

**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 25 May 2022.**

**Completed acquisition by Wm Morrison Supermarkets Ltd 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 (these assets are collectively referred to as ‘McColl’s’) (the ‘Acquisition’)**

We refer to your submissions of 11 May 2022 and 17 May 2022 requesting that the CMA consents to a derogation from the Initial Enforcement Order of 25 May 2022 (the ‘**Initial Order**’). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter.

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.

Under the Initial Order, save for written consent by the CMA, 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 (together with the Acquirer Group the ‘**Addressees**’) are required to hold separate the Acquirer Group business from the Alliance 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 requests for derogations 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 5(a), 5(d), 5(g), 5(h) and 5(l) – Engagement with suppliers

The CMA understands that Morrisons has not had the opportunity to [REDACTED] in relation to McColl's supply contracts due to the expedited nature of the sale process following the administration of McColl's Retail Group plc ('MRG'). The CMA also understands that during the [REDACTED] following completion of the Acquisition, Morrisons must provide the administrators of MRG with details of the supply contracts that it wishes to retain, and any supply contracts that it does not wish to retain.

The CMA further understands that the administration may have [REDACTED] in McColl's existing contracts, licenses, and arrangements with its commercial counterparties (the '**Supply Arrangements**') and that Morrisons has received [REDACTED].

Morrisons submits that it is necessary to undertake due diligence in relation to McColl's Supply Arrangements and, where strictly necessary, to engage with the Alliance business to seek to [REDACTED] that have arisen as a result of the administration of MRG and engage and negotiate the Supply Arrangements with the suppliers of the Alliance business (the '**Supplier Review**').

Morrisons further submits that engaging in the Supplier Review is essential to ensure the preservation of Alliance's critical supply relationships and its ability to continue as a going concern, particularly in circumstances where the [REDACTED] of any McColl's Supply Arrangements could [REDACTED] of the Alliance business and [REDACTED]. Morrisons also submits that prior to taking a decision as to whether or not to renew, novate, retain, or extend any Supply Arrangement, subject to appropriate safeguards, it is strictly necessary for such Supply Arrangements to be reviewed and approved by Morrisons' senior management (the '**Senior Approval**') in order to assess the magnitude of liabilities being assumed by Morrisons and to preserve the value of Morrisons' investment in McColl's.

The CMA consents to a derogation from paragraphs 5(a), 5(d), 5(g), 5(h) and 5(l) of the Initial Order to permit the Supplier Review, strictly on the basis that:

- (a) The sharing of any confidential or commercially sensitive information relating to the Alliance business will be limited to strictly necessary information to enable Morrisons to understand the Supply Arrangements ('**Strictly Necessary Supply Arrangements Information**').
- (b) Strictly Necessary Supply Arrangements Information will only be provided to the individuals listed in Annex 1 (the '**Authorised Supply Arrangements Recipients**') for whom it is strictly necessary to see the information for the purpose of this derogation.

(c) Whilst the Authorised Supply Arrangements Recipients may undertake due diligence in relation to McColl's Supply Arrangements and, where strictly necessary, engage and negotiate terms directly with suppliers of the Alliance business, Morrisons shall not:

- (i) enter into any new Supply Arrangements on behalf of Alliance;
- (ii) transfer any Supply Arrangements to the Alliance business by novation;
- (iii) notify the administrators of MRG that it does not wish to retain any Supply Arrangements;
- (iv) extend the terms of Morrisons' Supply Arrangements to the Alliance business; and/or
- (v) [X] in respect of any Supply Agreements that are entered into, novated or extended in relation to Alliance,

without giving the CMA at least 24 hours' notice in advance of execution or, where urgent action (ie in under 24 hours) is strictly necessary to preserve the viability of the Alliance business, as much notice as possible.

(d) The advance notice referenced in condition (c) above, to the extent that it concerns significant supplier contracts (with an average annual expenditure exceeding £[X]), will include the name of the supplier, the existing contract terms, and, where applicable, the new contract terms. Moreover, where contract terms have [X] for Alliance, the Addressees will explain how Morrisons has achieved these [X].

(e) This derogation covers only Supply Agreements, as defined above. For the avoidance of doubt, it does not cover any agreements with suppliers which McColl's did not have a commercial relationship with at completion of the Acquisition. As such, this derogation does not permit Morrisons to enter into any contracts with new suppliers on behalf of Alliance, or amend the contracts Morrisons holds with its own suppliers so that these include Alliance.

(f) Whilst [X] and [X] shall not engage with Alliance's suppliers for the purpose of this derogation, they may receive Strictly Necessary Supply Arrangements Information in the form of a summary report that has been sufficiently aggregated and/or anonymised to remove any competitively sensitive information, strictly for the purpose of granting Senior Approval in relation to actions permitted by condition (c) of this derogation. The Addressees shall provide to the CMA a copy

of any such reports, should the CMA request to see a copy.

- (g) Strictly Necessary Supply Arrangements Information shared with the Authorised Supplier Review Recipients shall be governed by a non-disclosure agreement in a form approved by the CMA 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 Strictly Necessary Supply Arrangements Information.
- (h) No changes to the Authorised Supply Arrangements Recipients are permitted without the prior written consent of the CMA (including via email).
- (i) This derogation will not result in any integration between Alliance and the Acquirer Group.
- (j) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

## **2. Paragraphs 5(l) – Engagement between Alliance and Morrisons to provide funding to support the Alliance business**

The CMA understands that in light of MRG being placed into administration and due to Alliance's current financial difficulties, it is anticipated that Alliance will require access to funding from [X] to remain a going concern. The CMA also understands that Alliance would be unable to [X] within the required timeframe.

Morrisons submits that in order to [X], it will need to engage with the Alliance business and receive relevant information from Alliance in relation to cash receipts and payments that are due (or expected to become due) including to creditors, suppliers, and employees.

The CMA consents to a derogation from paragraph 5(l) of the Initial Order to permit Morrisons to engage with the Alliance business in relation to its funding requirements, strictly on the basis that:

- (a) The sharing of any confidential or commercially sensitive information relating to the Alliance business will be limited to strictly necessary information to enable Morrisons to understand the cash receipts and payments that have fallen due or are expected to become due in respect of the Alliance business, including information necessary for Morrisons to submit payments on behalf of Alliance (the **'Strictly Necessary Accounts Information'**).

- (b) Strictly Necessary Accounts Information will only be provided to a limited number of Morrisons employees as listed in Annex 2 (the '**Authorised Accounts Recipients**') for whom it is strictly necessary to see the information for the purpose of this derogation.
- (c) Strictly Necessary Accounts Information shared with the Authorised Accounts Recipients shall be governed by a non-disclosure agreement in a form approved by the CMA 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 Strictly Necessary Accounts Information.
- (d) No changes to the Authorised Accounts Recipients are permitted without the prior written consent of the CMA (including via email).
- (e) This derogation will not result in any integration between Alliance and the Acquirer Group.
- (f) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

### **3. Paragraphs 5(a), 5(c), 5(e) and 5(l) – Engagement with MRG's Pension Schemes**

The CMA understands that under the Asset Purchase Agreement ('**APA**') governing the Acquisition, Morrisons, MRG and the administrators of MRG have agreed [X] (the '**Pension Schemes**').

The APA requires that the [X]. In accordance with the APA, [X] requires that:

- (i) [X]
- (ii) [X].

[X].

Morrisons submits that [X].

The CMA further understands that [X].

The CMA consents to a derogation from paragraphs 5(a), 5(c), 5(e) and 5(l) of the Initial Order to allow Morrisons to engage with the McColl's Trustee and agree to and implement

a suitable [X] in relation to the Pension Schemes, strictly on the basis that:

- (a) The obligations to be taken on by [X] will not impact on, or affect Morrisons' ability to implement, its pre-Acquisition business plan.
- (b) The sharing of any confidential or commercially sensitive information relating to the Alliance business will be limited to strictly necessary information to enable Morrisons agree a suitable [X] (the '**Strictly Necessary Pensions Information**').
- (c) Strictly Necessary Pensions Information will only be provided to a limited number of Morrisons employees as listed in Annex 3 (the '**Authorised Pensions Recipients**') for whom it is strictly necessary to see the information for the purpose of this derogation.
- (d) Strictly Necessary Pensions Information shared with the Authorised Pensions Recipients shall be governed by a non-disclosure agreement in a form approved by the CMA 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 Strictly Necessary Pensions Information.
- (e) No changes to the Authorised Pensions Recipients are permitted without the prior written consent of the CMA (including via email).
- (f) This derogation will not result in any employee transfers from Alliance to the Acquirer Group.
- (g) This derogation will not result in any integration between Alliance and the Acquirer Group.
- (h) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

#### **4. Paragraphs 5(a), 5(g) and 5(l) – Extension of Morrisons' insurance policies and negotiation with insurance providers**

The CMA understands that McColl's assurance, insurance, indemnity and trade credit insurance policies (the '**Insurance Policies**') [X] and that Alliance [X].

Morrisons submits that [X], and therefore it is strictly necessary to engage with the Alliance business, [X].

The CMA consents to a derogation from paragraphs 5(a), 5(g) and 5(l) of the Initial Order to enable Morrisons to arrange new Insurance Policies on behalf of Alliance and/or to extend Morrisons' existing insurance coverage to Alliance, strictly on the basis that:

- (a) The inclusion of the Alliance business in Morrisons' group Insurance Policies will have no influence upon the commercial direction of the Alliance business during the term of the Initial Order.
- (b) The Alliance business is free at any time and for any reason to stop the insurance programme and is able to take out replacement Insurance Policies.
- (c) The sharing of any confidential or commercially sensitive information will be limited to strictly necessary information to enable Morrisons to arrange new Insurance Policies on behalf of the Alliance business and/or to extend Morrisons' existing insurance coverage to Alliance (the '**Strictly Necessary Insurance Information**').
- (d) Strictly Necessary Insurance Information will only be provided to a limited number of Morrisons employees as listed in Annex 4 (the '**Authorised Insurance Recipients**') for whom it is strictly necessary to see the information for the purpose of taking out the Insurance Policies on behalf of the Alliance business.
- (e) Strictly Necessary Insurance Information shared with the Authorised Insurance Recipients shall be governed by a non-disclosure agreement in a form approved by the CMA 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 Strictly Necessary Insurance Information.
- (f) No changes to the Authorised Insurance Recipients are permitted without the prior written consent of the CMA (including via email).
- (g) This derogation will not result in any integration between Alliance and the Acquirer Group.
- (h) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

## **5. Paragraphs 5(g) and 5(l) - Review of Alliance's Property Portfolio**

The CMA understands that, prior to the Acquisition, Morrisons did not have the opportunity to [X] in respect of Alliance's stores that are leased from [X] landlords (the

**'Leased Premises'**), which comprise the vast majority of Alliance's stores in the United Kingdom.

The CMA further understands that Morrisons has been [REDACTED] to enable due diligence to take place following completion of the Acquisition. Morrisons intends to undertake property and commercial diligence on each of the Leased Premises in order to determine whether the Premises will ultimately be [REDACTED] (the **'Property Review'**).

Morrisons submits that conducting the Property Review is strictly necessary in circumstances where it is estimated that [REDACTED]. Morrisons also submits that in order to conduct the Property Review it is necessary to engage with relevant staff from within the Alliance business, the administrators of MRG and the landlords of the Leased Premises.

The CMA consents to a derogation from 5(g) and 5(l) of the CMA's Initial Order to permit the Property Review and for Morrisons to engage in discussions with relevant staff from within the Alliance business, the administrators of MRG and the landlords of the Leased Premises, strictly on the basis that:

- (a) The sharing of any confidential or commercially sensitive information will be limited to strictly necessary information to enable Morrisons to undertake the Property Review (the **'Strictly Necessary Property Information'**).
- (b) Strictly Necessary Property Information will only be provided to a limited number of Morrisons' employees (or agents) as listed in Annex 5 (the **'Authorised Property Recipients'**) for whom it is strictly necessary to see the information for the purpose of conducting the Property Review.
- (c) Whilst [REDACTED] and [REDACTED] shall not engage with the administrators of MRG or the landlords of the Leased Premises under this derogation, they may receive Strictly Necessary Property Information in the form of a summary report that has been sufficiently aggregated and/or anonymised to remove any competitively sensitive information. The Addressees shall provide to the CMA a copy of any such reports, should the CMA request to see a copy.
- (d) Strictly Necessary Property Information shared with the Authorised Property Recipients shall be governed by a non-disclosure agreement in a form approved by the CMA 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 Strictly Necessary Property Review Information.



- (e) No changes to the Authorised Property Recipients are permitted without the prior written consent of the CMA (including via email).
- (f) This derogation will not result in any integration between Alliance and the Acquirer Group.
- (g) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

## **6. Paragraph 5(l) – Review of business support functions**

The CMA understands that prior to the Acquisition, Morrisons did not have the opportunity to [X] in respect of McColl's, including in relation the status of McColl's internal support and administrative functions.

The CMA further understands that Morrisons intends to undertake a review of Alliance's business support and administration functions, including (but not limited to) legal, human resources, corporate services, property, store support, treasury, secretarial, finance, IT and logistics teams and systems (the '**Support Functions**') in order to ensure that the Support Functions are appropriately resourced, staffed and resilient to operate efficiently and on a standalone basis during the hold separate period (the '**Support Function Review**').

Morrisons submits that without the effective support provided by the Support Functions, there is [X]. Morrisons further submits that, in order to determine whether Alliance's Support Functions are appropriately resourced, staffed and resilient for the duration of the hold separate period, specified Morrisons employees will need to engage in discussions with relevant staff within Alliance's Support Functions.

Moreover, Morrisons submits that, where strictly necessary to preserve the competitiveness and viability of the Alliance business, Morrisons intends to make recommendations on the basis of the Support Function Review and, if necessary, to provide financial support to the Alliance business to facilitate compliance with its obligation under paragraph 5(b) of the CMA's Initial Order.

The CMA consents to a derogation from paragraph 5(l) of the CMA's Initial Order to permit the Support Function Review, strictly on the basis that:

- (a) The sharing of any confidential or commercially sensitive information shall be limited to strictly necessary information to enable Morrisons to undertake the Support Function Review (the '**Strictly Necessary Review Information**'). Under

no circumstances will Alliance share competitively sensitive information for the purpose of this derogation.

- (b) Strictly Necessary Review Information will only be provided to a limited number of Morrisons employees as listed in Annex 6 (the '**Authorised Review Recipients**') for whom it is strictly necessary to see the information for the purpose of conducting the Support Function Review. In this regard, with the exception of Authorised Review Recipients listed in Annex 6 under 'All Functions', Authorised Review Recipients will be limited in terms of the Alliance's Support Functions with which they can engage when undertaking the Support Function Review. For example, Authorised Review Recipients listed under Morrisons' property team shall only engage with relevant staff within Alliance's property team, Authorised Review Recipients listed under Morrisons' tax and treasury team shall only engage with relevant staff from Alliance's tax and treasury team, etc.
- (c) Whilst the Authorised Review Recipients may engage in discussions with relevant staff within Alliance's Support Functions in connection with the Support Function Review, Morrisons shall not:
  - (i) make any recommendations to Alliance; or
  - (ii) provide financial support to Alliance on the basis of such recommendations, without giving the CMA at least 24 hours' notice. For the avoidance of doubt, any recommendations made by Morrisons to Alliance shall not include recommendations concerning the commercial policy or business strategy of Alliance more generally.
- (d) Whilst [X] and [X] shall not engage with Alliance's Support Functions for the purpose of this derogation, they may receive Strictly Necessary Review Information in the form of a summary report where strictly for the purpose of deciding whether to undertake any action permitted by condition (c) of this derogation. The Addressees shall provide to the CMA a copy of any such reports, should the CMA request to see a copy.
- (e) Strictly Necessary Review Information shared with the Authorised Review Recipients shall be governed by a non-disclosure agreement in a form approved by the CMA 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 Strictly Necessary Review

Information.

- (f) No changes to the Authorised Review Recipients are permitted without the prior written consent of the CMA (including via email).
- (g) This derogation will not result in any integration between Alliance and the Acquirer Group.
- (h) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

## **7. Paragraphs 5(a) and 5(l) - Arrangements relating to Alliance's VAT Group**

The CMA understands that Alliance is a member of Morrisons' VAT group and that Morrisons is responsible for making mandatory VAT returns and payments in respect of Alliance. The CMA further understands that Morrisons intends to include McColl's within Morrisons' VAT group.

The CMA also understands that Morrisons will be required to claim any input tax in respect of any taxable supplies received by Alliance and to account to Alliance for the benefit of any such input tax which is recovered, and that Morrisons will recharge the cost of any such payments to Alliance.

Morrisons submits that in order to prepare and submit mandatory VAT returns and to comply with its tax obligations, Morrisons must have access to certain financial information relating to Alliance and make payments as a result of Alliance's membership of the Morrisons VAT group.

The CMA consents to a derogation from paragraphs 5(a) and 5(l) of the Initial Order to permit Morrisons to include McColl's within its VAT group, receive related information and make the appropriate payments of VAT, strictly on the basis that:

- (a) Any payments made by Morrisons or its affiliates to Alliance or HMRC as a result of Alliance's membership of the Morrisons VAT group, and any equivalent payments by Alliance to Morrisons, will be limited to payments that are strictly necessary for the purpose of this derogation.
- (b) The sharing of any confidential or commercially sensitive information relating to the Alliance business will be limited to strictly necessary information to enable Morrisons to undertake the necessary VAT arrangements as set out in this derogation (the '**Strictly Necessary VAT Information**').

- (c) Strictly Necessary VAT Information will only be provided to a limited number of Morrisons employees as listed in Annex 7 (the '**Authorised VAT Recipients**') for whom it is strictly necessary to see the information for the purpose of this derogation.
- (d) Strictly Necessary VAT Information shared with Authorised VAT Recipients shall be governed by a non-disclosure agreement in a form approved by the CMA which shall contain 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 Strictly Necessary VAT Information.
- (e) No further changes to the Authorised VAT Recipients are permitted without the prior written consent of the CMA (including via email).
- (f) This derogation will not result in any integration between Alliance and the Acquirer Group.
- (g) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

Yours sincerely,

Lasse Burmester

Assistant Director, Mergers

25 May 2022

### Annex 1

#### **Authorised Supply Arrangements Recipients**

[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]

#### **Role within the Acquirer Group**

[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]

### Annex 2

#### **Authorised Accounts Recipients**

[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]

#### **Role within the Acquirer Group**

[✂]  
[✂]  
[✂]  
[✂]  
[✂]  
[✂]

### Annex 3

#### **Authorised Pensions Recipients**

[✂]  
[✂]  
[✂]  
[✂]

#### **Role within the Acquirer Group**

[✂]  
[✂]  
[✂]  
[✂]

### Annex 4

#### **Authorised Insurance Recipients**

[✂]  
[✂]  
[✂]  
[✂]

#### **Role within the Acquirer Group**

[✂]  
[✂]  
[✂]  
[✂]

## **Annex 5**

## Authorized Property Recipients





























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### Role within the Acquirer Group








































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## Annex 6

## Authorised Review Recipients

### Role within the Acquirer Group

	[X]	[X]
[X]		[X]
	[X]	[X]
[X]		[X]
[X]		[X]
	[X]	[X]
[X]		[X]

## **Annex 7**

<p><b>Authorised VAT Recipients</b></p>	<p><b>Role within the Acquirer Group</b></p>
[X]	[X]
[X]	[X]
[X]	[X]