

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

Decision that undertakings might be accepted

ME/6911/20

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 5 May 2021. Full text of the decision published on 17 May 2021.

Introduction

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**).
2. On 20 April 2021, 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 the Issa Brothers and TDR 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 the Issa Brothers and TDR 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 27 April 2021 the Issa Brothers and TDR 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 the Issa Brothers and TDR 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 (i) the retail supply of road fuel in 36 local areas; and (ii) the retail supply of auto-LPG in one local area (together, the **SLC Areas**) as a result of horizontal unilateral effects. The SLC Areas are listed in Annex 1. In its assessment, the CMA identified catchment areas defined by drive-time isochrones centred on each of the EG and Asda sites. Where the Parties' sites overlapped, the CMA applied a decision rule to establish whether the Merger results in a realistic prospect of an SLC.
8. To address the competition concerns set out in the SLC Decision, the Issa Brothers and TDR have offered to divest a site or sites in each of the SLC Areas, such that no areas would fail the CMA's decision rule following the divestment (the sites currently offered by the Issa Brothers and TDR are listed in Annex 1). However, recognising that on further inspection the CMA could deem certain proposed sites to be unsuitable or insufficient, for instance, following discussions with potential purchasers, the Issa Brothers and TDR have offered in the alternative to divest in each SLC Area such other site or sites to address effectively the SLC up to and including the increment caused by the Merger.
9. The divestment will occur by way of a sale of the freehold or, subject to the CMA's approval, the grant of a leasehold title with a minimum 25-year term (which may be subject to a break clause at 15 years exercisable at the option of the purchaser) (where the Issa Brothers and TDR hold the freehold interest in the site), or by way of an assignment of a leasehold interest (the **Proposed Undertakings**).

The CMA's provisional views

10. 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.¹ However, it is open to the parties to persuade the CMA that a proposed remedy that does not directly restore competition to pre-merger levels nevertheless clearly and comprehensively removes the SLC identified.²
11. Divestment of a site or sites in each SLC Area to ensure that no catchment areas fail the CMA's decision rule does not necessarily restore the pre-Merger situation in all areas, since it does not in every case amount to the divestment of the entire increment in the local area. However, the Parties submitted that the sale of the Divestment Business eliminates the SLCs identified by the CMA in the SLC Decision.
12. The CMA notes that in previous cases involving petrol stations,³ as well as in previous cases in other sectors,⁴ the CMA and the Office of Fair Trading have accepted divestments falling short of the entire increment as sufficient to address local competition concerns.
13. In this case, the decision rule was applied to each EG and Asda site that overlapped. Where sites in overlap areas did not fail the decision rule, the CMA determined that there was no realistic prospect of an SLC in that overlap area. The CMA therefore considers that, in the circumstances of this case, to the extent that the Proposed Undertakings ensure that none of the sites remaining in a given SLC Area fail the decision rule, this is likely to provide a clear-cut and effective remedy for the SLCs identified. The option to divest alternative and, if needed, additional sites if deemed appropriate by the CMA further ensures that the Proposed Undertakings may be clear-cut and effective in terms of addressing the competition concern identified.
14. The CMA also believes, at this stage, that the Proposed Undertakings may be capable of ready implementation, in particular in light of the option to divest alternative and, if needed, additional sites. Moreover, the divestment sites are stand-alone businesses and the Parties have provided evidence that there is high demand for petrol stations (as shown by a number of recent acquisitions

¹ *Mergers remedies (CMA87), December 2018*, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

² *Mergers remedies (CMA87), December 2018*, Chapter 3 (in particular paragraph 3.30).

³ ME/6750/18 Completed acquisition by CD&R Fund IX of MRH (GB) Limited, September 2018 and ME/5191/22 Completed acquisition by Shell UK Limited of 253 petrol stations from Consortium Rontec Investments LLP, July 2012.

⁴ See ME/4609/10 Anticipated acquisition by Travis Perkins plc of the BSS Group plc, October 2010; ME/6501/14 Anticipated acquisition by Greene King plc of Spirit Pub Company plc, May 2015.

of petrol stations), and that there are several potential suitable purchasers specifically for the divestment sites currently offered by the Issa Brothers and TDR (as listed in Annex 1). For this reason, and consistent with the CMA's practice in previous cases involving the divestment of petrol stations, the CMA does not consider that it is necessary for the CMA to approve the identity of the purchaser or purchasers prior to final acceptance of the undertakings.⁵

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 Undertakings are suitable to address the competition concerns identified by the CMA.

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.⁶

Decision

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Issa Brothers and TDR, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 1 July 2021 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 26 August 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.

Joel Bamford
Senior Director, Mergers
Competition and Markets Authority
5 May 2021

⁵ *Mergers remedies (CMA87)*, December 2018, Chapter 3 (paragraphs 5.28 to 5.32).

⁶ *CMA2*, paragraph 8.29.

Annex 1 – SLC Areas

Table 1: Road fuel

No.	Site name	EG / Asda site	Proposed Divestment
1	Ashington	EG	EG Ashington
2	Burscough	EG	EG Burscough
3	Calcutt	EG	EG South Marston
4	Churchill	EG	EG Churchill
5	Dorcanway	EG	EG Kingshill, Rodbourne, EG South Marston
6	Dragon	EG	EG Dragon
7	Eccleshall Road	EG	EG Lammascote
8	Egremont	EG	EG Egremont
9	Johnadamsway	EG	EG Johnadamsway
10	Kingshill	EG	EG Kingshill
11	Lakeland	EG	EG Lakeland
12	Lammascote	EG	EG Lammascote
13	Maple	EG	EG Maple
14	Northerngateway	EG	EG Northerngateway
15	Prestonway	EG	EG Prestonway
16	Regatta	EG	EG Regatta
17	Rodbourne	EG	EG Rodbourne
18	Regents Park	EG	EG Tibicar
19	Rylands	EG	EG Tibicar
20	Scottlane	EG	EG Scottlane
21	South Marston	EG	EG South Marston
22	Tibicar	EG	EG Tibicar
23	Thinfordnorth	EG	EG Thinfordnorth
24	Turnpike	EG	EG Turnpike
25	Blackpool	EG	EG Blackpool
26	Wootten Bassett	EG	EG Kingshill
27	Pentre	EG	EG Pentre
28	Fourcross	EG	EG Fourcross
29	Weld Blundell	EG	EG Reliance
30	Thieveslane	EG	EG Thieveslane
31	Swindon2	Asda	EG Rodbourne, EG South Marston
32	Lancaster	Asda	EG Tibicar
33	High wycombe	Asda	EG Maple, EG Turnpike
34	Swindon	Asda	EG Kingshill, EG Rodbourne
35	Forfar	EG	EG Forfar
36	Rushden	EG	EG Rushden

Table 2: Auto-LPG

No.	Site name	EG / Asda site	Proposed Divestment
1	Bridge of Dee	Asda	EG Don