

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED PURSUANT TO
SECTION 72(2) ENTERPRISE ACT 2002**

Consent under section 72(3C) of the Enterprise Act 2002 (the ‘Act’) to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (‘CMA’) on 26 October 2021.

Completed acquisition by Clayton, Dubilier and Rice of Wm Morrison Supermarkets Plc (‘Morrisons’) (the ‘Acquisition’).

We refer to your submissions of 7 and 18 February 2022 requesting that the CMA consents to a derogation from the Initial Enforcement Order of 26 October 2021 (the ‘**Initial Order**’). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Clayton, Dubilier & Rice Holdings, LLC (‘**CD&R**’), Motor Fuel Limited, CD&R Firefly Holdco Limited, Market Bidco Limited and Market Topco Limited (collectively referred to as the ‘**Acquirer Group**’), and Morrisons (together with the Acquirer Group the ‘**Addressees**’) are required to hold separate the Acquirer Group business from the Morrisons business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for a derogation from the Initial Order, based on the information received from you and in the particular circumstances of this case, the CMA consents to the Addressees carrying out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(a), 6(e), 6(g) and 6(l) – [Morley] Proposal(s)

The CMA understands that Morrisons wishes to enter into discussions and develop a potential proposal with CD&R in relation to [Morley] Group plc and/or its group companies, assets or undertaking, in whole or in part (‘**[Morley]**’). That proposal could entail Morrisons taking some or all of the following steps directly or indirectly, including in conjunction with CD&R:

- (i) [✂];

(ii) [REDACTED];

(iii) [REDACTED];

(iv) [REDACTED]; and/or

(v) [REDACTED],

(such steps and any of them individually being the '**Proposal(s)**').

Morrisons submits that it is contemplating the above steps because [REDACTED], which is in significant financial difficulties, owes Morrisons approximately [REDACTED], while also accounting for [REDACTED]. Morrisons forecasts that its relationship with [REDACTED] will generate approximately [REDACTED] in annual sales for 2021/22, and the volumes generated by that relationship [REDACTED].

Accordingly, Morrisons submits that (i) [REDACTED] and (ii) if [REDACTED]. Morrisons further submits that Morrisons will need to engage jointly with CD&R in devising a Proposal [REDACTED].

The Addressees submit that their overarching intention is to [REDACTED]. Accordingly, it is essential to [REDACTED]. Morrisons submits that CD&R, as opposed to any independent third party, is able to play a more active and effective role in achieving this overarching goal than Morrisons could as a standalone business.

Finally, CD&R submits that it is essential for CD&R to actively participate in developing any Proposal(s) to ensure that the value of its investment in Morrisons is maintained and that CD&R complies with its obligations to investors in its funds. In particular, CD&R as the general partner of the funds is required to carry out the purposes of the funds which include seeking significant, long-term capital appreciation through control-oriented investments in portfolio companies, including Morrisons. Amongst other obligations, CD&R is required to perform all acts necessary and advisable to achieving this purpose.

The CMA consents to a derogation from paragraphs 6(a), 6(e), 6(g) and 6(l) of the Initial Order to permit the Addressees to:

- Jointly undertake due diligence in connection with the Proposal(s).
- Jointly attend meetings and conference calls with [REDACTED] and relevant third party advisers strictly for the purpose of discussing the Proposal(s).
- Jointly attend meetings and conference calls [REDACTED].
- Jointly prepare any correspondence (including with [REDACTED] and [REDACTED]), and

submissions and regulatory filings in connection with the Proposal(s) [X].

- Jointly engage and agree to [X].
- Jointly attend meetings and conference calls with [X].
- Make public statements in connection with the Proposal(s) where necessary ([X]).
- Enter into preliminary agreements with [Morley], [X].
- Share and discuss certain confidential and commercially-sensitive information in connection with the Proposal(s) (the '**Strictly Necessary Information**'), including:
 - Information relating to [Morley] for the purpose of undertaking due diligence and assessing any [X] that would be available to Morrisons and/or CD&R, which may include [X].
 - Information relating to [X].
 - Information relating to [X].
 - Information relating to Morrisons for the purpose of undertaking due diligence, which may include information that is necessary to assess and [X] that would arise by executing the Proposal(s). However, such information will not include any granular revenue, margin or cost data at the individual product or service level.
 - Other strictly necessary information relevant to analysing, preparing, and subsequently entering into, the transaction documents for the purpose of the Proposal(s).

The CMA consents to a derogation from paragraphs 6(a), 6(e), 6(g) and 6(l) of the Initial Order to permit the above, strictly on the basis that:

- (a) The Addressees shall regularly (at least fortnightly) notify the CMA of any material developments in connection with the Proposal(s) (including, to the extent within the control of the Addressees, in advance of such material developments taking place), for example, prior to the Addressees entering into joint agreements with Morley or third parties in connection with the Proposal(s).
- (b) The Addressees shall notify the CMA prior to any physical meetings or any material virtual meetings (ie meetings where substantive decisions will be taken) that are

jointly attended by the Addressees, including who would be present at those meetings, and what the Addressees plan to discuss and (where relevant) agree during those meetings.

- (c) The Addressees will, upon request by the CMA, provide copies of relevant materials that the Addressees propose to share during, or in preparation for, key meetings that are jointly attended by the Addressees.
- (d) The Addressees will provide updates to the CMA in connection with the Proposal(s), where within the control of the Addressees, providing the CMA with advanced notice prior to finalising the Proposal(s) (including, where appropriate, approaching the CMA for a separate derogation).
- (e) The Addressees will ensure that their employees, directors, agents or affiliates involved with developing the Proposals, and their [X], are made aware of the Addressees' obligations under the IEO and any derogation(s) granted in connection with the Proposal(s).
- (f) The Addressees will request a separate derogation from the CMA prior to executing a Proposal listed at paragraphs (iv) or (v) above (including but not limited to before the [X]).
- (g) Any information disclosed pursuant to this derogation would not contain any competitively sensitive information (except where such information is strictly necessary to facilitate due diligence by CD&R for the purpose of deciding whether to proceed with a Proposal). However, under no circumstances will information disclosed pursuant to this derogation contain any granular revenue, margin or cost data at the individual product or service level.
- (h) Any confidential or commercially sensitive information shared under this derogation will be shared with no Acquirer Group individuals other than the individuals listed in Annex 1 (the '**Annex 1 Individuals**'). Each of the Annex 1 Individuals will receive the information necessary to assess the Proposal(s) under the terms of the non-disclosure agreement submitted to the CMA on 8 December 2021 (the '**NDA**') which contains appropriate safeguards on the use, treatment and storage of confidential information, as well as the necessary IT firewalls to prevent unauthorised individuals from accessing any information shared pursuant to this derogation.
- (i) Only the Annex 1 Individuals and CD&R's external professional advisers are authorised to receive and see information pursuant to this derogation (the latter

only once having been provided with a copy of this derogation).

- (j) No further changes to the Annex 1 Individuals are permitted without the prior written consent of the CMA (including via email).
- (k) Each of the Annex 1 Individuals shall enter into an individual confidentiality undertaking substantially in the form Annexed to the NDA;.
- (l) Any information shared pursuant to this derogation is confidential and cannot be shared more widely within CD&R, although high-level summaries of such information may be shared within CD&R provided the information has been generalised or aggregated to such an extent that it is not competitively sensitive.
- (m) Any information shared pursuant to this derogation may not be used for any purpose other than the Proposal(s).
- (n) Should the Acquisition be prohibited, or remedies required, CD&R will ensure that any confidential information received from Morrisons for the purposes of this derogation will be returned to Morrisons and any copies destroyed, except to the extent that record retention is required by law or regulation.
- (o) This derogation will not result in any integration between the Morrisons business and the Acquirer Group business.
- (p) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

Yours sincerely,

Alex Hazell

Assistant Director, Mergers

25 February 2022

Annex 1

[illegible]