

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 submission of 17 June 2022 requesting that the CMA consents to a derogation to 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 request 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 paragraph:

Paragraph 5(a) – Implementation of Enhanced Retention Plan

The CMA understands that prior to the Acquisition, McColl's Retail Group plc ('**MRG**') established a retention plan for senior staff within the McColl's business (the '**Original Retention Plan**'). Following a review of the Original Retention Plan, the Addressees have requested that they may supplement the Original Retention Plan with [X] for the duration of the CMA's investigation (the '**Enhanced Retention Plan**').

Alliance submits that implementing the Enhanced Retention Plan will incentivise the retention of, and encourage strong performance amongst, senior staff within the Alliance business for the duration of the CMA's investigation. Alliance further submits that implementing the Enhanced Retention Plan will facilitate the Addressees' continuing compliance with their obligations under paragraph 5(k) of the Initial Order to take reasonable efforts to encourage key staff to remain with the Alliance business.

The CMA consents to a derogation from paragraph 5(a) of the Initial Order to give effect to relevant arrangements required to implement the Enhanced Retention Plan, strictly on the basis that:

- (a) The Enhanced Retention Plan will not replace, amend or impact the Original Retention Plan or any retention payments that are currently envisaged under the Original Retention Plan.
- (b) The Enhanced Retention Plan will not impact the process of setting or reviewing the base salaries.
- (c) No changes will be made to the Enhanced Retention Plan and/or staff to whom the Enhanced Retention Plan will apply without the prior written consent of the CMA (including via email).
- (d) The Addressees will regularly monitor whether the overall compensation of staff subject to the Original Retention Plan and the Enhanced Retention Plan remains competitive with market rates, and will, subject to prior written approval by the CMA (including via email), make any necessary adjustments to Alliance's overall compensation structure to ensure this remains the case.
- (e) This derogation will not affect the viability of the McColl's business or affect McColl's assets other than as set out above.
- (f) This derogation will not result in any changes to McColl's staffing and management structure.
- (g) This derogation will not result in any integration between the McColl's business and the Morrisons business.

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

Yours sincerely.

Lasse Burmester

Assistant Director, Mergers

18 July 2022

Annex 1 – Original Retention Plan and Enhanced Retention Plan

Original Retention Plan (April 2022)

Alliance member	key staff	Position	Retention incentive (payable on condition that notice is not served by staff member prior to specified date)	Notice period
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]

Enhanced Retention Plan

Alliance member	key staff	Position	Enhanced retention incentive (payments payable on condition that notice is not served by staff member prior to the date on which the Initial Order is revoked or otherwise ceases to apply)
[X]	[X]	[X]	[X] (see below)
[X]	[X]	[X]	[X] (see below)
[X]	[X]	[X]	[X] (see below)
[X]	[X]	[X]	[X] (see below)
[X]	[X]	[X]	<ul style="list-style-type: none"> Extension of current contract expiry date to 31 December 2022, with an option for Alliance to extend the contract in the event that the Initial Order remains in force beyond this date. Notice period, exercisable by Alliance and [X], extended from 1 to 3 months.
[X]	[X]	[X]	[X] (see below)
[X]	[X]	[X]	<ul style="list-style-type: none"> [X] (see below) Agreement of [X] departure date following the lifting of the IEO
[X]	[X]	[X]	<ul style="list-style-type: none"> Extension of current contract expiry date to 31 December 2022, with an option for Alliance to extend the contract in the event the Initial Order remains in force beyond this date. Notice period, exercisable by Alliance and [X], extended from 1 to 3 months.
[X]	[X]	[X]	[X] (payable 16 September 2022)

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