

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 22 September 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, Morrisons is required to hold separate the Morrisons 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 Acquirer Group carrying out the following actions, in respect of the specific paragraphs:

Paragraphs 5(a), 5(g), and 5(l) – purchase of Product Recycling Notes ("PRNs") and implementation of a Deposit Return Scheme ("DRS")

The CMA understands that Alliance qualifies as a "producer" under the Producer Responsibility Obligations Regulations 2007 (the "**Regulations**"), [§].

Morrisons submits that it is necessary to engage with Alliance in relation to the acquisition of PRNs and, where strictly necessary, to engage and negotiate with potential PRN suppliers on behalf of Alliance, as securing the necessary PRNs is critical to Alliance's ability to comply with its legal obligations.

Further, Morrisons submits that it is necessary to establish a DRS with Alliance to ensure compliance with the Deposit and Return Scheme for Scotland Regulations 2020.

Morrisons submits that Morrisons' involvement in the negotiation process for the acquisition of PRNs on behalf of the Alliance business is strictly necessary and urgent, as:

- (i) the obligation to purchase PRNs and Package Waste Export Recovery Notes (**PERNs**) is renewed each calendar year. Therefore, there is a limited timeframe within which McColl's must comply with this obligation, where failure to do so may result in criminal sanctions;
- (ii) [X], and accordingly Morrisons and Alliance believe it is necessary to [X];
- (iii) Morrisons will [X] if and when integration with the Alliance business has taken place and intends to [X] should the CMA clear the Acquisition.

The CMA consents to a derogation from paragraphs 5(a), 5(g), and 5(l) of the Initial Order to permit Morrisons to (i) engage with Alliance and PRN suppliers with respect to McColl's legal obligation to purchase a certain number of PRNs; and (ii) implement a DRS with McColl's, strictly on the basis that:

- a) the sharing of any confidential or commercially sensitive information relating to the Alliance business will be limited to strictly necessary information to enable Morrisons to purchase PRNs/PERNs and to establish the DRS ("**Strictly Necessary PRN/DRS Information**");
- b) Strictly Necessary PRN/DRS Information will only be provided to those Authorised PRN/DRS Information Recipients for whom it is strictly necessary to see the information for the purpose of this derogation;
- c) whilst [X] shall not engage with any prospective PRN suppliers to Alliance for the purpose of this derogation, they may receive Strictly Necessary PRN/DRS 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;

- d) Strictly Necessary PRN/DRS Information shared with the Authorised PRN Information 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;
- e) no changes to the Authorised PRN/DRS Information Recipients are permitted without the prior written consent of the CMA (including via email); and
- 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

3 October 2022

Annex 1

Authorised PRN Information Recipients

Authorised Individuals	Role at Morrisons
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]

Authorised DRS Information Recipients

Authorised Individuals	Role at Morrisons
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]