

**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 30 March 2022, 26 April 2022 and 16 May 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 (‘**MFG**’), 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(c), and 6(l) – Delegation of authority

In order to protect its investment in Morrisons and to ensure that Morrisons remains a going concern, CD&R submits that it will need oversight of certain actions by Morrisons outside the ordinary course of business (collectively referred to as '**Non-Standard Acts**'). The CMA also understands that some Non-Standard Acts will become reportable only above specific thresholds, thereby ensuring infrequent reporting which does not restrict the ability of Morrisons to operate independently from CD&R. There are 25 Non-Standard Acts in total. Morrisons submits that in the period between 1 October 2021 and 31 March 2022, [REDACTED]. The remaining [REDACTED] Non-Standard Acts would have produced [REDACTED].

Accordingly, CD&R has sought the CMA's consent for (i) Morrisons to report to CD&R each time it proposes to undertake a Non-Standard Act and (ii) share limited commercially-sensitive information with CD&R (as described in Annex 3) in order for CD&R to take an informed decision on the proposed Non-Standard Act.

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

- (a) Any requests which relate specifically to Morrisons' fuel business will be raised by Morrisons with, and information provided only to, the '**Annex 1 Individuals**'. Each of the Annex 1 Individuals will receive the information necessary to assess the relevant Non-Standard Act under the terms of the non-disclosure agreement submitted to the CMA on 8 December 2021 which contains appropriate safeguards on the use, treatment and storage of confidential financial information, as well as the necessary IT firewalls to prevent unauthorised individuals from accessing any information shared pursuant to this derogation.
- (b) Any requests which do not relate specifically to Morrisons' fuel business and which do not involve sharing commercially-sensitive information related specifically to Morrisons' fuel business will be raised by Morrisons with, and information provided only to, the '**Annex 2 Individuals**'. Each of the Annex 2 Individuals will receive the information necessary to assess the Non-Standard Act under the terms of the non-disclosure agreement submitted to the CMA on 8 December 2021 which contains appropriate safeguards on the use, treatment and storage of confidential financial information, as well as the necessary IT firewalls to prevent unauthorised individuals from accessing any information shared pursuant to this derogation.
- (c) The information to which Annex 1 and Annex 2 Individuals will be given access will be limited to that which is strictly necessary to allow CD&R to reach a view on the

specific matter at hand and will not include any other commercially-sensitive information beyond that described in Annex 3. 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.

- (d) Each of the Annex 1 and Annex 2 Individuals shall enter into an individual NDA/confidentiality undertaking in the form submitted to the CMA on 8 December 2021.
- (e) The Annex 1 or Annex 2 Individuals will not use any information provided by Morrisons in any way to intervene in the day-to-day management or operation of Morrisons.
- (f) The Annex 1 or Annex 2 Individuals will not consult with any other individual at CD&R in taking decisions on the Non-Standard Acts.
- (g) No additions or changes to the Annex 1 or Annex 2 Individuals shall be made under this derogation without the prior written consent of the CMA (including via email).
- (h) The CMA will be notified at least 24 hours in advance of each instance of reporting of a Non-Standard Act to either the Annex 1 or Annex 2 Individuals, and the Addressees will provide to the CMA a template for sharing information should the CMA request one. In the event of a proposed veto of a Non-Standard Act by either the Annex 1 or Annex 2 Individuals, the Annex 1 or Annex 2 Individuals will notify the CMA of their reasons for vetoing at least 24 hours in advance of any such veto being exercised.
- (i) The CMA can amend each of the Non-Standard Acts at any time in writing (including via email) if it subsequently reaches a view that any one of the Non-Standard Acts, as defined in Annex 3, is impacting upon the independent operation of the Morrisons business.
- (j) Should the Acquisition ultimately be prohibited (ie if the CMA orders a full divestment of Morrisons following a Phase II investigation), 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.
- (k) This derogation will not result in any integration between the Morrisons business and the CD&R business.

(l) This derogation will not prevent any remedial action which the CMA may need to take regarding the Acquisition.

Yours sincerely,

Alex Hazell

Assistant Director, Mergers

18 May 2022

Annex 1 Individuals

Authorised individuals	Role at CD&R
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]

Annex 2 Individuals

Authorised individuals	Role at CD&R
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]

Annex 3 – Non-Standard Acts

[✂]