

## **COMPLETED ACQUISITION BY CLAYTON, DUBILIER & RICE HOLDINGS, LLC OF WM MORRISON SUPERMARKETS LIMITED**

**Directions issued on 17 February 2023 pursuant to paragraph 12.1 of the Undertakings in Lieu accepted by the Competition and Markets Authority on 9 June 2022**

On 27 October 2021, Clayton, Dubilier & Rice Holdings, LLC (**CD&R**) acquired Wm Morrison Supermarkets Limited (**Morrisons**) (the **Merger**).<sup>1</sup> CD&R exercises indirect control over a number of portfolio companies, including the Motor Fuel Group (**MFG**). Both Morrisons and MFG are active in the retail supply of petrol and diesel in the UK.

On 24 March 2022, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).

On 31 March 2022, pursuant to section 73A(1) of the Act, CD&R offered Undertakings in Lieu of a Reference to the CMA for the purposes of section 73(2) of the Act (the **UILs**). CD&R undertook to divest the retail fuel sites listed in Annex 1 of the UILs (the **Divestment Sites**) within a specified period (the **Divestment Period**).

The CMA considered that the UILs are appropriate to remedy, mitigate or prevent the SLC, or any adverse effect which may be expected to result from the Merger, as specified in the SLC Decision. Having been signed by CD&R, the CMA accepted the UILs on 9 June 2022.

Paragraph 12.1 of the UILs provides that CD&R shall comply promptly with such written directions as the CMA may from time to time give:

- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these UILs; or
- (b) to do or refrain from doing anything so specified or described which it might be required by these UILs to do or to refrain from doing.

The CMA now issues written directions under paragraph 12.1 of the UILs (**Directions**) that, for the purpose of securing compliance with the UILs and implementing the

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<sup>1</sup> Wm Morrison Supermarkets Limited changed its name from Wm Morrison Supermarkets PLC on 17 November 2021.

divestiture of each of the Divestment Sites, CD&R shall appoint a monitoring trustee (**MT**), in accordance with the terms provided for in the Annex and shall comply with the obligations set out in the Annex.

**Colin Raftery**  
**Senior Director, Mergers**  
**17 February 2023**

## ANNEX

### Directions to appoint a Monitoring Trustee

#### Interpretation

In these Directions:

**'the Act'** means the Enterprise Act 2002;

**'Business'** has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act;

**'CD&R'** means Clayton, Dubilier & Rice Holdings, LLC, a company registered in the Cayman Islands with the registration number MC-3019, registered offices at c/o Maples Corporate Services Limited, PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands;

**'CD&R's Business'** means the businesses of CD&R and its group of interconnected bodies corporate carried on as at the effective date of the UILs;

**'CMA'** means the Competition and Markets Authority;

**'Control'** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**'MT'** means the monitoring trustee appointed in accordance with this Annex;

**'Subsidiary'** has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and 'subsidiaries' shall be construed accordingly); and

**'UILs'** means the Undertakings in Lieu accepted by the CMA on 9 June 2022.

Terms and expressions defined in the UILs have the same meaning in these Directions unless the context requires otherwise.

#### Appointment

1. CD&R must appoint an MT in order to ensure compliance with the UILs, in particular to:
  - a. monitor and report to the CMA on compliance by CD&R with the UILs; and
  - b. support the CMA in:

- i. monitoring compliance with the provisions of the UILs; and/or
    - ii. investigating potential breaches of the provisions of the UILs.
  - c. support the CMA taking any remedial action which may be required to ensure compliance with the UILs;
  - d. assess and report to the CMA in relation to the arrangements made by CD&R for divestment of the Divestment Sites and what changes to those arrangements, if any, are necessary to ensure the divestiture process is carried out in accordance with the terms of the UILs.
2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out his or her functions to the best of his or her abilities.
  3. CD&R must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of CD&R as set out in these Directions.

## **General**

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. CD&R shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively properly carry out his or her functions.
7. CD&R must appoint the MT as soon as is reasonably practicable and in any event by 5pm on Friday 24 February 2023 (or such longer period as the CMA may reasonably agree in writing).
8. The appointment of a MT by CD&R is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
  - a. the name and contact details of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by 5pm on Tuesday 21 February 2023 (or such longer period as the CMA may reasonably agree in writing);

- b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by 5pm on Wednesday 22 February 2023 (or such longer period as the CMA may reasonably agree in writing);
  - c. the MT must be appointed to act until the completion of the divestment of the Divestment Sites to any proposed purchaser to the satisfaction of the CMA in accordance with paragraph 2.1 of the UILs or until the CMA directs that the MT is no longer required; and
  - d. once the MT has been approved by the CMA and appointed, CD&R must provide the CMA with a copy of the agreed terms and conditions of appointment within 1 working day following the MT's appointment.
9. If CD&R is unable for any reason to conclude the appointment of the MT within the time limit specified by the CMA, the CMA shall nominate one or more persons to act as MT, and CD&R shall appoint or cause to be appointed such MT within two working days starting with the date of such nomination under the terms and conditions of appointment approved by the CMA.

## **Functions**

10. The functions of the MT will be to:
- a. ascertain and report to the CMA in relation to the current level of compliance by CD&R and its Subsidiaries with paragraphs 2 and 3 of the UILs (or any other paragraph of the UILs if the CMA so requires);
  - b. assess and report to the CMA in relation to the arrangements made by CD&R to ensure compliance with paragraphs 2 and 3 of the UILs (or any other paragraph of the UILs if the CMA so requires);
  - c. identify and supervise if necessary the arrangements made by CD&R for ensuring compliance with paragraphs 2 and 3 of the UILs (or any other paragraph of the UILs if the CMA so requires); and
  - d. without prejudice to the right of CD&R to directly contact the CMA, respond to any questions which CD&R may have in relation to compliance with the UILs, in consultation with the CMA.
11. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within CD&R's Business, such as written and electronic communications, telephone conversations and meetings as may be required.

12. The MT must comply with any other requests made by the CMA for the purpose of ensuring the full and effective compliance by CD&R with the UILs.

### **Obligations of CD&R**

13. During the term of the MT's appointment (in accordance with paragraph 8 above), CD&R's Business, its employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
  - a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of CD&R's Business (including the Divestment Sites) as the MT may reasonably require; and
  - b. the provision of such office and supporting facilities as the MT may reasonably require;
  - c. where reasonably practicable, CD&R's provision of advance notice of, including advance sight of any agenda, and right to attend any proposed meeting relating to the sale of the Divestment Sites; and
  - d. compliance with any reasonable request by the MT to be copied into correspondence within CD&R which is relevant to compliance with the UILs and/or to enable the MT to fulfil its functions as set out in these directions (save to the extent that such correspondence is protected by legal privilege).
14. If CD&R's Business is in any doubt as to whether any action or communication would infringe the UILs, it is required to contact the MT for clarification.
15. If CD&R's Business has any reason to suspect that the UILs may have been breached, it must notify the MT and the CMA immediately.

### **Reporting functions**

16. The MT is required to provide an initial report to the CMA no later than 1 week (or such longer period as the CMA may reasonably agree in writing) following appointment, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the UILs, and including among other things:
  - a. details of the current extent of compliance with paragraphs 2 and 3 of the UILs (or any other paragraph of the UILs if the CMA so requires);
  - b. a description and assessment of the steps taken by CD&R and CD&R's future plans (including CD&R's detailed implementation plan provided to the CMA on 13 February 2023) to ensure completion of the sale of the Divestment Sites in accordance with paragraph 2.1 of the UILs; and

- c. recommendations as to what changes to those arrangements, if any, are necessary, including a recommendation in relation to whether a divestiture trustee (a Trustee) should be appointed in accordance with paragraph 4 of the UILs.
17. In addition to providing the initial report referred to in paragraph 16 above, the MT must provide a statement to the CMA every week thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, CD&R has and is complying with the UILs. At the same time, the MT must provide the CMA with a report setting out the following:
- a. the basis for the MT's view that the UILs have or have not, as the case may be, been complied with and in particular whether:
    - i. anything has caused him or her to be concerned as to whether CD&R has complied with the UILs, and if it has, whether those concerns have been resolved and why;
    - ii. he or she has any remaining doubts or uncertainties as to whether CD&R has complied with the UILs; and
    - iii. anything that causes him or her to be concerned about a possible future breach of the UILs (whether deliberate or inadvertent);
  - b. the extent to which CD&R's Business has cooperated with the MT in his or her task of monitoring its compliance with the UILs and details of any aspects of the cooperation of CD&R's Business that he or she considers could be improved;
  - c. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of CD&R's Business with the UILs and if there is anything that the MT considers would assist him or her in monitoring compliance;
  - d. any current or anticipated requests for CMA consents under the terms of the UILs; and
  - e. the information he or she used to compile the report.
18. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which CD&R would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires CD&R and its Subsidiaries to produce any information or documents to the MT which are legally privileged.
19. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the UILs have been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation,

the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 18 above).

20. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 16 and 17) are confidential and should not be disclosed to CD&R or its Subsidiaries, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.