

## **ACQUISITION BY GXO LOGISTICS, INC. OF CLIPPER LOGISTICS PLC**

### **Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)**

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in GXO Logistics, Inc. and Clipper Logistics plc (**Clipper**) ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed GXO Logistics, Inc. (DE) 86-2098312 (**GXO**); GXO Logistics Europe (SAS) (France) S01; GXO Logistics Holdings UK Unlimited (England and Wales) S7P (referred to together as the '**Acquirer Group**'), and Clipper (Order).

### **Commencement, application and scope**

1. This Order commences on the commencement date: being the date of order completion of the transaction.
2. This Order applies to the Acquirer Group and Clipper.

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige the Acquirer Group or Clipper to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order does not prohibit the completion of the transaction provided that the Acquirer Group and Clipper observe the restrictions set out below.

### **Management of the Acquirer Group and Clipper businesses until determination of proceedings**

5. Except with the prior written consent of the CMA, Acquirer Group and Clipper shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the Clipper business with the Acquirer Group business;
  - (b) transfer the ownership or control of the Acquirer Group business or the Clipper business or any of their subsidiaries; or
  - (c) otherwise impair the ability of the Clipper business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, the Acquirer Group and Clipper shall at all times during the specified period take all necessary steps to ensure that, except with the prior written consent of the CMA:
  - (a) the Clipper business is carried on separately from the Acquirer Group business and the Clipper business's separate sales or brand identity is maintained;
  - (b) the Clipper business and the Acquirer Group business are maintained as a going concern and sufficient resources are made available for the development of the Clipper business and the Acquirer Group business, on the basis of their respective pre-merger business plans;
  - (c) except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities within, the Clipper business or the Acquirer Group business;

- (d) the nature, description, range and quality of goods or services (or both) supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business through the separate operation of the two businesses:
  - (i) all of the assets of the Clipper business and the Acquirer Group business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Clipper business or the Acquirer Group business are disposed of; and
  - (iii) no interest in the assets of the Clipper business or the Acquirer Group business is created or disposed of;
- (f) there is no integration of the information technology of the Clipper or Acquirer Group businesses, and the software and hardware platforms of the Clipper business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Clipper business will be carried out by the Clipper business alone and for the avoidance of doubt the Acquirer Group business will not negotiate on behalf of the Clipper business (and vice versa) or enter into any joint agreements with the Clipper business (and vice versa);
- (h) all contracts of the Clipper business and the Acquirer Group business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Clipper business or Acquirer Group business;
- (j) no key staff are transferred between the Clipper business and the Acquirer Group business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Clipper business and the Acquirer Group business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Clipper business (or any of its employees,

directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

## **Compliance**

7. The Acquirer Group and Clipper shall take all necessary steps to ensure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
8. The Acquirer Group and Clipper shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by the Acquirer Group and Clipper their subsidiaries with this Order. In particular, on 7 June 2022 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of the Acquirer Group and Clipper or other persons of the Acquirer Group and Clipper as agreed with the CMA shall, on behalf of the Acquirer Group and Clipper provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
9. At all times, the Acquirer Group and Clipper shall actively keep the CMA informed of any material developments relating to the Clipper business or the Acquirer Group business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Clipper business or the Acquirer Group business;
  - (b) any interruption of the Clipper or the Acquirer Group business (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 won or lost or substantial changes to the customer contracts for the Clipper or the Acquirer Group business including any substantial changes in customers' demand; and

- (d) substantial changes in the Clipper or the Acquirer Group businesses' contractual arrangements or relationships with key suppliers.
10. If the Acquirer Group and Clipper has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that the Acquirer Group or Clipper may be directed to appoint under paragraph 111.
  11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
  12. The Acquirer Group and Clipper shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

**'Acquirer Group'** means GXO, GXO Logistics Europe (SAS) (France) S01 and GXO Logistics Holdings UK Unlimited (England and Wales) S7P;

**'the Acquirer Group business'** means the business of the Acquirer Group and their subsidiaries carried on as at the commencement date;

**'the Act'** means the Enterprise Act 2002;

**'an affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'Clipper'** means Clipper Logistics plc, a company registered in England and Wales with company number 03042024, registered offices at Gelderd Road, Leeds, LS12 6LT.

**'the Clipper business'** means the business of Clipper and its subsidiaries carried on as at the commencement date;

**'commencement date'** means the date of completion;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**'GXO'** means GXO Logistics, Inc. (DE) 86-2098312, a company registered in the United States with the registration number 86-2098312, registered offices at Five American Lane, Greenwich, CT, 6831, United States;

**'the decisions'** means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 or 36 of the Act;

**'key staff'** means staff in positions of (i) senior executive or managerial responsibility or (ii) whose performance affects the viability of the business;

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods or services (or both) by Clipper or the Acquirer Group and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Clipper and the Acquirer Group;

**'specified period'** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'the transaction'** means the transaction by which GXO and Clipper will cease to be distinct within the meaning of section 23 of the Act;

**'the two businesses'** means the Acquirer Group business and the Clipper business;

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

**Signature:**

Shantanu Kafle

**Assistant Director, Mergers**

## Compliance statement for the Acquirer Group

I [insert name] confirm on behalf of GXO Logistics, Inc. (DE) 86-2098312 / GXO Logistics Europe (SAS) (France) S01 / GXO Logistics Holdings UK Unlimited (England and Wales) S7P that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
  - (a) GXO Logistics, Inc. (DE) 86-2098312 / GXO Logistics Europe (SAS) (France) S01 / GXO Logistics Holdings UK Unlimited (England and Wales) S7P has complied with the Order made by the CMA in relation to the transaction on 17 May 2022 (the Order).
  - (b) GXO Logistics, Inc. (DE) 86-2098312 / GXO Logistics Europe (SAS) (France) S01 / GXO Logistics Holdings UK Unlimited (England and Wales) S7P subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by GXO Logistics, Inc. (DE) 86-2098312 / GXO Logistics Europe (SAS) (France) S01 / GXO Logistics Holdings UK Unlimited (England and Wales) S7P that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Clipper business with the Acquirer Group business;
    - (ii) transfer the ownership or control of the Acquirer Group business or the Clipper business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Clipper business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
  - (b) The Clipper business has been carried on separately from the Acquirer Group business and the Clipper business's separate sales or brand identity has been maintained.



- (c) The Y business and the Acquirer Group business have been maintained as a going concern and sufficient resources have been made available for the development of the Clipper business and the Acquirer Group business, on the basis of their respective pre-merger business plans.
- (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Clipper business or the Acquirer Group business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Clipper business and the Acquirer Group business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Clipper business and the Acquirer Group business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Clipper business or the Acquirer Group business have been disposed of; and
  - (iii) no interest in the assets of the Clipper business or the Acquirer Group business has been created or disposed of.
- (g) There has been no integration of the information technology of the Clipper or Acquirer Group businesses, and the software and hardware platforms of the Clipper business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Clipper business have been carried out by the Clipper business alone and, for the avoidance of doubt, the Acquirer Group business has not negotiated on behalf of the Clipper business (and vice versa) or entered into any joint agreements with the Clipper business (and vice versa).
- (i) All contracts of the Clipper business and the Acquirer Group business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.

- (j) No changes have been made to key staff of the Clipper business or the Acquirer Group business.
- (k) No key staff have been transferred between the Clipper business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Clipper business and the Acquirer Group business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Clipper business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
  - (i) key staff that have left or joined the Clipper business or the Acquirer Group business;
  - (ii) interruptions of the Clipper business or the Acquirer Group business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Clipper business or the Acquirer Group business; or
  - (iv) substantial changes in the Clipper or Acquirer Group business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. GXO Logistics, Inc. (DE) 86-2098312 / GXO Logistics Europe (SAS) (France) S01 / GXO Logistics Holdings UK Unlimited (England and Wales) S7P and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Clipper or the Acquirer Group business in accordance with paragraph 9 of the Order.

## Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

### I understand that:

It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [INSERT SIGNATORY ENTITY]

Signature .....

Name .....

Title .....

Date

## Compliance statement for Clipper

I [insert name] confirm on behalf of Clipper that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the **Relevant Period**):

(a) Clipper has complied with the Order made by the CMA in relation to the transaction on 17 May 2022 (the Order).

(b) Clipper subsidiaries have also complied with this Order.

2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:

(a) No action has been taken by Clipper that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:

(iv) lead to the integration of the Clipper business with the Acquirer Group business;

(v) transfer the ownership or control of the Acquirer Group business or the Clipper business or any of their subsidiaries; or

(vi) otherwise impair the ability of the Clipper business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.

(b) The Clipper business has been carried on separately from the Acquirer Group business and the Clipper business's separate sales or brand identity has been maintained.

(c) The Y business and the Acquirer Group business have been maintained as a going concern and sufficient resources have been made available for the development of the Clipper business and the Acquirer Group business, on the basis of their respective pre-merger business plans.

(d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Clipper business or the Acquirer Group business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Clipper business and the Acquirer Group business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (iv) all of the assets of the Clipper business and the Acquirer Group business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (v) none of the assets of the Clipper business or the Acquirer Group business have been disposed of; and
  - (vi) no interest in the assets of the Clipper business or the Acquirer Group business has been created or disposed of.
- (g) There has been no integration of the information technology of the Clipper or Acquirer Group businesses, and the software and hardware platforms of the Clipper business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Clipper business have been carried out by the Clipper business alone and, for the avoidance of doubt, the Acquirer Group business has not negotiated on behalf of the Clipper business (and vice versa) or entered into any joint agreements with the Clipper business (and vice versa).
- (i) All contracts of the Clipper business and the Acquirer Group business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Clipper business or the Acquirer Group business.
- (k) No key staff have been transferred between the Clipper business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Clipper business and the Acquirer Group business.

- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Clipper business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
  - (v) key staff that have left or joined the Clipper business or the Acquirer Group business;
  - (vi) interruptions of the Clipper business or the Acquirer Group business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (vii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Clipper business or the Acquirer Group business; or
  - (viii) substantial changes in the Clipper or Acquirer Group business's contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. Clipper and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Clipper or the Acquirer Group business in accordance with paragraph 9 of the Order.

## **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

## **I understand that:**

It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fines, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF CLIPPER

Signature .....

Name .....

Title .....

Date