

## **COMPLETED ACQUISITION BY JLA NEW EQUITYCO LTD THROUGH ITS SUBSIDIARY VANILLA GROUP LTD OF WASHSTATION LTD**

### **Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups<sup>1</sup>**

#### **Introduction**

1. On 16 April 2018, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by JLA New Equityco Ltd through its subsidiary Vanilla Group Ltd (JLA) of Washstation Limited (the Merger) for further investigation and report by a group of CMA panel members (the Inquiry Group).
2. On 13 December 2017, the CMA imposed an Initial Enforcement Order on JLA for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act.
3. In its provisional findings on the reference notified to JLA on 10 August 2018, the CMA, among other things, provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) in the market for the supply of managed laundry services to higher education customers on vend sharing agreements in the UK.
4. This Notice sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.<sup>2</sup>
5. The CMA invites comments on possible remedies by 21 August 2018.

---

<sup>1</sup> CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17, March 2014, corrected November 2015).

<sup>2</sup> [Provisional Findings Report](#).

## Criteria

6. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>3</sup>
7. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.<sup>4</sup>
8. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>5</sup>
9. In deciding the question of remedies, the CMA may have regard to the effect of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.<sup>6</sup>

## Possible remedies on which views are sought

10. In merger inquiries, the CMA will generally prefer structural remedies, such as divestiture or prohibition, rather than behavioural remedies, because:
  - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
  - (b) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
  - (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.<sup>7</sup>
11. At this stage, the CMA's provisional view is that the divestiture of the Washstation business would represent a comprehensive solution to the SLC and any resulting adverse effects it has provisionally found and that it has few risks in terms of practicability or effectiveness.
12. The CMA's current view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC or any resulting adverse effect that it has

---

<sup>3</sup> Section 35(4) of the Act.

<sup>4</sup> *Merger Remedies: CC8 (November 2008)*, adopted by the CMA board, paragraph 1.7.

<sup>5</sup> *CC8*, paragraph 1.7.

<sup>6</sup> Section 35(5) of the Act, see also *CC8*, paragraph 1.14.

<sup>7</sup> *CC8*, paragraph 2.14.

provisionally identified. However, the CMA will consider any behavioural remedies put forward as part of this consultation.

13. The CMA will also consider any other practicable remedies that the main parties, or any interested third parties, may propose that would be effective and proportionate in addressing the SLC and any resulting adverse effects.<sup>8</sup>
14. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective and proportionate in remedying, mitigating or preventing the SLC and any resulting adverse effects that have been provisionally identified.
15. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example, whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLC and any resulting adverse effects.

### ***Divestiture***

16. In evaluating the possible divestiture of the Washstation business as a remedy to the provisional SLC it has found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies.

#### *The scope of the divestiture package*

17. To be effective in remedying the provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor.<sup>9</sup>
18. The CMA's provisional view is that a divestiture package comprising all of the Washstation business would represent an effective package that would be likely to enable a suitable purchaser to compete effectively.
19. Following the Merger, the business and operations of Washstation were transferred to Circuit Launderette Services Limited and fully integrated into

---

<sup>8</sup> For example, the CMA will consider a divestiture drawn from the acquiring business if this is not subject to greater risk in addressing the SLC than a divestiture of the acquired business (CC8, paragraph 3.6).

<sup>9</sup> CC8, paragraph 3.3(a).

JLA, although the Washstation business is currently being operated separately by a Hold Separate Manager.

20. The CMA's provisional view is that the divestiture would likely take the form of a transfer to a suitable purchaser of the Washstation business, and in particular, those elements of the business that made it an important competitive presence prior to the Merger. This could include the following:
- (a) the Washstation contracts acquired by JLA (other than those Washstation contracts that were retendered following the Merger and awarded to another provider), as well as any other contracts that are required to make the divestiture package viable;
  - (b) the Washstation machines installed at customer sites, as well as any other Washstation machines included in the acquisition of Washstation by JLA (or equivalent machines if the purchaser prefers a different supplier);
  - (c) the team of engineers that transferred to JLA with the Washstation business (or an equivalent team of engineers); and
  - (d) any other elements required to support the purchaser of the Washstation business, such as the Washstation brand, customer records, call centre and back office functions and sales staff.<sup>10</sup>
21. The CMA invites views on:
- (a) the package of assets to be divested;
  - (b) any other elements that may be required in the divestiture package, such as sales staff, call centre functions, service engineer support and back office functions, and whether these should be provided on a transitional basis, depending on the requirements of the purchaser.
  - (c) for those contracts where the customer may choose to exercise a 'change of control' clause to terminate the contract, whether it is necessary (for the effectiveness of the remedy) to require JLA to transfer JLA contracts of equivalent size, and the feasibility of doing so;
  - (d) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable

---

<sup>10</sup> Such elements may be required irrespective of whether they were previously present in the Washstation business prior to the Merger, if the CMA considers that it is necessary to include them in order to secure divestment to a suitable purchaser ([CC8](#), paragraph 3.8).

purchaser or may not allow a purchaser to operate as an effective competitor in the market;

- (e) whether there are risks that a suitable purchaser is not available; and
- (f) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of the divestiture.

#### *Identification of a suitable purchaser*

- 22. The CMA will wish to be satisfied that a prospective purchaser:
  - (a) is independent of the main parties;
  - (b) has the necessary capability to compete;
  - (c) is committed to competing in the market for the supply of managed laundry services to higher education customers on vend sharing agreements in the UK; and
  - (d) will not create further competition concerns.<sup>11</sup>
- 23. The CMA invites views on whether there are any specific factors to which the CMA should pay particular regard in assessing purchaser suitability, eg whether the purchaser would need to have an existing presence in the market or would need to demonstrate an existing level of expertise in the market.
- 24. The CMA also invites views on the identity of any suitable purchasers.

#### *Effective divestiture process*

- 25. The CMA invites views on the appropriate timescale for achieving a divestiture.
- 26. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
- 27. The CMA invites views on whether the functions of the Monitoring Trustee and the Hold Separate Manager should be amended to ensure that the Washstation business is maintained during the course of the process.
- 28. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:

---

<sup>11</sup> [CC8](#), paragraphs 3.15 ff.

- (a) the JLA fails to procure divestiture to a suitable purchaser within the initial divestiture period;<sup>12</sup> or
- (b) the CMA has reason to expect that the merger parties will not procure divestiture to a suitable purchaser within the initial divestiture period.<sup>13</sup>

29. The CMA welcomes views on the appropriate timescale for achieving a divestiture and what, if any, further procedural safeguards would be needed to minimise the risk associated with this remedy option.

### **Cost of remedies and proportionality**

30. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.<sup>14</sup>

31. The CMA invites views on what costs are likely to arise in implementing each remedy option.

### **Relevant customer benefits**

32. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.<sup>15</sup>

33. Relevant customer benefits are limited by the Act to benefits to customers in the form of:

- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
- (b) greater innovation in relation to such goods or services.'<sup>16</sup>

---

<sup>12</sup> The CMA will state in its final report the period in which the merger parties should achieve effective disposal of a divestiture package to a suitable purchaser (ie the 'initial divestiture period'). The length of this period will depend on the circumstances of the merger but will normally have a maximum duration of six months (CC8, paragraph 3.24).

<sup>13</sup> CC8, paragraph 3.26.

<sup>14</sup> CC8, paragraph 1.10.

<sup>15</sup> Section 35(5) of the Act, see also CC8, paragraph 1.14.

<sup>16</sup> Section 30(1)(a) of the Act, see also CC8, paragraph 1.14.

34. The Act provides that a benefit is only a relevant customer benefit if the CMA believes that:
- (a) it has accrued to relevant customers<sup>17</sup>, or may be expected to accrue to them within a reasonable period, as a result of the Merger; and
  - (b) it was, or is, unlikely to accrue without the Merger or a similar lessening of competition.<sup>18</sup>
35. The CMA welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.

### **Next steps**

36. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by 21 August 2018 (see Notes).
37. A copy of this notice will be posted on the [case page](#) of the CMA website.

Stuart McIntosh  
Inquiry Group Chairman  
10 August 2018

### *Notes*

This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the Provisional Findings announced on 10 August 2018. The main parties have until 31 August 2018 to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.

---

<sup>17</sup> Relevant customers are customers at any point in the chain of production and distribution and are not limited to final consumers (section 30(4) of the Act and [CC8](#), paragraph 1.16).

<sup>18</sup> Section 30(2) of the Act, see also [CC8](#), paragraph 1.16.