

## COMPLETED ACQUISITION BY GXO LOGISTICS, INC. OF WINCANTON PLC

### Invitation to Comment on Remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups<sup>1</sup>

#### Introduction

1. This consultation seeks the views of interested parties on possible remedies to address the substantial lessening of competition (**SLC**) we have provisionally identified, in particular: (a) a structural divestiture remedy proposed by GXO Logistics, Inc. (**GXO**) (**GXO's Divestiture Remedy Proposal**); (b) a behavioural remedy proposed by GXO (**GXO's 3PL Sponsorship Remedy Proposal**); and/or (c) a structural remedy requiring the divestiture of a potentially broader and/or differently configured standalone business than GXO's Divestiture Remedy Proposal (**Wincanton**).
2. On 14 November 2024, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the **Act**), made a reference to its chair for the constitution of a Group of CMA Panel Members (the **Inquiry Group**)<sup>2</sup> regarding the completed acquisition by GXO of Wincanton (the **Merger**) for further investigation and requiring it to report within a period ending on 30 April 2025.<sup>3</sup>
3. In its interim report on the reference notified to the Parties on 19 February 2025 (the **Interim Report**), we provisionally concluded that the Merger may be expected to result in an SLC in the supply of dedicated warehousing to national supermarket chains (**Grocery customers**) in the UK.<sup>4</sup>
4. The CMA's analysis provisionally indicates that the Merger, by removing the constraint that GXO and Wincanton exert on each other, would lead to a significant reduction in competition, with limited strong alternatives in the supply of dedicated warehousing services to Grocery customers, which in turn

---

<sup>1</sup> See [CMA Rules of Procedure for Merger, Market and Special Reference Groups \(CMA17\)](#).

<sup>2</sup> Under [Schedule 4](#) to the Enterprise and Regulatory Reform Act 2013.

<sup>3</sup> See: CMA, [Decision to refer](#), 14 November 2024 and CMA, [Terms of reference](#), GXO and Wincanton are each a Party to the Merger; together they are referred to as the **Parties** and, for statements relating to the future if the Merger was to proceed, as the **Merged Entity**.

<sup>4</sup> CMA, [Interim Report](#), 19 February 2025.

would allow the Merged Entity to raise prices and/or degrade non-price aspects of its competitive offering to Grocery customers in the UK.

5. This Invitation to Comment on Remedies sets out and consults on the actions which the CMA might take for the purpose of remedying the SLC and/or any resulting adverse effects provisionally identified in the Interim Report.<sup>5</sup>
6. We invite comments from the Parties and third parties on possible remedies by no later than **5pm (UK time) on Tuesday 18 March 2025**.<sup>6</sup>

### **CMA criteria for remedies**

7. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>7</sup>
8. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
9. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>8</sup>

### **Possible remedies on which views are sought**

10. Without prejudice to GXO's position that it disagrees with the provisional SLC identified in the Interim Report, and without prejudice to any representations the Parties may make on the CMA's provisional findings as set out in the Interim Report, GXO has proposed two potential remedies which it submits could independently address the SLC provisionally identified in our Interim Report. GXO's two remedies proposals are:
  - (a) The Divestiture Remedy Proposal, a non-confidential summary of which is set out in **Annex A**; and
  - (b) The 3PL Sponsorship Remedy Proposal, a non-confidential summary of which is set out in **Annex B**.
11. In addition to the remedies proposals submitted by the GXO, we have identified the following potential remedy:

---

<sup>5</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), paragraphs 12.6-12.9. CMA, [Interim Report](#), 19 February 2025.

<sup>6</sup> See [CMA2](#), 2 January 2025, paragraph 12.6.

<sup>7</sup> [Section 35\(4\)](#) of the Act. [Merger Remedies \(CMA87\)](#), paragraph 3.3.

<sup>8</sup> See [CMA87](#), December 2018, paragraphs 3.3 and 3.4.

- (a) a possible remedy requiring the divestiture of a potentially broader and/or differently configured standalone business than GXO's Divestiture Remedy Proposal.
12. The CMA will also consider any other practicable remedies – whether structural or behavioural in nature – that the Parties, or any interested third parties, may propose that would be effective in comprehensively addressing the SLC and any resulting adverse effects we have provisionally identified.
  13. We have not yet reached any view, provisional or otherwise, on the effectiveness of either of GXO's remedy proposals in addressing the SLC and resulting adverse effects we have provisionally identified.
  14. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options will be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.
  15. In relation to the CMA's approach to behavioural remedies, the CMA's preference is to use enabling measures that 'work with the grain of competition', such as access remedies, and measures that remove obstacles to competition, rather than measures that control market outcomes, such as price caps. The latter measures tend to be onerous to operate and monitor, may create significant market distortions and do not address the causes of an SLC. Therefore, they are unlikely to be appropriate other than for a limited duration, unless there is no effective or practical alternative remedy.<sup>9</sup>
  16. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the provisional SLC or any resulting adverse effects.

### ***GXO's Divestiture Remedy Proposal***

17. GXO's Divestiture Remedy Proposal, which GXO has indicated is its alternative remedy proposal to the 3PL Sponsorship Remedy Proposal, involves the divestment of Wincanton's dedicated warehousing services business to UK Grocery customers, which provides dedicated warehousing services to certain Grocery customers (the **Divestment Customers**). The divestment package is comprised of:

---

<sup>9</sup> See [CMA87](#), paragraphs 3.49.

- (a) the Divestment Customers; and
  - (b) all tangible or intangible assets, employees and supplier contracts necessary to service the relevant Divestment Customers' contracts.
18. GXO has prepared a non-confidential summary of GXO's Divestiture Remedy Proposal, the relevant extracts of which are set out in **Annex A**.

### ***GXO's 3PL Sponsorship Remedy Proposal***

19. GXO's 3PL Sponsorship Remedy Proposal, which GXO had indicated is its preferred remedy proposal, is comprised of:
- (a) A financial fund which will be made available to each Grocery customer currently serviced by either of the Parties for the purposes of sponsoring the entry or expansion of a new third-party logistics provider (**3PL**) to supply dedicated warehousing to UK Grocery customers; and
  - (b) Contract term guarantees to all Grocery customers of either Party (**Contract Term Guarantees**), to include, if they wish, the retention of existing contract terms for existing Grocery customers and the offer of existing contract terms to new Grocery customers and/or contracts.
20. GXO has prepared a non-confidential summary of GXO's 3PL Sponsorship Remedy Proposal, the relevant extracts of which are set out in **Annex B**.

### ***Divestiture of a broader and/or differently configured standalone business***

21. To the extent that the business to be divested under GXO's Divestiture Remedy Proposal is insufficient to address the SLC and resulting adverse effects we have provisionally identified, we will consider whether the divestiture of a broader and/or differently configured divestment package may be required.
22. Based on the information gathered about the Parties' businesses in the course of our investigation to date, we are not in a position at this stage independently to identify a smaller and/or differently configured business which could be divested, or any other viable remedy, although we are considering GXO's remedy proposals described in Annexes A and B. We will consider any submissions in relation to a differently configured divestment package taking into account the constraints of our statutory timeframe.

### **Consultation on possible remedies**

23. We invite views on whether: (a) GXO's Divestiture Remedy Proposal (as described by GXO in more detail in **Annex A**); (b) GXO's 3PL Sponsorship

Remedy Proposal (as described by GXO in more detail in **Annex B**); or (c) a divestiture of a broader and/or differently configured standalone business than GXO's Divestiture Remedy Proposal, will be effective in addressing the SLC and resulting adverse effects provisionally identified in the Interim Report.

24. In particular, in relation to each of GXO's Divestiture Remedy Proposal and GXO's 3PL Sponsorship Remedy Proposal, we invite views on:
- (a) whether either of the remedy proposals fully addresses the SLC and resulting adverse effects we have provisionally identified; and if not, the extent to which it should be modified to ensure that it effectively addresses the SLC and resulting adverse effects we have provisionally identified; and
  - (b) any significant risks associated with each of GXO's remedy proposals that could undermine its effectiveness in addressing the SLC and resulting adverse effects we have provisionally identified, and how these risks can be effectively mitigated.

### **Cost of remedies and proportionality**

25. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction.<sup>10</sup>
26. We invite views on the proportionality of each remedy proposal as well as what costs are likely to arise in implementing each remedy option.

### **Relevant customer benefits**

27. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits (**RCBs**) in relation to the creation of the relevant merger situation.<sup>11</sup>
28. RCBs are limited by the Act to benefits to customers<sup>12</sup> in the form of:<sup>13</sup>

---

<sup>10</sup> See [CMA87](#), paragraphs 3.6.

<sup>11</sup> [Section 35\(4\)](#) of the Act, see also [CMA87](#), paragraphs 3.15 and 3.16.

<sup>12</sup> For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution; they are therefore not limited to final consumers ([section 30\(4\)](#) of the Act; see also [CMA87](#), paragraph 3.18.

<sup>13</sup> [Section 30\(1\)\(a\)](#) of the Act, see also [CMA87](#), paragraph 3.17.

- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom [...] or
  - (b) greater innovation in relation to such goods or services'.
29. The Act provides that a benefit is only an RCB if:<sup>14</sup>
- (a) it has accrued or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
30. it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
31. We welcome views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

### Next steps

32. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **5pm (UK time) on Tuesday 18 March 2025** Comments should be provided by email to [gx0.wincanton@cma.gov.uk](mailto:gx0.wincanton@cma.gov.uk).
33. A copy of this Invitation to Comment on Remedies will be posted on the CMA [case page](#).

Richard Feasey  
Group Chair  
6 March 2025

### Note

- (i) This Invitation to Comment on Remedies to remedy, mitigate or prevent the provisional SLC or any resulting adverse effects is made having regard to the Interim Report announced on 19 February 2024. The deadline for interested parties to submit comments on the Interim Report is **5pm (UK time) on Wednesday 12 March 2025**. The CMA's findings may alter in response to comments it receives on its Interim Report, in which case the CMA may consider other possible remedies, if appropriate.

---

<sup>14</sup> [Section 30\(2\)](#) of the Act, see also [CMA87](#), paragraph 3.19.

## ANNEX A: GXO's non-confidential summary of GXO's Divestiture Remedy Proposal<sup>15</sup>

1. Without prejudice to GXO's position, if the CMA considers the 3PL Sponsorship Proposal to be insufficient, GXO proposes an alternative 'structural' proposal.
2. In its alternative proposal, GXO would dispose to a CMA-approved 3PL purchaser (the **Divestment Purchaser**) what is in effect a viable standalone business for dedicated warehousing services to Grocers (the **Divestiture Remedy Proposal**).
3. The Divestiture Remedy Proposal therefore removes – through a targeted customer disposal – the entire overlap between the Parties in the provisional SLC customer cohort. This **Divestment Business** includes:
  - a) the Wincanton contracts of certain Grocery customers (the **Divestment Customers**); and
  - b) all tangible or intangible assets,<sup>16</sup> employees (including senior management with Grocery expertise) and the supplier contracts necessary to service the Divestment Customers.
4. Other than the CMA's approval confirming the suitability of the Divestment Purchaser, the Parties do not expect any other significant regulatory approvals or consents over and above those anticipated during the transfer of customer business in the ordinary course (i.e. tender wins / losses).
5. In particular, the Divestiture Remedy Proposal:
  - a) removes the overlap between the Parties in the provisional SLC customer cohort;
  - b) ensures the Merged Entity would not retain access to the Divestment Business (i.e. data, know-how or software systems); and

---

<sup>15</sup> Annex A and Annex B are based on non-confidential summaries provided to the CMA by GXO. The CMA has made some edits to the summaries, eg to remove text that it considers to be advocacy. These summaries do not reflect the views of the Inquiry Group.

<sup>16</sup> To the extent assets are not already customer-owned or customer-leased, GXO would transfer all assets and rights necessary to operate the Divestment Business and compete for new contracts immediately.

- c) builds in risk mitigation strategies, such as assurances to customers and purchasers regarding transfer costs, the quality of service and long-term viability of the Divestment Business.
6. GXO intends to transfer the Divestment Business to a capable 3PL who meets the CMA's suitability criteria. GXO is further committed to maintaining the Divestment Business and complying with existing obligations under the Initial Enforcement Order dated 29 April 2024.



## ANNEX B: GXO's non-confidential summary of GXO's 3PL Sponsorship Remedy Proposal

1. The 3PL Sponsorship Proposal is specifically designed to overcome the barriers to entry and expansion identified in the Interim Report. Under the 3PL Sponsorship Proposal, GXO would offer:
  - a) a financial fund<sup>17</sup> to each of GXO's and Wincanton's Grocery customers, strongly incentivising and enabling them to invest in helping a 3PL develop its operations to a point, within the next two years, where that Grocery customer regards the 3PL as a credible provider of dedicated warehousing contract services (the ***New Entry Sponsorship Fund***); and
  - b) as interim backstop protection, certain contractual guarantees to each of GXO's and Wincanton's existing Grocery customers for new contracts or contracts coming up for renewal in the near term, for an appropriate contractual duration, to be determined with the CMA (the ***Contract Term Guarantees***).<sup>18</sup> These Contract Term Guarantees will be based on either (i) a Grocery customer's existing contract terms; or (ii) terms comparable to the key contractual terms in the existing contracts of the Parties' Grocery customers.
2. The 3PL Sponsorship Proposal is designed to resolve the CMA's provisional SLC in a timely manner, by:
  - a) offering contractual guarantees to existing and new Grocery customers, based on existing contracts or comparable contractual frameworks for all key contractual terms in a manner which minimises specification risk;
  - b) clearly specifying the terms of the 3PL Sponsorship Proposal, which reduces the risk of circumvention, and introducing an independent monitoring and a dispute resolution mechanism;
  - c) ensuring that market incentives are not distorted, as the contractual guarantees act as an effective backstop to prevent any short-term adverse effects which might arise from the Transaction, and any other potential market distortions which could arise in relation to the short-term SLC would by definition also be short-term in nature (given the prospect of successful expansion); and

---

<sup>17</sup> Details confidential to GXO, the CMA, and the Merged Entity's Grocery Customers.

<sup>18</sup> Subject to CMA oversight and ring-fencing, where appropriate. The Contract Term Guarantees would be subject to appropriate safeguards (i.e. to ensure fair use and prevent Grocers from artificially tendering for bulk warehousing services in advance, purely to take advantage of these guarantees).

d) preventing any onerous monitoring costs, due to the narrow scope of Grocers under consideration, the manageable number of contracts, the straightforward but effective commercial terms of the 3PL Sponsorship Proposal and the short period over which monitoring will be required. Grocers are sophisticated customers who are able to monitor the implementation of the 3PL Sponsorship Proposal as part of business as usual monitoring.