CD&R Group and other competitors in the retail supply of road fuel, in the relevant local area.
- 2.7 In the event that CD&R fails to divest the Divestment Sites in accordance with paragraphs 2.1, 2.2, 2.3 and 2.5 above, the CMA may, whether or not initiating the Trustee Functions as set out in paragraph 4 below, require CD&R to divest the Divestment Sites as a going concern at no minimum price to a purchaser (or purchasers) approved by the CMA.
- 2.8 CD&R shall notify the CMA in writing of the identity of each Proposed Purchaser that makes an offer for the Divestment Sites together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 5 Working Days of receipt of such offers.

3. APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT

- 3.1 For the purposes of the CMA approving a Proposed Purchaser of the Divestment Sites in accordance with these undertakings, CD&R shall, save as required or permitted by the CMA, satisfy the CMA that:
 - (a) the acquisition by the Proposed Purchaser of the Divestment Sites, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
 - (b) the Proposed Purchaser is independent of and unconnected to CD&R and the Group of Interconnected Bodies Corporate to which CD&R belongs and any Associated Person or Affiliate of CD&R or such Group of Interconnected Bodies Corporate;
 - (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Sites as a viable and active business in competition with the CD&R Group and other competitors in the retail supply of road fuel from the date of completion of the divestment of the Divestment Sites;

- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
 - (e) the acquisition by the Proposed Purchaser of the Divestment Sites does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.
- 3.2 The CMA may require CD&R to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser will fulfil the requirements in paragraph 3.1 above.
4. **APPOINTMENT OF A TRUSTEE**
- 4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as CD&R has not satisfied, or where the CMA has reasonable grounds for believing that CD&R will not satisfy, all or any part of the obligation to divest the Divestment Sites in accordance with paragraph 2 above.
- 4.2 Within 5 Working Days of the CMA notifying CD&R in writing that it must do so, CD&R shall propose to the CMA for approval:
- (a) the names of at least two individuals to exercise the Trustee Functions; and
 - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 CD&R and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the CMA that, save as required or permitted by the CMA:
- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
 - (b) such nominated individuals are each independent of CD&R and of the Group of Interconnected Bodies Corporate to which CD&R belongs and of any Associated Person or Affiliate of CD&R or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Sites to be sold pursuant to these undertakings, and, in the reasonable opinion of CD&R, are appropriate to be appointed as Trustee; and
 - (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.
- 4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by CD&R and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, CD&R shall use its best endeavours to appoint from

the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.

4.5 In the event that:

- (a) CD&R fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by CD&R pursuant to paragraph 4.2 is approved by the CMA; or
- (c) CD&R is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

CD&R shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. CD&R shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, CD&R shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. CD&R shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

5. **THE MANDATE**

5.1 The terms of the mandate proposed by CD&R pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Sites as required by paragraph 6.1 below to a purchaser (or purchasers) as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient divestment;

- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the divestment of the Divestment Sites;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at CD&R's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

6. FUNCTIONS OF TRUSTEE

- 6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the divestment of the Divestment Sites at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.
- 6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take the following measures in relation to the Divestment Sites to the extent to which such measures may be necessary to effect the divestment of the Divestment Sites in accordance with the provisions of these undertakings:
- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
 - (d) the formation or winding up of a company.
- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Sites to a Proposed Purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that Proposed Purchaser. The Trustee shall notify the CMA of the identity of a Proposed Purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed divestment agreement in question.
- 6.4 Pending the divestment of the Divestment Sites pursuant to paragraph 6.1 above, the Trustee shall monitor CD&R's compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that CD&R is failing or will fail to comply with such obligations.

- 6.5 The Trustee may give written directions to CD&R to take such steps as may be specified or described in the directions for the purpose of securing CD&R's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require CD&R to:
- (a) offer any reverse premium or similar inducement to a purchaser (or purchasers); or
 - (b) accept any actual or contingent liability towards a purchaser (or purchasers) or otherwise in connection with the divestment of the Divestment Sites which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that CD&R is failing or will fail to comply with any of its obligations under these undertakings.
- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of CD&R nor shall the Trustee Functions be extended or varied in any way by CD&R save with the prior express written consent of the CMA.

7. OBLIGATIONS OF CD&R FOLLOWING APPOINTMENT OF TRUSTEE

- 7.1 CD&R shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 CD&R shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:
- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6 above; and
 - (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

8. REMUNERATION OF TRUSTEE

- 8.1 CD&R shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

9. INTERIM ACTION

- 9.1 Pending the completion of the divestment of the Divestment Sites to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA (which, for the avoidance of doubt, includes

the list of derogations set out in Annex 2 that shall be treated as exceptions to the general obligations set out in paragraph 9.1 of the UILs, unless amended or revoked by the CMA at any time), CD&R shall minimise as far as possible any risk of loss of competitive potential of the Divestment Sites and in particular ensure that:

- (a) the Divestment Sites are carried on separately from the Morrisons Business and the Divestment Sites' separate sales or brand identity is maintained;
- (b) the Divestment Sites are maintained as a going concern and sufficient resources are made available for the development of the Divestment Sites on the basis of their respective pre-Transaction 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 Divestment Sites;
- (d) the nature, description, range and quality of road fuel, supplied by each of the Divestment Sites are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the Divestment Sites:
 - (i) all of the assets of the Divestment Sites are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Divestment Sites are disposed of; and
 - (iii) no interest in the assets of the Divestment Sites is created or disposed of;
- (f) there is no integration of the information technology of the Divestment Sites and the Morrisons Business and the software and hardware platforms of the Divestment Sites shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the supplier list of the Divestment Sites and the Morrisons Business shall be operated and updated separately and any negotiations with any existing or potential suppliers in relation to the Divestment Sites will be carried out by the Divestment Sites alone and for the avoidance of doubt the Morrisons Business will not negotiate on behalf of any Divestment Sites or enter into any joint agreements with any Divestment Sites ;
- (h) all existing contracts of the Divestment Sites continue to be serviced by the business to which they were awarded;
- (i) no changes are made to Key Staff of the Divestment Sites;
- (j) no Key Staff are transferred between the Divestment Sites and the Morrisons Business;
- (k) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Sites; and

- (l) no Confidential Information relating to either of the Divestment Sites or the Morrisons Business shall pass, directly or indirectly, from the Divestment Sites (or any of its employees, directors, agents or affiliates) to the Morrisons Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or any steps necessary in order for CD&R to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Sites, any records or copies (electronic or otherwise) of Confidential Information held by CD&R in relation to the Divestment Sites (or vice versa) shall be returned to the relevant business and any copies destroyed (except as may be necessary for the purposes of compliance with the obligations above).

9.2 At all times, CD&R will actively keep the CMA informed of any material developments relating to the Divestment Sites, which includes, but is not limited to:

- (a) details of Key Staff who leave the Divestment Sites;
- (b) any interruption of the Divestment Sites (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 lost by the Divestment Sites; and
- (d) substantial changes in the Divestment Sites' contractual arrangements or relationships with key suppliers.

10. CONTINUED SEPARATION

10.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Sites pursuant to these undertakings, CD&R, or any member of the Group of Interconnected bodies Corporate to which CD&R belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) an Interest in the Divestment Sites other than any freehold interest in the property associated with the Divestment Sites pending divestment of that freehold proprietary interest pursuant to paragraph 2.4 above; or
 - (ii) any Interest in any company carrying on or having Control of the Divestment Sites (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of CD&R or of any members of the Group of Interconnected Bodies Corporate to which CD&R belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or

- (iii) other than in the normal course of business, any of the assets of the Divestment Sites;
- (b) shall procure that no employee or director of CD&R or any member of the Group of Interconnected Bodies Corporate to which CD&R belongs for as long as they are an employee or director of CD&R or any member of the Group of Interconnected Bodies Corporate to which CD&R belongs holds or is nominated to any directorship or managerial position in the Divestment Sites or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Sites without the CMA's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Sites or any company or other undertaking carrying on or having control of that Divestment Sites; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of CD&R or of any member of the Group of Interconnected Bodies Corporate to which CD&R belongs directly or indirectly acquiring the Divestment Sites or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above.

11. NEW DIVESTMENT IF CD&R OBTAINS POSSESSION OF A DIVESTMENT SITE PROPERTY

- 11.1 In the event that, following divestment of a Divestment Site in a manner that has involved CD&R assigning an existing lease or granting a sub-lease to the purchaser of the Divestment Site, CD&R benefits from or becomes subject to an Occupation Interest (so long as CD&R so benefits or becomes so subject during the term of the lease assigned or sub-lease granted by CD&R as part of such divestment), CD&R shall:
- (a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the CMA in writing of that fact; and
 - (b) using its best endeavours and acting in good faith comply with such written directions as the CMA may give to CD&R to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Divestment Site.
- 11.2 In determining, for the purposes of sub-paragraph 11.1(b) above, whether to require CD&R to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, the CMA may have regard to any change of circumstances since the Decision.
- 11.3 In the event that CD&R fails to divest the Occupation Interest in accordance with paragraph 11.1 above, the CMA may, whether or not initiating the Trustee Functions

set out in these undertakings, require CD&R to divest the Occupation Interest at no minimum price to a purchaser approved by the CMA.

- 11.4 CD&R shall notify the CMA in writing of the identity of each Proposed Purchaser that makes an offer for the Occupation Interest together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.
- 11.5 In the event that the CMA gives written directions under paragraph 11.1 above for CD&R to effect a new divestment of the Occupation Interest, paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to "Divestment Site" in those paragraphs shall be construed as references to "Occupation Interest".

12. COMPLIANCE

- 12.1 CD&R shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 12.2 CD&R shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
 - (b) investigating potential breaches of the provisions of these undertakings.
- 12.3 CD&R shall procure that any member of the same Group of Interconnected Bodies Corporate as CD&R complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as CD&R shall be attributed to CD&R for the purposes of these undertakings.
- 12.4 Where any Affiliate of CD&R is not a member of the same Group of Interconnected Bodies Corporate as CD&R, CD&R shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

13. PROVISION OF INFORMATION

- 13.1 CD&R shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

14. EXTENSION OF TIME LIMITS

- 14.1 The CMA may, in response to a written request from CD&R, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

15. SERVICE

- 15.1 CD&R hereby authorises Clifford Chance LLP, whose address for service is 10 Upper Bank Street, London, E14 5JJ, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to CD&R, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 15.2 Unless CD&R informs the CMA in writing that Clifford Chance LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on CD&R if it is served on Clifford Chance LLP; and service shall be deemed to have been acknowledged by CD&R if it is acknowledged by Clifford Chance LLP or such other nominee.
- 15.3 Paragraph 15.2 above has effect irrespective of whether, as between CD&R and Clifford Chance LLP or other nominees, Clifford Chance LLP or other nominees has or continues to have any authority to accept and acknowledge service on CD&R's or any of its respective Subsidiaries' behalf.
- 15.4 No failure or mistake by Clifford Chance LLP or other nominees (including a failure to notify CD&R of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 15.5 Any communication from CD&R to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ or such other person or address as the CMA may direct in writing.

16. EFFECT OF INVALIDITY

- 16.1 Should any provision of these undertakings be contrary to law or invalid for any reason, CD&R undertake to continue to observe the remaining provisions.

17. GOVERNING LAW

- 17.1 CD&R recognises and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 17.2 In the event that a dispute arises concerning these undertakings, CD&R undertakes to submit to the courts of England and Wales.

18. TERMINATION

- 18.1 CD&R recognises and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 18.2 CD&R recognises and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

19. INTERPRETATION

19.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

19.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

19.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

19.4 For the purposes of these undertakings:

"**the Act**" means the Enterprise Act 2002;

"**Affiliate**" a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

"**Associated Person**" means a person or persons associated with CD&R within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"**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;

"**CD&R Group**" means CD&R, its subsidiaries and portfolio companies;

"**CMA**" means the Competition and Markets Authority or any successor body;

"**Confidential Information**" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"**Control**" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"**Decision**" means the CMA's decision under section 22 of the Act dated 24 March 2022 in connection with the Transaction;

"Divestment Sites" means the sites listed in **Annex 1**, or such other site or sites to address effectively the substantial lessening of competition up to and including the increment caused by the Transaction in each relevant local area;

"Divestment Site Property" means the relevant property associated with the Divestment Sites as at the date of these undertakings;

"Divestment Period" means the period of time determined by the CMA and notified in writing to CD&R by the CMA;

"enterprise" has the meaning given in section 129(1) of the Act;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"IEO" means the Initial Enforcement Order applying to CD&R, Motor Fuel Limited, CD&R Firefly Holdco Limited, Market Bidco Limited, Market Topco Limited and Morrisons on 27 October 2021;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Sites;

"Occupation Interest" means an interest in the Divestment Site Property by virtue of which CD&R enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Site Property provided always that: (i) the original purchaser (or its successor) is not in occupation of the Divestment Site Property; and/or (ii) before such interest in the Divestment Site Property arose, the most recent use to which the Divestment Site Property had been put was that of carrying on the retail supply of road fuel;

"MFG Business" means the business of 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 Limited, a company registered in England and Wales with company number 00358949, registered offices at Hilmore House, Gain Lane, Bradford, West Yorkshire, BD3 7DL;

"Morrisons Business" means the business of Morrisons and its Subsidiaries;

"Proposed Purchaser" means any proposed purchaser (or purchasers) for the Divestment Sites;

"**Subsidiary**" shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

"**the Transaction**" means the acquisition by CD&R of Morrisons and its subsidiaries on 27 October 2021 by way of acquisition of the entire issued and to be issued share capital of Morrisons;

"**Trustee**" means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

"**Trustee Functions**" means the functions set out in paragraph 6;

"**UK**" means the United Kingdom of Great Britain and Northern Ireland;

"**Working Day**" means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales;

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

FOR AND ON BEHALF OF CD&R

Signature

Name

Title

Date

DATE ACCEPTED BY THE CMA:

Annex 1 – Divestment Sites

Divestment Site Name	Divestment Site Address
MFG FRINTON	Frinton Road, CO13 0PA Frinton-On-Sea
MFG PORTLAND SPAR	Easton Lane, DT5 1BW Portland
MFG BUDE	Bencoolen Road, EX23 8PJ Bude
MFG NORTHSIDE	Hereford Road, HR6 0PJ Leominster
QUEENBOROUGH SERVICE STATION	Queenborough Road, ME12 3EW Sheerness
MFG OVERMONNOW	Cinderhill Street, NP25 5EZ Monmouth
MFG BEN	North Road, PH33 6TQ Fort William
MFG ROAD TO THE ISLES	North Road, PH33 6TQ Fort William
MFG BLACKFIELD	Hampton Lane, SO45 1WE Southampton
MFG ISENHURST	Cross In Hand, TN21 0UE Heathfield
MFG BELLBROOK	Bell Farm Road, TN22 1BA Uckfield
MFG OLD ROAD	Old Road, CO15 3LX Clacton-On-Sea
PEREGRINE SHERBORNE SERVICE STATION	Yeovil Road, DT9 4BQ Sherborne
MFG AMERSHAM	Woodside Road, HP6 6AJ Amersham
MFG ST ANDREWS	Bridge Street, KY16 9EX St Andrews
MFG CASTLE VIEW	Rhyl Road, LL16 5SU Denbigh
MFG LOOE	Station Road, PL13 1HN Looe
MFG SPRINGHILL	Cannock Road, WS7 0BQ Burntwood
MFG VINES	Main Road, CO12 4DN Harwich
MFG PARKWOOD	Sutton Road, ME15 8RB Maidstone
MFG IMPERIAL	Regent Street, PA15 4TH Greenock
MFG SPALDING	London Road, PE11 2TP Spalding
MFG FILLYBROOK	Newcastle Road Southbound, ST15 0PT Stone

MFG SUNNYLODGE	Worcester Road, WR14 1AB Malvern
MFG COASTWAYS SPAR	York Road, YO43 3PN York
MFG TIVERTON	Exeter Road, EX16 5DY Tiverton
MFG FELIXSTOWE DOCK SERVICES	Anzani Avenue, IP11 4HU Felixstowe
MFG BECCLES	Norwich Road, NR34 0ED Beccles
MFG ROCK	Scotgate, PE9 2YQ Stamford
MFG HEMMINGFORD	London Road, PE27 5EU Huntingdon
MFG LOWER LANE	Lower Lane, GL16 8QQ Coleford
MFG LEDBURY	The Homend, HR8 1BS Ledbury
MFG RUTHIN	Park Road, LL15 1NB Denbigh
MFG BLOODY OAKS	Great North Road, PE9 4AD Stamford
MFG MALVERN SPRINGS	Worcester Road, WR14 1AG Malvern
MFG JEDBURGH	Edinburgh Road, TD8 6EB Jedburgh
MFG PARK VIEW	Haddon Road, DE45 1AW Bakewell
MFG BRIDGE	Bridge Road, DN21 1JU Gainsborough
MFG ASHINGTON	Morpeth Road, NE63 8QG Ashington
MFG THIRSK	Thirsk Bypass Southbound, YO7 3HL Thirsk
MFG RUBERY	Cock Hill Lane, B45 9RQ Birmingham
MFG IRON ACTON	Yate Road, BS37 9XY Bristol
MFG WESTERN SERVICE STATION	Western Road, KA3 1TX, Kilmarnock
MFG BOARS HEAD	Eridge Road, TN6 3HD Crowborough
MFG LEOMINSTER	Mill Street, HR6 0DQ Leominster
MFG OAKHAM	Melton Road, LE15 6AX Oakham
MFG BEVERLEY	Mill Lane, HU17 9DH Beverley
MFG FISHGUARD	The High Street, SA65 9AT Fishguard
MFG WIRRAL PARK	Street Road, BA6 9XE Glastonbury

MFG CARLTON SQUARE	Carlton Road, NG4 1BG Nottingham
MFG SWAFFHAM	A47 Bypass, PE37 7TZ Swaffham
MFG WITTERING	A1 Great North Road, PE8 6HA Peterborough
MFG VALE	Cheltenham Road, WR11 7QP Evesham
MFG SYMONDS YAT SERVICES NORTHBOUND	A40, HR9 6DP Ross-On-Wye
MFG HAZEL GROVE	Camel Hill, BA22 7JE Yeovil
MFG BOURNE SOUTH	Milestone Road, PE10 0ET Bourne
MFG BROMSGROVE SPAR	Birmingham Road, B61 0DF Bromsgrove
MFG CORNISH GATEWAY SERVICE AREA	A30 Victoria Junction, PL26 8UF St Austell
MFG ERITH	Bexley Road, DA8 3EX Erith
MFG SCUNTHORPE	Grange Lane South, DN16 3BJ Scunthorpe
MFG BURTON	Ashby Road, DE15 0NX Burton-On-Trent
MFG RACES	Derwenthough Road, Blaydon-on-Tyne, NE21 5PG
MFG SWALWELL	Hexham Rd, Swalwell, Newcastle upon Tyne NE16 3DW
MFG ROYSTON	Edinburgh Road, EH52 6LS Broxburn
MFG MANDALE ROAD	Mandale Road, TS17 6AD Stockton-On-Tees
MFG NORWOOD	Herries Road, S5 8TP Sheffield
MFG HILLTOP	Sheffield Road, S70 5XB Barnsley
MFG PRIZET SOUTHBOUND	A591 Helsington, LA8 8AA Kendal
MFG MOUNT VERNON	Hamilton Road, G32 9QD Glasgow
MFG BURNBANK	Burnbank Road, ML3 9AN Hamilton
MFG CALDER	215 Merry Street, Motherwell, ML1 1LN
MFG EARNOCK	Wellhall Road, Hamilton, ML3 9UE
MFG ST CLAIR	203 St. Clair Street, Kirkcaldy, KY1 2BX

MFG MALMESBURY	Crudwell Road, SN16 9JL Malmesbury
MFG BRIGG	Bridge Street, DN20 8LY Brigg
MFG ROWBERROW	Bridgwater Road, BS25 1QJ Winscombe
MFG GRAVESEND SPAR	Old Road West, DA11 0LR Gravesend
MFG CREWE ROAD	Crewe Road, CW2 6PR Crewe
MFG ELVA	Sedlescombe Road North, TN37 7PB St Leonards-On-Sea
MFG DUNBALL ROUNDABOUT	Bristol Road, TA6 4TE Bridgwater
MFG WHITE ROSE	Great North Road Northbound, DN6 8LR Doncaster
MFG HARVEST	Wheatley Hall Road, DN2 4NF Doncaster
MFG STRATHTAY	Edinburgh Road, PH2 8DX Perth
MFG ST JOHNSTONE	Dunkeld Road, PH1 5RG Perth
MFG JACOBS WELL	Jacobs Well Lane, WF1 3NS Wakefield
MFG ARKLE	Barkerend Road, BD3 9BD Bradford
MFG EUROPA	Town Street, LS28 6HQ Pudsey

Annex 2 – Derogations

Date Granted	Derogation
27 October 2021	Non-executive director resignations and changes to Morrisons' accounting reference date
5 November 2021	Morrisons' adoption of new Articles of Association
10 November 2021	Exemption of certain CD&R portfolio companies from certain provisions of the IEO
9 December 2021	Sharing of strictly necessary limited financial information relating to the sale and leaseback of certain retail sites
9 December 2021	Financing arrangements and note issuance
7 January 2022	Sharing of strictly necessary limited financial information relating to the sale and leaseback of certain retail sites
14 February 2022	Transfer of Morrisons properties to Morrisons' pension schemes
25 February 2022	Sharing of information and execution of Morley proposal
24 March 2022	Auto LPG Removal
29 March 2022	Changes to key staff and associated changes to management responsibilities
5 April 2022	Changes to key staff and associated changes to management responsibilities