

DEROGATION LETTER IN RESPECT OF INITIAL ENFORCEMENT ORDER ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002 COMPLETED ACQUISITION

Dear [✂]

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 26 April 2024

Completed acquisition by GXO Logistics, Inc. of Wincanton Plc

We refer to your emails dated 16 April 2024 and 22 April 2024 requesting that the CMA consents to derogations to the Initial Enforcement Order of 26 April 2024 (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, the Acquirer Group and Wincanton are required to hold separate the Acquirer Group business from the Wincanton business and refrain from taking any action which might prejudice a reference under section 22 or 33 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, GXO and Wincanton may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(c) of the Initial Order

Upon completion of the transaction, GXO submits that Wincanton will become part of the GXO group, and that following a scheme of arrangement, GXO will be the sole shareholder of Wincanton. As a result, GXO submits that Wincanton will no longer satisfy the free float requirement to remain listed on the London Stock Exchange.

GXO therefore requests a derogation from paragraph 5(c) of the Initial Order to:

- (a) enable de-listing and re-registration of the Wincanton business as a private limited company;
- (b) enable Wincanton to change its name and amend its Articles of Association accordingly; and
- (c) enable Wincanton's accounting reference date to be amended from 31 March to align with GXO's accounting reference date of 31 December.

The CMA consents to the derogation strictly on the basis that:

- (1) this derogation will not result in any integration between the Wincanton business and the GXO business;
- (2) this derogation will have no impact on the day-to-day operations of Wincanton; and
- (3) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

2. Paragraph 5(c) and 5(i) of the Initial Order

Wincanton submits that the roles of its Non-Executive Directors ('**NEDs**') will cease when Wincanton is de-listed. This is because their purpose was tied primarily to the requirements of a listed company (e.g. to run and oversee Remuneration, Nomination and Audit Committees).

Wincanton also submits that it will retain post-completion of the Transaction relevant external advisers including accountants and auditors. Wincanton will maintain a direct relationship with its auditors and other external advisers through its remaining board members (who currently manage these relationships).

Wincanton further submits that the resignation of the NEDs would not have an impact on Wincanton's operations or strategic direction which will continue to be the responsibility of Wincanton's existing management. Wincanton's post-completion board (made up of Wincanton's CEO and CFO) will perform the board functions which continue to be necessary for a company that is not listed.

The CMA considers the NEDs to be key staff. Wincanton therefore requests a derogation from paragraphs 5(c) and 5(i) of the Initial Order in order to allow for the resignation of Wincanton's NEDs after completion of the transaction.

The CMA consents to the derogation strictly on the basis that:

- (1) this derogation will not result in any disruption to, or impact the viability of the Wincanton business;

- (2) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

3. Paragraph 5(a), 5(g) & 5(l) of the Initial Order

The Parties submit that upon completion of the transaction, as Wincanton's new owner, GXO will become responsible for ensuring that Wincanton has effective access to directors' and officers' ('D&O') and crime insurance coverage. The Parties also submit that the most effective way to ensure that Wincanton has all the necessary D&O and crime insurance cover immediately upon completion is to include Wincanton in GXO's coverage.

The Parties therefore request a derogation from paragraphs 5(a), 5(g) and 5(l) of the Initial Order to permit (i) GXO to extend GXO's existing D&O and crime insurance coverage to Wincanton; and (ii) GXO to receive information from Wincanton to put in place and maintain the requisite D&O and crime insurance coverage for Wincanton.

The CMA consents to the derogation strictly on the basis that:

- (1) Wincanton information provided to GXO will be limited to what is strictly necessary for GXO to arrange D&O and crime insurance coverage for Wincanton and ensure compliance with any requirements of the insurance policies and the information provided by Wincanton will not be used for any other purpose;
- (2) information will only be provided to [X] (the '**Authorised Individuals**') for whom it is strictly necessary to see Wincanton information to ensure that the necessary D&O and crime insurance arrangements are put in place. The Authorised Individuals shall enter into non-disclosure agreements in a form approved by the CMA. The Parties shall submit to the CMA a summary of the information shared with the Authorised Individuals, should the CMA request this;
- (3) the Authorised Individuals do not have any responsibility for the commercial or strategic operations of GXO and shall not use any information provided by Wincanton in any way to intervene in the management or operation of Wincanton;
- (4) IT firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within GXO from accessing the information shared with the Authorised Individuals for the purposes of this derogation;
- (5) GXO will ensure that any third party to whom it provides the information provided by Wincanton is aware of the terms on which the information has been provided and that the information must not be provided to any individual other than in compliance with the Initial Order and this derogation;

- (6) no changes to the Authorised Individuals are permitted without the prior written consent of the CMA (including via email);
- (7) the inclusion of Wincanton within GXO's insurance arrangements: (i) will not be difficult or costly to reverse; and (ii) will have no influence upon the commercial direction of the Wincanton business during the term of the Initial Order;
- (8) should remedial action be required by the CMA in relation to the Wincanton business, GXO will ensure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from Wincanton for the purposes of this derogation will be returned to Wincanton and any copies destroyed, except to the extent that record retention is required by law or regulation;
- (9) this derogation shall not prevent any remedial action which the CMA may need to take regarding the transaction; and
- (10) this derogation will not result in any integration between the Wincanton business and the GXO business.

4. Paragraph 5(e) of the Initial Order

GXO and Wincanton submit that in order to ensure that they have the appropriate resources to service their customers, each of GXO and Wincanton may from time to time (i) dispose of warehouses and other premises (including for example by surrendering leases or novating leases to new contract logistics providers) and (ii) acquire additional warehouses and other premises (including by entering into new leases, which may require the granting of security over the relevant business's assets).

In order to ensure the continuity and viability of each of GXO and Wincanton, the Parties request a derogation from paragraph 5(e) of the Initial Order to permit each of GXO and Wincanton to (i) dispose of existing leases over warehouses and other premises and (ii) grant security in connection with entering into new leases over which warehouses and other premises (together, '**Warehouse Portfolio Changes**'), in each specific instance subject to prior approval in writing from the CMA (including via email).

The CMA consents to the derogation strictly on the basis that:

- (1) Each of GXO and Wincanton will submit to the CMA a written request in advance of executing individual Warehouse Portfolio Changes. These requests will be submitted to the CMA as soon as possible and will contain, as a minimum, the following information:

In the event of a disposal

- (i) Which customer(s) are / were served by the relevant warehouse;
- (ii) The size and location of the warehouse;
- (iii) Why the relevant disposal is inherently tied to a specific contract, and, if relevant, why GXO / Wincanton has decided not to retender for that contract; and

In the event of a new security being granted

- (i) Which assets GXO and Wincanton plan to grant security over, including what those assets are used for.
- (2) the Warehouse Portfolio Changes will not affect the viability or competitive capability of the GXO business or the Wincanton business.
 - (3) this derogation will not result in any integration between the GXO business and the Wincanton business.
 - (4) this derogation shall not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

Yours sincerely,

Matteo Alchini

Assistant Director, Remedies Business and Financial Analysis

26 April 2024