

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

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6625/16

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 situation¹ 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**). The text of the SLC Decision is available on the CMA webpages.²
3. On 26 October 2016, CGL offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 1 November 2016, the CMA gave notice to CGL, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was

¹ Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

² See [Co-operative / ML Convenience and MLCG case page](#).

considering CGL's offer (the **UILs Decision**). The text of the UILs Decision is available on the CMA webpages.³

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the retail supply of groceries in the local area of Widnes, Cheshire.
6. As set out in the UILs Decision, to address the SLC identified by the CMA, CGL has offered undertakings 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 **Divestment Businesses**). Specifically, the key assets to be divested as part of the Divestment Businesses 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 undertakings agreed with CGL (the **Proposed Undertakings**) require that the convenience stores will be divested to one or two grocery retailers who 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 require that the proposed purchaser(s) will 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 text of the Proposed Undertakings is available on the CMA webpages.⁴
7. As set out at paragraphs 10 and 11 of the UILs Decision, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Divestment Businesses.

CMA assessment

8. The CMA currently considers, subject to responses to the consultation required by Schedule 10 to the Act, that the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁵ This

³ See [Co-operative / ML Convenience and MLCG case page](#).

⁴ See [Co-operative / ML Convenience and MLCG case page](#).

⁵ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7 to 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).

is because the characteristics of CGL Hough Green and CGL Farnworth (including their net sales area, turnover and location) are such that their sale to a purchaser or purchasers that will continue to provide a similar range of products to that currently offered in the stores would remedy the loss of the pre-Merger competitive constraint provided by the My Local convenience store at Widnes.

9. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the Divestment Businesses comprise assets that are readily capable of being sold. Further, CGL has provided evidence that a number of grocery retailers meeting the standard described in paragraph 6 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.

Proposed decision and next steps

10. For the reasons set out above, the CMA currently considers that the Proposed Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
11. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Proposed Undertakings is available on the CMA webpages.⁶
12. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.⁷
13. Representations should be made in writing to the CMA and be addressed to:

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⁶ See [Co-operative / ML Convenience and MLCG case page](#).

⁷ Under paragraph 2(4) of Schedule 10 to the Act.

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Deadline for comments: 2 December 2016