

Completed acquisition by Danspin A/S of certain assets and goodwill of LY Realisations Limited (previously known as Lawton Yarns 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/6870/19

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).
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**). The text of the SLC Decision is available on the CMA webpages.¹
3. On 12 November 2019 Danspin offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 19 November 2019, the CMA gave notice to Danspin, 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 Danspin's offer (the **In Principle Acceptance Decision**).

¹ See <https://www.gov.uk/cma-cases/danspin-a-s-lawton-yarns-limited-merger-inquiry>

5. Pursuant to 73A(3) of the Act the CMA had until 17 January 2020 to decide whether to accept this undertaking. On 16 January 2020, the CMA extended the period under section 73A(4) of the Act. The extension ends on 13 March 2020.

The undertakings offered

6. In the SLC Decision, the CMA 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.
7. To address this SLC, Danspin has offered undertakings in lieu of a reference to divest Lawton Yarns Limited and P41 Limited (together, the **Divestment Business**) (the **Proposed Undertakings**). The assets that Danspin has offered to divest as part of the Divestment Business include:
 - (a) The entire share capital of Lawton Yarns Limited;
 - (b) The entire share capital of P41 Limited², which owns the freehold title to the Raven Ings site;³
 - (a) Machinery and equipment located at Ravens Ings, including the machinery purchased by Danspin from [X]⁴ which is to be sold to the Divestment Business (immediately before the completion of the sale to the purchaser), [X];
 - (b) The Divestment Business' employees, including key staff;
 - (c) The benefit of any of the Divestment Business' confirmed orders to the closing date;
 - (d) All relevant intellectual property rights and licences held and any goodwill or any other know-how;
 - (e) Supplier relationships (although the Divestment Business' supplies are generally purchased on a purchase order basis);
 - (f) The Divestment Business' working capital and receivables at closing;

² The Proposed Undertakings allow the purchaser to make, at their discretion: (i) a bid for the Divestment Business excluding P41 Limited; (ii) a bid for shares in P41 Limited in order to acquire only the Raven Ings site in the event that the interested buyer for (i) does not wish to acquire the Raven Ings site; or (iii) a bid for both the Divestment Business and P41 Limited. In the event there are separate bids for the Divestment Business and P41 Limited, both sale processes will run in parallel. The proposed purchaser on who the CMA is consulting on (the Proposed Purchaser) have made a offer for the Divestment Business, including P41 Limited

³ Ravens Ing Mills Huddersfield Road Dewsbury WF13 3JF

⁴ See derogation to the initial enforcement order of 23 July 2019, granted on [12 August](#).

- (g) All stock owned by the Divestment Business at closing; and
 - (h) The Divestment Business' debt at closing, as well as its liabilities.
8. The Proposed Undertakings include several commitments (the **Transitional Obligations**) from Danspin to ensure the effectiveness of the Proposed Undertakings to restore competition to the level that would have prevailed absent the Merger:
- (a) Certain non-compete restrictions on Danspin in wording approved by the CMA, [✂] for a limited period of time;
 - (b) An obligation not to interfere or frustrate Lawton Yarns' relationships with its suppliers, either by action or omission;
 - (c) An obligation to use all reasonable endeavours to ensure the transfer of Key Staff with the divestment of Lawton Yarns to the extent that such Key Staff are required by the Proposed Purchaser of Lawton Yarns;
 - (d) A number of transitional arrangements, at the discretion of the purchaser, to support the continuity of the business, namely:
 - (i) To continue [✂] with the Divestment Business' suppliers for a limited period;
 - (ii) To offer the prospective purchaser the continuation of this support on market terms for a limited period should the purchaser require them on terms reviewed by the CMA prior to acceptance of the UILs.
9. The Parties have also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts these undertakings (the **Upfront Buyer Condition**).

CMA assessment

Suitability of the proposed undertakings

10. 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 does not currently have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁵ This is

⁵ *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).

because the Proposed Undertakings to a suitable buyer will allow Lawton Yarns to resume operation as an independent and effective competitor in the UK market for the supply of woollen yarn for carpet manufacturing with an established customer base, brand and supplier relationships. As such, the Proposed Undertakings would result in restoring the competitive constraint that Lawton Yarns placed on Danspin that would otherwise be lost following the Merger.

11. The CMA also considers that the Proposed Undertakings would be capable of ready implementation because the Divestment Business is a limited and readily-identifiable set of assets, operating as a standalone business, that is capable of being transferred to an upfront purchaser.
12. The Upfront Buyer Condition means that the CMA would only accept the Proposed Undertakings to Divest after the Parties have entered into an agreement with a nominated buyer that the CMA considers to be suitable. The CMA considers that an Upfront Buyer Condition is necessary because the CMA considers that the identity of the purchaser will affect the undertakings' ability to remedy the CMA's competition concerns by competing effectively in the market for the supply of woollen yarn for carpet manufacturing in the UK.
13. The Sale and Purchase Agreement (**SPA**) is subject to the CMA's approval.
14. The CMA will have regard to the fact that Danspin has committed to certain Transitional Obligations for the benefit of the Divestment Business. These obligations are designed to ensure the effectiveness of the Proposed Undertakings by allowing the necessary minimum period of time for the transition and stabilisation of the Divestment Business. These obligations protect the investment of the purchaser and enable the purchaser to establish its position in the market for the supply of woollen yarn for carpet manufacturing in the UK, increasing the likelihood of the Divestment Business retaining its existing business.
15. The CMA currently considers that the commitments described above will ensure that the Divestment Business continues to operate as an ongoing business.

Suitability of the Proposed Purchaser

16. The CMA's objective is, without the need to undertake a detailed investigation, to achieve an outcome that restores pre-merger level of competition. Therefore, in approving a purchaser, the CMA aims to ensure that:

- (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
 - (b) the Proposed Purchaser is independent of and unconnected to the merging parties;
 - (c) the Proposed Purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
 - (d) the Proposed Purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
 - (e) the acquisition by the Proposed Purchaser does not itself create an SLC within any market or markets in the UK.⁶
17. Danspin has proposed Breal Capital Limited (**Breal**) as the Proposed Purchaser. An SPA is currently being negotiated between Danspin and Breal. Any potential SPA between Danspin and Breal to transfer the Divestment Business will be conditional upon acceptance by the CMA of the UIL, including approval of the purchaser of the Divestment Business and the terms of the APA.
18. Breal is an independently backed private equity firm and experienced investor in UK manufacturing specialising in developing small, mid-market enterprises for the longer term. Breal typically focuses on UK-headquartered businesses, in the manufacturing, distribution, wholesale, support services and retail sectors. Breal's existing portfolio includes businesses where the sourcing and purchasing of commodity raw materials, like wool, making it well placed to stabilise the supply chain and provide the foundation for growth for Lawton Yarns.

Would the SLC be remedied, mitigated or prevented?

19. In the SLC Decision the CMA estimated that the Parties have a combined share of supply of [70- 80]% in the supply of woollen yarn to UK carpet manufacturers. There are only two other competitors with a sizeable share of supply (Semonte and Lusolã), with all the other suppliers having a very small presence in the UK and therefore unable to offer material constraint on the Parties. The CMA identified significant barriers to entry.

⁶ See [Merger Remedies](#) (CMA 87) December 2018 paragraphs 5.20 – 5.27

20. The purchase of the Divestment Business by Breal would ensure that the Divestment Business would compete effectively with Danspin as pre-Merger, and, therefore, would remedy the SLC.

Independence

21. Breal is independent of the Parties, with no common shareholdings, directorships, significant structural links or commercial arrangements.

Financial suitability

22. Breal told the CMA that it will finance the acquisition through a combination of internal cash and a funding facility sufficient to cover the acquisition and working capital needs of the business borrowed against Lawton Yarns' assets. Having considered Breal's funding arrangements and having reviewed its recent financial accounts, the CMA believes that the company has the necessary financial resources to operate the Divestment Business.

Expertise, incentive and intention to operate as an effective competitor

23. Breal has plans to stabilise the position in the market through investment in and development of Lawton Yarns into a more sustainable presence as the future market in the UK evolves. One central focus for Breal is the retention and utilisation of the skills and knowledge of the existing senior personnel at Lawtons especially regarding the customer facing teams. It will also embark on a capital investment programme to improve efficiency and has clear plans on how it will do so.
24. Breal has considerable experience in purchasing small and medium sized UK businesses in the manufacturing sector including in sectors such as steel where it is exposed to both currency and commodity price fluctuations. Breal had credible plans as to how it would retain the current management, support and manage the operations of Lawton Yarns.
25. The CMA therefore considers that Breal would maintain and operate the Divestment Business as an effective competitor.

Approvals and consents

26. The Divestment Business has all necessary licences, permits and authorisations to carry out business in the UK in its current form. No regulatory consents or approvals are needed.

Whether the acquisition by Proposed Purchaser may create an SLC

27. Breal is not active in any activities overlapping or related to the supply of woollen yarn to UK carpet manufacturers UK markets. Therefore, the CMA considers that the acquisition of the Divestment Business by Breal will not in itself create an SLC.

Conclusion on the Proposed Purchaser

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

Proposed decision and next steps

29. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by Breal 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.
30. 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.⁷
31. 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.⁸
32. Representations should be made in writing to the CMA and be addressed to:

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Mergers Group
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

⁷ See <https://www.gov.uk/cma-cases/danspin-a-s-lawton-yarns-limited-merger-inquiry>

⁸ Under paragraph 2(4) of Schedule 10 to the Act.

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Deadline for comments: 14 February 2020