

Completed acquisition by CD&R Fund IX of MRH (GB) Limited

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/6750/18

Introduction

1. On 21 June 2018, Clayton Dubilier & Rice Fund IX, L.P. (**CD&R Fund IX**), a private equity fund which exercises indirect control over Motor Fuel Group (**MFG**) via a number of companies, including CD&R Firefly Holdco Limited, acquired MRH (GB) Limited, through the acquisition of MRH's holding company, LSF9 Robin Topco Limited (**MRH**) (the **Merger**). MFG and MRH are together referred to as the **Parties**.
2. On 31 August 2018, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation¹ that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the UK (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpages.²
3. On 7 September 2018, CD&R Firefly Holdco Limited, Clayton Dubilier & Rice, LLC (which manages CD&R Fund IX), and CD&R Associates IX, L.P. (the general partner of CF&R Fund IX) (together **CD&R**) offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 14 September 2018, the CMA gave notice to CD&R, 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

¹ Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

² See <https://www.gov.uk/cma-cases/motor-fuel-group-mfg-mrh-merger-inquiry>.

be accepted by the CMA under section 73(2) of the Act and that it is considering CD&R's 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 retail supply of road fuel in the 29 overlap areas listed in the first column of Annex 1 (**SLC areas**). In its assessment, the CMA identified catchment areas defined by drive-time isochrones centred on each of the MFG and MRH sites. Where the Parties' sites overlapped, the Parties then applied primary filters agreed with the CMA to identify local areas of potential concern. Through this filtering, 84 overlap areas 'failed' one or more of the primary filters. The Parties conceded that the test for reference was met in 23 of these overlap areas. Following further assessment of the local conditions of competition, the CMA concluded that the test for reference was also met in relation to a further six of the 'failing' overlap areas.
6. As further set out in the SLC Decision, due to these sites failing the primary filters, the CMA was unable to rule out concerns as regards the supply of auto-LPG in the MFG/Sparkford/MRH Podimore local area, and as regards the retail supply of groceries in the MFG/Sparkford/MRH Hazelgrove and MRH Newbridge local areas.
7. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, CD&R offered to divest a site, or sites, which resolve the CMA's primary filters such that none of the sites remaining in a given SLC area fail the CMA's filters. However, recognising that on further inspection by the CMA, certain proposed sites could be deemed by the CMA to be unsuitable or insufficient, in particular following discussions with potential purchasers, CD&R offered in the alternative to divest in each SLC area such other site or sites to address effectively the SLC up to and including the increment caused by the Merger.
8. Following further discussion with the CMA, CD&R is now offering to divest the site or sites listed in Annex 1. The divestment will occur by way of a sale of the freehold or, subject to the CMA's approval, the grant of a leasehold title (which may be subject to a break clause at 15 years exercisable at the option of the purchaser) (where either MFG or MHR holds the freehold interest in the site), or by way of an assignment of a leasehold interest. The relevant sites or sites include the auto-LPG facilities and/or grocery outlets, where applicable.

(the **Divestment Sites**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).³

9. As set out at paragraph 17 of the UIL Provisional Acceptance Decision, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Divestment Sites.

CMA assessment

10. On the basis of the information it has so far received, 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 divesting the Divestment Sites will ensure that no areas identified as SLC areas will continue to fail the primary filters applied by the CMA, and the Divestment Sites are each viable sites which provide an effective competitive constraint in the local markets in which they operate.⁵ The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because:
 - (a) The Divestment Sites are stand-alone businesses; and
 - (b) CD&R have provided evidence that there are several potential suitable purchasers for all Divestment Sites.

Proposed decision and next steps

11. 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.

³ See <https://www.gov.uk/cma-cases/motor-fuel-group-mfg-mrh-merger-inquiry>.

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 These primary filters were applied to identify local areas which warranted further assessment and were applied to each MRH and MFG site that overlapped. If no sites failed the filters then a given overlap area was not assessed further, thereby determining that there was no realistic prospect of an SLC in that area.

12. 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.⁶
13. 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.⁷
14. Representations should be made in writing to the CMA and be addressed to:

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

Email: anna.caro@cma.gov.uk

Telephone: 020 3738 6375

Deadline for comments: 5 November 2018

⁶ See <https://www.gov.uk/cma-cases/motor-fuel-group-mfg-mrh-merger-inquiry>.

⁷ Under paragraph 2(4) of Schedule 10 to the Act.

Annex 1

SLC area	Divestment Site(s)
MFG Ashford/MFG East Stour/MRH Beaver/MRH Hothfield	MFG Ashford
MFG Barnet/MFG New Barnet/MFG Potters Bar/MRH Whetstone/MRH Cockfosters/MRH Southgate	MFG Barnet and MRH Cockfosters
MFG Bawbee/MRH Leven	MFG Bawbee
MFG Bear Cross/MFG Hamworthy/MFG Bournemouth Road/MRH Wallisdown/MRH Oakdale/MRH East Howe/MRH Longfleet	MFG Bear Cross and MRH Longfleet
MFG Beaumont/MRH Kings Norton	MFG Beaumont
MFH Brighton Road/MRH Whitgift/MRH Hayling Down	MFG Brighton Road
MFG Calne/MRH Pippin	MFG Calne
MFG Canvey Island/MFG Kents Hill/MRH Canvey Island/MRH Long Road/MRH Manor	MFG Canvey Island and MRH Manor
MFG Carlton Square/MFG Sportsman/MRH East Lane/MRH Pierrepoint	MRH East Lane and MFG Sportsman
MFG Fairfield/MRH Newbridge	MFG Fairfield
MFG Finsbury Park/MFG Stamford Hill/MFG Ambassador/MRH Hornsey Road/MRH Hornsey Rise/MRH Stamford Hill	MFG Finsbury Park and MRH Stamford Hill
MFG Hanwell/MRH Studley Grange/MRH Southall	MFG Hanwell

SLC area	Divestment Site(s)
MFG Hastings/MFG Bexhill/MRH Glyne Gap/MRH Sidley	MFG Bexhill and MFG Hastings
MFG Kenilworth/MRH Warwick Road	MRH Warwick Road
MFG Killay/MRH Dunvant	MFG Killay
MFG Lymm/ MRH Cheshireways	MRH Cheshireways
MFG Mid-Cornwall/MRH Cornish Gateway	MFG Mid-Cornwall
MFG New John Street/MRH Key Hill	MRH Key Hill
MFG Northwick/MFG St Stephens/MRH Castle/MRH Blackpole	MRH Castle and MRH Blackpole
MFG Pwllmeyric/MFG Almondsbury/MRH Chepstow/MRH Patchway	MFG Pwllmeyric
MFG Riviera/MRH Riviera	MRH Riviera
MFG Sparkford/MFG Fosse Way Garage/MRH Hazelgrove/MRH Podimore/MRH Lydford	MFG Sparkford
MFG Styal Road/MRH Civic Centre	MFG Styal Road
MFG Swallow/MRH Felling/MRH Gateshead	MRH Felling and MRH Gateshead
MRH Runnymede/MFG Egham	MFG Egham
MFG Walton House/MFG Parkhurst/MRH Moleside/MRH Palace/MRH Shepperton	MFG Walton House and MRH Moleside
MFG Thamesmead/MRH Lakedale	MRH Lakedale
MFG Grays/MRH Chafford/MRH Daneholes	MFG Grays

SLC area	Divestment Site(s)
MFG Romford/MRH Collier Row	MFG Romford