

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

## **Decision on acceptance of undertakings in lieu of reference**

**ME/6625/16**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 23 January 2017. Full text of the decision published on 26 January 2017.

### **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 26 October 2016, CGL offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to CGL on 1 November 2016, 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 considering CGL's offer (the **UIL Provisional Acceptance Decision**).

4. The text of the SLC Decision and the UIL Provisional Acceptance Decision are available on the CMA webpages.<sup>1</sup>

## 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.
6. As set out in the UIL Provisional Acceptance Decision, CGL has offered 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**), as set out in the text of the consultation in Annex 1 below (the **UILs**). The UILs require that the Divestment Businesses be divested to one or two grocery retailers that 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 UILs 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.

## Consultation

7. On 17 November 2016, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.<sup>2</sup> For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC Decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.<sup>3</sup>
8. The CMA received one submission from a third party during the consultation period. This third party questioned the commercial attractiveness of the Divestment Businesses, which it stated would not meet its investment criteria, although it was not concerned with the suitability or otherwise of the UILs in remedying the SLC identified in the SLC Decision.

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<sup>1</sup> See [Co-operative / ML Convenience and MLCG case page](#).

<sup>2</sup> The full consultation text was published on [Co-operative / ML Convenience and MLCG case page](#).

<sup>3</sup> *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).

9. At the time of the UIL Provisional Acceptance Decision, the CMA considered that the UILs might be acceptable as a suitable remedy to the SLC identified by the CMA. This was because the CMA believed that the characteristics of CGL Hough Green and CGL Farnworth were such that the sale of those stores to a purchaser or purchasers that would continue to provide a similar range of products could remedy the loss of the pre-Merger competitive constraint provided by My Local. The concern raised by the third party does not give the CMA cause to depart from this initial view. Further, the CMA understands that CGL has received offers for the Divestment Businesses.
10. The CMA therefore considers that the UILs offered by CGL are a clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

## **Decision**

11. For the reasons set out above, the CMA considers that the UILs provided by CGL are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by CGL pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
12. The undertakings, which have been signed by CGL and will be published on the CMA webpages,<sup>4</sup> will come into effect from the date of this decision.

**Sheldon Mills**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**23 January 2017**

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

## Annex 1

### Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on the 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 situation<sup>5</sup> 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.<sup>6</sup>
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 considering CGL's offer (the **UILs Decision**). The text of the UILs Decision is available on the CMA webpages.<sup>7</sup>

#### 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.

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<sup>5</sup> 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.

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

<sup>7</sup> See [Co-operative / ML Convenience and MLCG case page](#).

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.<sup>8</sup>
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.<sup>9</sup> This 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 will 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

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<sup>8</sup> See [Co-operative / ML Convenience and MLCG case page](#).

<sup>9</sup> *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).

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.<sup>10</sup>
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.<sup>11</sup>
13. Representations should be made in writing to the CMA and be addressed to:

Emma Budge  
Mergers Group  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

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<sup>10</sup> See [Co-operative / ML Convenience and MLCG case page](#).

<sup>11</sup> Under paragraph 2(4) of Schedule 10 to the Act.