

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 4 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.

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 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 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 action, in respect of the specific paragraphs:

1. Paragraphs 5(a), (d), (e), (g), (h) and (l) of the Initial Order – Morrisons Daily Franchise Programme

The CMA understands that prior to the Acquisition, Morrisons and MRG entered into an agreement (the '**Franchise Agreement**'), pursuant to which certain McColl's stores would be converted to Morrisons Daily franchise stores (the '**Franchise Programme**').

The CMA understands that whilst the Franchise Programme was temporarily paused prior to the Acquisition, the Addressees now intend to recommence the Franchise Programme to [X] of McColl's stores that are converted to the Morrisons Daily format. The Addressees intend to prepare and recommence the Franchise Programme in

accordance with a revised list of stores as compared against the list included in the Addressees' pre-Transaction business plans (the '**Revised Store List**').

The CMA further understands that Morrisons intends to engage with McColl's to undertake a review of McColl's contracting and procurement arrangements in connection with the conversion of stores under the Franchise Programme (the '**Franchise Supply Arrangements**'). Following Morrisons' review, if any of the Franchise Supply Arrangements are [redacted], Morrisons intends to participate in the re-tendering of such Franchise Supply Arrangements insofar as they concern stores listed in the Revised Store List and, where necessary, negotiate contracts (including with new suppliers) of the Franchise Supply Arrangements on behalf of McColl's.

The Addressees submit that recommencement of the Franchise Programme in accordance with the Revised Store List is strictly necessary to:

- (a) [redacted] in order to protect the commercial viability of the McColl's business; and
- (b) avoid McColl's being subject to [redacted] as a consequence of failing to recommence the Franchise Programme.

The Addressees further submit that Morrisons' involvement with McColl's Franchise Supply Arrangements is strictly necessary in order to protect and enhance McColl's viability by ensuring the Franchise Supply Arrangements [redacted] by engaging with third parties to retender and negotiate new Franchise Supply Arrangements.

The CMA consents to a derogation from paragraphs 5(a), 5(d), 5(e), 5(g), 5(h) and 5(l) of the CMA's Initial Order to permit the Addressees to prepare the Revised Store List, resume and implement the Franchise Programme in accordance with the Revised Store List, and for Morrisons to participate in McColl's re-tendering or negotiation of contracts (including with new suppliers) in respect of the Franchise Supply Arrangements insofar as they concern the stores listed in the Revised Store List, strictly on the basis that:

- (a) the sharing of confidential or commercially sensitive information relating to the McColl's business will be limited to strictly necessary information to enable Morrisons to recommence the Franchise Programme (including preparing the Revised Store List and re-tendering and entering into new contracts in respect of the Franchise Supply Arrangements) ('**Strictly Necessary Franchise Information**').
- (b) Strictly Necessary Franchise Information will only be provided to the individuals listed at Annex 1 of the derogation request ('**Authorised Franchise Recipients**') for whom it is strictly necessary to see the information for the purpose of this derogation.
- (c) whilst [redacted] ([redacted] of Morrisons), [redacted] ([redacted] of Morrisons), and [redacted] ([redacted] of Morrisons) are not Authorised Franchise Recipients, they may receive Strictly Necessary Franchise 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) Each of the Authorised Franchise 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.
- (e) no changes to the Authorised Franchise Recipients are permitted without the prior written consent of the CMA (including via email).
- (f) the Addressees will not convert any McColl's stores to the Morrisons Daily fascia under the Franchise Programme without the prior written consent of the CMA (including via email).
- (g) to assist the CMA with confirming whether consent should be granted for the conversion of McColl's stores to the Morrisons Daily fascia, the Addressees will provide the CMA with a local analysis confirming that there are no overlaps between the Addressees involving the affected stores based on the decision rule applied in the CMA's *Bellis/Asda* decision.
- (h) Morrisons shall not seek to re-tender or enter into any new Franchise Supply Arrangements without giving the CMA at least 24 hours' notice in advance of the tender process/execution of the new contract (as appropriate) or, where urgent action (i.e. in under 24 hours) is strictly necessary to preserve the viability of the McColl's business, as much notice as possible.

Yours sincerely,

Lasse Burmester

Assistant Director, Mergers
1 August 2022

Annex 1 – Authorised Franchise Recipients

Authorised Franchise Recipients	Role at Morrisons
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]