

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

## Decision on acceptance of undertakings in lieu of reference

**ME/6950/21**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 14 January 2022. Full text of the decision published on 17 January 2022.

**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 (**Patagonia**), 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 30 November 2021, Patagonia offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Patagonia on 8 December 2021, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering Patagonia's offer (the **UILs Provisional Acceptance Decision**).

4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.<sup>1</sup>

## 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 that were applied to screen out overlap areas where competition concerns are unlikely to arise.
6. As set out in the UIL Provisional Acceptance Decision, Patagonia has offered undertakings in lieu of a reference, specifically an undertaking to divest Buildbase Sudbury, as set out in more detail in the text of the consultation on the CMA webpages<sup>3</sup> (the **UILs**).

## Consultation

7. On 9 December 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>4</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>5</sup>
8. The CMA received no submissions during the consultation period. Accordingly, the CMA has not received any information that would cause the CMA to change its preliminary view that the UILs would be acceptable.

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<sup>1</sup> See <https://www.gov.uk/cma-cases/huws-gray-ltd-slash-grafton-plc>.

<sup>2</sup> Ie Buildbase - Sudbury (Buildbase store (ID 3135) situated at Milner Road, Chiltern Industrial Estate, Sudbury, Suffolk, CO10 2XG UK) and Huws Gray – Sudbury (Huws Gray store (ID 88) situated at Alexandra Works, Chilton Industrial Estate, Sudbury, Suffolk, CO10 2XH, UK).

<sup>3</sup> See <https://www.gov.uk/cma-cases/huws-gray-ltd-slash-grafton-plc>.

<sup>4</sup> The full consultation text was published on <https://www.gov.uk/cma-cases/huws-gray-ltd-slash-grafton-plc>.

<sup>5</sup> *Merger remedies*, (CMA87), December 2018, Chapter 3, in particular paragraphs 3.27, 3.28 and 3.30.

9. The CMA therefore considers that the UILs offered by Patagonia are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

## **Decision**

10. For the reasons set out above, the CMA considers that the UILs provided by Patagonia are as comprehensive a solution as is reasonable and practicable and will remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Patagonia pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
11. The undertakings, which have been signed by Patagonia and will be published on the CMA webpages,<sup>6</sup> will come into effect from the date of this decision.

**Joel Bamford**  
**Senior Director Mergers**  
**Competition and Markets Authority**  
**14 January 2022**

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<sup>6</sup> See <https://www.gov.uk/cma-cases/huws-gray-ltd-slash-grafton-plc>.

# 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

### 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>7</sup>
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**).

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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)): SLC Decision on the Merger.

## 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>8</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>9</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>10</sup>
  - (c) the transfer of Buildbase Sudbury's lease.<sup>11,12</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 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>13</sup>

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<sup>8</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>9</sup> See [Patagonia Bidco Limited / Certain businesses owned by Grafton Group Plc merger inquiry](https://www.gov.uk/government/news/patagonia-bidco-limited-certain-businesses-owned-by-grafton-group-plc-merger-inquiry) – GOV.UK ([www.gov.uk](https://www.gov.uk)).

<sup>10</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>11</sup> The transfer of Buildbase Sudbury's lease is subject to [X]. The Parties submitted that they do not anticipate any material delay.

<sup>12</sup> The Parties will also explore the transfer of the [X].

<sup>13</sup> See [Patagonia Bidco Limited / Certain businesses owned by Grafton Group Plc merger inquiry](https://www.gov.uk/government/news/patagonia-bidco-limited-certain-businesses-owned-by-grafton-group-plc-merger-inquiry) – GOV.UK ([www.gov.uk](https://www.gov.uk)).

## 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>14</sup> ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>15</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>16</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. Additionally, the Parties have provided evidence that there are several potential suitable purchasers.<sup>17</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,

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<sup>14</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>15</sup> [Mergers remedies \(CMA87\), December 2018](#), Chapter 3, paragraphs 3.27 - 3.28.

<sup>16</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).

<sup>17</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).

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>18</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>19</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

**Deadline for comments: 23 December 2021**

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<sup>18</sup> See [Patagonia Bidco Limited / Certain businesses owned by Grafton Group Plc merger inquiry](#) – GOV.UK ([www.gov.uk](http://www.gov.uk)).

<sup>19</sup> Under paragraph 2(4) of Schedule 10 to the Act.