

## Completed acquisition by Bellis Acquisition Company 3 Limited of ASDA Group 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/6897/20

#### 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**). The Issa Brothers and TDR are together referred to as the **Parties**.
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 has resulted in the creation of a relevant merger situation, and that this 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 webpage.<sup>1</sup>
3. On 27 April 2021, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 5 May 2021, the CMA gave notice to the Parties, 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

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<sup>1</sup> See [Bellis Acquisition Company 3 Limited / Asda Group Limited merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/bellis-acquisition-company-3-limited-asda-group-limited-merger-inquiry): SLC Decision on the Merger.

be accepted by the CMA under section 73(2) of the Act and that it is considering the Parties' offer (**the UIL Provisional Acceptance Decision**).

5. The CMA made an Initial Enforcement Order (**IEO**) applying to Asda, the Issa Brothers and TDR on 10 February 2021 in respect of the Merger pursuant to section 72 of the Act for the purposes of preventing pre-emptive action. Pursuant to section 72(6)(b) of the Act, this IEO ceases to be in force on the acceptance by the CMA of the undertakings given below by the Parties.

### **The undertakings offered**

6. As set out in the SLC Decision, the CMA found a realistic prospect of an 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).
7. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, the Parties have offered undertakings to divest a number of retail fuel sites listed in Annex 1 of the UIL Provisional Acceptance Decision, or such other site or sites to address effectively the SLC up to and including the increment caused by the Merger in each relevant local area (**the Divestment Business**), to a suitable purchaser or purchasers (**the Proposed Undertakings**). Specifically, the Divestment Business comprises the following:
  - (a) All the rights, assets, interests and obligations of or associated with each particular retail fuel business, including without limitation: the freehold or long leasehold of the sites; inventory; the employees dedicated to the Divestment Business; relevant agreements; governmental approvals and permits (including petroleum licences) necessary for the operation of the Divestment Business, to the extent transferable; and product and pricing information, account histories, and historic commercial data relating to the Divestment Business; and
  - (b) the whole of the retail fuel business on the relevant site, including the forecourt's foodservice/beverage offerings and convenience store.
8. The Parties have offered to use their best endeavours and act in good faith and effect to the satisfaction of the CMA the divestment of the Divestment Business as a going concern within an agreed timeframe, unless otherwise agreed in writing with the CMA.

9. Furthermore, the purchaser of the Divestment Business would need to be agreed with the CMA.
10. The text of the Proposed Undertakings is available on the CMA webpage.<sup>2</sup>

## **CMA assessment**

11. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings, or a modified version of them, will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie, the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings.<sup>3</sup> This is because in the SLC Decision the CMA applied a decision rule to establish whether the Merger gave rise to an SLC in local areas, and divesting the Divestment Business will ensure that no areas identified as SLC areas will continue to fail the CMA's decision rule.
12. The CMA also considers that the Proposed Undertakings would be capable of ready implementation. This is because:
  - (a) The Divestment Business is comprised of established standalone retail fuel businesses and, as such, constitutes an attractive business for a wide variety of potential purchasers.
  - (b) The CMA does not have material concerns as to the viability or attractiveness of the Divestment Business to potential purchasers (ie composition risk) or the availability of suitable purchasers (ie purchaser risk).
  - (c) The CMA has also been provided with evidence of a number of potentially suitable purchasers who have expressed an interest in purchasing the Divestment Business.
13. For these reasons the CMA does not consider it appropriate to seek an upfront buyer.

## **Proposed decision and next steps**

14. For the reasons set out above, the CMA currently considers that the Proposed Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision

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<sup>2</sup> See [Bellis Acquisition Company 3 Limited / Asda Group Limited merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/bellis-acquisition-company-3-limited-asda-group-limited-merger-inquiry).

<sup>3</sup> *Merger remedies (CMA87)*, December 2018, Chapter 3, paragraph 3.28.

and form as comprehensive a solution to these concerns as is reasonable and practicable.

15. 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.
16. 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.<sup>4</sup>
17. Representations should be made to the CMA by email only and be addressed to:

Kalani Herath

Email: [kalani.herath@cma.gov.uk](mailto:kalani.herath@cma.gov.uk)

**Deadline for comments: 5.00pm on 4 June 2021.**

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<sup>4</sup> Under paragraph 2(4) of Schedule 10 to the Act.