

**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 Ltd (formerly known as Wm Morrison Supermarkets PLC) (‘Morrisons’) (the ‘Acquisition’).

We refer to your submissions of 22 April 2022, 29 April 2022 and 11 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 5(b), 6(a), 6(b) and 6(e) – Amendments to Morrisons’ employee incentives schemes

The CMA understands that, prior to completion of the Acquisition on 27 October 2021, Morrisons had two incentive schemes for its employees. The first was the annual bonus scheme (available to all Morrisons employees between Work Level [X] and Work Level [X] (the highest Work Level)), and the second was the long term incentive plan (‘**LTIP**’) where Morrisons employees were required to hold shares in Morrisons, then a listed

company, in exchange for a return on their investment provided at three-year intervals (available to all Morrisons employees between Work Level [REDACTED] and Work Level [REDACTED]).

Since completion of the Acquisition, Morrisons has retained its annual bonus scheme as it was pre-completion; however, its LTIP vested upon completion of the Acquisition. The Addressees submit that, as a result, it is critical for them to create and implement a new long term incentive plan (the '**New Incentive Plan**'). The Addressees also submit that it is necessary to amend Morrisons' annual bonus scheme to [REDACTED] as a privately-owned company.

The CMA understands that the New Incentive Plan, like the LTIP, requires Morrisons employees to invest in Morrisons to receive a return, based on Morrisons' performance, at a given future date. However, whereas under the LTIP Morrisons' staff bought Morrisons' shares and were given a reward after three years which was tied to Morrisons' performance, under the New Incentive Plan Morrisons' employees [REDACTED]. The New Incentive Plan is set out in full in Annex 1.

The CMA further understands that Morrisons' existing annual bonus scheme, like the new proposed annual bonus scheme, is tied to a combination of personal performance and corporate performance. However, under the new annual bonus scheme, Morrisons' cash flow situation at the time of payment is given greater weight. A full comparison between the existing annual bonus scheme and the new annual bonus scheme is set out in Annex 2.

The CMA consents to a derogation from paragraphs 5(b), 6(a), 6(b) and 6(e) of the Initial Order to permit the Addressees to implement both the New Incentive Plan and the revised annual bonus scheme. The CMA consents to this strictly on the basis that:

- (a) Neither the New Incentive Plan nor the revised annual bonus scheme will impact the process of setting base salaries.
- (b) The revised annual plan will be available to Work Levels [REDACTED] , while the New Incentive Plan will be available to Work Levels [REDACTED], as was the case with their predecessors.
- (c) The amount which Morrisons' employees are required to invest under the New Incentive Plan will [REDACTED]. Moreover, Morrisons will [REDACTED] .
- (d) The Addressees have calculated that, given comparable trading situations, Morrisons' employees [REDACTED].

- (e) The Addressees have calculated that the New Incentive Plan is [✂].
- (f) The Addressees will regularly monitor whether the overall compensation of its employees remains competitive with market rates, and will make any necessary adjustments to its overall compensation structure to ensure this remains the case.
- (g) This derogation will not affect the viability of the Morrisons business or affect Morrison's assets other than as set out above.
- (h) This derogation will not result in any changes to Morrisons' staffing and management structure.
- (i) This derogation will not result in any integration between the Morrisons business and the CD&R business.
- (j) 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

12 May 2022

Annex 1 – New Incentive Plan

The New Incentive Plan is [REDACTED], whereby participants between Work Levels [REDACTED] and [REDACTED] of the Morrisons business [REDACTED], as set out below:

Work Level	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

The New Incentive Plan seeks to balance a number of outcomes:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Morrisons is also considering whether to [REDACTED] .

Annex 2 – Changes to annual bonus plan (2021 v 2022)

The Addressees are proposing to implement the following changes to the [REDACTED] used to determine bonuses under Morrisons' Annual Bonus Plan:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Awards available under the Annual Bonus Plan are set out as follows whereby the 'Maximum Eligibility' column represents the maximum percentage bonus that a Morrisons employee at each Work Level is entitled to receive and the 'Average Maximum Bonus Payment' column indicates the average maximum bonus that an employee at each Work Level could receive:

Work level	Maximum eligibility	Average maximum bonus payment
[REDACTED]	[REDACTED]	[REDACTED]

[illegible]