

## **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 submissions dated 6 January 2025 and 10 January 2025 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 its subsidiaries 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 CMA consents to the Parties carrying out the following actions, in respect of the specific paragraphs:

### **Paragraphs 4(b) 5(c), and 5(l) of the Initial Order**

The Parties submit that Wincanton's board of directors is comprised solely of the Wincanton executive management team and does not include any independent non-executive directors to exercise independent financial oversight over the Wincanton business. The Parties therefore request a derogation from paragraph 4(b), 5(c), and 5(l) of the Initial Order in order for Wincanton to (i) be required to seek approval for its 2025 budget from [✂] (the '**Authorised Individual**'), to ensure that that the budget aligns with Wincanton's strategic objectives and long-term goals as set out in Wincanton's pre-merger business plan, and (ii)

share the Confidential Information (as defined in Annex 1) with the Authorised Individual (together, the **Permitted Purpose**).

The CMA consents to the Parties' request for a derogation, strictly on the basis that:

- (1) the Confidential Information is limited to information that is strictly necessary to be shared for the Permitted Purpose;
- (2) the Confidential Information is shared only with the Authorised Individual and Wincanton;
- (3) the scope of the Confidential Information will not be changed without written consent from the CMA (which can be given via email);
- (4) the Authorised Individual will enter into a confidentiality undertaking in a form approved by the CMA;
- (5) the Authorised Individual will be employed by Wincanton and their employment will end after approving Wincanton's 2025 budget;
- (6) no changes will be made to the Authorised Individual without written consent from the CMA (which can be given via email);
- (7) the Authorised Individual's contract with Wincanton will be in a form approved by the CMA;
- (8) in the event the Authorised Individual becomes aware of any issues with Wincanton 2025 budget that necessitate any significant remediation steps, the Parties will apply for a subsequent derogation from the CMA;
- (9) in the event that the Authorised Individual wishes to share any Confidential Information with GXO (including any issues with the Wincanton budget that necessitate any significant remediation steps), the Authorised Individual will first contact GXO's legal advisors, who will apply for a subsequent derogation from the CMA to enable any further sharing of Confidential Information;
- (10) this derogation will not result in any integration between GXO and Wincanton; and
- (11) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

Yours sincerely,

Peter Park  
Director, Merger Remedies  
22 January 2025

## **Annex 1 – the Confidential Information**

The Confidential Information will not include any customer names (or information which will enable a specific customer to be identified) and will be limited to Wincanton's:

- (a) consolidated, group-level financial and budget information;
- (b) full statement of profit and loss with information on new wins, customer losses, price, volume, efficiency, discrete items, and central HQ costs by month; and
- (c) full free cash-flow statement with information on adjusted EBITDA, add backs, change in working capital, capital expenditure, and interest and tax cash expenses by month.