

# Completed acquisition by Rentokil Initial plc of MPCL Ltd (formerly Mitie Pest Control Ltd)

## Decision that undertakings might be accepted

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 30 April 2019. Full text of the decision published on 16 May 2019.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

**ME/6784-18**

### Introduction

1. As a result of documents executed on 29 and 30 September 2018, Rentokil Initial plc (**Rentokil**) acquired the pest control business of Mitie Pest Control Ltd (since renamed MPCL Ltd (**MPCL**)) (the **Merger**).
2. On 12 April 2019, 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 United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Rentokil of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow Rentokil the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 23 April 2019, Rentokil offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Rentokil 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 considering the offer.

## The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC decision found that Rentokil acquired the pest control business of MPCL by way of a preferred supply agreement on 29 September 2018 (**PSA**)<sup>1</sup> and a sale and purchase agreement of 30 September 2018 (**SPA**)<sup>2</sup> and that the SPA and PSA are both part of the relevant merger situation in which Rentokil and MPCL ceased to be distinct. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of pest control services to national customers in the UK. The Merger involves the leading pest control provider (Rentokil) merging with the third largest player who is a close competitor to Rentokil, leading to a combined share of supply of [60-70]%. The Parties are mainly constrained by the other two national players, with other competitors exercising less of a constraint at a national level. While the remaining competitors may impose some constraint on the Parties, the CMA found in the SLC Decision that there is insufficient evidence to conclude that these competitors will offset the competitive effects of the Merger, either individually or in aggregate.
8. To address this SLC, Rentokil has offered to give undertakings in lieu of a reference. Rentokil has offered to divest a set of contracts relating to pest control services for customers of MPCL located in eight or more regions of the UK, i.e. national customers acquired by Rentokil, excluding the PSA entered into by Rentokil and Mitie (the **Divestment Contracts**).<sup>3</sup> [X] Rentokil has offered to sell such assets (including vans and employees, such as technicians and the national accounts team), and transitional services as a

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<sup>1</sup> The PSA was concluded between Rentokil Initial UK Limited (part of the Rentokil Initial Group) and Mitie Limited (part of the Mitie Group (**Mitie**))

<sup>2</sup> The SPA was concluded between Rentokil Initial 1927 PLC (part of the Rentokil Initial Group) and Mitie Limited (part of Mitie).

<sup>3</sup> With an annual contract value of approximately [X].

purchaser (whose business plan would be approved by the CMA) reasonably deems necessary to be or become an effective national competitor. Finally, Rentokil has also offered to amend the key terms of the PSA by: (i) limiting its duration to three years; and (ii) making the PSA non-exclusive, enabling Mitie to select additional and different suppliers for each end-customer without restrictions (the **Proposed Undertakings**). Under the Proposed Undertakings, Rentokil has also offered to enter into a sale and purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

## The CMA's provisional views

9. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.<sup>4</sup>
10. The CMA notes that the Divestment Contracts, assets and transitional services and the amendments to the PSA terms do not fully restore the pre-Merger situation, as they do not replicate fully the pre-Merger relationship between MPCL and Mitie, under which MPCL was Mitie's default supplier of pest control services to Mitie customers receiving facilities management services,<sup>5</sup> and which has been transferred to Rentokil under the PSA.
11. However, the CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The Divestment Contracts represent the large majority and significant proportion of MPCL's pre-Merger national pest control business and the most significant proportion in terms of MPCL's pre-Merger competitive activity for national pest control customers. [✂]
12. The CMA believes at this stage that the Proposed Undertakings may be capable of ready implementation through the transfer to a purchaser that has the expertise and infrastructure to support such a transfer.
13. The CMA considers that an Upfront Buyer Condition is necessary to minimise purchaser risks (given that there may be only a small number of suitable purchasers) and to minimise risks relating to the composition of the Proposed

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<sup>4</sup> [Merger Remedies](#) (CMA 87), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

<sup>5</sup> See for more background on this relationship paragraphs 10, 11 and 20 of the SLC Decision.

Undertaking, which, given it is made up of a combination of contracts and relevant assets, does not comprise an existing stand-alone business.

14. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after Rentokil has entered into an agreement with a proposed buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer(s), as well as other aspects of the Proposed Undertakings. In order to consider the proposed buyer(s) as being suitable, the CMA will need to be satisfied that the purchaser suitability criteria in the CMA's Merger Remedies guidance are met. These include the requirement that the proposed purchasers have the financial resources, expertise, incentive and intention to maintain and operate the divestment business as part of a viable and active business in competition with the merged party in the relevant market.<sup>6</sup> The application of these criteria in this case means that the CMA will need to be satisfied that the proposed purchaser is committed to the UK pest control market for national customers and has the capability and intention to be an effective competitor in this market,<sup>7</sup> particularly, given that entry and expansion in this market has occurred only rarely in recent years.<sup>8</sup> Therefore, when assessing the suitability of the purchaser, the CMA, among other things, will consider the purchaser's existing expertise in the provision of pest control services [X].
15. For these reasons, the CMA currently considers that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
16. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer is effective and credible such that the competitive constraint provided by MPCL absent the Merger is replaced to a sufficient extent.

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<sup>6</sup> See [CMA87](#) paragraphs 5.20 – 5.27.

<sup>7</sup> See [CMA87](#) paragraphs 5.28 – 5.32 and [CMA2](#), paragraph 8.34.

<sup>8</sup> See paragraph 179 of the SLC Decision.

## **Consultation process**

17. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.<sup>9</sup>

## **Decision**

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Rentokil, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 27 June 2019 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 22 August 2019 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

**Andrea Gomes da Silva**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**30 April 2019**

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<sup>9</sup> [CMA2](#), paragraph 8.29.