

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 ('MRG'), 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 19 July 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 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 Acquirer Group carrying out the following actions, in respect of the specific paragraphs:

Paragraphs 5(d) and 5(e) of the Initial Order – McColl's Site Disposals

The CMA understands that in early to mid-2019, MRG planned and commenced a programme for the disposal of a number of McColl's, Martin's, and RS McColl branded sites in various locations.

The disposal project, code named Project Orleans involved:

- assessing and monitoring [X] individual sites across the McColl's network; and
- in relation to sites which had [X].

The Addressees submit that the core purpose of Project Orleans is [X] – i.e. to identify [X] within the McColl's estate, and take necessary actions to dispose of those sites to protect and preserve the viability of the McColl's business as a whole.

A list of the current Project Orleans sites designated for disposal (by sale or closure), as last reviewed by McColl's management in [X] and (in respect of certain sites) during a [X] meeting held in [X], is set out at **Annex 1**.

The CMA understands that whilst Morrisons has been made aware of Project Orleans, the list of sites for disposal was and has at all times been determined and reviewed by the McColl's management independently of Morrisons.

Alliance intends to proceed with the implementation of Project Orleans in respect of the sites listed in Annex 1. The Parties submit that continued implementation of Project Orleans to be strictly necessary and urgent as it will:

- (i) improve and contribute to recreating the viability of the McColl's business as well as enhancing its competitiveness by closing or divesting [X]; and
- (ii) mitigate the prospect of [X] due to delays implementing Project Orleans.

The CMA grants a derogation from paragraphs 5(d) and 5(e) of the Initial Order to permit the resumption and continued implementation of necessary actions to dispose of [X] sites within the McColl's estate strictly on the basis that:

- (a) the sites as listed in Annex 1 are the current sites contemplated for disposal and Alliance will notify the CMA if further sites are added to the list at Annex 1;
- (b) none of the following actions to implement the disposal of a site, listed in Annex 1 (or any additional sites that may be added to the list pursuant to (a) above),

will take place unless previously consented to in writing by the CMA (including via email):

- i. entry into a sale agreement to dispose of a site as a going concern;
 - ii. service of a notice of termination by Alliance to surrender or terminate an existing lease on a disposal site; or
 - iii. closure of a disposal site for subsequent sale by vacant possession.
- (c) This derogation will not result in any integration between the Alliance business and the Acquirer Group.
- (d) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.

In order for the CMA to issue written consent in relation to a proposed disposal, Alliance will, prior to taking any of the actions set out in paragraph (b)(i) to (iii) above provide the CMA with the following information in respect of each site, which the CMA may take into account in issuing its decision alongside any other relevant information and / or data:

- A. local analysis confirming that the closure or sale of the site in question satisfies the decision rule applied by the CMA in CDR/Morrisons;
- B. evidence to demonstrate that the site in question [~~is~~]; and
- C. in the case of a proposed sale as a going concern, the identity of the prospective purchaser.

Given the urgency with which certain actions are required to effect a disposal, this derogation will be granted on the basis that the CMA will revert with a response (which may simply be a request for additional information) within two working days of a request. However, the Addressees shall take no actions towards closing or selling a store until the CMA has formally granted consent via email.

Yours sincerely,

Lasse Burmester

Assistant Director, Mergers

9 August 2022

ANNEX 1

[✂]

	Site ID	Name	Next steps subject to CMA consent
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[✂]

[illegible]

[illegible]