

## **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 30 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 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 a derogation to 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(e) – Alliance’s [X] Site Disposal**

Alliance submits that its store at [X] (the ‘[X] Site’) has gone through the following series of events:

- (i) the branch was approved for closure and sale with vacant possession by McColl's prior to the Acquisition at a property review meeting in December 2021;
- (ii) the staffing level in the store is currently three employees and the store is operating on the basis of reduced opening hours;
- (iii) in light of [X] at the store and [X], the Alliance Operations team [X];
- (iv) the [X] is expected to conclude on 30 June 2022 [X]; and
- (v) with the store closing earlier than anticipated as a consequence, it will not be possible to recruit additional staff to run the store for the few weeks that it would have remained open. Without employees to operate the shop it will be extremely difficult to keep the shop open given the specific logistics of the site in question.

Alliance further submits that the [X] Site had been loss making since 2021, and rapidly declining in performance. Alliance therefore does not consider that the site can be brought back to a profitable state – particularly in light of the recent opening of [X] in close proximity to the [X] Site. Moreover, the [X] Site has no parking facilities.

Finally, Alliance submits that the [X] Site does not fail the decision rule contained in Bellis/Asda and CD&R/Morrisons, ie there is no overlap between the Parties in relation to the 1 mile or 5-minute drive time catchment area.

The CMA consents to a derogation from paragraph 5(e) of the Initial Order to permit Alliance to permanently close the [X] Site, strictly on the basis that:

- (a) The [X] Site is loss-making with limited realistic prospects to return it to financial viability.
- (b) It is not feasible to keep the store open until the time when Alliance had originally planned to close it.
- (c) This derogation will not negatively affect the viability of the Alliance business.
- (d) The decision to close the store was taken independently of the Acquirer Group (as defined in the Initial Order).
- (e) This store’s closure will not impact local competition between the Acquirer Group and Alliance.

(f) This derogation will not result in any integration between the Alliance business and the Acquirer Group.

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

Yours sincerely.

Lasse Burmester

1 July 2022