

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

## Decision that undertakings might be accepted

**ME/6966/21**

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 7 April 2022. Full text of the decision published on 3 May 2022.

### Introduction

1. On 27 October 2021, Clayton, Dubilier & Rice Holdings, LLC (**CD&R**) acquired Wm Morrison Supermarkets Limited (**Morrisons**) (the **Merger**).<sup>1</sup> CD&R and Morrisons are together referred to as the **Parties** or the **Merged Entity**. Morrisons is a British supermarket retailer, active in the retail and wholesale supply of groceries, as well as, amongst other products, the retail supply of petrol and diesel (**road fuel**) throughout the UK. CD&R exercises indirect control over a number of portfolio companies, including the Motor Fuel Group (**MFG**), which owns and operates 921 petrol filling stations (**PFSs**) throughout the UK.
2. On 24 March 2022, 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 the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to CD&R of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow CD&R 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

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<sup>1</sup> Wm Morrison Supermarkets Limited changed its name from Wm Morrison Supermarkets PLC on 17 November 2021.

specified in section 73A(1)(a) of the Act. Accordingly, on 31 March 2022, CD&R 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 CD&R 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, 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, the CMA may 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 retail supply of road fuel in 121 local areas (the **SLC Areas**) as a result of horizontal unilateral effects. In its assessment, the CMA identified catchment areas defined by drive-time isochrones centred on each of the MFG and Morrisons sites. Where the Parties' sites overlapped, the CMA applied a decision rule to establish whether the Merger results in a realistic prospect of an SLC.
8. To address this SLC, CD&R has offered to give undertakings in lieu of a reference to divest a site or sites in each of the SLC Areas (the **Divestment Sites**), such that no areas would fail the CMA's decision rule following the divestment (the Divestment Sites currently offered by CD&R are listed in Annex 1). CD&R has also offered in the alternative to divest in each SLC Area such other site or sites to address effectively the SLC up to and including the increment caused by the Merger (which might apply, for example, if any of the sites listed in Annex 1 are found to be unsuitable or insufficient).
9. The divestment will occur by way of a sale of the freehold or, subject to the CMA's approval, the grant of a leasehold title with a minimum 25-year term (which may be subject to a break clause at 15 years exercisable at the option of the purchaser) (where CD&R holds the freehold interest in the site), or by way of an assignment of the leasehold interest (the **Proposed Undertakings**).

## The CMA's provisional views

10. 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>2</sup> However, it is open to the

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<sup>2</sup> [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

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>3</sup>

11. Divestment of a site or sites in each SLC Area to ensure that no catchment areas fail the CMA's decision rule does not necessarily restore the pre-Merger situation in all areas, since it does not in every case amount to the divestment of the entire increment in the local area. However, CD&R submitted that the sale of the Divestment Sites would eliminate the SLCs identified by the CMA in the SLC Decision.
12. The CMA notes that in previous cases involving petrol stations,<sup>4</sup> as well as in previous cases in other sectors,<sup>5</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.
13. In this case, the decision rule was applied to each MFG and Morrisons site that overlapped. Where sites in overlap areas did not fail the decision rule, the CMA determined that there was no realistic prospect of an SLC in that overlap area. The CMA therefore considers that, in the circumstances of this case, to the extent that the Proposed Undertakings ensure that none of the sites remaining in a given SLC Area fail the decision rule, this is likely to provide a clear-cut and effective remedy for the SLCs identified. The option to divest alternative and, if needed, additional sites further ensures that the Proposed Undertakings may be clear-cut and effective in terms of addressing the competition concern identified.
14. The CMA also believes, at this stage, that the Proposed Undertakings may be capable of ready implementation. Each of the Divestment Sites are standalone businesses. CD&R has provided evidence that the market is highly liquid with sites being transferred on a single and multi-site basis,<sup>6</sup> suggesting that Divestment Sites will draw considerable interest from potential purchasers. Further, CD&R provided evidence that there are a significant number of active and suitable potential acquirers for the Divestment Sites.<sup>7</sup> For these reasons, and consistent with the CMA's practice in previous cases involving the divestment of petrol stations, the

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

<sup>4</sup> See ME/6911/20 Completed acquisition by Bellis Acquisition Company 3 Limited of Asda Group Limited, June 2021; ME/6750/18 Completed acquisition by CD&R Fund IX of MRH (GB) Limited, September 2018; and ME/5191/11 Completed acquisition by Shell UK Limited of 253 petrol stations from Consortium Rontec Investments LLP, July 2012.

<sup>5</sup> See ME/4609/10 Anticipated acquisition by Travis Perkins plc of the BSS Group plc, October 2010; ME/6501/14 Anticipated acquisition by Greene King plc of Spirit Pub Company plc, May 2015.

<sup>6</sup> Mergers Remedies Form submitted 31 March 2022, paragraph 19.2. Based on estimates prepared by Barber Wadlow, Excluding the MFG/MRH deal, 195 PFSs were transacted in 2018, representing a 15% increase of PFSs sold from 2017, with 182 petrol station forecourts transacted in 2019, 95 in 2020 and 86 in 2021 (noting that both 2020 and 2021 were in years affected by the Coronavirus (COVID-19) pandemic).

<sup>7</sup> Mergers Remedies Form submitted 31 March 2022, Annex 3, 'Non-Exhaustive List of Active Acquirers in the PFS Market'.

CMA does not consider that it is necessary for the CMA to approve the identity of the purchaser or purchasers prior to final acceptance of the undertakings.<sup>8</sup>

15. 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.
16. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed 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**

17. 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>9</sup>

### **Decision**

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by CD&R, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 9 June 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 4 August 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 22(1) and 34ZA(2) of the Act.

**Colin Raftery**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**7 April 2022**

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<sup>8</sup> [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (paragraphs 5.28 to 5.32).

<sup>9</sup> [CMA2](#), paragraph 8.29.

## Annex 1 – Proposed Divestment Sites

No.	Proposed divestment
1	MFG FRINTON
2	MFG PORTLAND SPAR
3	MFG BUDE
4	MFG NORTHSIDE
5	QUEENBOROUGH SERVICE STATION
6	MFG OVERMONNOW
7	MFG BEN
8	MFG ROAD TO THE ISLES
9	MFG BLACKFIELD
10	MFG ISENHURST
11	MFG BELLBROOK
12	MFG OLD ROAD
13	PEREGRINE SHERBORNE SERVICE STATION
14	MFG AMERSHAM
15	MFG ST ANDREWS
16	MFG CASTLE VIEW
17	MFG LOOE
18	MFG SPRINGHILL
19	MFG VINES
20	MFG PARKWOOD
21	MFG IMPERIAL
22	MFG SPALDING
23	MFG FILLYBROOK
24	MFG SUNNYLODGE
25	MFG COASTWAYS SPAR
26	MFG TIVERTON
27	MFG FELIXSTOWE DOCK SERVICES
28	MFG BECCLES
29	MFG ROCK
30	MFG HEMMINGFORD
31	MFG LOWER LANE
32	MFG LEDBURY
33	MFG RUTHIN
34	MFG BLOODY OAKS
35	MFG MALVERN SPRINGS
36	MFG JEDBURGH
37	MFG PARK VIEW
38	MFG BRIDGE
39	MFG ASHINGTON
40	MFG THIRSK
41	MFG RUBERY
42	MFG IRON ACTON

43	MFG WESTERN SERVICE STATION
44	MFG BOARS HEAD
45	MFG LEOMINSTER
46	MFG OAKHAM
47	MFG BEVERLEY
48	MFG FISHGUARD
49	MFG WIRRAL PARK
50	MFG CARLTON SQUARE
51	MFG SWAFFHAM
52	MFG WITTERING
53	MFG VALE
54	MFG SYMONDS YAT SERVICES NORTHBOUND
55	MFG HAZEL GROVE
56	MFG BOURNE SOUTH
57	MFG BROMSGROVE SPAR
58	MFG CORNISH GATEWAY SERVICE AREA
59	MFG ERITH
60	MFG SCUNTHORPE
61	MFG BURTON
62	MFG RACES
63	MFG SWALWELL
64	MFG ROYSTON
65	MFG MANDALE ROAD
66	MFG NORWOOD
67	MFG HILLTOP
68	MFG PRIZET SOUTHBOUND
69	MFG MOUNT VERNON
70	MFG BURNBANK
71	MFG CALDER
72	MFG EARNOCK
73	MFG ST CLAIR
74	MFG MALMESBURY
75	MFG BRIGG
76	MFG ROWBERROW
77	MFG GRAVESEND SPAR
78	MFG CREWE ROAD
79	MFG ELVA
80	MFG DUNBALL ROUNDABOUT
81	MFG WHITE ROSE
82	MFG HARVEST
83	MFG STRATHTAY
84	MFG ST JOHNSTONE
85	MFG JACOBS WELL
86	MFG ARKLE
87	MFG EUROPA