

## 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 submissions of 4 July 2022 and 22 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(a), 5(e), 5(g), 5(h) and 5(l) – Property segmentation**

On 25 May 2022 the CMA granted a derogation from the Initial Order (the “**25 May 2022 Derogation**”) for Morrisons to undertake property and commercial due diligence in relation to stores that were leased to [X] (“**Leased Premises**”) in order to assess which of the Leased Premises will ultimately be [X].

The Addressees submit that, in order to implement the Property Segmentation process, Morrisons will be required to engage with Alliance in relation to the Property Steps (as defined below) and negotiate, either directly or via a third party, with landlords of Leased Premises as well as third parties to whom McColl's provides services from the Leased Premises (e.g. [X]). Following these negotiations, it is strictly necessary that Morrisons is able to:

- [X];
- [X]; and
- [X],

(collectively, and including the negotiations themselves, the “**Property Steps**”).

The Addressees further submit that, in relation to stores which are closed [X] (“**Leased Premises Closures**”), it will be necessary for the Addressees to coordinate in respect of any [X], including to ensure that [X]. In particular, it will be necessary for Morrisons to:

- enter into discussions with Alliance employees affected by Leased Premises Closures in relation to positions available within other McColl's stores or the Morrisons network; and
- provide support to McColl's in connection with [X], should McColl's require such assistance,

(collectively, the “**Employment Steps**”).

The Addressees also submit that, in relation to Leased Premises Closures, it will be strictly necessary for the Addressees to coordinate on other logistical aspects of store closure, [X], to ensure that Alliance has adequate support available to implement the store closure process without disrupting its ordinary course business activities. In particular, it will be necessary for Morrisons to:

- request and receive information on Alliance's plans in relation to the logistical aspects of store closures, as well enter into discussions and provide support to Alliance in the design and implementation of store closure plans; and

- support Alliance with the implementation of plans relating to the logistical aspects of store closures on an ad hoc basis should Alliance require such assistance,

(collectively, the '**Logistics Steps**').

The Addresses also intend to agree an NDA that would be entered into by relevant employees within Morrisons and Alliance who are involved in the Property Steps, Employment Steps or Logistics Steps to ensure that confidential or commercially sensitive information is not disseminated outside the Addresses' respective businesses.

The CMA consents to a derogation from paragraphs 5(a), 5(e), 5(g), 5(h) and 5(l) of the Initial Order to permit the Property Steps, Employment Steps and Logistics Steps described above, strictly on the basis that:

- (a) Any Alliance confidential information is shared with Morrisons only where it specifically relates to the implementation of the Property Steps, Employment Steps or Logistics Steps (the '**Strictly Necessary Property Segmentation Information**').
- (b) Strictly Necessary Property Segmentation Information will only be provided to a limited number of Morrisons employees as listed in Annex 1 ('**Authorised Property Segmentation Recipients**') according to their respective involvement with implementing the Property Segmentation process. In this regard, Authorised Property Segmentation Recipients will be limited in terms of the Strictly Necessary Property Segmentation Information they can receive for the purpose of implementing the Property Segmentation process. For example, Authorised Property Segmentation Recipients listed under Morrisons property team shall only receive Strictly Necessary Property Segmentation Information which is relevant to the Property Steps, Authorised Property Segmentation Recipients listed under Morrisons people team shall only receive Strictly Necessary Property Segmentation Information which is relevant to the Employment Steps, etc.
- (c) Each of the Authorised Property Segmentation 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.
- (d) No additions or changes to the list of Authorised Property Segmentation Recipients are permitted without the prior written consent of the CMA (including via email).

- (e) The Addressees notify the CMA at least two working days in advance of [X]. For the avoidance of doubt, the Addressees will not [X] without prior CMA consent (including via email).
- (f) Except with prior written consent (including via email) from the CMA, no Morrisons employees will directly communicate with the landlords of the Leased Premises. Morrisons will instruct a third party to negotiate with the landlords of the Leased Premises.
- (g) When notifying the CMA that the Addressees propose to [X] in accordance with condition (e) above, the Addressees will explain:
  - i. whether, [X]; and
  - ii. [X].
- (h) Each of the Authorised Property Segmentation Recipients in the Property category will receive only (i) the information the CMA consented to them receiving under the 25 May 2022 Derogation, and (ii) updates relating to [X].
- (i) None of the Authorised Property Segmentation Recipients in either the People or Logistics categories will receive commercially-sensitive information which is specific to any one of the Alliance stores listed in Annex 2.
- (j) The Addressees seek the CMA's written consent (including via email) prior to terminating any licences to occupy the Leased Premises. To assist the CMA with deciding whether to provide its written consent, the Addressees will submit:
  - i. a local analysis for each licence to occupy that Morrisons intends to terminate based on the decision rule applied in *CD&R/Morrisons*; and
  - ii. the rationale for deciding to terminate any licence(s) to occupy the Leased Premises, including supporting evidence (where available).
- (k) The Addressees do not [X] prior to the CMA giving written consent to the [X].
- (l) This derogation will not result in any integration between Alliance and the Acquirer Group.

- (m) 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

18 August 2022

## **Annex 1 – Authorised Property Segmentation Recipients**

[illegible]

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

**Annex 2 – Alliance’s stores in areas where the CMA has identified a realistic prospect of an SLC**

No.	Centre site ID	Postcode
1.	0474_Mc	SN9 5AQ
2.	0921_Mc	MK11 1AA
3.	1039_Mc	WA13 9LT
4.	1042_Mc	IP11 0SN
5.	1072_Mc	BA6 8EW
6.	1113_Mc	CW7 3HP
7.	1132_Mc	CO16 9LD
8.	1136_Mc	BN8 4BG
9.	1449_Mc	SG9 9BL
10.	4624_Mc	PH1 1HA
11.	4800_Mc	BL5 1ER
12.	4858_Mc	CW12 2BA

13.	4892_Mc	EX11 1HD
14.	4904_Mc	NP10 9EY
15.	5905_Mc	GL4 6LL
16.	5914_Mc	BA1 6RS
17.	6141_Mc	DY9 9HJ
18.	6189_Mc	SN6 7AG
19.	6226_Mc	BN44 3RD
20.	6251_Mc	TN11 0BZ
21.	6308_Mc	DY9 9ST
22.	6457_Mc	RG20 5ND
23.	6545_Mc	TN12 6EN
24.	6561_Mc	RM19 1ST
25.	6809_Mc	LN6 0PY