

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

## Decision on acceptance of undertakings in lieu of reference

**ME/6911/20**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 16 June 2021. Full text of the decision published on 28 June 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**). 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 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 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 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 text of the SLC Decision and the UIL Provisional Acceptance Decision are available on the CMA webpages.<sup>1</sup>

## The undertakings offered

6. As set out in the SLC Decision, the CMA 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. In each area where the Parties' retail fuel sites overlapped, the CMA applied a decision rule to establish whether the Merger results in a realistic prospect of an SLC.
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 the 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 as set out in more detail in the text of the consultation on the CMA webpages<sup>2</sup> (the **UILs**).

## Consultation

8. On 21 May 2021, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.<sup>3</sup> For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.<sup>4</sup>
9. The CMA received nine submissions during the consultation period. Three of these submissions were expressions of interest from third parties to purchase all or parts of the Divestment Business. As such, only six submissions were

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<sup>1</sup> See [Bellis Acquisition Company 3 Limited / Asda Group Limited merger inquiry - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

<sup>2</sup> See [Bellis Acquisition Company 3 Limited / Asda Group Limited merger inquiry - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

<sup>3</sup> The full consultation text was published on [Bellis Acquisition Company 3 Limited / Asda Group Limited merger inquiry - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

<sup>4</sup> *Merger remedies, (CMA87)*, December 2018, Chapter 3, in particular paragraphs 3.27, 3.28 and 3.30.

responsive to the CMA's consultation. These submissions are summarised below:

- (a) Three respondents were concerned that, following the Merger, there will be a lessening of competition in some areas of the UK, which will lead to a rise in prices, less choice for local consumers, and high profits for EG.
  - (b) One respondent asked the CMA to ensure that the sales process is transparent and the Parties sell the Divestment Business to a buyer who will improve competition in the relevant areas.
  - (c) One respondent asked the CMA to ensure that, for a particular site, the planning restrictions currently in place are transferred with the site to the new buyer.
  - (d) Lastly, one respondent asked the CMA to allow the Merger to proceed.
10. In response to these submissions, the CMA notes that the CMA's SLC Decision already identified the areas in which the merger could lead to an SLC, and the UILs are designed to address those.
11. Moreover, although the commercial process is run by the Parties, they must, in accordance with the paragraphs 2.1 and 2.3 of the UILs, seek the CMA's approval of the purchaser or purchaser(s) of the Divestment Business. As set out in the CMA's guidance on merger remedies,<sup>5</sup> the CMA will assess the suitability of a purchaser by reference to a number of criteria including whether the purchaser has the capability to run the Divestment Business as an effective competitor and is committed to doing so, and whether a sale to the purchaser would give rise to competitive or regulatory concerns.<sup>6</sup> In this way, the CMA can ensure that the purchaser will be an effective competitor and that the sale of the Divestment Business will not have a negative impact on competition in the relevant areas.
12. Finally, the CMA notes that paragraph 2.4 of the UILs provides for the Divestment Business to include 'the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents)' to the extent they may be necessary in the opinion of the CMA to effect the divestment.

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<sup>5</sup> [CMA87 Merger Remedies Guidance](#).

<sup>6</sup> [CMA87 Merger Remedies Guidance](#), paragraphs 5.21(c), (d) and (e) and 5.26 and 5.27.

13. Accordingly, the CMA considers that it did not receive any submissions in response to its consultation that would cause it to change its preliminary view that the UILs would be acceptable.
14. The CMA therefore considers that the UILs offered by the Parties are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

## **Decision**

15. For the reasons set out above, the CMA considers that the UILs provided by the Parties are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLCs identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by the Parties pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
16. The undertakings, which have been signed by the Parties and will be published on the CMA webpages,<sup>7</sup> will come into effect from the date of this decision.

**Joel Bamford**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**16 June 2021**

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<sup>7</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).

## Annex 1 – SLC Areas and Divestment Sites

**Table 1: Road fuel**

No.	Site name	EG / Asda site	Divestment Site(s)
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	Divestment Site
1	Bridge of Dee	Asda	EG Don

## Annex 2

# 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

17. 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**.
18. 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>8</sup>
19. 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.
20. 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 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**).

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<sup>8</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): SLC Decision on the Merger.

21. The CMA made an Initial Enforcement Order (**IEO**) applying to Asda, the Parties 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**

22. 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).
23. 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.
24. 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.
25. Furthermore, the purchaser of the Divestment Business would need to be agreed with the CMA.

26. The text of the Proposed Undertakings is available on the CMA webpage.<sup>9</sup>

## **CMA assessment**

27. 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>10</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.

28. 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.

29. For these reasons the CMA does not consider it appropriate to seek an upfront buyer.

## **Proposed decision and next steps**

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

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<sup>9</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).

<sup>10</sup> *Merger remedies (CMA87)*, December 2018, Chapter 3, paragraph 3.28.



31. 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.
32. 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>11</sup>
33. 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>11</sup> Under paragraph 2(4) of Schedule 10 to the Act.