

# COMPLETED ACQUISITION BY GXO LOGISTICS, INC. OF WINCANTON PLC<sup>1</sup>

## INTERIM ORDER MADE BY THE COMPETITION AND MARKETS AUTHORITY PURSUANT TO SECTION 81(2) OF THE ENTERPRISE ACT 2002

Whereas:

- A. On 26 April 2024, the Competition and Markets Authority (**CMA**) served an initial enforcement order (**IEO**) under section 72(2) of the Enterprise Act 2002 (the **Act**) on GXO Logistics, Inc. (**GXO**), International Venture Holdings Limited (England and Wales), and Wincanton Plc (**Wincanton**), in order to ensure that no action is taken pending a final determination of any reference under section 22 of the Act which might prejudice that reference, or impede the taking of any action by the CMA under Part 3 of the Act, which might be justified by the CMA's decisions on the reference.
- B. On 29 April 2024, GXO completed the acquisition of Wincanton (the **Merger**) and GXO and Wincanton ceased to be distinct within the meaning of section 23 of the Act.
- C. On 14 November 2024, the CMA made a reference under section 22 of the Act to determine pursuant to section 35(1) of the Act (the **Reference**):
  - a. whether a relevant merger situation (**RMS**) had been created; and
  - b. if so, whether the creation of the situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
- D. On 19 February 2025, the CMA published its Interim Report which provisionally concluded (among other things) that the Merger has resulted in the creation of an RMS, and that that situation may be expected to result in an SLC in the supply of dedicated warehousing to Grocery customers<sup>2</sup> in the UK.

---

<sup>1</sup> On 19 June 2024, Wincanton Plc was re-registered from a public company to a private limited company and renamed Wincanton Limited. References to Wincanton in this Interim Order should be interpreted to mean both Wincanton Plc (in the period prior to 19 June 2024) and Wincanton Limited (in the period since 19 June 2024).

<sup>2</sup> Grocery customers means national supermarket chains.

- E. On 30 April 2025, the CMA issued its Interim Report on Remedies which made provisional findings in respect of remedies to remedy, mitigate or prevent the SLC provisionally identified in the Interim Report.
- F. On 20 May 2025, a Monitoring Trustee (**Monitoring Trustee**) was appointed pursuant to directions issued under paragraph 10 of the IEO.
- G. On 28 May 2025, GXO requested that, in the event the CMA confirms the provisional SLC in its final report under section 38 of the Act on the Reference, the CMA permits integration between those parts of Wincanton and GXO which would not be subject to a possible remedy. GXO submitted proposed plans to enable such integration to take place following publication of the final report in a manner which does not raise pre-emptive action concerns. Following subsequent discussions with the CMA, GXO intends to take the following actions (**GXO's Integration Plans**):
  - a. **Stage 1:**
    - i. submitting to the CMA, a proposed separation plan for the functional separation of the Wincanton business into two groups (namely, the Proposed Wincanton In-Scope Business and the Proposed Wincanton Out-of-Scope Business), and will include (among other things) a proposed definition of each of the following: (a) the Proposed Wincanton In-Scope Business; (b) the Proposed Wincanton Out-of-Scope Business; and (c) the Proposed GXO In-Scope Business, each to be defined in accordance with the CMA's decisions in the final report (the **Proposed Separation Plan**);
    - ii. obtaining the CMA's approval of the Proposed Separation Plan, which may be subject to any further amendments the CMA may require following a review of the Proposed Separation Plan by the Monitoring Trustee and the CMA (the **Approved Separation Plan**); and
    - iii. GXO and Wincanton implementing the functional separation of the Wincanton business in accordance with the Approved Separation Plan.
  - b. **Stage 2:** subject to the CMA's written confirmation that the Approved Separation Plan has been properly implemented, integrating the Wincanton Out-of-Scope Business with GXO (together the **Out-of-Scope Business**).
- H. On 19 June 2025, the CMA published its final report on the Reference (the **Final Report**) which concluded among other things that:
  - a. the Merger has resulted in the creation of an RMS;

- b. the creation of that situation has resulted, or may be expected to result, in an SLC in the supply of dedicated warehousing services to Grocery customers in the UK (the **Relevant Market**); and
  - c. the CMA should take action for the purpose of remedying, mitigating or preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC. To address the SLC, in the Final Report, the CMA has required the divestiture of Wincanton's dedicated warehousing business to UK Grocery customers to an Approved Purchaser.
- I. The Reference has not been finally determined in accordance with section 79(2)(e) of the Act.

Now for the purposes of ensuring that no action is taken pending final determination of the Reference which might prejudice that Reference, or impede the taking of any action by the CMA under Part 3 of the Act, which might be justified by the CMA's decisions on the Reference, and in order to ensure that any implementation of GXO's Integration Plans does not raise pre-emptive action concerns, the CMA makes this Interim Order (**Order**). The IEO ceases to be in force in accordance with section 72(6)(i) of the Act. This Order applies to GXO and International Venture Holdings Limited (England and Wales) (together, the **Acquirer Group**) and Wincanton.

## **Part 1: Commencement, timing, application and scope:**

1. This Order commences on the Commencement Date (as defined below), subject to the following:
  - (a) Parts 2 and 3 of this Order, which contain the obligations applicable during Stage 1, shall come into force on the Commencement Date and remain in force until the commencement of Stage 2;
  - (b) Parts 4 and 5 of this Order, which contain the obligations applicable during Stage 2, shall only come into force when each of the following steps have been completed, and shall remain in force until final determination of the Reference:
    - (i) The Acquirer Group and Wincanton have prepared a Proposed Separation Plan, and that Proposed Separation Plan has been reviewed by the Monitoring Trustee and the Monitoring Trustee has provided a statement to the CMA approving the Proposed Separation Plan (the **MT Statement**);
    - (ii) Following the submission of the Proposed Separation Plan and the MT Statement referred to in paragraph 1(b)(i) to the CMA as soon as reasonably practicable, the CMA has reviewed and approved that Proposed Separation Plan (or a modified form of it proposed by the

Acquirer Group as required for the CMA to grant approval) in writing, confirming that it is the Approved Separation Plan;

(iii) The Acquirer Group and Wincanton have implemented the Approved Separation Plan;

(iv) The CMA has confirmed in writing that the Approved Separation Plan has been implemented to the CMA's satisfaction.

2. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige the Acquirer Group or Wincanton to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the Commencement Date, or was approved by a derogation under the IEO.
3. The directions and derogations issued in relation to, or pursuant to, the IEO shall remain in force and apply in relation to this Order unless amended, cancelled or revoked by the CMA.

## **Part 2: Management of the Acquirer Group and Wincanton during Stage 1**

4. Except with the prior written consent of the CMA, the Acquirer Group and Wincanton shall not, during Stage 1, take any action which might prejudice the Reference or impede the taking of action justified by the CMA's decisions on the Reference, including any action which might:
  - (a) lead to the integration of the Wincanton business with the Acquirer Group business;
  - (b) transfer the ownership or control of the Acquirer Group business or the Wincanton business or any of their subsidiaries; or
  - (c) otherwise impair the ability of the Wincanton business or the Acquirer Group business to compete independently in any of the markets affected by the Merger.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraphs 2 and 3, the Acquirer Group and Wincanton shall at all times during Stage 1 take all necessary steps to ensure that, except with the prior written consent of the CMA or to the extent necessary to implement the Approved Separation Plan:
  - (a) the Wincanton business is carried on separately from the Acquirer Group business and the Wincanton business's separate sales or brand identity is maintained;

- (b) the Wincanton business and the Acquirer Group business are maintained as going concerns and sufficient resources are made available for the development of the Wincanton business and the Acquirer Group business, on the basis of their respective pre-Merger business plans (as updated from time to time);
- (c) except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities within, the Wincanton business or the Acquirer Group business;
- (d) the nature, description, range and quality of goods or services (or both) supplied in the UK by each of the Wincanton business and the Acquirer Group business are maintained and preserved;
- (e) except in the ordinary course of business through the separate operation of the Wincanton business and the Acquirer Group business:
  - (i) all of the assets of the Wincanton business and the Acquirer Group business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Wincanton business or the Acquirer Group business are disposed of; and
  - (iii) no interest in the assets of the Wincanton business or the Acquirer Group business is created or disposed of;
- (f) there is no integration of the information technology of the Wincanton business or the Acquirer Group business, and the software and hardware platforms of the Wincanton business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the Wincanton business and the Acquirer Group business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Wincanton business will be carried out by the Wincanton business alone and, for the avoidance of doubt, the Acquirer Group business will not negotiate on behalf of the Wincanton business (and vice versa) or enter into any joint agreements with the Wincanton business (and vice versa);
- (h) all contracts of the Wincanton are serviced by Wincanton and all contracts of the Acquirer Group are serviced by the Acquirer Group;
- (i) no changes are made to key staff of the Wincanton business or the Acquirer Group business;

- (j) no key staff are transferred between the Wincanton business and the Acquirer Group business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Wincanton business and the Acquirer Group business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Wincanton business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa, except where:
  - (i) strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the Merger); or
  - (ii) the Monitoring Trustee has reviewed the information and confirmed in writing that it does not contain any competitively sensitive information pertaining to the Relevant Market, the Proposed GXO In-Scope Business and/or the Proposed Wincanton In-Scope Business.

### **Part 3: Compliance during Stage 1**

6. The Acquirer Group and Wincanton shall each take all necessary steps to ensure that its subsidiaries comply with Parts 2 and 3 of this Order as if Parts 2 and 3 of this Order had been issued to each of them.
7. The Acquirer Group and Wincanton shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by the Acquirer Group and Wincanton and their subsidiaries with Parts 2 and 3 of this Order. In particular, on 3 July 2025 and subsequently every two weeks following the Commencement Date (or, where this does not fall on a working day, the first working day thereafter) until the end of Stage 1, the Chief Executive Officers of the Acquirer Group and Wincanton or other persons of the Acquirer Group and the Wincanton as agreed with the CMA shall, on behalf of the Acquirer Group and Wincanton provide a statement to the CMA in the form set out in Annex A to this Order confirming compliance with Parts 2 and 3 of this Order.
8. During Stage 1, the Acquirer Group and Wincanton shall actively keep the CMA informed of any material developments relating to the Wincanton business or the Acquirer Group business (in particular, in relation to GXO's business activities in the Relevant Market), which includes but is not limited to:

- (a) details of key staff who leave or join the Acquirer Group business in the Relevant Market or Wincanton;
  - (b) any interruption to the business of the Acquirer Group business in the Relevant Market or Wincanton (including without limitation their procurement, production, logistics, sales and employee relations arrangements) that has prevented either from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Acquirer Group business in the Relevant Market or Wincanton including any substantial changes in customers' demand; and
  - (d) substantial changes in the contractual arrangements or relationships with key suppliers of the Acquirer Group business in the Relevant Market or the Wincanton business.
9. During Stage 1, if the Acquirer Group and Wincanton have any reason to suspect that Parts 2 or 3 of this Order might have been breached they shall immediately notify the CMA and the Monitoring Trustee.
10. The Acquirer Group and Wincanton shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

#### **Part 4: Management of the Wincanton In-Scope Business, the Out-of-Scope Business and the GXO In-Scope Business during Stage 2 until final determination of the Reference**

11. Except with the prior written consent of the CMA, the Acquirer Group and Wincanton shall not, during Stage 2 and until final determination of the Reference, take any action which might prejudice the Reference or impede the taking of action justified by the CMA's decision specified in the Final Report, including any action which might:
- (a) lead to the integration of the Wincanton In-Scope Business with the Out-of-Scope Business;
  - (b) transfer the ownership or control of the Wincanton In-Scope Business or the GXO In-Scope Business; or
  - (c) otherwise impair the ability of the Wincanton In-Scope Business or the GXO In-Scope Business to compete independently in the Relevant Market affected by the Merger.

12. Further and without prejudice to the generality of paragraph 11 and subject to paragraphs 2 and 3, the Acquirer Group and Wincanton shall at all times during Stage 2 take all necessary steps to ensure that, except with the prior written consent of the CMA:
- (a) the Wincanton In-Scope Business is carried on separately from the Out-of-Scope Business and the Wincanton In-Scope Business's separate sales are maintained;
  - (b) the Wincanton In-Scope Business and the GXO In-Scope Business are maintained as going concerns and sufficient resources are made available for the development of the Wincanton In-Scope Business and the GXO In-Scope Business on the basis of their respective pre-Merger business plans (as updated from time to time);
  - (c) except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities within, the Wincanton In-Scope Business or the GXO In-Scope Business;
  - (d) the nature, description, range and quality of goods or services (or both) supplied in the UK by the Wincanton In-Scope Business and the GXO In-Scope Business are maintained and preserved;
  - (e) except in the ordinary course of business through the separate operation of the Wincanton In-Scope Business and the GXO In-Scope Business:
    - (i) all of the assets of the Wincanton In-Scope Business and the GXO In-Scope Business are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets of the Wincanton In-Scope Business or the GXO In-Scope Business are disposed of; and
    - (iii) no interest in the assets of the Wincanton In-Scope Business or the GXO In-Scope Business is created or disposed of;
  - (f) the Out-of-Scope Business provides the Wincanton In-Scope Business with any services under the TSA in accordance with the Approved Separation Plan (unless as otherwise permitted by the CMA in writing, which can be provided by email);
  - (g) the customer and supplier lists of the Wincanton In-Scope Business shall be operated and updated separately from the Out-of-Scope Business and the GXO In-Scope Business;
  - (h) any negotiations with any existing or potential customers and suppliers in relation to the business activities of the Wincanton In-Scope Business will be



carried out by the Wincanton In-Scope Business alone and for the avoidance of doubt the Out-of-Scope Business and the GXO In-Scope Business will not negotiate on behalf of the Wincanton In-Scope Business (and vice versa) or enter into any joint agreements with the Wincanton In-Scope Business (and vice versa), except for discussion with the Wincanton In-Scope Business' customers with a view to securing the transfer of their contracts to the Approved Purchaser (provided that any agreement to transfer their contracts to the Approved Purchaser is not concluded prior to, and remains without prejudice to, the final determination of the Reference by the CMA);

- (i) all contracts of the Wincanton In-Scope Business and the GXO In-Scope Business continue to be serviced by the business to which they were awarded;
- (j) no changes are made to key staff of the Wincanton In-Scope Business or the GXO In-Scope Business;
- (k) no key staff are transferred between the Wincanton In-Scope Business and the Out-of-Scope Business;
- (l) all reasonable steps are taken to encourage all key staff to remain with the Wincanton In-Scope Business and the GXO In-Scope Business; and
- (m) no competitively sensitive information of the Wincanton In-Scope Business shall pass, directly or indirectly, from the Wincanton In-Scope Business (or any of its employees, directors, agents or affiliates) to the Out-of-Scope Business (or any of their employees, directors, agents or affiliates), or vice versa, except:
  - (i) to provide support services to the Wincanton In-Scope Business in accordance with the terms and safeguards specified in the Approved Separation Plan; or
  - (ii) where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the Merger).

## **Part 5: Compliance during Stage 2**

- 13. The Acquirer Group and Wincanton shall each take all necessary steps to ensure that its subsidiaries complies with Parts 4 and 5 of this Order as if Parts 4 and 5 of this Order had been issued to each of them.
- 14. The Acquirer Group and Wincanton shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of

monitoring compliance by the Acquirer Group and Wincanton and their subsidiaries with Parts 4 and 5 of this Order. In particular, every two weeks following the commencement of Stage 2 (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officers of the Acquirer Group and Wincanton or other persons of the Acquirer Group and Wincanton as agreed with the CMA shall, on behalf of the Acquirer Group and Wincanton provide a statement to the CMA in the form set out in Annex B to this Order confirming compliance with Parts 4 and 5 of this Order.

15. During Stage 2, the Acquirer Group and Wincanton shall actively keep the CMA informed of any material developments relating to the Wincanton In-Scope Business and the GXO In-Scope Business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Wincanton In-Scope Business or the GXO In-Scope Business;
  - (b) any interruption of the Wincanton In-Scope Business or the GXO In-Scope Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Wincanton In-Scope Business or the GXO In-Scope Business, including any substantial changes in customers' demand; and
  - (d) substantial changes in the Wincanton In-Scope Business or the GXO In-Scope Business's contractual arrangements or relationships with key suppliers.
16. During Stage 2, if the Acquirer Group or Wincanton have any reason to suspect that Parts 3 or 4 of this Order might have been breached, they shall immediately notify the CMA and the Monitoring Trustee.
17. The Acquirer Group and Wincanton shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## **Part 6: Interpretation**

18. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
19. For the purposes of this Order:

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

**‘an affiliate’** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**‘Acquirer Group’** means GXO and International Venture Holdings Limited (England and Wales) (company number 12130098);

**‘Acquirer Group business’** means the business of the Acquirer Group and its subsidiaries carried on as at the Commencement Date;

**‘Approved Purchaser’** means any purchaser of the contracts for Grocery customers held by the Wincanton In-Scope Business approved by the CMA;

**‘Approved Separation Plan’** means the Proposed Separation Plan as approved by the CMA in writing;

**‘business’** has the meaning given by section 129(1) and (3) of the Act;

**‘Commencement Date’** means 19 June 2025;

**‘control’** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**‘the decisions’** means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

**‘Final Report’** means the CMA’s final report on the Reference notified to GXO and Wincanton on 19 June 2025;

**‘Grocery customers’** means UK national supermarket chains;

**‘GXO’** means GXO Logistics, Inc., a company registered in the United States with the number 86-2098312. Its registered office is in Two American Lane, Greenwich, CT, 06831, United States;

**‘GXO In-Scope Business’** means GXO’s [X], as defined in the Approved Separation Plan;

**‘IEO’** means the Initial Enforcement Order served under section 72(2) of the Act on GXO, International Venture Holdings Limited (England and Wales), and Wincanton on 26 April 2024;

**‘key staff’** means staff in positions of (i) senior executive or managerial responsibility or (ii) whose performance affects the viability of the business;

**‘Merger’** means the completed acquisition by GXO of Wincanton;

**‘Monitoring Trustee’** means the Monitoring Trustee appointed on 20 May 2025 pursuant to directions issued under paragraph 10 of the IEO;

**‘the ordinary course of business’** means matters connected to the day-to-day supply of goods or services (or both) by Acquirer Group and Wincanton and does not include matters involving significant changes to the organisational structure or related to the post-Merger integration of Wincanton and the Acquirer Group;

**‘Out-of-Scope Business’** means both the Wincanton Out-of-Scope Business and the Acquirer Group business;

**‘Proposed GXO In-Scope Business’** means [✂], as defined in the Proposed Separation Plan;

**‘Proposed Separation Plan’** means GXO’s proposed separation plan for the functional separation of the Wincanton business into two groups: the Proposed Wincanton In-Scope Business and the Proposed Wincanton Out-of-Scope Business;

**‘Proposed Wincanton In-Scope Business’** has the meaning given in the Proposed Separation Plan;

**‘Proposed Wincanton Out-of-Scope Business’** has the meaning given in the Proposed Separation Plan;

**‘Reference’** means the reference of the Merger pursuant to section 22(1) and in accordance with section 34ZA(2) of the Act made by the CMA to its chair for the constitution of a group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation;

**‘RMS’** means a relevant merger situation;

**‘SLC’** means a substantial lessening of competition;

**‘specified period’** means the period beginning on the Commencement Date and the date that this Order ceases to be in force in accordance with terminating in accordance with section 81(7) or (8) of the Act;

**‘subsidiary’**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**‘TSA’** means the transitional services agreement included in the Approved Separation Plan;

**‘UK’** means the United Kingdom;

**‘Wincanton’** means both Wincanton Plc (in the period prior to 19 June 2024) and Wincanton Limited (in the period since 19 June 2024), a company registered in England and Wales with company number 04178808. Its registered office is in Methuen Park, Chippenham, Wiltshire, SN14 0WT;

**‘Wincanton business’** means the business of Wincanton and its subsidiaries carried on as at the Commencement Date;

**‘Wincanton In-Scope Business’** has the meaning given in the Approved Separation Plan;

**‘Wincanton Out-of-Scope Business’** has the meaning given in the Approved Separation Plan;

unless the context requires otherwise, the singular shall include the plural and vice versa.

*(signed)*

Richard Feasey

*Inquiry Group Chair*

19 June 2025

# ANNEX A

## COMPLIANCE STATEMENTS FOR STAGE 1

### ANNEX A1: Compliance statement for the Acquirer Group

I, [insert name], confirm on behalf of GXO Logistics, Inc. / International Venture Holdings Limited (England and Wales) that:

#### 1. COMPLIANCE IN THE RELEVANT PERIOD

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
  - (a) GXO Logistics, Inc. / International Venture Holdings Limited (England and Wales) has complied with the Order made by the CMA in relation to the Merger on 19 June 2025 (the **Order**)
  - (b) The subsidiaries of GXO Logistics, Inc. / International Venture Holdings Limited (England and Wales) have also complied with this Order.
2. Subject to paragraphs 2 and 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by GXO Logistics, Inc. / International Venture Holdings Limited (England and Wales) that might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act, which be justified by the CMA's decisions on the Reference, including any action which might:
    - (i) lead to the integration of the Wincanton business with the Acquirer Group business;
    - (ii) transfer the ownership or control of the Acquirer Group business or the Wincanton business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Wincanton business or the Acquirer Group business to compete independently in any of the markets affected by the Merger.
  - (b) The Wincanton business has been carried on separately from the Acquirer Group business and the Wincanton business's separate sales or brand identity has been maintained.
  - (c) The Wincanton business and the Acquirer Group business have been maintained as going concerns and sufficient resources have been made available for the development of the Wincanton business and the Acquirer Group business, on the basis of their respective pre-Merger business plans (as updated from time to time).

- (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Wincanton business or the Acquirer Group business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Wincanton business and the Acquirer Group business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the Wincanton business and the Acquirer Group business:
  - (i) all of the assets of the Wincanton business and the Acquirer Group business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Wincanton business or the Acquirer Group business have been disposed of; and
  - (iii) no interest in the assets of the Wincanton business or the Acquirer Group business has been created or disposed of.
- (g) There has been no integration of the information technology of the Wincanton or the Acquirer Group businesses, and the software and hardware platforms of the Wincanton business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to 29 April 2024, the customer and supplier lists of the Wincanton business and the Acquirer Group business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Wincanton business have been carried out by the Wincanton business alone and, for the avoidance of doubt, the Acquirer Group business has not negotiated on behalf of the Wincanton business (and vice versa) or entered into any joint agreements with the Wincanton business (and vice versa).
- (i) All contracts of the Wincanton business and the Acquirer Group business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Wincanton business or the Acquirer Group business.
- (k) No key staff have been transferred between the Wincanton business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Wincanton business and the Acquirer Group business.

(m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Wincanton business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Acquirer Group business in the Relevant Market or Wincanton;
- (ii) interruptions of the Acquirer Group business in the Relevant Market or Wincanton (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Acquirer Group business in the Relevant Market or the Wincanton business; or
- (iv) substantial changes in the contractual arrangements or relationships with key suppliers of the Acquirer Group business in the Relevant Market or the Wincanton business.

(o) [list of material developments]

3. GXO Logistics, Inc. / International Venture Holdings Limited (England and Wales) and their subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Wincanton or the Acquirer Group business in accordance with paragraph 8 of the Order.

## 2. INTERPRETATION

4. Terms defined in the Order have the same meaning in this compliance statement.

## 3. I UNDERSTAND THAT:

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.**<sup>3</sup>

---

<sup>3</sup> Section 117 of the Act.



6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed.<sup>4</sup>

FOR AND ON BEHALF OF GXO Logistics, Inc. / International Venture Holdings Limited  
(England and Wales)

Signature: .....

Name: .....

Title: .....

Date: .....

---

<sup>4</sup> Section 94A of the Act.

## **ANNEX A2: Compliance statement for Wincanton**

I, [insert name], confirm on behalf of Wincanton that:

### **1. COMPLIANCE IN THE RELEVANT PERIOD**

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
  - (a) Wincanton has complied with the Order made by the CMA in relation to the Merger on 19 June 2025 (the **Order**)
  - (b) Wincanton's subsidiaries have also complied with this Order.
2. Subject to paragraphs 2 and 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Wincanton that might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act, which be justified by the CMA's decisions on the Reference, including any action which might:
    - (i) lead to the integration of the Wincanton business with the Acquirer Group business;
    - (ii) transfer the ownership or control of the Acquirer Group business or the Wincanton business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Wincanton business or the Acquirer Group business to compete independently in any of the markets affected by the Merger.
  - (b) The Wincanton business has been carried on separately from the Acquirer Group business and the Wincanton business's separate sales or brand identity has been maintained.
  - (c) The Wincanton business and the Acquirer Group business have been maintained as going concerns and sufficient resources have been made available for the development of the Wincanton business and the Acquirer Group business, on the basis of their respective pre-Merger business plans (as updated from time to time).
  - (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Wincanton business or the Acquirer Group business, except in the ordinary course of business.
  - (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Wincanton business and the Acquirer Group business have been maintained and preserved.

- (f) Except in the ordinary course of business for the separate operation of the Wincanton business and the Acquirer Group business:
  - (i) all of the assets of the Wincanton business and the Acquirer Group business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Wincanton business or the Acquirer Group business have been disposed of; and
  - (iii) no interest in the assets of the Wincanton business or the Acquirer Group business has been created or disposed of.
- (g) There has been no integration of the information technology of the Wincanton or the Acquirer Group businesses, and the software and hardware platforms of the Wincanton business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to 29 April 2024, the customer and supplier lists of the Wincanton business and the Acquirer Group business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Wincanton business have been carried out by the Wincanton business alone and, for the avoidance of doubt, the Acquirer Group business has not negotiated on behalf of the Wincanton business (and vice versa) or entered into any joint agreements with the Wincanton business (and vice versa).
- (i) All contracts of the Wincanton business and the Acquirer Group business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Wincanton business or the Acquirer Group business.
- (k) No key staff have been transferred between the Wincanton business and the Acquirer Group business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Wincanton business and the Acquirer Group business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Wincanton business (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Acquirer Group business in the Relevant Market or Wincanton;
- (ii) interruptions of the Acquirer Group business in the Relevant Market or Wincanton (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Acquirer Group business in the Relevant Market or the Wincanton business; or
- (iv) substantial changes in the contractual arrangements or relationships with key suppliers of the Acquirer Group business in the Relevant Market or the Wincanton business.

(o) [list of material developments]

3. Wincanton and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Wincanton or the Acquirer Group business in accordance with paragraph 8 of the Order.

### Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

### I understand that:

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both**.<sup>5</sup>
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed.<sup>6</sup>

---

<sup>5</sup> Section 117 of the Act.

<sup>6</sup> Section 94A of the Act.

FOR AND ON BEHALF OF WINCANTON

Signature: .....

Name: .....

Title: .....

Date: .....

# ANNEX B

## COMPLIANCE STATEMENTS FOR STAGE 2

### ANNEX B1: Compliance statement for the Acquirer Group

I, [insert name], confirm on behalf of the Acquirer Group that:

#### 1. COMPLIANCE IN THE RELEVANT PERIOD

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
  - (a) the Acquirer Group has complied with the Order made by the CMA in relation to the Transaction on 19 June 2025 (the **Order**)
  - (b) the subsidiaries of the Acquirer Group have also complied with this Order.
2. Subject to paragraphs 2 and 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by the Acquirer Group that might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act, which be justified by the CMA's decisions on the Reference, including any action which might:
    - (i) lead to the integration of the Wincanton In-Scope Business with the Out-of-Scope Business;
    - (ii) transfer the ownership or control of the Wincanton In-Scope Business or the GXO In-Scope business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Wincanton In-Scope business or the GXO In-Scope Business to compete independently in the Relevant Market affected by the Merger.
  - (b) The Wincanton In-Scope Business has been carried on separately from the Out-of-Scope Business and the Wincanton In-Scope Business's separate sales are maintained.
  - (c) The Wincanton In-Scope Business and the GXO In-Scope Business have been maintained as a going concern and sufficient resources have been made available for the development of the Wincanton In-Scope Business and the GXO In-Scope Business, on the basis of their respective pre-Merger business plans (as updated from time to time).

- (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Wincanton In-Scope Business and the GXO In-Scope Business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Wincanton In-Scope Business and the GXO In-Scope Business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the Wincanton In-Scope Business and the GXO In-Scope Business:
  - (i) all of the assets of the Wincanton In-Scope Business and the GXO In-Scope Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Wincanton In-Scope Business and the GXO In-Scope Business have been disposed of; and
  - (iii) no interest in the assets of the Wincanton In-Scope Business and the GXO In-Scope Business has been created or disposed of.
- (g) The Out-of-Scope Business has provided the Wincanton In-Scope Business with any services under the TSA in accordance with the Approved Separation Plan (unless as otherwise permitted by the CMA).
- (h) The customer and supplier lists of the Wincanton In-Scope Business have been operated and updated separately from the Out-of-Scope Business and the GXO In-Scope Business.
- (i) Except as permitted by the Order and subject to integration which had occurred prior to 29 April 2024, (i) any negotiations with any existing or potential customers and suppliers in relation to the business activities of the Wincanton In-Scope Business have been carried out by the Wincanton In-Scope Business alone and (ii) the Out-of-Scope Business and the GXO In-Scope Business have not negotiated on behalf of the Wincanton In-Scope Business (and vice versa) or entered into any joint agreements with the Wincanton In-Scope Business (and vice versa).
- (j) All contracts of the Wincanton In-Scope Business and the GXO In-Scope Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (k) No changes have been made to key staff of the Wincanton In-Scope Business or the GXO In-Scope Business.

- (l) No key staff have been transferred between the Wincanton In-Scope Business or the Out-of-Scope Business.
  - (m) All reasonable steps have been taken to encourage all key staff to remain with the Wincanton In-Scope Business and the GXO In-Scope Business;
  - (n) Except as permitted by the Order, no competitively sensitive information of the Wincanton In-Scope Business has passed, directly or indirectly, from the Wincanton In-Scope Business (or any of its employees, directors, agents or affiliates) to the Out-of-Scope Business (or any of their employees, directors, agents or affiliates), or vice versa.
  - (o) Except as listed in paragraph (p) below, there have been no:
    - (i) key staff that have left or joined the Wincanton In-Scope Business or the GXO In-Scope Business;
    - (ii) interruptions of the Wincanton In-Scope Business or the GXO In-Scope Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
    - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Wincanton In-Scope Business or the GXO In-Scope Business; or
    - (iv) substantial changes in the contractual arrangements or relationships with key suppliers of the Wincanton In-Scope Business or the GXO In-Scope Business.
  - (p) [list of material developments]
3. The Acquirer Group remains in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Wincanton In-Scope Business or the GXO In-Scope Business in accordance with paragraph 15 of the Order.

## **2. INTERPRETATION**

4. Terms defined in the Order have the same meaning in this compliance statement.

## **3. I UNDERSTAND THAT:**

It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading



in any material respect. Breach of this provision can result in **fin**es, **imprisonment for a term not exceeding two years, or both**.<sup>7</sup>

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed.<sup>8</sup>

FOR AND ON BEHALF OF THE ACQUIRER GROUP

Signature: .....

Name: .....

Title: .....

Date: .....

---

<sup>7</sup> Section 117 of the Act.

<sup>8</sup> Section 94A of the Act.

## **ANNEX B2: Compliance statement for Wincanton**

I, [insert name], confirm on behalf of Wincanton that:

### **1. COMPLIANCE IN THE RELEVANT PERIOD**

1. In the period from [insert date] to [insert date] (the **Relevant Period**):
  - (a) Wincanton has complied with the Order made by the CMA in relation to the Merger on 19 June 2025 (the **Order**)
  - (b) the subsidiaries of Wincanton have also complied with this Order.
2. Subject to paragraphs 2 and 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Wincanton that might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act, which be justified by the CMA's decisions on the Reference, including any action which might:
    - (i) lead to the integration of the Wincanton In-Scope Business with the Out-of-Scope Business;
    - (ii) transfer the ownership or control of the Wincanton In-Scope Business or the GXO In-Scope business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Wincanton In-Scope business or the GXO In-Scope Business to compete independently in the Relevant Market affected by the Merger.
  - (b) The Wincanton In-Scope Business has been carried on separately from the Out-of-Scope Business and the Wincanton In-Scope Business's separate sales are maintained.
  - (c) The Wincanton In-Scope Business and the GXO In-Scope Business have been maintained as a going concern and sufficient resources have been made available for the development of the Wincanton In-Scope Business and the GXO In-Scope Business, on the basis of their respective pre-Merger business plans (as updated from time to time).
  - (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the Wincanton In-Scope Business and the GXO In-Scope Business, except in the ordinary course of business.
  - (e) The nature, description, range and quality of goods or services (or both) supplied in the UK by the Wincanton In-Scope Business and the GXO In-Scope Business have been maintained and preserved.

- (f) Except in the ordinary course of business for the separate operation of the Wincanton In-Scope Business and the GXO In-Scope Business:
  - (i) all of the assets of the Wincanton In-Scope Business and the GXO In-Scope Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Wincanton In-Scope Business and the GXO In-Scope Business have been disposed of; and
  - (iii) no interest in the assets of the Wincanton In-Scope Business and the GXO In-Scope Business has been created or disposed of.
- (g) The Out-of-Scope Business has provided the Wincanton In-Scope Business with any services under the TSA in accordance with the Approved Separation Plan (unless as otherwise permitted by the CMA).
- (h) The customer and supplier lists of the Wincanton In-Scope Business have been operated and updated separately from the Out-of-Scope Business and the GXO In-Scope Business.
- (i) Except as permitted by the Order and subject to integration which had occurred prior to 29 April 2024, (i) any negotiations with any existing or potential customers and suppliers in relation to the business activities of the Wincanton In-Scope Business have been carried out by the Wincanton In-Scope Business alone and (ii) the Out-of-Scope Business and the GXO In-Scope Business have not negotiated on behalf of the Wincanton In-Scope Business (and vice versa) or entered into any joint agreements with the Wincanton In-Scope Business (and vice versa).
- (j) All contracts of the Wincanton In-Scope Business and the GXO In-Scope Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (k) No changes have been made to key staff of the Wincanton In-Scope Business or the GXO In-Scope Business.
- (l) No key staff have been transferred between the Wincanton In-Scope Business or the Out-of-Scope Business.
- (m) All reasonable steps have been taken to encourage all key staff to remain with the Wincanton In-Scope Business and the GXO In-Scope Business;
- (n) Except as permitted by the Order, no competitively sensitive information of the Wincanton In-Scope Business has passed, directly or indirectly, from the Wincanton In-Scope Business (or any of its employees, directors, agents or

affiliates) to the Out-of-Scope Business (or any of their employees, directors, agents or affiliates), or vice versa.

(o) Except as listed in paragraph (p) below, there have been no:

- (i) key staff that have left or joined the Wincanton In-Scope Business or the GXO In-Scope Business;
- (ii) interruptions of the Wincanton In-Scope Business or the GXO In-Scope Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Wincanton In-Scope Business or the GXO In-Scope Business; or
- (iv) substantial changes in the contractual arrangements or relationships with key suppliers of the Wincanton In-Scope Business or the GXO In-Scope Business.

(p) [list of material developments]

3. Wincanton remains in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Wincanton In-Scope Business or the GXO In-Scope Business in accordance with paragraph 15 of the Order.

## 2. INTERPRETATION

4. Terms defined in the Order have the same meaning in this compliance statement.

## 3. I UNDERSTAND THAT:

It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.**<sup>9</sup>

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed.<sup>10</sup>

---

<sup>9</sup> Section 117 of the Act.

<sup>10</sup> Section 94A of the Act.

FOR AND ON BEHALF OF WINCANTON

Signature: .....

Name: .....

Title: .....

Date: .....

## **ANNEX C**

### **PART A - ENFORCEMENT OF AN INTERIM ORDER ISSUED UNDER SECTION 81 OF THE ACT – IMPOSITION OF CIVIL PENALTIES**

#### **Imposition of civil penalties**

1. Under section 94AA(1), the CMA may impose a penalty on a person—
  - (a) from whom the CMA has accepted an enforcement undertaking, or
  - (b) to whom an enforcement order is addressed,
  - (c) where the CMA considers that the person has, without reasonable excuse, failed to comply with the undertaking or order.
2. In deciding whether and, if so, how to proceed under section 94AA(1) the CMA must have regard to the statement of policy which was most recently published under section 94B at the time of the failure to comply.

#### **Amount of penalty**

3. A penalty under section 94AA(1) is to be such amount as the CMA considers appropriate.
4. The amount must be—
  - (a) a fixed amount,
  - (b) an amount calculated by reference to a daily rate, or
  - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
5. A penalty imposed under section 94AA(1) on a person who does not own or control an enterprise must not—
  - (a) in the case of a fixed amount, exceed £30,000;
  - (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day;
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.
6. A penalty imposed under section 94AA(1) on any other person must not—

- (a) in the case of a fixed amount, exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;
- (b) in the case of an amount calculated by reference to a daily rate, for each day exceed 5% of the total value of the daily turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.

7. In imposing a penalty by reference to a daily rate—

- (a) no account is to be taken of any days before the service on the person concerned of the provisional penalty notice under section 112(A1), and
- (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the person complies with the enforcement undertaking or enforcement order.

## **PART B - PENALTIES FOR THE PROVISION OF FALSE OR MISLEADING INFORMATION**

### **Imposition of civil penalties**

1. Under section 110(1A) of the Act, the CMA may impose a penalty on a person in accordance with section 111 of the Act where the CMA considers that
  - (a) The person has, without reasonable excuse, supplied information that is false or misleading in a material respect to the CMA in connection of any of the CMA's functions under Part 3 of the Act;
  - (b) The person has without reasonable excuse, supplied information that is false or misleading in a material respect to another person knowing that the information was to be used for the purpose of supplying information to the CMA in connection with any function of the CMA under part 3 of the Act.
2. Under section 110(1C) of the Act, the CMA may not impose such a penalty in relation to an act or omission which constitutes an offence under section 117 of the Act if the person has, by reason of the act or omission, been found guilty of that offence.

## **Amount of penalty**

3. Under section 111(4), a penalty imposed under section 110(1A) shall be of such amount as the CMA considers appropriate.
4. A penalty imposed under section 110(1A) on a person who does not own or control an enterprise shall be a fixed amount that must not exceed £30,000.
5. Under section 111(4A) a penalty imposed under section 110(1A) on any other person shall be a fixed amount that must not exceed 1% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person.
6. In deciding whether and, if so, how to proceed under section 110(1A), the CMA must have regard to the statement of policy which was most recently published under section 116 at the time when the act of omission occurred.