

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

Decision on acceptance of undertakings in lieu of reference

ME/6750/18

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 9 November 2018. Full text of the decision published on 20 November 2018.

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 situation 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**).
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. The CMA gave notice to CD&R on 14 September 2018, 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 CD&R's 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.¹

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, CD&R has offered to divest the site or sites listed in Annex 1 (the **Divestment Sites**), as set out in more detail in the text of the consultation on the CMA webpages² (the **UILs**).

CONSULTATION

8. On 22 October 2018, 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 2 of this decision.³ 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.⁴

¹ See <https://www.gov.uk/cma-cases/motor-fuel-group-mfg-mrh-merger-inquiry>.

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

³ The full consultation text was published on <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).

9. The CMA received one submission during the consultation period, expressing concerns regarding future arrangements for the staff currently managing the Divestment Sites. The points made in the submission related to matters outside the scope of the CMA's remit and are not therefore ones which the CMA can take into account. Accordingly, this submission did not cause the CMA to change its preliminary view that the UILs would be acceptable.
10. The CMA therefore considers that the UILs offered by CD&R are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

DECISION

11. For the reasons set out above, the CMA considers that the UILs provided by CD&R are as comprehensive a solution as is reasonable and practicable and 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 UILs offered by CD&R pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
12. The undertakings, which have been signed by CD&R and will be published on the CMA webpages,⁵ will come into effect from the date of this decision.

Andrea Gomes da Silva
Executive Director
Competition and Markets Authority
9 November 2018

⁵ See <https://www.gov.uk/cma-cases/motor-fuel-group-mfg-mrh-merger-inquiry>.

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 Pierpoint | 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 |

ANNEX 2

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

13. 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**.
14. 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 situation⁶ 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.⁷
15. 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.
16. 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

⁶ 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.

⁷ 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

17. 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.
18. 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.
19. 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.
20. 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**).⁸

21. 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

22. 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.⁹ 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.¹⁰ 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

23. 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.

⁸ See <https://www.gov.uk/cma-cases/motor-fuel-group-mfg-mrh-merger-inquiry>.

⁹ *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).

¹⁰ 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.

24. 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.¹¹
25. 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.¹²
26. 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

¹¹ See <https://www.gov.uk/cma-cases/motor-fuel-group-mfg-mrh-merger-inquiry>.

¹² 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 Pierpoint | 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 |