

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.

Under the Initial Order, save for written consent by the CMA, Morrisons is required to hold separate the Morrisons business from the McColl's 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 paragraphs:

Paragraphs 5(a), 5(c) and 5(l) – Delegation of authority

Morrisons has requested that it may enter into a delegated authority arrangement in relation to certain material conduct undertaken by Alliance, including actions taken outside the ordinary course of business (set out in Annex 1 and collectively referred to as "**Non-Standard Acts**"). The CMA understands that the Non-Standard Acts will become reportable only above specific thresholds set out in Annex 1 to ensure that only material items are captured and there is no impediment to maintaining McColl's operational independence from Morrisons.

Morrisons submits that for the duration that the Initial Order remains force, Morrisons requires oversight in relation to actions undertaken by Alliance, in order to preserve the viability of Alliance, in addition to Morrisons' investment in the McColl's business as the sole shareholder of Alliance. Morrisons also submits that preservation of the McColl's business is critical in [REDACTED].

Accordingly, Morrisons requests the CMA's consent for Alliance to: (i) report to Morrisons each time it proposes to undertake a Non-Standard Act; and (ii) share certain limited information with Morrisons in order for Morrisons to take an informed decision in relation to the proposed Non-Standard Act.

In respect of each Non-Standard Act, Alliance will prepare a memorandum setting out the proposed Non-Standard Act and share it with the individuals listed in Annex 2 (the "**Authorised NSA Recipients**") and Morrisons will decide, on the basis of that memorandum and any additional clarifications required, whether to approve or veto the relevant Non-Standard Act.

The CMA consents to a derogation from paragraphs 5(a), 5(c) and 5(l) of the Initial Order to permit Morrisons to enter into the delegated authority arrangement described above, strictly on the basis that:

- (a) The information to which Authorised NSA Recipients will be given access will be limited to that which is strictly necessary for Morrisons to reach a view on the specific matter at hand and will not include any other commercially-sensitive information beyond that described in Annex 1.
- (b) Each of the Authorised NSA Recipients will have entered into an individual confidentiality undertaking in the form approved by the CMA on 25 May 2022 prior to receiving any information under this derogation.
- (c) The Authorised NSA Recipients will not use any information provided by Alliance in any way to intervene in the day-to-day management or operation of Alliance.

- (d) Any confidential or commercially sensitive information shared under this derogation will not be shared with any Morrisons individuals other than the Authorised NSA Recipients.
- (e) No additions or changes to the list of Authorised NSA Recipients shall be made under this derogation without the prior written consent of the CMA (including via email).
- (f) Whilst [X] and [X] are not Authorised NSA Recipients, they may receive information provided under this derogation in the form of a summary report that has been sufficiently aggregated and/or anonymised to remove any competitively sensitive information. Under no circumstances will [X] or [X] receive competitively sensitive information relating to individual stores and specific product lines. The Addressees shall provide to the CMA a copy of any such reports, should the CMA request to see a copy.
- (g) The Authorised NSA Recipients will not consult with any other individual in Morrisons when taking decisions on the Non-Standard Acts (with the exception of [X] and [X] subject to the requirements of condition (f) above).
- (h) The CMA will be notified at least one working day in advance of each instance of reporting of a Non-Standard Act to the Authorised NSA Recipients (with the exception of Non Standard Act 7(ii) of Annex 1), and the Addressees will provide to the CMA a template for sharing information should the CMA request one. In the case of Non-Standard Act 7(ii) of Annex 1, the CMA may, at its discretion, be provided with a summary of the information shared with the Authorised NSA Recipients after a request for approval has been submitted by Alliance under the terms of this derogation.
- (i) In the event of a proposed veto, partial or total, of a Non-Standard Act by the Authorised NSA Recipients, the Authorised NSA Recipients will notify the CMA of their reasons for vetoing, partially or totally, at least one working day in advance of any such veto being exercised. In the case of Non-Standard Acts 4 and 5 of Annex 1, to the extent that they concern [X], the Authorised NSA Recipients will notify the CMA of their reasons for vetoing at least three working days in advance of any such veto being exercised.
- (j) No additions or changes to the Non-Standard Acts are implemented without the Parties obtaining the prior written consent of the CMA (including by email).
- (k) 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 is impacting upon the independent operation of the McColl's business.

- (l) The Authorised NSA Recipients will not allow any information provided by Alliance to be used to inform Morrisons' commercial strategy.
- (m) This derogation will not result in any integration between the Alliance business and Morrisons.
- (n) 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

4 July 2022

Annex 1 – Non-Standard Acts

OPERATIONS AND MANAGEMENT

[✂]

ACQUISITION AND DISPOSAL OF ASSETS, INVESTMENTS AND LEASES

[✂]

CONTRACTS AND EXPENDITURE

[✂]

DEBT AND GUARANTEES

[✂]

FINANCIAL REPORTING AND CONTROLS

[✂]

RNS AND PUBLIC ANNOUNCEMENTS

[✂]

BOARD MEMBERSHIP AND OTHER APPOINTMENTS

[✂]

REMUNERATION

[✂]

RECRUITMENT

[✂]

COMPANY STRUCTURE AND CAPITAL

[✂]

LITIGATION

[✂]

Annex 2 – Authorised NSA Recipients

Authorised NSA Recipients	Role at Morrisons
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]