

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

## DECISION ON ACCEPTANCE OF UNDERTAKINGS IN LIEU OF REFERENCE

**ME/6966/21**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 9 June 2022. Full text of the decision published on 28 July 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**. CD&R exercises indirect control over a number of portfolio companies, including the Motor Fuel Group (**MFG**). Both Morrisons and MFG are active in the retail supply of petrol and diesel in 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 31 March 2022, CD&R offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to CD&R on 7 April 2022, 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 CD&R's offer (the **UILs Provisional Acceptance Decision**).

---

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

4. The text of the SLC decision and the UILs Provisional Acceptance Decision undertakings are available on the CMA webpage.<sup>2</sup>

### **The undertakings offered**

5. As set out in the SLC Decision, the CMA 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. In each area where the Parties' retail fuel sites overlapped, the CMA applied a decision rule to establish whether the Merger resulted in a realistic prospect of an SLC.
6. As set out in the UIL Provisional Acceptance Decision, CD&R has offered to divest the retail fuel sites listed in the annex to each of the UILs Provisional Acceptance Decision and text of the consultation, such that no areas would fail the CMA's decision rule following the divestment. CD&R has also offered in the alternative to divest 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 (**Divestment Sites**), to a suitable purchaser or purchasers, as set out in the text of the consultation on the CMA webpages<sup>3</sup> (the **UILs**).

### **Consultation**

7. On 3 May 2022, 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 A to 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 two submissions during the consultation period, which are summarised below:
  - (a) One respondent indicated that they had no comments.

---

<sup>2</sup> See [CD&R / Morrisons - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

<sup>3</sup> See [CD&R / Morrisons - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

<sup>4</sup> The full consultation text was published on [CD&R / Morrisons - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

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

(b) One respondent questioned the suitability of divesting MFG's Fishguard site, suggesting that an alternative MFG site closer to the Morrisons petrol filling station (**PFS**) in the area should be divested instead. In response to this submission, the CMA notes that, as outlined at paragraph 74 of the SLC Decision, the CMA has determined the local areas that give rise to a realistic prospect of an SLC in the retail supply of road fuel at a local level are the areas that meet any of the conditions of the specified decision rule. Some of the conditions of the decision rule require placing individual MFG or Morrisons PFSs at the centre of an identified catchment area defined by drive-time isochrones and assessing how the Merger impacts the conditions of competition for that specific site. As outlined at Annex 1 of the SLC Decision, using this approach, MFG Fishguard fails the decision rule. On this basis, the CMA considers that the divestment of MFG Fishguard is suitable to solve this competition concern. Other MFG or Morrisons PFSs in the local area did not fail the decision rule, and therefore the Merger does not give rise to a realistic prospect of an SLC within the catchment areas in which these facilities are located (and there is therefore no basis for assets to be divested in these areas).

9. Accordingly, the CMA considers that it did not receive any third-party submissions that change its preliminary view that the UILs would be acceptable.
10. The CMA therefore considers that the UILs offered by CD&R are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

## **Decision**

11. For the reasons set out above, the CMA considers that the UILs provided by CD&R are as comprehensive a solution as is reasonable and practicable and 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 CD&R pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
12. The undertakings, which have been signed by CD&R and will be published on the CMA webpages, will come into effect from the date of this decision.

**Colin Raftery**  
**Competition and Markets Authority**  
**9 June 2022**

## ANNEX A

# 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**).<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 Act that it is or may be the case that the Merger constitutes a relevant merger situation<sup>2</sup> 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.<sup>3</sup>
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.
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**).<sup>4</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, 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.<sup>5</sup> This is 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.<sup>6</sup>
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.<sup>7</sup>
15. Representations should be made to the CMA by email only and addressed to:

Jonathan Akinyemi  
Email: [jonathan.akinyemi@cma.gov.uk](mailto: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