

Anticipated acquisition by David Lloyd Clubs of 16 Virgin Active gyms

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/6679/17

Introduction

1. David Lloyd Clubs Limited (**David Lloyd**) has agreed to acquire the business and assets of 16 gyms (together the **Target Gyms**) from Virgin Active Limited (**Virgin Active**) (the **Merger**). David Lloyd and the Target Gyms are together referred to as the **Parties**.
2. On 19 May 2017, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this 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.¹
3. On 22 May 2017 David Lloyd offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 26 May 2017, the CMA gave notice to David Lloyd, pursuant to section 73A(2)(b) of the Act, 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 David Lloyd's offer (the **UIL Provisional Acceptance Decision**).

¹ See the David Lloyd Clubs / Virgin Active gyms merger inquiry [case page](#).

The undertakings offered

5. As set out in the SLC Decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the supply of gyms in the local areas around Virgin Active Brighton and Virgin Active Clearview in Brentwood (ie between Virgin Active Clearview and David Lloyd Gidea Park) (the **SLC Gyms**). The CMA did not find competition concerns in relation to any of the other gyms being acquired.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA David Lloyd has offered not to acquire the SLC Gyms. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).²

CMA assessment

7. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, 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.³ This is because the existing competitive constraint currently posed by each of the SLC Gyms will remain following the Merger. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the scope of the Proposed Undertakings is limited to the SLC Gyms, there are no conditions for the implementation of the Proposed Undertakings and the Proposed Undertakings can be effected by David Lloyd giving notice to Virgin Active in accordance with the Business Purchase Agreement signed between the Parties that the SLC Gyms be excluded from the Merger.

Proposed decision and next steps

8. 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.

² See the David Lloyd Clubs / Virgin Active gyms merger inquiry [case page](#).

³ *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. 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 undertaking is available on the CMA webpages.⁴
10. 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.⁵
11. Representations should be made in writing to the CMA and be addressed to:

Daniella Sinobad
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: Daniella.Sinobad@cma.gsi.gov.uk
Telephone: 020 3738 6983

Deadline for comments: 10 June 2017

⁴ See the David Lloyd Clubs / Virgin Active gyms merger inquiry [case page](#).

⁵ Under paragraph 2(4) of Schedule 10 to the Act.