

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

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/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**). Rentokil acquired the pest control business of MPCL from Mitie Limited, part of the Mitie Group (**Mitie**).
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 situation¹ 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**). The text of the SLC Decision is available on the CMA webpages.²
3. On 23 April 2019, Rentokil offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 30 April 2019, the CMA gave notice to Rentokil, 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 be accepted by the CMA under section 73(2) of the Act and that it is considering Rentokil's offer (the **UIL Provisional Acceptance Decision**).

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 [Rentokil / MPCL case page](#).

The undertakings offered

5. 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**)³ and a sale and purchase agreement of 30 September 2018 (**SPA**)⁴ (together the **Merger**) and that the Merger is a relevant merger situation.
6. As set out in the SLC Decision, the CMA found a realistic prospect of the Merger resulting in an SLC as a result of horizontal unilateral effects in the supply of pest control services to national customers in the UK.
7. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA Rentokil has offered to divest a number of contracts to provide pest control services to 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**).⁵ Rentokil has offered to divest such assets including vans, employees, such as technicians and the national accounts team, and provide such transitional services as a purchaser reasonably deems necessary to be an effective national competitor (the **Divestment Business**). Rentokil has also offered to amend the key terms of the PSA by: (i) limiting its duration to [REDACTED]; and (ii) making the PSA non-exclusive, enabling Mitie to select additional and different suppliers for each end-customer without restrictions (the **Amended PSA**) (together the **Proposed Undertakings**). The text of the Proposed Undertakings is available on the CMA webpages.⁶
8. Rentokil has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the Proposed Undertakings (the **Upfront Buyer Condition**). Rentokil has proposed ServiceMaster Global Holdings, Inc. (**ServiceMaster**) as the upfront buyer. This agreement will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of ServiceMaster as the buyer of the Divestment Business.

³ The PSA was concluded between Rentokil Initial UK Limited (part of the Rentokil Initial Group) and Mitie Limited (part of Mitie)

⁴ The SPA was concluded between Rentokil Initial 1927 PLC (part of the Rentokil Initial Group) and Mitie Limited (part of Mitie).

⁵ With an annual contract value of approximately £6.8m.

⁶ See [Rentokil / MPCL case page](#).

CMA assessment

Suitability of the proposed undertakings

9. 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.⁷
10. This is because the Divestment Contracts represent the large majority of MPCL's pre-Merger national pest control business. The Divestment Contracts do not fully replicate the pre-Merger relationship between MPCL and Mitie, under which MPCL was the default supplier of pest control services to Mitie customers receiving facilities management services.⁸ However, the Proposed Undertakings nonetheless enable the Divestment Business to compete for Mitie and its facilities management customers which represent the remainder of MPCL's pre-Merger national pest control business.
11. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because:
 - (a) The Divestment Business is a viable business that is capable of being transferred to an upfront purchaser, comprising revenue-generating customer contracts, key staff with expert knowledge of the UK pest control market and such assets, other employees and transitional services as a purchaser deems reasonably necessary to be an effective national competitor. While the CMA is aware that currently the Divestment Contracts may not be profitable as a standalone business, as discussed further below, the Proposed Purchaser has the ability and incentive to maintain and grow the Divestment Business and the CMA expects that the Proposed Purchaser will be an effective competitor.
 - (b) The Upfront Buyer Condition means that the CMA would accept the Proposed Undertakings only after Rentokil has entered into an agreement with a proposed purchaser that the CMA considers to be suitable.⁹
 - (c) In addition, the Proposed Undertakings include contractual obligations to enable the Proposed Purchaser to retain and win new national customers, including potential business from Mitie, and compete effectively in the

⁷ *Merger Remedies* (CMA 87), December 2018, Chapter 3, in particular paragraphs 3.27, 3.28 and 3.30.

⁸ See for more background on this relationship paragraphs 10, 11 and 20 of the SLC Decision.

⁹ See *CMA87*, paragraphs 5.28 – 5.32 and *CMA2*, paragraph 8.34.

immediate future. The Sale and Purchase Agreement for the Divestment Business (SPA) and related agreements, and the Amended PSA are subject to the CMA's approval.

- (d) As discussed in further detail below, the CMA considers that the Proposed Purchaser has the expertise, financial means and infrastructure to maintain the Divestment Business.
12. The CMA therefore 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.¹⁰

Suitability of the proposed purchaser

13. The CMA's starting position is to seek an outcome that effectively address the SLC and its resulting adverse effects.¹¹ Therefore, in approving a purchaser, the CMA seeks to ensure that:
- (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable;
 - (b) the purchaser has no significant connection to the merger parties that may compromise the purchaser's incentives to compete with the merged entity;
 - (c) the purchaser has access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable the divested business to be an effective competitor. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor. The proposed purchaser is expected to obtain in advance all necessary approvals, licences and consents from any regulatory or other authority;
 - (d) the purchaser has an appropriate business plan and objectives for competing in the relevant market(s) and that the purchaser has the incentive and intention to maintain and operate the relevant business as part of a viable and active business in competition with the merged party and other competitors in the relevant market; and

¹⁰ CMA 87, paragraphs 3.27, 3.28 and 3.30.

¹¹ CMA 87, paragraph 3.45.

- (e) the divestiture to the purchaser does not create a realistic prospect of further competition or regulatory concerns.¹²
14. ServiceMaster is a global pest control management company active in the US, Central America, Asia and the Middle East. It is one of the largest pest control providers in the US, operating under the brand name Terminix.
 15. ServiceMaster is already active in the UK¹³ in businesses other than pest control. ServiceMaster operates a number of route-based franchising businesses in the domestic and commercial services sectors in the UK. ServiceMaster told the CMA that, as part of its global expansion strategy, [redacted] it has recently purchased Pest Pulse, a technology-based pest control company¹⁴ active in the UK and Ireland. Further to its global expansion strategy, ServiceMaster is also currently [redacted].
 16. The CMA considers that the acquisition by ServiceMaster of the Divestment Business would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it as required by section 73(2) of the Act, achieving as comprehensive a solution as is reasonable and practicable. ServiceMaster told the CMA that the acquisition of the Divestment Business would enable ServiceMaster to continue to serve existing MPCL national customers for pest control services while expanding in the relevant market in the UK. In the SLC Decision, the CMA identified barriers to entry or expansion in the supply of pest control services to national customers in the UK, in particular: (i) customer expectations about service quality and availability of reporting and management information; and (ii) customer requirements for national coverage. The CMA considers that the acquisition of the Divestment Business by ServiceMaster would facilitate the entry in the UK of an alternative supplier of pest control services to national customers and so would remedy, mitigate or prevent the SLC.
 17. In terms of independence, the evidence available to the CMA indicates that ServiceMaster has no significant connection to the merger parties that may compromise ServiceMaster's incentives to compete. ServiceMaster told the CMA that it does not have any material influence over the merger parties and that no entity or individual within ServiceMaster holds or benefits from any current commercial arrangement or has any significant structural link (such as common directors or joint ventures) with the merger parties.

¹² [Merger Remedies](#) (CMA 87), December 2018 paragraphs 5.20-5.27.

¹³ ServiceMaster operates in the UK through its wholly owned subsidiary ServiceMaster Ltd (registered in England 01250088)

¹⁴ Pest Pulse uses smart traps that permanently monitor a premise for pest activities, such as rodents.

18. The evidence available to the CMA indicates that ServiceMaster has access to appropriate financial resources, expertise and assets to enable the Divested Business to be and to continue to develop as an effective competitor in the marketplace.
- (a) In terms of financial resources, the evidence available to the CMA indicates that ServiceMaster has the available funds to acquire and operate the Divestment Business as an effective competitor. ServiceMaster will finance the acquisition of the Divestment Business from its cash reserves.
- (b) In terms of expertise, ServiceMaster has significant experience in the operation of route-based businesses and, in particular, in providing pest control services to large national customers over a wide geographic area such as the US. In addition, ServiceMaster has extensive experience in acquiring other businesses, having undertaken numerous acquisitions [redacted] in the past year and already commenced its expansion in the UK pest control market prior to entering negotiations with Rentokil for the Divestment Business. ServiceMaster will supplement its limited experience in the UK pest control market with the expertise of key staff and technical and operational employees transferred with the Divestment Business and the expertise of Pest Pulse management, who have significant experience in the UK pest control market.
- (c) In terms of assets, ServiceMaster will use its existing infrastructure in the UK to support the Divestment Business with a number of front and back office functions. There are no regulatory or other consents and approvals which ServiceMaster is required to obtain.
19. ServiceMaster has provided the CMA with a business plan for the Divestment Business, taking account of the financial performance of the Divestment Contracts, setting out its long-term strategy and objectives for the development and growth of its pest control activities in the UK. ServiceMaster has pledged significant financial resources for the Divestment Business and intends to achieve its growth plans for the Divestment Business through various means, including [redacted]. The CMA currently considers that ServiceMaster has the incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with Rentokil and other competitors in the relevant market.
20. The CMA does not believe that ServiceMaster's acquisition of the Divestment Business would itself create a realistic prospect of regulatory problems or an SLC within any market or markets in the UK. The evidence available to the CMA

indicates that ServiceMaster (and its recently purchased Pest Pulse business) is not a substantial constraint on the Divestment Business.¹⁵

21. Therefore, subject to responses to this consultation, the CMA currently considers ServiceMaster to be a suitable purchaser of the Divestment Business.

Proposed decision and next steps

22. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by ServiceMaster are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and provide as comprehensive a solution to these concerns as is reasonable and practicable.
23. 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.¹⁶
24. 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.¹⁷
25. Representations should be made in writing to the CMA and be addressed to:

Matteo Alchini
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: matteo.alchini@cma.gov.uk
Telephone: 020 3738 6041

Deadline for comments: 18.00 on Thursday 25 July 2019

¹⁵ See further paragraph 14 above.

¹⁶ See [Rentokil / MPCL case page](#).

¹⁷ Under paragraph 2(4) of Schedule 10 to the Act.