

Completed acquisition by Danspin A/S of certain assets and goodwill of LY Realisations Limited (formerly Lawton Yarns Limited)

Decision that undertakings might be accepted

ME/6870/19

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 19 November 2019. Full text of the decision published on 29 November.

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.

Introduction

1. On 12 June 2019, Danspin A/S (**Danspin**) acquired certain assets and goodwill of LY Realisations Limited (formerly Lawton Yarns Limited) (the **Merger**). Subsequently, the acquired business has been integrated into Lawton Yarns Limited (formerly K72 Limited, which Danspin created for the purposes of the Merger and then renamed to Lawton Yarns Limited). Throughout this document the acquired business is referred to as the **Target** except where the context requires otherwise.
2. On 5 November 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 Danspin 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 Danspin 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 12 November 2019 Danspin 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 Danspin 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 the Merger gives rise to a realistic prospect of an SLC in relation to the supply of woollen yarn to carpet manufacturers in the UK. To address this SLC, Danspin has offered undertakings in lieu of a reference to divest Lawton Yarns Limited and P41 Limited (**Target Business**) (the **Proposed Undertakings**), as further set out in paragraph 8 below. Under the Proposed Undertakings, Danspin has also offered to enter into sale and purchase agreements with the buyer(s) approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).
8. Danspin's proposal to divest the Target Business includes the divestment of:
 - (a) The entire share capital of Lawton Yarns Limited;
 - (b) The entire share capital of P41 Limited, which owns the freehold title to the Raven Ings site,¹
 - (c) Machinery and equipment located at Ravens Ings, including the machinery [X]²;
 - (d) The Target's employees, including key staff;

¹ Ravens Ing Mills Huddersfield Road Dewsbury WF13 3JF.

² See derogation to the initial enforcement order of 23 July 2019, granted on [12 August](#).

- (e) The benefit of any of the Target's confirmed orders to the closing date;
 - (f) All relevant intellectual property rights and licences held and any goodwill or any other know-how;
 - (g) Supplier relationships (although the Target's supplies are generally purchased on a purchase order basis);
 - (h) The Target's working capital and receivables at closing;
 - (i) All stock owned by the Target at closing; and
 - (j) The Target's debt at closing, as well as its liabilities.
9. The Proposed Undertakings allow interested buyers to make, at their discretion: (i) a bid for both the Target Business and P41 Limited; or (ii) a bid for the Target Business excluding P41 Limited; and (iii) a bid for shares in P41 Limited in order to acquire only the Raven Ings site in the event that the interested buyer for Lawton Yarns Limited does not wish to acquire the Raven Ings site freehold. . In the event there are separate bids for the Target Business and P41 Limited, both sale processes will run in parallel. In the event that there are separate bids, Danspin has committed to enter into sale and purchase agreements with each buyer before the CMA finally accepts the Proposed Undertakings. Moreover, each buyer will be subject to approval by the CMA. Danspin has also committed to procure that, if required, the new owner of the freehold title to the Raven Ings site grant a leasehold title of a reasonable term to the new owner of the Target Business.
10. The Proposed Undertakings include several commitments from Danspin to ensure the effectiveness of the Proposed Undertakings to restore competition to the level that would have prevailed absent the Merger:
- (a) An obligation not to solicit certain business from the Target's customers. The exact wording and duration of the non-solicitation obligation is still to be agreed with the CMA;
 - (b) A number of transitional arrangements, at the discretion of the buyer, to support the continuity of the business, namely:
 - (i) ~~to~~ with the Target's suppliers for a reasonable period of ~~time~~;
 - (ii) To ~~be~~ for the Target on an arm's length basis for a reasonable period of time ~~of~~;

- (c) To encourage, for a reasonable period of time, the Target's suppliers to continue to supply the Target, and not to interfere or frustrate the Target's supply chain relationships. The exact wording and duration of this obligation is still to be agreed with the CMA.

The CMA's provisional views

11. 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.³
12. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that it may restore competition in the market for the supply of woollen yarn to carpet manufacturers in the UK as it was prior to the Merger.
13. 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 CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation, particularly given that the Target's business is profitable and there appear to be a number of suitable buyers with interest in purchasing the divestment.
14. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after Danspin has entered into an agreement with nominated buyer(s) 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. The CMA considers that an Upfront Buyer Condition is necessary given the [X].⁴
15. For these reasons, the CMA currently thinks 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

³ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

⁴ See [CMA 87](#) paragraphs 5.28–5.32, and [CMA2](#), paragraph 8.34.

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(s) are effective and credible such that the competitive constraint provided by the Target absent the Merger is replaced to a sufficient extent.

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.⁵

Decision

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Danspin, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 17 January 2020 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 13 March 2020 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
19 November 2019

⁵ [CMA2](#), paragraph 8.29.