

COMPLETED ACQUISITION BY RENTOKIL INITIAL PLC OF CANNON HYGIENE

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

1. On 28 June 2018, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) (for completed mergers) of the Enterprise Act 2002 (the Act), referred the completed acquisition of Cannon Hygiene Ltd by Rentokil Initial plc (the Merger), for further investigation and report by a group of CMA panel members (the Inquiry Group).
2. The Merger completed on 1 January 2018. On 31 January 2018 the CMA served an initial enforcement order (IEO) under section 72(2) of the Enterprise Act 2002 on Rentokil Initial plc, in relation to the completed acquisition by Rentokil Initial plc of Cannon Hygiene Limited. On 26 February 2018 the CMA granted a derogation exempting Rentokil Initial International, a subsidiary of Rentokil, from the obligations under paragraph 8 of the IEO. Subsequently, in accordance with section 81 of the Act, on 10 July 2018, the CMA imposed an Interim Order ('Order').
3. In its provisional findings on the reference notified to Rentokil and Cannon (the Parties) on 18 October 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 may be expected to result in a substantial lessening of competition (SLC) in the supply of waste disposal services to some customers in the UK.
4. The CMA's analysis provisionally indicates that this SLC may be expected to result in adverse effects, for example in the form of higher prices, lower service quality or a reduction in choice for waste disposal services offered to some customers in the UK.

¹ CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17, 2014).

5. 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.²
6. The CMA invites comments on possible remedies by **1 November 2018**.³

Criteria

7. 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.⁴
8. 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.
9. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁵

The Provisional SLC

10. The CMA has provisionally concluded that the relevant merger situation has resulted, or may be expected to result, in an SLC in relation to the supply of waste disposal services to the following national and multi-regional customers:
 - (a) Customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier.
 - (b) Public and private framework customers with national or multi-regional coverage.

Possible remedies on which views are sought

11. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified.

² [Provisional Findings Report](#)

³ Date: Responses to the Notice of Possible Remedies are typically requested within 14 days of publication of the Notice (and in any event, no less than seven days) so that they can be considered before response hearings (CMA 2 Mergers: guidance on the CMA's jurisdiction and procedure, paragraph 13.1)

⁴ Sections 35(4) and 36(3) of the Act.

⁵ [Merger Remedies: CC8](#) (November 2008), paragraph 1.7. This has been adopted by the CMA board.

12. 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 or any resulting adverse effects.
13. 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.⁶
14. At this stage, the CMA has identified one potential structural remedy that it considers will remedy the SLC and any resulting adverse effects identified in the Provisional Findings. This is the divestiture of the entire Cannon UK business. The CMA is open to considering other divestiture options but considers the divestiture risks are significantly higher, limiting their potential effectiveness.
15. 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 provisionally identified. However, the CMA will consider any behavioural remedies put forward as part of this consultation. More generally the CMA will consider any other practicable remedies that the main parties, or any interested third parties, may propose that could be effective in addressing the SLC and/or any resulting adverse effects.

Divestiture

16. In evaluating possible divestitures 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:

⁶ [Merger Remedies: CC8](#) (November 2008), paragraph 2.14. This has been adopted by the CMA board.

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.
18. The CMA's provisional view is that the divestiture of the entire Cannon UK business, including the washroom services business as well as the mats and healthcare waste business, would represent an effective package that would be likely to enable a suitable purchaser to compete effectively.
19. The CMA's provisional view is that the divestiture would likely take the form of a transfer to a suitable purchaser of all of the assets and staff of the Cannon UK business. The divestiture would need to include an interim service agreement.
20. Divestitures may be subject to a variety of risks that may limit their effectiveness in addressing an SLC. The CMA's Merger Remedy Guidelines distinguish between three broad categories of risks that may impair the effectiveness of divestiture remedies as follows:
 - (a) Composition risks—these are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market.
 - (b) Purchaser risks—these are risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser.
 - (c) Asset risks—these are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, for example through loss of customers or key members of staff.⁷
21. The CMA acknowledges that, if feasible, a structural remedy requiring only the divestiture of those customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier and public and private framework customers with national or multi-regional coverage would align with the identified SLC. However, at this stage, the CMA considers the divestiture risks associated with alternative divestiture options are likely to substantially limit their effectiveness.

⁷ [Merger Remedies: CC8](#) (November 2008), paragraph 3.3. CC8.

22. The CMA invites views on:

- (a) the package of assets to be divested;
- (b) whether there are risks that the scope of the divestiture package (the sale of the entire Cannon UK business), may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market;
- (c) whether there are risks that a suitable purchaser is not available or that the merger parties will divest to a weak or otherwise inappropriate purchaser;
- (d) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture;
- (e) whether the Cannon brand, 'Cannon Hygiene', should be included in the divestiture package;
- (f) whether a divestiture package excluding the Mats and healthcare waste businesses of Cannon would be effective, may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market;
- (g) whether there is a divestiture package that only included or more closely aligns to, the customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier and public and private framework customers with national or multi-regional coverage, that would be effective in addressing the provisionally identified SLC; and
- (h) any other elements that a divestiture package may require to be effective and comprehensively address the provisionally identified SLC.

Identification of a suitable purchaser

23. 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 for those customers located in 8 or more regions in the UK provisionally identified by the SLC; and

(d) will not create further competition concerns.⁸

24. The CMA invites views on whether there are any specific factors to which the CMA should pay particular regard in assessing purchaser suitability, for example whether the purchaser would need to have an existing presence in the market or would need to demonstrate an existing level of expertise with a direct cross over to washroom services, such as logistics?
25. The CMA also invites views on the identity of any suitable purchasers.

Effective divestiture process

26. The CMA invites views on the appropriate timescale for achieving a divestiture.
27. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
28. At this stage, the CMA expects that it will not be necessary to require an up-front buyer for the sale of the entire Cannon UK business.
29. The CMA invites views on whether the functions of the Monitoring Trustee should be amended to ensure that the business is maintained during the course of the process.
30. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
 - (a) the Parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that the Parties will not procure divestiture to a suitable purchaser within the initial divestiture period.
31. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

Cost of remedies and proportionality

32. 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

⁸ [Merger Remedies: CC8](#) (November 2008), paragraph 3.15 ff.

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.⁹

33. The CMA invites submissions about proportionality and views on any relevant costs that are likely to arise in implementing different remedy options.

Relevant customer benefits

34. 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.¹⁰

35. 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.'¹¹

36. The Act provides that a benefit is only a relevant customer benefit if:

- (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
- (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.¹²

37. 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.

⁹ [Merger Remedies: CC8](#) (November 2008), paragraph 1.10. This has been adopted by the CMA board.

¹⁰ Section 36(4) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.14.

¹¹ Section 30(1)(a) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.14.

¹² Section 30(3) of the Act, see also [Merger Remedies: CC8](#) (November 2008), paragraph 1.16.

Next steps

38. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **1 November 2018** (see Note (i)).
39. A copy of this notice will be posted on the [CMA website](#).

(signed)

Anne Lambert
Group Chair
18 October 2018

Note

- (i) 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 18 October 2018. The main parties have until 8 November 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.