

## **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 28 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 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:

### **Paragraphs 5(a), 5(g), 5(h), and 5(l) – New Energy Supply Agreement**

The CMA understands that [X], the existing energy supplier of the McColl's business, has confirmed that it will not enter into a new energy supply contract with Alliance beyond [X], other than [X].

Morrisons submits that it is necessary to engage with the Alliance business in relation to a new energy supply arrangement and, where strictly necessary, to engage and negotiate with potential energy suppliers on behalf of Alliance (including energy suppliers that do not currently supply the McColl's business) as securing a suitable energy supply arrangement (the '**New Energy Supply Arrangement**') is critical to McColl's ability to operate and preserve the competitiveness and viability of its business.

The CMA consents to a derogation from paragraphs 5(a), 5(g), 5(h) and 5(l) of the Initial Order to permit Morrisons to engage with Alliance and energy suppliers with respect to the New Energy Supply Agreement, strictly on the basis that:

- (a) The sharing of any confidential or commercially sensitive information relating to the McColl's business will be limited to strictly necessary information to enable Morrisons to understand the energy supply arrangements ("**Strictly Necessary Energy Tender Information**").
- (b) Strictly Necessary Energy Tender Information will only be provided to the individuals listed in Annex 1 (the '**Authorised Energy Tender Recipients**') for whom it is strictly necessary to see the information for the purpose of this derogation.
- (c) Whilst the Authorised Energy Tender Recipients may undertake due diligence in relation to the New Energy Supply Agreement and, where strictly necessary, engage and negotiate terms directly with energy suppliers on behalf of Alliance, Morrisons shall not:
  - (i) enter into a New Energy Supply Agreement; or
  - (ii) extend the terms of Morrisons' existing energy supply arrangements to Alliance (including, upon the supplier's request, by amending the contracts that Morrisons holds with its own energy suppliers so that these include Alliance),

without notifying the CMA at least one working day prior to execution of the agreement.

- (d) Whilst [X] shall not engage with any prospective energy suppliers to Alliance for the purpose of this derogation, they may receive Strictly Necessary Energy

Tender Information in the form of a summary report that has been sufficiently aggregated and/or anonymised to remove any competitively sensitive information, strictly for the purpose of granting senior approval in relation to actions permitted by this derogation. The Addressees shall provide the CMA with a copy of any such report(s), should the CMA request to see a copy.

- (e) Strictly Necessary Energy Tender Information shared with the Authorised Energy Tender Recipients will be governed by an NDA in a form approved by the CMA 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 such information.
- (f) No changes to the Authorised Energy Tender Recipients are permitted without the prior written consent of the CMA (including via email).
- (g) This derogation shall not prevent any remedial action which the CMA may need to take regarding the Acquisition.
- (h) Should divestment remedies be offered or required, Morrisons will continue supplying any number of Alliance stores that are subject to divestment remedies through Alliance's energy provider until the purchaser of the divestment stores has:
  - (i) completed the acquisition of the divested stores; or
  - (ii) if earlier, arranged an alternative energy agreement for the divested stores.

#### **Paragraphs 5(d) and 5(e) of the Initial Order – McColl's [X] Closure**

Alliance submits that it is necessary to permanently close the site at [X] as a result of increased criminal activity impacting the day-to-day operation and ongoing viability of the [X], and prolonged losses encountered at the site which are irreversible.

Closure of the [X] is strictly necessary, as it will:

- protect and preserve the viability and competitiveness of the Alliance business; and
- facilitate the Addressees' continuing compliance with their obligations under paragraph 5(b) of the Initial Order to maintain the viability of the Alliance business as a going concern on the basis of its pre-merger business plan.

Finally, Alliance submits that the [X] does not fail the decision rule contained in *Bellis/Asda*, i.e. there is no overlap between the Addressees in relation to the 1 mile radius or 5-minute drive time catchment area.

The CMA consents to a derogation from paragraphs 5(d) and 5(e) of the CMA's Initial Order to permit the closure of the [X] strictly on the basis that:

- (a) The [X] is loss-making with limited realistic prospects to return it to financial viability.
- (b) This derogation will not negatively affect the viability of the Alliance business.
- (c) The decision to close the store was taken independently of the Acquirer Group.
- (d) This store's closure will not impact local competition between the Acquirer Group and Alliance.
- (e) This derogation will not result in any integration between the Alliance business and the Acquirer Group.
- (f) 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

15 August 2022

**Annex 1 – Authorised Energy Tender Recipients**

Authorised Individuals	Role
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]