

Completed acquisition by Bellis Acquisition Company 3 Limited of Asda Group Limited

Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

ME/6911/20

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

SUMMARY

1. On 16 February 2021, Mr Zuber Issa, Mr Mohsin Issa (together, the **Issa Brothers**), and investment funds managed by TDR Capital LLP (**TDR**) acquired, through Bellis Acquisition Company 3 Limited (**Bellis**), the whole of the issued ordinary share capital of Asda Group Limited (**Asda**) (the **Merger**). The Issa Brothers and TDR also jointly own EG Group Limited (**EG**). The Issa Brothers, TDR and Asda are together referred to as the **Parties**. EG, the other TDR portfolio companies and Asda are together referred to as the **Merged Entity**.
2. As a result of the Merger, the Issa Brothers and TDR acquired interests in Asda which the Competition and Markets Authority (**CMA**) considers confer on them the ability to exercise material influence over Asda.¹ The CMA believes that it is or may be the case that each of EG, the other TDR portfolio companies and Asda is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

¹ Within the meaning of section 26(1) of the Enterprise Act 2002 (the **Act**).

Frame of reference

3. The Parties overlap in (i) the retail supply of road fuel, (ii) the retail supply of auto-LPG, and (iii) the retail supply of convenience format groceries (**convenience groceries**) in the UK.

Road fuel

4. In line with the CMA's approach in precedent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of road fuel (without further segmentation between petrol and diesel) at both the national and local levels. At the local level, in line with the *Sainsbury's/Asda* precedent, the CMA adopted the following catchment areas: (i) non-supermarket petrol filling stations (**PFSs**) up to 10 minutes drive-time; and (ii) supermarket PFSs up to 20 minutes drive-time.

Auto-LPG

5. In line with the CMA's approach in precedent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of auto-LPG (distinct from road fuel, due to limited supply and demand-side substitutability) at both the national and local levels. In relation to the local frame of reference, the CMA did not receive any evidence to support departing from its findings in previous cases and, therefore, believes that it is appropriate to assess the impact of the Merger based on the 10, 20, 30 and 40 minute drive-times adopted in *MFG/MRH*.

Convenience groceries

6. In line with the CMA's approach in precedent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of convenience groceries (which are constrained by other convenience groceries, mid-size stores and one-stop stores), both at the national and local level. At the local level, the CMA believes an appropriate catchment area is a 5 minute drive-time around each convenience store.

Conclusion on frame of reference

7. Accordingly, the CMA has adopted the following frames of reference:
 - (a) the retail supply of road fuel at a national and local level;
 - (b) the retail supply of auto-LPG at a national and local level; and

- (c) the retail supply of convenience groceries at a national and local level.

Horizontal unilateral effects

Local assessment

Decision rules

8. In order to assess the competitive impact of the Merger in local areas where the Parties' activities overlap based on the frames of reference set out above, the CMA sought to devise an analytical approach that:
 - (a) reflects the key parameters of competition at the local level;
 - (b) is tailored to the specific features of this Merger (including the Parties' differentiated offering; EG focusses on a premium offering with convenience store and food-to-go (**FTG**) offerings at all of its PFSs while Asda's offering focuses on cost conscious customers often on a grocery shopping mission);
 - (c) assesses all areas of overlap systematically by reference to the same factors; and
 - (d) enables the efficient conduct of the CMA's investigation at Phase 1.
9. The CMA therefore adopted decision rules to establish whether the Merger results in a realistic prospect of an SLC in the retail supply of road fuel, auto-LPG or convenience groceries in any local areas.

Road fuel

10. Based on the available evidence, the CMA applied a decision rule for the retail supply of road fuel to determine whether the Merger gives rise to a realistic prospect of an SLC in any local areas that takes into account of:
 - (a) Different catchment areas for non-supermarket PFSs and supermarket PFSs (as explained in the frame of reference);
 - (b) The drive-time distance between the Parties' PFSs and between the Parties' PFSs and competitors' PFSs;
 - (c) The weak competitive constraint that motorway PFSs exert on non-motorway PFSs and vice versa;

- (d) The number of alternatives available to customers in the catchment area;
 - (e) Whether the Parties have a significant market share in the catchment area and whether the Merger significantly strengthens this position;
 - (f) Whether there are a limited number of supermarket PFSs other than Asda in the local areas where EG is present;
 - (g) The asymmetric constraint that Asda exerts on EG;
 - (h) Differentiation between the Parties; and
 - (i) Whether Asda considers EG's prices when setting its prices in each local area.
11. Using the decision rule, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the retail supply of road fuel in 36 local areas.

Auto-LPG

12. Based on the available evidence, the CMA applied a decision rule which took into account the following: (i) location is the most important parameter of competition, followed by price; (ii) unlike in the retail supply of road fuel, supermarkets do not exert a significantly stronger constraint relative to non-supermarkets; and (iii) the Parties [X].
13. Using the decision rule, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the Asda Bridge of Dee (Aberdeen) local area in the retail supply of auto-LPG.

Convenience groceries

14. Based on the available evidence, the CMA applied a decision rule which, in line with its precedent cases, adopted a weighted fascia count that is adjusted by the competitive constraint exerted by different types of convenience store (ie grocery retailers such as Tesco, Symbol stores such as Spar and independent convenience stores).
15. Using the decision rule, the CMA has not identified a realistic prospect of an SLC in any local area. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in any local areas in the retail supply of convenience groceries.

National assessment

Road fuel

16. Asda's pricing strategy in road fuel has a national dimension. Asda sometimes implements national price cap reductions in road fuel across its PFS estate in response to reductions in wholesale costs. The CMA understands that the media often refers to these price reductions as triggering 'price wars' because other supermarkets tend to follow Asda by cutting their own road fuel prices.
17. Based on the evidence gathered during its investigation, the CMA believes that Asda currently has an incentive to trigger (and publicise) these price cap reductions in order to promote its reputation as being a 'value' retailer and, therefore, increase its combined profits in road fuel and groceries (as low road fuel prices can help to increase footfall in groceries).
18. The CMA considered whether the Merger could affect Asda's incentives to trigger these national price cap reductions on the following basis:
 - (a) There is evidence that Asda acts as the price leader in road fuel, driving other supermarkets' prices down;
 - (b) Supermarket PFSs exert an important competitive constraint on all PFSs, including on EG;
 - (c) Asda's current pricing strategy may therefore have an impact on EG's road fuel margins, not just as a result of Asda's own pricing, but also as a result of other supermarkets' pricing in response to Asda; and
 - (d) The Merged Entity may no longer have an incentive to continue Asda's aggressive road fuel pricing strategy, given the potential impact on the combined road fuel volumes of Asda and EG.
19. The CMA assessed whether combining Asda's and EG's PFS portfolios would change the Merged Entity's incentive to maintain Asda's current national pricing strategy in road fuel. The evidence available to the CMA suggested the following:
 - (a) The cost to the Merged Entity of maintaining Asda's current pricing strategy would increase by a relatively modest amount after adding EG's PFS portfolio (the CMA estimated that the annualised cost increase was likely to be in the region of £[~~8~~], compared to an existing annualised cost in the region of £[~~8~~]); and

(b) The benefits to the Asda brand of maintaining Asda's current pricing strategy are likely to outweigh these costs. Asda is generally perceived as a value-led retailer and a price leader. Its brand and reputation could be affected if the Merged Entity were to abandon Asda's current pricing strategy in road fuel. Even a relatively small reduction (eg 1%) on Asda's groceries margins arising from this reputational impact would outweigh the costs of maintaining Asda's current road fuel pricing strategy.

20. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the retail supply of road fuel across all of Asda's PFS sites.

Auto-LPG and convenience groceries

21. With regard to the national retail supply of auto-LPG and the national retail supply of convenience groceries, on the basis of the Parties' low shares of supply at a national level and on the basis of third-party responses to the CMA's Merger investigation, the CMA found no competition concerns.

Decision

22. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects:

(a) in the retail supply of road fuel in 36 local areas; and

(b) in the retail supply of auto-LPG in one local area; Asda Bridge of Dee (Aberdeen).

23. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. The Issa Brothers and TDR have until 27 April 2021 to offer an undertaking to the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.