

# Anticipated acquisition by Patagonia Bidco Limited of certain businesses owned by Grafton Group Plc

## Decision that undertakings might be accepted

**ME/6950/21**

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 8 December 2021. Full text of the decision published on 9 December 2021.

**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. Patagonia Bidco Limited, the holding company of Huws Gray builders' merchant business (**Huws Gray**), has agreed to acquire a number of builders' merchant businesses (the **Targets**) ultimately controlled by the Grafton Group plc (**Grafton**) (the **Merger**). Huws Gray and the Targets are together referred to as the **Parties**.
2. On 29 November 2021, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this 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 Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties 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 30 November 2021, Patagonia Bidco Limited 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 Parties 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 the supply of building materials through General Builders' Merchants (**GBMs**) as a result of horizontal unilateral effects in the Sudbury area.
8. In its assessment, the CMA identified catchment areas defined by a 23-minute drive-time centred on each of the Parties' GBM branches.<sup>1</sup> The CMA further adopted a two-stage filtering methodology to identify the local areas where the Merger gives rise to an SLC. The CMA found that two of the Parties' GBM branches, Buildbase Sudbury and Huws Gray (Ridgeons) Sudbury,<sup>2</sup> which are located very close to one another (less than three minutes' drive), did not pass the filters. As a result, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the Sudbury area. To address the SLC Decision, Patagonia Bidco Limited have offered, undertakings in lieu of a reference, specifically an undertaking to divest Buildbase Sudbury (the **Proposed Undertakings**).

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<sup>1</sup> The CMA did not include the Parties' non-GBM branches (with the exception of the Timber Group, ie a business operated by the Target that specialises in timber and forest products, with six branches in London and the South East) in the analysis.

<sup>2</sup> Ie Buildbase Sudbury (Store ID 3135, located at Milner Road, Chiltern Industrial Estate, Sudbury, Suffolk, CO10 2XG) and Huws Gray (Ridgeons) (Store ID 88, located at Solopark, Station Road, Pampisford Cambridgeshire CB22 3HB).

9. The divestment of Buildbase Sudbury will be by way of sale of the relevant business and assets, including:
  - (a) [X] staff working at Buildbase Sudbury will be transferred as part of the divestment business: [X];
  - (b) all individual customers or groups of customers who are currently customers of Buildbase Sudbury;<sup>3</sup>
  - (c) the transfer of Buildbase Sudbury's lease.<sup>4,5</sup>
10. A suitable purchaser would operate the Buildbase Sudbury branch under its own brand, as the use of the Buildbase brand would not form part of the Proposed Undertakings.

## The CMA's provisional views

11. 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.<sup>6</sup> 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.<sup>7</sup>
12. Consistent with CMA precedents, Patagonia Bidco Limited offered to divest the Buildbase Sudbury centroid to address the SLC concerns identified in that catchment area.<sup>8</sup> The CMA also notes that the divestment of Buildbase Sudbury removes almost the entire increment in the catchment area around Huws Gray (Ridgeons) Sudbury.<sup>9</sup>

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<sup>3</sup> It is likely the Parties will exclude [X]. The relationship with [X]. The CMA notes that [X] accounted for only a small share [X] of Buildbase Sudbury's 2020 sales. Additionally, [X] currently account for a small share [X] of Buildbase Sudbury's 2021 YTD sales as of October (which were [X]). The CMA therefore believes that [X] represent only a small proportion of Buildbase Sudbury's sales which is not likely to impact the effectiveness and/or attractiveness of the Proposed Undertakings.

<sup>4</sup> The transfer of Buildbase Sudbury's lease is [X]. The Parties submitted that they do not anticipate any material delay.

<sup>5</sup> The Parties will also explore the transfer of the [X].

<sup>6</sup> [Mergers remedies \(CMA87\), December 2018](#), Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

<sup>7</sup> [Mergers remedies \(CMA87\), December 2018](#), Chapter 3 (in particular paragraph 3.30).

<sup>8</sup> ME/6501/14 Anticipated acquisition by Greene King of Spirit pubs, [Notice to consider undertakings offered](#), 26 May 2015; ME/6656/16 Anticipated acquisition by Heineken UK Limited of Punch taverns Holdco (A) Limited, [Notice to consider undertakings offered](#), 27 June 2017.

<sup>9</sup> Following the implementation of the Proposed Undertakings, the Merger would result in a 4.2% increment in the local catchment area around Huws Gray (Ridgeons) Sudbury.

13. The CMA notes that in previous cases involving petrol stations,<sup>10</sup> as well as in previous cases in other sectors,<sup>11</sup> the CMA and the Office of Fair Trading have accepted divestments falling short of the entire increment as sufficient to address local competition concerns.
14. Given the particular circumstances of this case, the CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to address the concerns identified by the CMA in the SLC Decision.
15. This is because Buildbase Sudbury and Huws Gray (Ridgeons) Sudbury are located very close to one another (less than three minutes' drive) whereas all of the Parties' other GBM branches are significantly farther away. Additionally, as set out in paragraph 12, the Proposed Undertakings remove almost the entire increment in the catchment area around Huws Gray (Ridgeons) Sudbury. Accordingly, the CMA believes that the Proposed Undertakings eliminate the SLC identified by the CMA in the SLC Decision.
16. For the reasons set out above, the CMA considers that, in the circumstances of this case, the Proposed Undertakings are likely to provide a clear-cut and effective remedy for the SLC identified.
17. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation because Buildbase Sudbury is a stand-alone and profitable business and, as such, constitutes an attractive business for a wide variety of potential purchasers. Furthermore, the CMA is satisfied that there is currently a high level of demand for GBM stores, as evidenced by the Parties' submissions on recent third-party acquisitions of GBM stores in the past year. Additionally, the Parties have provided evidence that there are several potential suitable purchasers.<sup>12</sup>
18. 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.
19. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed

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<sup>10</sup> ME/6911/20 Completed acquisition by Bellis Acquisition Company 3 Limited of Asda Group Limited, May 2018, 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.

<sup>11</sup> ME/4609/10 Anticipated acquisition by Travis Perkins plc of the BSS Group plc

<sup>12</sup> Accordingly, the CMA believes that a divestment to an upfront buyer is not required in this case. [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (paragraphs 5.28 to 5.32).

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**

20. 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.<sup>13</sup>

## **Decision**

21. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 10 February 2022 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 7 April 2022 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 33(1) and 34ZA(2) of the Act.

**Joel Bamford**  
**Senior Director Mergers**  
**Competition and Markets Authority**  
**8 December 2021**

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<sup>13</sup> [CMA2](#), paragraph 8.29.