

Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited

Decision that undertakings might be accepted

ME/6625/16

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 1 November 2016. Full text of the decision published on 2 November 2016.

Introduction

1. On 5 July and 27 September 2016, Co-operative Foodstores Limited (**CFL**) (a wholly owned subsidiary of Co-operative Group Limited (**CGL**)) acquired eight convenience store businesses (the **Target Stores**) from ML Convenience Limited (**ML**) and MLCG Limited (**MLCG**) (the **Merger**).
2. On 19 October 2016, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to CGL of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow CGL the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act. On 19 October 2016 the CMA extended the statutory four-month period mentioned in section 24(1) of the Act by notice pursuant to section 25(4) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 26 October 2016, CGL offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to CGL that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the retail supply of groceries in the local area of Widnes. To address this SLC, CGL has offered to give undertakings in lieu of a reference to divest two of its convenience stores in Widnes: CGL Hough Green (442 Liverpool Road, Widnes, WA8 7XP) and CGL Farnworth (100 Derby Road, Widnes WA8 9LQ) (the **Proposed Undertakings**). Specifically, the key assets to be divested as part of the Proposed Undertakings include: the staff at CGL Hough Green; the staff at CGL Farnworth; the property at Hough Green; the property at CGL Farnworth; and the fixtures and fitting (including fridges) at both stores. The Proposed Undertakings envisage that the convenience stores would be divested to one or two grocery retailers who would have the ability and incentive to maintain and operate the stores as viable and active businesses in competition with CGL and other competitors. Specifically, the Proposed Undertakings envisage that the proposed purchaser(s) would be active in the provision of convenience grocery retailing including the provision of a range of products that is similar to that currently offered at CGL Farnworth and CGL Hough Green.

The CMA's provisional views

8. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that

restores competition to the level that would have prevailed absent the merger.¹

9. The CMA considers that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA. This is because the characteristics of CGL Hough Green and CGL Farnworth, including their net sales area, turnover and location, are such that the sale of those stores to a purchaser or purchasers that will continue to provide a similar range of products to that currently offered may remedy the loss of the pre-Merger competitive constraint provided by the My Local convenience store at Widnes.
10. The CMA currently considers that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation, in particular in light of the fact that the convenience store businesses that are the subject of the Proposed Undertakings are readily capable of being sold. Further, CGL has provided evidence that a number of grocery retailers meeting the standard described in paragraph 7 have shown interest in acquiring either or both of CGL Hough Green and CGL Farnworth and the CMA has no reason to doubt the commercial attractiveness of the two stores.
11. For these reasons, the CMA does not consider that an upfront buyer is necessary in this case and currently considers that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
12. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA.

¹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

Consultation process

13. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 to the Act.²

Decision

14. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by CGL, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 30 December 2016 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 27 February 2017 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Sheldon Mills

Senior Director, Mergers

Competition and Markets Authority

1 November 2016

² [CMA2](#), paragraph 8.29.