

**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 2 June 2022 requesting that the CMA consents to derogations 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(c), 5(d), 5(i), 5(j) and 5(l) – Secondment of Morrisons staff and implementation of a new business plan

The CMA understands that McColl's Retail Group plc ('**MRG**') was placed into administration on 9 May 2022 following a period of financial difficulty and the resignation of Jonathan Miller, the former CEO of MRG, and Richard Crampton, the former Chief Commercial Officer of MRG, in March 2022 and February 2022, respectively.

The CMA also understands that Morrisons intends to second to Alliance to work alongside Alliance's senior management team:

- (i) [X] employee of Morrisons' [X] team (the '[X] **Secondee**'); and
- (ii) [X] employees of Morrisons' [X] team, [X] and [X] (together with the [X] Secondee, the '**Transferring Secondees**').

The CMA further understands that the Transferring Secondees would join the Alliance senior management team for the duration of their secondment, which would last at least as long as the CMA's investigation into the Acquisition, to provide assistance and support to Alliance's existing senior leadership team.

Morrisons submits that the Transferring Secondees have considerable knowledge and experience of Alliance's business operations through Morrisons' existing wholesale supply relationship with McColl's. Morrisons also submits that the Transferring Secondees have relevant experience of the groceries sector and can be deployed at short notice to the Alliance business.

Morrisons further submits that McColl's pre-Acquisition business and financial plan (the '**Business Plan**') was inadequate [X] and, therefore, it is strictly necessary for the Transferring Secondees to assist the remaining management team with formulating and implementing changes to the Business Plan.

The CMA grants a derogation from paragraphs 5(a), 5(c), 5(d), 5(i), 5(j) and 5(l) of the Initial Order to permit the secondment of the Transferring Secondees and their assistance with the formulation and implementation of a new Business Plan for Alliance strictly on the basis that:

- (a) Prior to commencing their roles with Alliance, the Transferring Secondees shall:
 - (i) relinquish any roles or duties undertaken on behalf of the Morrisons business (as applicable);

- (ii) have all access removed to Morrisons' office premises, IT servers, email accounts and work devices;
- (iii) receive tailored training and guidance on the terms of the Initial Order and its application to their specific roles; and
- (iv) enter into a non-disclosure agreement in the form approved by the CMA in relation to any confidential or commercially sensitive information that they receive throughout the duration of their secondments or appointment (as appropriate) to the Alliance business.

In addition, in the case of the [X] Secondee, the Addressees shall notify the CMA of the [X] Secondee's identity, employment history and experience, and seek the written consent of the CMA (including via email), prior to the [X] Secondee commencing their role with Alliance.

- (b) Incentive arrangements to ensure that the Transferred Secondees engage in their roles with the Alliance business independently from Morrisons will be entered into with the Transferred Secondees. The targets to be met by the Transferred Secondees as well as the incentives offered to them pursuant to these arrangements will be agreed with the CMA prior to the Transferring Secondees commencing their roles with Alliance.
- (c) The Transferring Secondees will not be exposed to a conflict of interest that impairs their objectivity and independence in discharging their functions in their roles with the Alliance business.
- (d) Without prejudice to the outcome of the CMA's merger investigation, in the event that a full divestment is required by the CMA, the Transferring Secondees shall, from the point at which a full divestment is implemented:
 - (i) relinquish any roles or duties undertaken on behalf of the McColl's business (as applicable);
 - (ii) have all access removed to McColl's office premises, IT servers, email accounts and work devices;
 - (iii) remain on the Morrisons payroll; but
 - (iv) for a period of at least 6 months from the date on which they cease any roles or duties undertaken on behalf of the McColl's business, not undertake any

role or duty on behalf of the Morrisons business (as an employee, contractor or adviser) nor have access to Morrisons' office premises, IT servers, email accounts and work devices.

- (e) Any revised Alliance Business Plan presented to Morrisons will be developed independently of Morrisons' executive management and will be presented exclusively to the individuals listed in Annex 1 (the '**Authorised Business Plan Recipients**') for whom it is strictly necessary to see the information for the purpose of this derogation.
- (f) Any revised Business Plan will be presented to the Authorised Business Plan Recipients only in a high-level format which excludes details concerning specific product lines or individual stores. The aforementioned applies to any responses to questions or clarifications provided to the Authorised Business Plan Recipients with respect to the Business Plan.
- (g) Any revised Alliance Business Plan shall be subject to review and approval by the Authorised Business Plan Recipients only.
- (h) Should the Authorised Business Plan Recipients request any changes to the revised Business Plan, or propose to reject it altogether, Morrisons will submit to the CMA the reasons provided by the Authorised Business Plan Recipients for changing or rejecting the Business Plan at least 24 hours in advance of Alliance implementing any changes to its existing Business Plan.
- (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. Paragraph 5(l) of the Initial Order – Sharing of strictly necessary financial information

The CMA understands that the provision of certain information by Alliance to certain Morrisons individuals will be strictly necessary for the purpose of monitoring Alliance's ongoing financial performance and in order to take decisions necessary to ensure that Alliance can continue to operate as a going concern, including ensuring that Alliance can meet its ongoing liquidity requirements.

The CMA consents to a derogation to permit the individuals listed in Annex 2 (the

'Authorised Financial Information Recipients') to receive the following categories of information for the above purpose (defined collectively as the **'Strictly Necessary Financial Information')**:

- (i) Alliance's daily sales performance reported on a weekly basis in the form of the template set out at Annex 3 providing an overview of aggregated sales forecast across McColl's stores, actual sales data aggregated across McColl's stores and a like-for-like comparison against aggregated sales data available for the previous year.
- (ii) Cash flow statements in the form of the template set out at Annex 4 providing: (a) high-level aggregated cash flow reporting and short-term forecasts reported on a weekly basis; (b) a longer-term 26-week rolling cash flow forecast reported on a weekly basis; and (c) Alliance's budget forecast reported on a monthly basis. This information includes a high-level breakdown of Alliance's cash balance, receipts and payments, broken down by high-level categories and aggregated across all of Alliance's stores.
- (iii) Periodic balance sheets in the form of the template set out at Annex 5 providing an overview of Alliance's assets, liabilities, and net debt position. The purpose of this request is to give Authorised Financial Information Recipients insights into the general financial position of the company, and does not include granular details of Alliance's business activities.
- (iv) Periodic management accounts and budget forecasts in the form of the template set out at Annexes 6 and 7 providing an overview of Alliance's year-to-date performance. These sets of accounts include aggregated information across all of McColl's stores, including: (a) turnover, (b) commercial margin, (c) operating costs, (d) group depreciation, and (e) interest. This information provides a high-level overview of the operation of the Alliance business, which is typical of any company's profit and loss accounts, through which the Authorised Financial Information Recipients are able to monitor Morrisons' investment in McColl's.

The CMA consents to a derogation from paragraph 5(l) of the Initial Order strictly on the basis that:

- (a) Any Strictly Necessary Financial Information disclosed pursuant to this derogation shall not contain competitively sensitive information, including but not limited to site-specific or product-specific data relating to any one of Alliance's business units. The aforementioned applies to any management commentary provided to

the Authorised Financial Information Recipients with respect to the information received under categories (i) to (iv) above.

- (b) Strictly Necessary Financial Information will only be provided to a limited number of Morrisons employees as listed in Annex 2 (the 'Authorised Financial Information Recipients') for the purpose of monitoring the business activities and performance of Alliance.
- (c) Strictly Necessary Financial Information shared with the Authorised Financial Information Recipients shall be governed by a non-disclosure agreement in the form approved by the CMA on 25 May 2022 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 Financial Information.
- (d) No changes to the Authorised Financial Information Recipients are permitted without the prior written consent of the CMA (including via email).
- (e) No further changes to the templates set out at Annexes 3, 4, 5, 6 and 7 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.

3. Paragraph 5(l) – Sharing of strictly necessary employee-related information

The CMA understands that as a consequence of MRG being unexpectedly placed into administration on 9 May 2022, Morrisons did not have the opportunity to [REDACTED] prior to closing of the Acquisition, including [REDACTED] set out at Annex 8 (the '**Strictly Necessary Employee Information**').

The CMA further understands that Morrisons intends to review the Strictly Necessary Employee Information for integration planning purposes and in the context of an ongoing review of Alliance's portfolio of stores that are leased from [REDACTED] landlords, in order to make appropriate arrangements for employees of any stores that are ultimately [REDACTED].

Morrisons submits that integration planning in the context of employee-related issues is strictly necessary in circumstances where [REDACTED], and that [REDACTED] would assist Morrisons in

determining whether additional steps are strictly necessary to [REDACTED].

Morrisons also submits that the [REDACTED] is strictly necessary as Morrisons will need to determine the [REDACTED], which may include [REDACTED] within the Morrisons business.

The CMA consents to a derogation from paragraph 5(l) of the Initial Order to permit the [REDACTED] and for Morrisons to engage with Alliance and receive Strictly Necessary Employee Information for integration planning purposes, strictly on the basis that:

- (a) The sharing of any confidential or commercially sensitive information will be limited to strictly necessary information for integration planning purposes and to enable Morrisons to undertake the [REDACTED].
- (b) Strictly Necessary Employee Information will only be provided to a limited number of Morrisons' employees as listed in Annex 9 (the '**Authorised Employee Information Recipients**') for whom it is strictly necessary to see the information for the purpose of integration planning and/or the [REDACTED] (as appropriate).
- (c) Whilst [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are not Authorised Employee Information Recipients, they may receive Strictly Necessary Employee 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 Employee Information shared with the Authorised Employee Information Recipients shall be governed by a non-disclosure agreement in the form approved by the CMA on 25 May 2022 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 Employee Information.
- (e) No changes to the Authorised Employee Information 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.

4. Paragraphs 5(a) and 5(l) – Extension of Morrisons discount scheme

The CMA understands that Morrisons intends to extend its existing employee store discount scheme to employees of Alliance, which would result in Alliance's employees having access to a [REDACTED].

The CMA further understands that in order to facilitate the extension of the Discount Scheme to Alliance's employees, certain individuals within Morrisons' People department require access to the categories of information listed in Annex 10, which would enable Morrisons to prepare and provide Alliance's employees with the necessary [REDACTED] in physical or digital format (the '**Strictly Necessary Discount Scheme Information**').

Morrisons submit that extension of the Discount Scheme to Alliance employees is strictly necessary, as it [REDACTED]. Morrisons also submits that extending the [REDACTED] would assist with preserving the viability of the Alliance business in a highly competitive market for [REDACTED].

The CMA consents to a derogation from paragraphs 5(a) and 5(l) of the Initial Order to permit the Morrisons to extend the Discount Scheme to employees of Alliance, strictly on the basis that:

- (a) The sharing of any confidential or commercially sensitive information will be limited to strictly necessary information for preparing and delivering the Discount Scheme.
- (b) Strictly Necessary Discount Scheme Information will only be provided to a limited number of Morrisons' employees as listed in Annex 11 (the '**Authorised Discount Scheme Recipients**') for whom it is strictly necessary to see the information for the purpose preparing and delivering the Discount Scheme.
- (c) Strictly Necessary Discount Scheme Information shared with the Authorised Discount Scheme Recipients shall be governed by a non-disclosure agreement in the form approved by the CMA on 25 May 2022 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 Discount Scheme Information.
- (d) No changes to the Authorised Discount Scheme 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.

Yours sincerely,

Lasse Burmester

Assistant Director, Mergers

22 June 2022

Annex 1

Authorised Business Plan Recipients	Role within the Acquirer Group
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[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]

Annex 2

Authorised Financial Information Recipients	Role within the Acquirer Group
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[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]

Annex 3 – Daily sales performance template submitted to the CMA on 2 June 2022

Annex 4 – Cash flow statements template submitted to the CMA on 2 June 2022

Annex 5 – Periodic balance sheet template submitted to the CMA on 2 June 2022

Annex 6 – Management accounts template submitted to the CMA on 2 June 2022

Annex 7 – Management accounts budget forecast submitted to the CMA on 2 June 2022

Annex 8 – Strictly Necessary Employee Information

[✂]

Annex 9

Authorised Employee Information Recipients

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

Role within the Acquirer Group

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

Annex 10 – Strictly Necessary Discount Scheme Information

[X]

Annex 11

Authorised Discount Scheme Recipients

[X]
[X]
[X]

Role within the Acquirer Group

[X]
[X]
[X]