

# Anticipated acquisition by David Lloyd Clubs of 16 Virgin Active gyms

## Decision on acceptance of undertakings in lieu of reference

**ME/6679/17**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 13 June 2017. Full text of the decision published on 13 June 2017.

### 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**).
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. The CMA gave notice to David Lloyd on 26 May 2017, 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 the Parties' offer (the **UILs Provisional Acceptance Decision**).

4. The text of the SLC Decision and the UILs 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 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 to be acquired.
6. As set out in the UIL Provisional Acceptance Decision the Parties have offered to give undertakings that David Lloyd will not acquire the SLC Gyms for a period of ten years in lieu of a reference (the **UILs**).

## Consultation

7. On 26 May 2017, 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 no submissions during the consultation period.
9. The CMA therefore considers that the UILs offered by the Parties are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

## Decision

10. For the reasons set out above, the CMA considers that the UILs provided by the Parties are as comprehensive a solution as is reasonable and practicable to 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

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<sup>1</sup> See [case page](#).

<sup>2</sup> The full consultation text was published on the [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).

UILs offered by the Parties pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.

11. The undertakings, which have been signed by the Parties and will be published on the CMA webpages,<sup>4</sup> will come into effect from the date of this decision.

**Rachel Merelie**  
**Acting Executive Director, Markets & Mergers**  
**Competition and Markets Authority**  
**13 June 2017**

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<sup>4</sup> See the [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<sup>5</sup>**

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<sup>5</sup> See [case page](#) for full text of Notice.