

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

DECISION TO ACCEPT THE PROPOSED UNDERTAKINGS IN LIEU OF REFERENCE

ME/6966/21

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.

INTRODUCTION

- 1 On 27 October 2021, Clayton, Dubilier & Rice Holdings, LLC (**CD&R**) acquired Wm Morrison Supermarkets Limited (**Morrisons**) (the **Merger**).¹ 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 Act that it is or may be the case that the Merger constitutes a relevant merger situation² 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**). The text of the SLC Decision is available on the CMA webpage.³
- 3 On 31 March 2022, CD&R offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.

¹ Wm Morrison Supermarkets Limited changed its name from Wm Morrison Supermarkets PLC on 17 November 2021.

² Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

³ See [CD&R / Morrisons - GOV.UK \(www.gov.uk\)](https://www.gov.uk/cd&r-morrisons).

- 4 On 7 April 2022, the CMA gave notice to CD&R, 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 CD&R's 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 retail supply of road fuel in 121 local areas (the **SLC Areas**) as a result of horizontal unilateral effects.
- 6 As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, CD&R has offered undertakings to divest the retail fuel sites listed in **Annex 1**, or such other site or sites to address effectively the SLC up to and including the increment caused by the Merger in each relevant local area, to a suitable purchaser or purchasers (**Divestment Sites**).
- 7 CD&R is offering to divest the Divestment Sites by way of an asset sale involving the transfer of freehold and/or grant or assignment of leasehold, subject to the CMA's approval. The Divestment Sites comprise a petrol station and their related assets (including onsite convenience stores). Currently, commission operators manage the onsite convenience stores at the Divestment Sites; these commission operator arrangements would not be assigned with the Divestment Sites. The purchaser or purchasers of the Divestment Sites would be free to engage a commission operator or operate the sites themselves. In addition, the existing staff may potentially be transferred to the purchaser or purchasers under the Transfer of Undertakings Regulations 2006.
- 8 Furthermore, the purchaser or purchasers of the Divestment Sites would need to be agreed with the CMA.
- 9 The text of the undertakings is available on the CMA webpage (**Proposed Undertakings**).⁴

CMA ASSESSMENT

- 10 The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings, or a modified version of them, will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁵ This is

⁴ See [CD&R / Morrisons - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/cd-r-morrisons-merger-remedies).

⁵ [Merger remedies \(CMA87\)](#), December 2018, Chapter 3, paragraph 3.28.

because in the SLC Decision the CMA applied a decision rule to establish whether the Merger gave rise to an SLC in local areas, and divesting the Divestment Sites will ensure that no areas identified as SLC areas will continue to fail the CMA's decision rule. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because:

- (a) the Divestment Sites are established standalone retail fuel businesses and, as such, constitute an attractive business for a wide variety of potential purchasers;
- (b) the CMA has been provided with evidence that the retail road fuel market is highly liquid, with sites being frequently transferred on a single and multi-site basis, suggesting that that Divestment Sites will draw considerable interest from potential purchasers;
- (c) the CMA does not have material concerns as to the viability or attractiveness of the Divestment Sites to potential purchasers (ie composition risk); and
- (d) the CMA has been provided with evidence that there are a significant number of active and suitable potential acquirers for the Divestment Sites.

11 For these reasons the CMA does not consider it appropriate to seek an upfront buyer.

Proposed decision and next steps

12 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.

13 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 Undertakings is available on the CMA webpage.⁶

14 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.⁷

⁶ See [CD&R / Morrisons - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

⁷ Under paragraph 2(4) of Schedule 10 to the Act.

15 Representations should be made to the CMA by email only and addressed to:

Jonathan Akinyemi

Email: jonathan.akinyemi@cma.gov.uk

Deadline for comments: 17 May 2022

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