

Anticipated acquisition by Vision Express (UK) Limited of Tesco Opticians

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/6696/17

Introduction

1. Vision Express (UK) Limited (**Vision Express**) has agreed to acquire 209 Tesco Opticians optical retail outlets located within Tesco stores in the UK and Ireland (**Tesco Opticians**) from Tesco Stores Limited and Tesco Ireland Limited (the **Merger**). Vision Express and Tesco Opticians are together referred to as the **Parties**.
2. On 28 September 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 5 October 2017, Vision Express offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 11 October 2017, the CMA gave notice to the Parties, 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

¹ See <https://www.gov.uk/cma-cases/vision-express-tesco-opticians-merger-inquiry>.

considering Vision Express' offer (the **UIL Provisional Acceptance Decision**).

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 optical services and products in bricks-and-mortar stores in Barrow-in-Furness (Cumbria), Helston (Cornwall) and Ryde (Isle of Wight).
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA Vision Express has offered undertakings to divest the business and assets (including staff, ophthalmic equipment, fixtures and fittings, a customer database and the assignment of the applicable lease) of the Vision Express store in each of the three local areas in which the SLC Decision identified competition concerns (the **Divestment Businesses**).² The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).³
7. If the CMA accepts the Proposed Undertakings, Vision Express will have a set period of time determined by the CMA to enter into an agreement for the sale and purchase of the Divestment Businesses to a buyer or buyers approved by the CMA. If Vision Express does not effect the sale of the Divestment Business in that time period, and it is not extended by the CMA, the CMA will have the power to appoint a trustee to effect the sale of those stores. In either case, until the sale of the Divestment Businesses is completed, Vision Express will be obliged to continue to run the Divestment Businesses as going concerns and minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses.
8. The Proposed Undertakings also require that the Divestment Businesses be sold to a buyer or buyers who have the financial resources, expertise, incentive and intention to maintain and operate the Divestment Businesses as viable and active businesses in competition with Vision Express and other competitors in the supply of optical services and products through bricks-and-mortar stores in the three local areas.
9. As set out at paragraphs 14 to 17 of the UIL Provisional Acceptance Decision, the CMA does not currently consider it appropriate to seek an upfront buyer in

² The Divestment Businesses are at the following addresses: 178-180 Dalton Road, Barrow-in-Furness, Cumbria, LA14 1PR; Coinagehall Street, Helston, Cornwall, TR13 8ER; and 40 Union Street, Ryde, Isle of Wight, PO33 2LF.

³ See <https://www.gov.uk/cma-cases/vision-express-tesco-opticians-merger-inquiry>.

respect of the Divestment Businesses. However, this is subject to responses to this consultation.

CMA assessment

10. 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.⁴ This is because the proposed structural divestments are intended to result in a new business owner of the three sites that will continue to provide a similar range of products and services to that currently offered by the Divestment Businesses. As such, the Proposed Undertakings will replace the competitive constraint provided by Vision Express in each of these local areas that would otherwise be lost following the Merger.
11. The CMA also currently believes that the Proposed Undertakings would be capable of ready implementation, because each of the divestment stores are viable and stand-alone businesses (ie they operate relatively independently) that are readily capable of being sold and likely to continue to operate as a going concern. Further, Vision Express has provided evidence of a number of prospective purchasers that have shown an interest in acquiring the Divestment Businesses and the CMA has no reason to doubt the commercial attractiveness of the Divestment Businesses.

Proposed decision and next steps

12. For the reasons set out above, the CMA currently believes 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.
13. 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 web pages.⁵

⁴ *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).

⁵ See <https://www.gov.uk/cma-cases/vision-express-tesco-opticians-merger-inquiry>.

14. 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.⁶
15. Representations should be made in writing to the CMA and be addressed to:

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

Email: Cristina.Caballero@cma.gsi.gov.uk
Telephone: 020 3738 6639

Deadline for comments: 3 November 2017

⁶ Under paragraph 2(4) of Schedule 10 to the Act.