

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 email of 15 May 2024 requesting that the CMA consents to a derogation from 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 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 Acquirer Group and Wincanton (together, the '**Parties**') may carry out the following actions, in respect of the specific paragraph:

Paragraph 5(l) of the Initial Order

The Parties submit that Wincanton is currently involved in a number of disputes, at least one of which involves losses above the threshold for disclosure in its US' Securities and Exchange Commission ('**SEC**') filings. The Parties further submit that it is necessary for GXO to be kept apprised of all pending and potential litigation involving Wincanton (the '**Wincanton Litigation Matters**') for external regulatory disclosure requirements in the United States, and to ensure Wincanton is maintained as a going concern in compliance with paragraph 5(b) of the Initial Order.

The Parties submit that there are two GXO individuals who would need to have access to information pertaining to the Wincanton Litigation Matters owing to their responsibility for signing off on the accuracy of legal proceedings disclosures required by the SEC:

(a) [REDACTED]; and

(b) [REDACTED]

together, the '**Authorised Individuals**'.

The Parties submit that the Authorised Individuals will need to receive the following information about the Wincanton Litigation Matters on a monthly basis to enable GXO to comply with its reporting obligations and ensure Wincanton is maintained as a going concern:

(a) [REDACTED]; and

(b) summaries of the status and any significant developments pertaining to the Wincanton Litigation Matters,

together, the '**Litigation Information**'.

The Parties further submit that the Authorised Individuals will need to engage directly with Wincanton's external and in-house counsel to ask follow-up questions about the status of Wincanton Litigation Matters, Wincanton's view of risk and next steps.

The Parties therefore request a derogation from paragraph 5(l) of the Initial Order for Wincanton to provide Litigation Information to the Authorised Individuals about the Wincanton Litigation Matters and allow the Authorised Individuals to discuss the Wincanton Litigation Matters with Wincanton's external and in-house counsel.

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

- (1) this derogation is strictly necessary to ensure GXO can comply with its external regulatory disclosure requirements;
- (2) confidential and commercially sensitive information pertaining to the Litigation Information shared with GXO will be:
 - (a) shared only on a monthly basis, with the exception of responses to follow-up questions to the monthly updates. These questions will be limited in scope to clarifying queries arising from each monthly update;
 - (b) shared only with the Authorised Individuals for whom it is strictly necessary to see the information for the permitted purpose (except where external regulatory reporting obligations require GXO to disclose Litigation Information to the market); and

- (c) limited to that which is strictly necessary to allow the Authorised Individuals to understand the impact of any Wincanton litigation or disputes on the Wincanton business and whether any regulatory reporting disclosures are required;
- (3) The Authorised Individuals:
- (a) must not share the information received under this derogation or consult with any other individual at GXO (except where external regulatory reporting obligations require GXO to disclose Litigation Information to the market);
 - (b) must not advise GXO in any way in connection with the Wincanton Litigation Matters or negotiate or litigate on Wincanton's behalf;
 - (c) do not hold a commercial or strategic decision-making role within GXO; and
 - (d) will be subject to a confidentiality undertaking in a form approved by the CMA;
- (4) the Parties will keep a record of all information shared in accordance with this derogation, and the record will be made available to the CMA on request;
- (5) except as permitted by subsequent derogations from the CMA, Wincanton will independently of GXO decide the course of action it will adopt in relation to the Wincanton Litigation Matters;
- (6) this derogation only relates to the provision of information from Wincanton to GXO in connection with the Wincanton Litigation Matters and does not allow any integration of the GXO and Wincanton businesses or any changes to the operation or functioning of the Wincanton business;
- (7) should GXO consider that further action is necessary in order to protect the ongoing viability of the Wincanton business, GXO shall seek appropriate derogations from the CMA;
- (8) 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, except insofar as disclosure is required by GXO's reporting obligations; and
- (9) should remedial action be required by the CMA in relation to the Wincanton business, 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 the Wincanton business for the purposes of this derogation will be returned to the Wincanton business and any copies destroyed, except to the extent that record retention is required by law or regulation.

Yours sincerely,

Matteo Alchini

Assistant Director, Remedies Business and Financial Analysis

20 May 2024