

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

## 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/6950/21

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**). The text of the SLC Decision is available on the CMA webpages.<sup>1</sup>

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<sup>1</sup> See [Patagonia Bidco Limited / Certain businesses owned by Grafton Group Plc merger inquiry](#) – GOV.UK ([www.gov.uk](http://www.gov.uk)): SLC Decision on the Merger.

3. On 30 November 2021, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 8 December 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**).

## The undertakings offered

5. As set out in the SLC Decision, the CMA found 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. 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.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA the Parties have offered undertakings to divest Buildbase Sudbury (the **Divestment Business**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>3</sup> Specifically, the Divestment Business comprises the following:
  - (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>4</sup>
  - (c) the transfer of Buildbase Sudbury's lease.<sup>5,6</sup>
7. 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

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<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).

<sup>3</sup> See [Patagonia Bidco Limited / Certain businesses owned by Grafton Group Plc merger inquiry](#) – GOV.UK ([www.gov.uk](http://www.gov.uk)).

<sup>4</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>5</sup> The transfer of Buildbase Sudbury's lease is [X]. The Parties submitted that they do not anticipate any material delay.

<sup>6</sup> The Parties will also explore the transfer of the [X].

Business as a going concern within an agreed timeframe, unless otherwise agreed in writing with the CMA.

8. Furthermore, the purchaser of the Divestment Business would need to be agreed with the CMA.
9. The text of the Proposed Undertakings is available on the CMA webpage.<sup>7</sup>

## **CMA assessment**

10. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner,<sup>8</sup> ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>9</sup> 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, the Proposed Undertakings remove almost the entire increment in the catchment area around Huws Gray (Ridgeons) Sudbury.<sup>10</sup> Accordingly, the CMA believes that the Proposed Undertakings eliminate the SLC identified by the CMA in the SLC Decision.
11. The CMA also considers that the Proposed Undertakings would 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.

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<sup>7</sup> See [Patagonia Bidco Limited / Certain businesses owned by Grafton Group Plc merger inquiry](#) – GOV.UK ([www.gov.uk](http://www.gov.uk)).

<sup>8</sup> Consistent with CMA precedents, Patagonia Bidco Limited offered to divest the Buildbase Sudbury centroid to address the SLC concerns identified in that catchment area (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> [Mergers remedies \(CMA87\), December 2018](#), Chapter 3, paragraphs 3.27 - 3.28.

<sup>10</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. The CMA notes that in previous cases involving petrol stations, as well as in previous cases in other sectors, the CMA and the Office of Fair Trading have accepted divestments falling short of the entire increment as sufficient to address local competition concerns (see 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).

Additionally, the Parties have provided evidence that there are several potential suitable purchasers.<sup>11</sup>

12. For these reasons, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Divestment Business.

## Proposed decision and next steps

13. 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.
14. 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. The text of the proposed undertaking is available on the CMA web pages.<sup>12</sup>
15. 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>13</sup>
16. Representations should be made in writing to the CMA and be addressed to:

Liana Sandulescu  
Mergers Group  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ

Email: [liana.sandulescu@cma.gov.uk](mailto:liana.sandulescu@cma.gov.uk)  
Telephone: 020 3738 6603

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<sup>11</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).

<sup>12</sup> See [Patagonia Bidco Limited / Certain businesses owned by Grafton Group Plc merger inquiry](#) – GOV.UK ([www.gov.uk](http://www.gov.uk)).

<sup>13</sup> Under paragraph 2(4) of Schedule 10 to the Act.

**Deadline for comments: 23 December 2021**