

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

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 submission dated 31 May 2024 and 7 June 2024 requesting that the CMA consents to a derogation 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 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 may carry out the following actions, in respect of the specific paragraphs:

Paragraph 5(c), 5(i), and 5(k) of the Initial Order

GXO Logistics, Inc. ('**GXO**') and Wincanton plc ('**Wincanton**') (together, the '**Parties**') have sought CMA consent under paragraphs 5(c), 5(i) and 5(k) of the Initial Order to allow for:

- (a) recruitment (e.g., appointment of a new joiner) of individuals to existing and new key staff roles as and when required;
- (b) internal promotions to key staff roles as and when required;

- (c) temporary departures of key staff due to parental (including maternity and paternity) leave or sick leave;
- (d) dismissal of individuals without notice from key staff roles for reasons set out in their contract of employment (and in accordance with that contract) as and when required; and
- (e) the non-retention of key staff who (i) have failed to achieve the requisite standards during their probationary periods, (ii) have performed poorly, and (iii) are in roles that have been made redundant.

The Parties submit that vacancies in key staff roles frequently arise across their UK and global businesses.

The Parties also submit that granting this derogation is the most administratively efficient approach as it will enable the Parties to more quickly fill key staff vacancies, allow the Parties to conduct dismissal processes when strictly necessary to do so and to not retain individuals in key staff roles as and when required by the Parties, or due to the decisions of key staff themselves.

The CMA consents to a derogation from paragraphs 5(c), 5(i) and 5(k) of the Initial Order to allow the Parties to take the actions listed in (a) to (e) above. This derogation is granted strictly on the basis that:

- (1) the CMA's written approval, which can be given via email, is required before any key staff change may occur;
- (2) prior to the appointment of a temporary or permanent replacement of any key staff lost to the business, interim arrangements will be put in place for each key staff vacancy such that there will be no disruption to the ongoing operation and viability of the GXO business or the Wincanton business;
- (3) in case of a departure of a key staff position from either Party, the Party will provide the CMA, in writing, with the following information in advance of taking any steps towards dismissing an employee:
 - (i) the name of the individual, their role, and whether the individual is employed in connection with the UK business;
 - (ii) details of the individual's responsibilities in their role;
 - (iii) the reason for the departure or transfer;
 - (iv) if the individual is to be dismissed without notice, an explanation as to why it is believed to be necessary that the individual candidate is dismissed without notice in accordance with the provisions of their employment contract and the process by which GXO or Wincanton came to this decision; and

- (v) the future plans for filling that position on a permanent basis or why GXO or Wincanton does not consider the position needs to be filled on a permanent basis;
- (4) once a candidate has been identified to fill a key staff vacancy on a temporary or permanent basis, and before a formal offer is made to the candidate, the Party will provide the CMA, in writing, with the following information:
- (i) the name of the candidate, their proposed role and their proposed practice (as relevant);
 - (ii) details of the candidate's employment history with the non-hiring Party;
 - (iii) an explanation as to why the candidate has the necessary skills and experience to fulfil the responsibilities of the position in question;
 - (iv) confirmation of any financial or non-financial interest in GXO or Wincanton;
and
 - (v) a description of the selection process;
- (5) GXO and Wincanton will not be required to seek approval for a key staff change if the departure, transfer or appointment of key staff is for a period of six months or less and appropriate interim arrangements have been put in place;
- (6) this derogation will not result in any staff transfers between the GXO business and the Wincanton business;
- (7) this derogation will not lead to any integration between the GXO and Wincanton businesses;
- (8) this derogation will not result in any disruption to, or impact the viability of, the GXO or Wincanton businesses; and
- (9) the 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.

Yours sincerely,

Matteo Alchini
Assistant Director, Mergers
13 June 2024