

Completed acquisition by Ardonagh Group Limited of Bennetts Motorcycling Services Limited

Decision that undertakings might be accepted

ME/6882/20

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 7 August 2020, Ardonagh Group Limited (**Ardonagh**) acquired Bennetts Motorcycling Services Limited (**Bennetts**) via its majority owned and indirectly controlled subsidiaries Atlanta Investment Holdings C Limited and Atlanta Investment Holdings 2 Limited (the **Merger**). Ardonagh and Bennetts are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. On 16 September 2020, 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 Ardonagh 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 Ardonagh 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 in lieu (**UILs**) 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 September 2020, Ardonagh offered two alternative UILs to the CMA for the purposes of section 73(2) of the Act:

- (a) The first UILs offer primarily comprised the divestiture of the brand and policy book of Ardonagh's [X] motorcycle insurance business, as well as a proportion of the policy book of the [X] and/or [X] brands (**Partial Divestiture Offer**); and
 - (b) The second, alternative, UILs offer, in the event the CMA did not accept the first UILs offer, involved the divestiture of the entire issued share capital of Bennetts to a purchaser approved by the CMA (**Full Divestiture Offer**).
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Ardonagh that it considers that there are reasonable grounds for believing that the Full Divestiture Offer, or a modified version of that offer, 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 and/or may have resulted from it or may be expected to result from it, accept UILs 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 distribution of motorcycle insurance to private customers in the UK. The SLC Decision found that the Parties are the two largest motorcycle insurance distributors in the UK, with a combined share of supply (by number of policies) of [30-40]%, with a significant increment of [10-20]% brought about by the Merger, and post-Merger would be three times the size of its next largest competitor by number of policies.¹
8. The SLC Decision found further that the Parties are close competitors, in particular Ardonagh's *Carole Nash* business and Bennetts, which both have high brand awareness and both focus on older customers. The Parties also hold a significant incumbency advantage by virtue of their large customer base and direct sales, and have a higher retention rate than their competitors. The Parties are therefore less reliant on price comparison websites (**PCWs**)

¹ See paragraph 11 of the SLC Decision.

as a route to market than their competitors and are liable to be less exposed to price competition through PCWs than other distributors.²

9. The CMA further found that post-Merger, the Merged Entity would face limited competition, as the tail of smaller motorcycle insurance distributors that would remain would find it difficult to compete closely with the Parties. The CMA also found that entry and/or expansion would not be timely, likely or sufficient to counter any SLC from arising.³
10. As set out above, in order to address the CMA's concerns identified in its SLC Decision, Ardonagh has offered two alternative UIL options:
 - (a) The Partial Divestiture Offer, which comprises the divestiture of the [X] brand and the transfer of the policy book of Ardonagh's [X] motorcycle insurance business, as well as a proportion of the policy books (ie rights over customer data, including claims data, rather than customer contracts) of the [X] and/or [X] brands. This would amount to [X] policies in total, which would represent a share of supply (based on number of policies) of approximately [5-10]%. In addition, Ardonagh offered to work with the prospective purchaser to determine whether any transfer of staff would be required with the [X] business and the [X] and/or [X] brands' policy books (as relevant), subject to those employees agreeing to a move following consultation. Furthermore, for a period of three years, Ardonagh offered to not launch any new brands or services for motorcycle insurance, and to cease using [X] aggregator slots or the [X] brand for motorcycle insurance. Ardonagh has also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts these undertakings (**Upfront Buyer Condition**);⁴ or
 - (b) The Full Divestiture Offer, in the event that the CMA does not find that the Partial Divestiture Offer is acceptable, which consists of the divestment of the entire issued share capital of Bennetts, to a purchaser approved by the CMA.⁵

Legal framework

11. The CMA considers that UILs are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing

² See paragraphs 12 – 13 of the SLC Decision.

³ See paragraphs 11 – 19 of the SLC Decision.

⁴ See UIL Form in relation to the Partial Divestiture Offer submitted by Ardonagh on 23 September 2020.

⁵ See UIL Form in relation to the Full Divestiture Offer submitted by Ardonagh on 23 September 2020.

undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.⁶

12. In accordance with section 73(3) of the Act, when deciding whether to accept UILs, the CMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.⁷
13. In order to accept UILs, the CMA must be confident that all of the potential competition concerns that have been identified in its investigation would be resolved by means of the UILs without the need for further investigation. UILs are therefore appropriate only where the remedies proposed to address any competition concerns raised by the merger are clear-cut and capable of ready implementation.⁸ Further:
 - (a) In relation to the substantive competition assessment, the clear-cut requirement means that ‘there must not be material doubts about the overall effectiveness of the remedy’; and
 - (b) In practical terms, the clear-cut requirement means that ‘UILs of such complexity that their implementation is not feasible within the constraints of the Phase 1 timetable are unlikely to be accepted’.⁹
14. As a general rule, the CMA considers that it is appropriate for it to seek to remedy or prevent competition concerns at Phase 1, rather than simply mitigating concerns.¹⁰

CMA’s assessment of the Parties’ UILs offers

15. The CMA has assessed whether any of the UILs offered by Ardonagh are clear-cut and capable of ready implementation, starting with Ardonagh’s preferred offer (ie the Partial Divestiture Offer).

⁶ *Mergers remedies (CMA87)*, December 2018 (**Remedies Guidance**), Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

⁷ Remedies Guidance, paragraph 3.30.

⁸ Remedies Guidance, paragraph 3.27.

⁹ Remedies Guidance, paragraph 3.28.

¹⁰ Remedies Guidance, paragraph 3.31.

Option 1: Partial Divestiture Offer

16. In the present case, the CMA considers that the Partial Divestiture Offer would not provide a clear-cut and effective remedy for the SLC identified by the CMA.¹¹

The Partial Divestiture Offer is not clear-cut

17. The CMA does not consider the Partial Divestiture Offer to offer a clear-cut remedy to the competition concerns identified in the SLC Decision on the basis that it has material doubts about its overall effectiveness and about whether it is capable of ready implementation.
18. The CMA addresses each of these elements of the clear-cut requirement in turn below.

There are material doubts about the overall effectiveness of the Partial Divestiture Offer

19. For the reasons set out below, the CMA has material doubts about the overall effectiveness of the Partial Divestiture Offer as a remedy for the SLC identified by the CMA. In particular, the CMA considers that the scope of the Partial Divestiture Offer may not be appropriately configured or sufficient in scope to allow a purchaser to operate as an effective competitor in the relevant markets.
20. First, the total number of policies that Ardonagh has offered to transfer falls significantly short of removing the full increment (in terms of the shares of supply) brought about by the Merger. More specifically, the proposed Partial Divestiture Offer would result in a divestment of the number of policies accounting for a share of supply of [5-10]%, which accounts for less than half of increment brought about by the Merger ([10-20]%). This increases the risk that the Partial Divestiture Offer would not restore the competitive structure of the market and therefore would not comprehensively address the concerns identified by the CMA in its SLC Decision. As noted above, the CMA considers that at Phase 1 it is appropriate to seek to remedy or prevent competition concerns rather than simply mitigate concerns.¹²
21. Second, the available evidence indicates that Ardonagh's [X] and [X] businesses do not compete as closely to the Bennetts business as the [X],

¹¹ Remedies Guidance, paragraph 3.27.

¹² Remedies Guidance, paragraph 3.31.

and Ardonagh's [redacted] brand is materially weaker than the [redacted] and [redacted] in the distribution of motorcycle insurance. In particular:

- (a) As Ardonagh has acknowledged in its submissions to the CMA, the main focus of the [redacted] business is on PCW sales, as opposed to direct sales (where the Parties are particularly strong). The CMA therefore considers that there is a material risk that the divestment of the [redacted] business, along with some [redacted] and [redacted] policies, would not provide the potential purchaser with the same ability and incentive to compete with the Merged Entity effectively across all sales channels, including direct sales.
- (b) The customers of the Ardonagh [redacted] business, as well as of the [redacted] brand, appear to differ, at least to some extent, to those of the [redacted] businesses. In particular, [redacted]. Ardonagh also told the CMA that the [redacted] had a [redacted] and that [redacted].¹³
- (c) The internal documents available to the CMA indicate that the [redacted] brand is considerably weaker than other brands in Ardonagh's portfolio and the *Bennetts* brand [redacted].¹⁴ Moreover, while the [redacted] brand has been marketed for [redacted], it holds a share of supply of only around [0-5]%, indicating that it has not [redacted] a significant market presence.

22. The CMA therefore considers that the Partial Divestiture Offer does not sufficiently address the concerns set out in the SLC decision in relation to the closeness of competition between the Parties' strongest brands (*Carole Nash* and *Bennetts*) or the incumbency advantage conferred by these brands.¹⁵ On this basis, the CMA considers that the Partial Divestiture Offer is not a clear-cut remedy to address the concerns identified in the SLC Decision.
23. Third, the CMA considers that the 'black-out' period of three years in relation to the use of the [redacted] brand for motorcycle insurance, under which Ardonagh is willing to commit to not launching new motorcycle insurance brands and/or services, gives rise to a material risk of market distortion. The CMA understands that the Partial Divestiture Offer does not include the [redacted] or [redacted] brands to avoid customer confusion with the [redacted] and [redacted] businesses (outside motorcycle insurance) retained by Ardonagh, and that the 'black-out' was therefore offered as an anti-circumvention measure to support the effectiveness of the transfer of Ardonagh's [redacted] business (eg to prevent

¹³ See submission from Ardonagh received on 28 September 2020 about the demographics of the respective [redacted] and [redacted] brands' customers.

¹⁴ The [redacted] brand is not mentioned in Ardonagh's internal document that compares spontaneous brand awareness ([redacted]). Similarly, the [redacted] brand is not mentioned in the document prepared by an external adviser for *Bennetts* that compares brand familiarity ([redacted]).

¹⁵ See paragraphs 191 – 196 of the SLC Decision.

Ardonagh from launching a brand with the same or similar positioning as the [X] business). To the extent that such a measure could be necessary or appropriate to support the transfer of the [X] brand, the CMA notes that it could also lead to market distortion by having the unintended consequence of dampening competition that would otherwise arise from Ardonagh launching new brands (as it has done in the past). In practice, this would mean that both of the strongest brands in the market – *Carole Nash* and *Bennetts* – would be prevented from launching variants to engage more effectively with customers for a period of three years. This further casts doubt on the clear-cut nature of this remedy.

24. Fourth, the Partial Divestiture Offer does not comprise an existing stand-alone business, but rather requires a ‘mix-and-match’ divestment of the Parties’ various policies (ie the policy book from Ardonagh’s [X] business and individual policies from its [X] business and from [X]). In accordance with the CMA’s Remedies Guidance, to avoid additional composition risk, it is normally preferable for all of the assets to be provided by one of the merger parties, unless it can be demonstrated that there is no significant increase in risk from a ‘mix-and-match’ alternative.¹⁶ The Parties have not made a reasoned submission to demonstrate to the CMA’s satisfaction that no risks would arise in the present case. Given its ‘mix-and-match’ nature, the CMA considers that Ardonagh’s proposed divestiture package under the Partial Divestiture Offer may create additional composition risks such that the divestiture package will not function effectively, which increases the risk that it will not enable an eventual purchaser to compete effectively (compared to a divestiture of an existing stand-alone business):
25. Fifth, the CMA consider that not all of the assets and attributes that appear to be important to replicate the competitive constraint may not be included in the Partial Divestiture Offer. In particular:
- (a) The relationships of Ardonagh or Bennetts with their respective panel underwriters are not included in Partial Divestiture Offer;¹⁷ and
 - (b) Under the Partial Divestiture Offer, the purchaser cannot rely on the strength of the wider Bennetts business to retain customers and grow. For example, the CMA notes that Bennetts’ pre-Merger business plan included [X], which was part of Bennetts’ expansion strategy and one of

¹⁶ Remedies Guidance, paragraph 5.16.

¹⁷ As mentioned in paragraph 188 of the SLC Decision, one of the competitive advantages of the Parties is their ‘established relationships with the panel underwriters.’

the [REDACTED].¹⁵ The Partial Divestiture Offer would not enable the purchaser to replicate these plans.

26. Finally, the CMA notes that the risks identified above, which raise serious doubts about the effectiveness of the Partial Divestiture Offer, cannot be addressed by the identification of a suitable purchaser that could be able to address (at least some of) the weaknesses incumbent in the remedies package.
27. The CMA notes that the mitigation of the risks raised by the Partial Divestiture Offer would depend heavily on finding a suitable purchaser with sufficient resources to compensate for the deficiencies of the divestiture package and/or the structural weakening of the market. In general, the CMA considers that risks regarding the effectiveness of the Partial Divestiture Offer should not rest with the purchaser. Moreover, the CMA also considers that, seeking to identify such a purchaser, for example through tightening the purchaser suitability criteria, would not be sufficient to compensate for the deficiencies of the divestiture package and the structural weakening of the market, nor would it do so with sufficient certainty.

There are material doubts about whether the Partial Divestiture Offer is capable of ready implementation

28. The CMA has material doubts about whether the Partial Divestiture Offer is capable of ready implementation, given the implementation risks and the need for monitoring set out below.
29. First, the CMA considers that customers' ability to opt-out from the transfer raises a material implementation risk:
 - (a) In transfers of policy books, customer may opt-out from the transfer,¹⁸ and only a percentage can be expected to be retained (Ardonagh provided an example of a previous transfer of a policy book in which [REDACTED]% of customers did not opt-out from the transferⁱ and its working assumption appears to be that the retention rates for the Partial Divestiture Offer would be similar). The customers who choose not to transfer to the purchaser may be dispersed across the market, adding a small increment to other motorcycle insurance providers in the market (but not materially

¹⁸ A book transfer as proposed by the Parties, entails that customers are contacted (typically 30 days) in advance of the transfer by the seller of the portfolio and notified of the intent to transfer. The customer is then approached by the acquirer of the portfolio and can elect to automatically transfer and continue the policy on the same terms (if an auto-renewal is in place or the customer continues monthly payments) or to renew on the terms included in notice if the policy is due for renewal. If the customer chooses not to transfer, the policy lapses and renewal does not take place, leaving the customer free to buy a new policy from whomsoever they choose.

increasing their market presence), rather than remaining with the purchaser. This outcome would therefore not replicate the competitive constraint provided by the Bennetts business absent the Merger.

- (b) Ardonagh has not included any mechanism to address a shortfall in customer transfers if only limited proportion of customers transfer to the purchaser of the divestment (such as a commitment to transfer more policies to make up for the number of customers that opted out).
- (c) The transfer of customers to the purchaser could take up to [X] to complete (depending on policy expiry/renewal dates) and would, in any case, be piecemeal in nature, with a number of customers transferring each month when their policies are due for renewal. The CMA therefore has concerns that it may not be possible to implement this remedy in a timely manner because the full transfer of customers, even if successful, would take a prolonged period to complete.
- (d) The Partial Divestiture Offer gives rise to material risks of customer confusion. While such book transfers have occurred in the past, the CMA notes that, in this case, customers of the [X] and [X] brands would be transferred to a third-party provider offering a brand (ie the [X] brand) that is currently under Ardonagh ownership (and therefore would have little track record under the new owner), which has limited market presence in any case. The affected customers (particularly if they are currently with [X] and/or [X]) may therefore be confused about the brand of their policy, which increases the risk that customers could opt out.

30. Second, the Partial Divestiture Offer also requires monitoring for a relatively long period of time:

- (a) The transfer of policies to the purchaser may take up to [X] because of the differing policy expiry dates for the affected customers. The transfer of the policies would require ongoing monitoring by the CMA (or an external monitor) during this extended period of [X]. The compliance monitoring of the book transfer remedy would be onerous given the large number of policies to be transferred ([X]) derived from [X] different motorcycle brands (businesses).
- (b) Ardonagh's commitments regarding a three-year 'black out' period in relation to the use of the [X] brand and the launch of new motorcycle insurance brands or services would also have to be monitored over a period of at least three years. Behavioural remedies, such as this, are

subject to a number of risks and may be difficult to monitor which can result in delayed enforcement.¹⁹

(c) Since ongoing monitoring of the book transfer and the Parties' behavioural commitments would be necessary, the CMA considers it would be onerous to monitor the effective implementation of the Partial Divestiture Offer, in particular given the large number of policies involved.

31. Third, the proposed transfer of staff to the purchaser (if required by the purchaser, Ardonagh offered to transfer potentially up to [X] full-time equivalent employees)²⁰ also gives rise to some implementation risks. In particular, as the Partial Divestiture Offer does not comprise an existing stand-alone business, but a transfer of a mix of assets, the transfer of staff is likely to be less straightforward, with the implementation risk that some staff may not accept the transfer.
32. Finally, as noted in paragraph 22, the mitigation of the composition and competition risks of the Partial Divestiture Offer would depend heavily on finding a suitable purchaser with sufficient resources (and capabilities) to compensate for the deficiencies in the divestiture package and/or structural weakening of the market. Although this offer is subject to an Upfront Buyer Condition, there is a material risk that a suitable purchaser may not be found within the timeline for the acceptance of UILs at Phase 1 and that the CMA would have to refer the Merger to Phase 2. This risk is particularly significant given the context that this is a completed Merger and the Parties are currently subject to 'hold separate' obligations.
33. For the reasons set out above, the CMA has material doubts that the Partial Divestiture Offer is capable of ready implementation, and considers that there are significant risks related to its implementation, including monitoring.

Conclusion on the acceptance of the Partial Divestiture Offer

34. For the reasons explained above, the CMA considers that there are significant risks that the Partial Divestiture Offer would not fully address all of the competition concerns identified by the CMA in the SLC Decision without the need for further investigation.²¹ The CMA therefore considers that the Partial

¹⁹ The types of risks which may undermine the effectiveness of behavioural remedies are set out in paragraph 7.4 of the Remedies Guidance.

²⁰ CMA's call with Ardonagh on 25 September 2020.

²¹ Remedies Guidance, paragraph 3.30.

Divestiture Offer would not be effective in addressing the SLC and cannot be accepted as a suitable remedy.

35. As the CMA has concluded that the Partial Divestiture Offer is not an effective remedy, it has not been required to consider Ardonagh's submissions that this remedy is a more proportionate remedy than the Full Divestiture Offer (which is considered further below).

Option 2: Full Divestiture Offer

36. The CMA believes that the Full Divestiture Offer might be acceptable as a suitable remedy to the SLC identified by the CMA. The divestment of the Bennetts business effectively reverses the Merger completely. Therefore, the CMA currently considers that it may restore competition in the market for the distribution of motorcycle insurance to private customers in the UK to the level that would have prevailed absent the Merger.
37. The CMA also believes at this stage that the Full Divestiture Offer may be capable of ready implementation, in particular because the Bennetts business is profitable, and there appear to be a number of suitable buyers with interest in purchasing the divestment business, as is apparent from the Bennetts sales process last year.
38. For these reasons, the CMA currently believes that the Full Divestiture Offer amounts to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. Therefore, the CMA currently considers that there are reasonable grounds for believing that the Full Divestiture Offer, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act.
39. The CMA's decision on whether ultimately to accept the Full Divestiture Offer or refer the Merger for a phase 2 investigation will be informed by, among other things, third-party views on the Full Divestiture Offer.

Consultation process

40. 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.²²

²² [CMA2](#), paragraph 8.29.

Decision

41. The CMA therefore considers that there are reasonable grounds for believing that the Full Divestiture Offer, or a modified version of that offer, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 25 November 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 25 January 2021 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.
42. For completeness, the CMA does not believe that the Partial Divestiture Offer would achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it. As a result, the CMA decided not to accept the Partial Divestiture Offer.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
30 September 2020

Endonote

In relation to the first sentence of paragraph 29(a), the reference to the percentage of customers that did not opt-out from the contract transfer is a proportion of the [~~8~~] % of customers that agreed to the data transfer (which occurs before the contract transfer).