

**ACQUISITION BY WM MORRISON SUPERMARKETS LIMITED OF CERTAIN ASSETS OF MCCOLL'S RETAIL GROUP PLC, MARTIN MCCOLL LIMITED, CLARK RETAIL LIMITED, DILLONS STORES LIMITED, SMILE STORES LIMITED, CHARNWAIT MANAGEMENT LIMITED, AND MARTIN RETAIL GROUP LIMITED**

**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 Wm Morrison Supermarkets Limited has ceased to be distinct from certain assets of McColl's Retail Group plc, Martin McColl Limited, Clark Retail Limited, Dillons Stores Limited, Smile Stores Limited, Charnwait Management Limited, and Martin Retail Group Limited (these assets are collectively referred to as '**McColl's**');
- (b) on 9 May 2022, Wm Morrison Supermarkets Limited completed the acquisition of McColl's via Alliance Property Holdings Limited ('**Alliance**'), a wholly-owned previously non-trading subsidiary the purpose of which, since completion of the acquisition by Wm Morrison Supermarkets Limited of McColl's, has been solely to act as the holding company for McColl's;
- (c) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (d) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 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

- (e) 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 to Clayton, Dubilier & Rice Holdings, LLC (**CD&R**); Motor Fuel Limited and CD&R Firefly Holdco Limited (referred to together as **MFG**); Market Bidco Limited, Market Topco Limited, and each of the subsidiaries of Wm Morrison Supermarkets Limited other than Alliance (referred to together as **Morrisons**) (CD&R, MFG and Morrisons collectively are referred to as the **Acquirer Group**); and Alliance (**Order**).

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

1. This Order commences on the commencement date: 25 May 2022.
2. This Order applies to the Acquirer Group and Alliance.
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 Alliance to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

### **Management of the Acquirer Group and the McColl's businesses until determination of proceedings**

4. Except with the prior written consent of the CMA (which, for the avoidance of doubt, and unless otherwise specified by the CMA, includes each of the derogations already granted or which will be granted by the CMA in relation to the completed acquisition of Wm Morrison Supermarkets Limited by Clayton, Dubilier & Rice Holdings, LLC that shall be treated as exceptions to the obligations set out in paragraphs 4 and 5, unless amended or revoked by the CMA at any time), the Acquirer Group and Alliance shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 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 Alliance business with the Acquirer Group business;
  - (b) transfer the ownership or control of the Acquirer Group business or the Alliance business or any of their subsidiaries; or

- (c) otherwise impair the ability of the Alliance business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, the Acquirer Group and Alliance 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 Alliance business is carried on separately from the Acquirer Group business and the Alliance business's separate sales or brand identity is maintained;
  - (b) the Alliance business and the Acquirer Group business are maintained as a going concern and sufficient resources are made available for the development of the Alliance 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 Alliance business or the Acquirer Group business;
  - (d) the nature, description, range and quality of goods and/or services 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 Alliance business and the Acquirer Group business are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets of the Alliance business or the Acquirer Group business are disposed of; and
    - (iii) no interest in the assets of the Alliance business or the Acquirer Group business is created or disposed of;
  - (f) there is no integration of the information technology of the Alliance or Acquirer Group businesses, and the software and hardware platforms of the Alliance 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 Alliance business will be carried out by the Alliance business alone and for the avoidance of doubt the Acquirer Group business will not negotiate on behalf of the Alliance business (and vice versa) or enter into any joint agreements with the Alliance business (and vice versa);
- (h) all contracts of the Alliance 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 Alliance business or Acquirer Group business;
- (j) no key staff are transferred between the Alliance business and the Acquirer Group business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Alliance 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 Alliance 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**

6. The Acquirer Group and Alliance 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.
7. The Acquirer Group and Alliance 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 Alliance and their

subsidiaries with this Order. In particular, on 8 June 2022 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the relevant Director(s) of each of the addressees of the Order that form part of the Acquirer Group, including the CEO of Wm Morrison Supermarkets Limited, as well as the relevant Director(s) of Alliance, or other persons of the Acquirer Group and Alliance as agreed with the CMA shall, on behalf of each of the Acquirer Group and Alliance, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.

8. At all times, the Acquirer Group and Alliance shall actively keep the CMA informed of any material developments relating to the Alliance business or the Acquirer Group business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Alliance business or the Acquirer Group business;
  - (b) any interruption of the Alliance or the Acquirer Group businesses (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 Alliance or the Acquirer Group businesses including any substantial changes in customers' demand; and
  - (d) substantial changes in the Alliance or the Acquirer Group businesses' contractual arrangements or relationships with key suppliers.
9. If the Acquirer Group or Alliance 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 Alliance may be directed to appoint under paragraph 10.
10. 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.
11. The Acquirer Group and Alliance 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

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

13. For the purposes of this Order:

**'the Acquirer Group'** means CD&R, MFG and Morrisons;

**'the Acquirer Group business'** means the business of CD&R, MFG and Morrisons 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;

**'Alliance'** means Alliance Property Holdings Limited, a company registered in England and Wales with company number 00907499 and a registered office address at Hilmore House, Gain Lane, Bradford, West Yorkshire, BD3 7DL.

**'the Alliance business'** means the business carried on by each of the assets which collectively make up McColl's;

**'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;

**'commencement date'** means 25 May 2022;

**'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;

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

**'McColl's'** means those assets which Morrisons acquired on 9 May 2022 that were formerly held by the below entities:

- McColl's Retail Group plc, a company registered in England and Wales with company number 08783477 and a registered office address at Ground Floor West, One London Road, Brentwood, Essex, England, CM14 4QW;
- Martin McColl Limited, a company registered in England and Wales with company number 00298945 and a registered office address at Ground Floor West, One London Road, Brentwood, Essex, England, CM14 4QW;
- Clark Retail Limited, a company registered in Scotland with company number SC101099 and a registered office address at 72 Carfin Road, Motherwell, Scotland, ML1 5JZ;
- Dillons Stores Limited, a company registered in England and Wales with company number 03498958 and a registered office at Ground Floor West, One London Road, Brentwood, Essex, England, CM14 4QW;
- Smile Stores Limited, a company registered in England and Wales with company number 00641258 and a registered office at Ground Floor West, One London Road, Brentwood, Essex, England, CM14 4QW;
- Charnwait Management Limited, a company registered in England and Wales with company number 04444181 and a registered office at Ground Floor West, One London Road, Brentwood, Essex, England, CM14 4QW; and
- Martin Retail Group Limited, a company registered in Scotland with company number SC013840 and a registered office at 72 Carfin Road, Motherwell, Scotland, ML1 5JZ;

**'MFG'** means 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 Market Bidco Limited a company registered in England and Wales with company number 13537474, registered office at C/O Alter

Domus (UK) Limited 18 St Swithin's Lane, London, United Kingdom, EC4N 8AD; Market Topco Limited a company registered in England and Wales with company number 13537349, registered office at C/O Alter Domus (UK) Limited 18 St Swithin's Lane, London, United Kingdom, EC4N 8AD; and each of the subsidiaries, other than Alliance, of 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;

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods and/or services by the Alliance business and the Acquirer Group business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Alliance 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 acquisition of McColl's by Morrisons through Alliance and by which the Acquirer Group and McColl's have ceased to be distinct within the meaning of section 23 of the Act;

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

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

Lasse Burmester

*Assistant Director, Mergers*



## Compliance statement for the Acquirer Group

I [insert name] confirm on behalf of Clayton, Dubilier & Rice Holdings, LLC / Motor Fuel Limited / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Wm Morrison Supermarkets Limited that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Clayton, Dubilier & Rice Holdings, LLC / Motor Fuel Limited / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Wm Morrison Supermarkets Limited has complied with the Order made by the CMA in relation to the transaction on 25 May 2022 (the Order).
  - (b) Clayton, Dubilier & Rice Holdings, LLC / Motor Fuel Limited / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Wm Morrison Supermarkets Limited's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Clayton, Dubilier & Rice Holdings, LLC / Motor Fuel Limited / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Wm Morrison Supermarkets Limited 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 Alliance business with the Acquirer Group business;
    - (ii) transfer the ownership or control of the Acquirer Group business or the Alliance business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Alliance business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
  - (b) The Alliance business has been carried on separately from the Acquirer Group business and the Alliance business's separate sales or brand identity has been maintained.

- (c) The Alliance business and the Acquirer Group's business have been maintained as a going concern and sufficient resources have been made available for the development of the Alliance 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 Alliance business or the Acquirer Group business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Alliance 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 Alliance 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 Alliance business or the Acquirer Group's business have been disposed of; and
  - (iii) no interest in the assets of the Alliance business or the Acquirer Group's business has been created or disposed of.
- (g) There has been no integration of the information technology of the Alliance business or the Acquirer Group's businesses, and the software and hardware platforms of the Alliance 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 Alliance business have been carried out by the Alliance business alone and, for the avoidance of doubt, the Acquirer Group's business has not negotiated on behalf of the Alliance business (and vice versa) or entered into any joint agreements with the Alliance business (and vice versa).
- (i) All contracts of the Alliance 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 Alliance business or the Acquirer Group business.
- (k) No key staff have been transferred between the Alliance business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Alliance 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 Alliance 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 Alliance business or the Acquirer Group business;
  - (ii) interruptions of the Alliance 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 Alliance business or the Acquirer Group business; or
  - (iv) substantial changes in the Alliance business's or Acquirer Group business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Clayton, Dubilier & Rice Holdings, LLC / Motor Fuel Limited / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Wm Morrison Supermarkets Limited and [its/their] subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Alliance business or the Acquirer Group business in accordance with paragraph 8 of the Order.

## Interpretation

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

### I understand that:

5. 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.)
6. 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 Clayton, Dubilier & Rice Holdings, LLC / Motor Fuel Limited / CD&R Firefly Holdco Limited / Market Bidco Limited and Market Topco Limited / Wm Morrison Supermarkets Limited

Signature .....

Name .....

Title .....

Date

## Compliance statement for Alliance

I [insert name] confirm on behalf of Alliance Property Holdings Limited that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period) Alliance has complied with the Order made by the CMA in relation to the transaction on 25 May 2022 (the Order).
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Alliance 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 Alliance business with the Acquirer Group business;
    - (ii) transfer the ownership or control of the Acquirer Group business or the Alliance business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Alliance business or the Acquirer Group business to compete independently in any of the markets affected by the transaction.
  - (b) The Alliance business has been carried on separately from the Acquirer Group business and the Alliance business's separate sales or brand identity has been maintained.
  - (c) The Alliance business and the Acquirer Group's business have been maintained as a going concern and sufficient resources have been made available for the development of the Alliance 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 Alliance business or the Acquirer Group business, except in the ordinary course of business.
  - (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Alliance 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 Alliance 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 Alliance business or the Acquirer Group's business have been disposed of; and
  - (iii) no interest in the assets of the Alliance business or the Acquirer Group's business has been created or disposed of.
- (g) There has been no integration of the information technology of the Alliance or the Acquirer Group's businesses, and the software and hardware platforms of the Alliance 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 Alliance business have been carried out by the Alliance business alone and, for the avoidance of doubt, the Acquirer Group's business has not negotiated on behalf of the Alliance business (and vice versa) or entered into any joint agreements with the Alliance business (and vice versa).
- (i) All contracts of the Alliance 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 Alliance business or the Acquirer Group business.
- (k) No key staff have been transferred between the Alliance business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Alliance 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 Alliance

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 Alliance business or the Acquirer Group business;
- (ii) interruptions of the Alliance 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 Alliance business or the Acquirer Group business; or
- (iv) substantial changes in the Alliance business's or Acquirer Group business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

- 3. Alliance Property Holdings Limited remains in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Alliance business or the Acquirer Group business in accordance with paragraph 8 of the Order.

## **Interpretation**

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

## **I understand that:**

- 5. 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.)
- 6. 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 Alliance Property Holdings Limited

Signature .....

Name .....

Title .....

Date