

# Completed acquisition by Clayton, Dubilier & Rice Holdings, LLC of Wm Morrison Supermarkets Limited

## Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

ME/6966/21

### SUMMARY

1. On 27 October 2021, Clayton, Dubilier & Rice Holdings, LLC (**CD&R**) acquired Wm Morrison Supermarkets Limited (**Morrisons**) (the **Merger**). CD&R and Morrisons are together referred to as the **Parties** or the **Merged Entity**.
2. Morrisons is a British supermarket retailer, headquartered in Bradford, active in the retail and wholesale supply of groceries, as well as the retail supply of petrol and diesel (**road fuel**), liquified petroleum gas used as a fuel for road vehicles (**auto-LPG**), apparel, and general merchandise products throughout the UK and online. CD&R exercises indirect control over a number of portfolio companies, including the Motor Fuel Group (**MFG**). MFG owns and operates 921 petrol filling stations (**PFSs**) throughout the UK, through which it supplies road fuel, auto-LPG, and convenience groceries. MFG also supplies road fuel on a wholesale basis to independent dealer sites.
3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of CD&R and Morrisons is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

### Frame of reference

4. The Parties primarily overlap in the supply of the following in the UK:

- (a) retail supply of road fuel;
- (b) retail supply of auto-LPG; and
- (c) retail supply of convenience groceries.

### ***Retail supply of road fuel***

5. In line with the CMA's approach in precedent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of road fuel (without further segmentation between petrol and diesel) both at the national and local level. At the local level, in line with the recent *Bellis/Asda* investigation, the CMA adopted the following catchment areas: (i) non-supermarket PFSs up to 10 minutes drive-time; and (ii) supermarket PFSs up to 20 minutes drive-time.

### ***Retail supply of auto-LPG***

6. In line with the CMA's approach in recent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of auto-LPG (distinct from road fuel, due to limited supply and demand-side substitutability) at both the national and local levels. Demand for auto-LPG has declined significantly over the past few years and remains in marked decline. The Parties submitted compelling evidence showing MFG's pre-existing commercial strategy to remove all of its auto-LPG facilities by 2024 (including the removal of auto-LPG from most of the areas where the Parties overlap by the end of 2022). Where MFG has previously removed auto-LPG facilities from its PFSs, it has not marketed or sold these assets (for continued operation in the local area) to third parties. The CMA also believes that there is no alternative, less anticompetitive purchaser (eg, rival PFSs in the relevant local areas) for MFG's auto-LPG facilities. It was therefore not necessary for the CMA to carry out a competitive assessment to conclude that there is no realistic prospect that the Merger could lead to a substantial lessening of competition (**SLC**) in the supply of auto-LPG.

### ***Retail supply of convenience groceries***

7. In line with the CMA's approach in precedent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of convenience groceries (which are constrained by other convenience groceries, mid-size stores and one-stop stores), both at the national and local level. At the local level, the CMA considered the following geographic frames of reference:

- (a) for convenience stores that are co-located within a PFS, a 5-minute drive time catchment; and
- (b) for standalone convenience stores, both a 1-mile radius and 5-minute drive time catchment.

### ***Conclusion on frame of reference***

8. The CMA has therefore assessed the impact of the Merger adopting the following frames of reference:
  - (a) retail supply of road fuel at both a national and local level; and
  - (b) retail supply of convenience groceries at both a national and local level.

## **Horizontal unilateral effects**

### ***Road fuel***

9. In *Bellis/Asda*, the CMA used a decision rule to assess the competitive impact of the Merger in local areas where the Parties' activities overlap. This decision rule took into account the competitive parameters in each local area, for example by incorporating the drive time distance between PFSs, the number of alternatives available to customers, differentiation between the Parties, and whether Asda had taken into account the acquirers' prices when setting its own prices in a local area.
10. The decision rule set out in *Bellis/Asda* in its local assessment of the retail supply of road fuel was the starting point for the CMA's assessment in this case. The CMA found that it would be appropriate to apply the same decision rule in this case for several reasons. First, the CMA noted the similarities between the two cases, in particular the fact that both involve an acquirer with a large portfolio of non-supermarket PFSs acquiring a target with a large portfolio of supermarket PFSs. Second, the CMA received evidence from third parties and found evidence in the Parties' internal documents indicating that the relevant parameters of competition have not changed since the *Bellis/Asda* decision. On this basis, the CMA considered it appropriate to use the decision rule adopted in *Bellis/Asda* to identify the number of local areas where there is a realistic prospect of an SLC. The CMA made one adjustment to the *Bellis/Asda* decision rule to reflect Morrisons' own price strategy in local areas.
11. Using the decision rule, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the retail supply of road fuel in 121 local areas.

12. With regard to the national retail supply of road fuel, on the basis of the Parties' low combined shares of supply at a national level and the presence of many large and small rivals in the market, the CMA found no competition concerns.

### ***Convenience groceries***

13. In *Bellis/Asda*, the CMA also applied a decision rule in its assessment of convenience groceries. This decision rule adopted a weighted fascia count that was adjusted by the competitive constraint exerted by different types of convenience stores.
14. In this case, the CMA found that the main factors that affect customers' choice of convenience groceries at a local level are still location, size, and brand. The CMA found the relevant parameters of competition have not changed since the *Bellis/Asda* investigation, and that there is no other reason that it would not be appropriate to apply the decision rule set out in that decision in the local assessment of the retail supply of convenience groceries.
15. Using this decision rule, the CMA has not identified a realistic prospect of an SLC in any local area. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in any local areas in relation to the retail supply of convenience groceries.
16. With regard to the national retail supply of convenience groceries, on the basis of the Parties' low combined shares of supply at a national level and on the basis of third party evidence received during the CMA's merger investigation, the CMA found no competition concerns.

### **Decision**

17. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of horizontal unilateral horizontal effects in the retail supply of road fuel in 121 local areas.
18. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). CD&R has until 31 March 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.