

# Completed acquisition by Morrisons of McColl's

## Decision that undertakings might be accepted

**ME/7002/22**

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 23 September 2022. Full text of the decision published on 10 October 2022.

### Introduction

1. On 9 May 2022, Alliance Property Holdings Limited (**Alliance**), a wholly owned subsidiary of WM Morrison Supermarkets Limited (**Morrisons**), acquired the assets and business of McColl's Retail Group plc, Martin McColl Limited, Clark Retail Limited, Dillons Stores Limited, Smile Stores Limited, Charnwait Management Limited, and Martin Retail Group Limited (these assets are collectively referred to as **McColl's**) (the **Merger**). Morrisons and McColl's overlap in the supply of retail groceries. Further, Morrisons' ultimate parent company is Clayton, Dubilier & Rice (**CD&R**), a private equity group that controls the Motor Fuel Group (**MFG**). MFG owns and operates over 900 petrol filling stations (**PFS**), which usually have a convenience store attached to them.
2. On 8 September 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 Morrisons 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 Morrisons 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

specified in section 73A(1)(a) of the Act. Prior to the SLC Decision, the Parties requested that the case proceed directly to consideration of UILs, which the CMA agreed to. On 31 August 2022, Morrisons 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 Morrisons 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, the CMA may, 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, 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 as a result of horizontal unilateral effects in the retail supply of convenience groceries in 35 local areas (the **SLC Areas**). In its assessment, the CMA identified catchment areas surrounding each of McColl's and MFG's convenience stores (a 5-minute drive time for all stores, as well as a 1-mile radius for standalone stores not attached to a PFS). The CMA applied a decision rule by which the Merger gives rise to a realistic prospect of an SLC in the retail supply of convenience groceries in local areas where, after the Merger, there remain three or fewer (weighted) fascia in addition to the Parties' sites.
8. To address this SLC, Morrisons 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 Morrisons are listed in **Annex 1**). The divestment will occur by the assignment or grant of leases (the **Proposed Undertakings**)

### The CMA's provisional views

9. 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>1</sup> However, it is open to the

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<sup>1</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>2</sup>

10. 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, Morrisons submitted that the sale of the Divestment Sites would eliminate the SLCs identified by the CMA in the SLC Decision.
11. The CMA notes that, in certain previous cases, the CMA has accepted divestments falling short of the entire increment as sufficient to address local competition concerns.<sup>3</sup>
12. The CMA 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.
13. The CMA also believes, at this stage, that the Proposed Undertakings may be capable of ready implementation. Morrisons has provided evidence that the Divestment Sites are viable, standalone and commercially attractive businesses.<sup>4</sup> For the purposes of their sale, Morrisons proposes to split the Divestment Sites into a small number of profitable groups or packages. Morrisons intends to organise the packages by region,<sup>5</sup> to facilitate their purchase and ongoing management by a single buyer in each region. Further, Morrisons submitted that it has already received interest from multiple credible potential purchasers for the Divestment Sites.<sup>6</sup> For these reasons, the 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>7</sup>
14. 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.

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

<sup>3</sup> See ME/6911/20 Completed acquisition by Bellis Acquisition Company 3 Limited of Asda Group Limited, June 2021; ME/6950/21 Anticipated acquisition by Patagonia Bidco Limited of certain businesses owned by Grafton Group Plc, January 2022; ME/6966/21 Completed acquisition by Clayton, Dubilier & Rice Holdings, LLC of Wm Morrison Supermarkets Limited, June 2022.

<sup>4</sup> Mergers Remedies Form submitted 31 August 2022, Annex 5.

<sup>5</sup> Mergers Remedies Form submitted 31 August 2022, paragraph 21.1.

<sup>6</sup> Mergers Remedies Form submitted 31 August 2022, Annex 7.

<sup>7</sup> [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (paragraphs 5.28 to 5.32).

15. 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**

16. 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>8</sup>

### **Decision**

17. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Morrisons, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until Friday 18 November 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 Wednesday 18 January 2023, 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.

**Sorcha O'Carroll**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**23 September 2022**

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<sup>8</sup> [CMA2](#), paragraph 8.29.

### Annex 1 – Proposed McColl’s Divestment Sites

	<b>Divestment Site Name</b>	<b>Divestment Site Address</b>
1.	Pewsey High Street	36 High Street, Pewsey, SN9 5AQ
2.	Stony Stratford 51 High Street	51 High Street, Stony Stratford, Milton Keynes, MK11 1AA
3.	Lymm Albany Road	61/63 Albany Road, Statham, Lymm, WA13 9LT
4.	Glastonbury Chinnock Road	5-7 Chinnock Road, Glastonbury, BA6 8EW
5.	Winsford Willow Square	1-3 Willow Square, Wharton, Winsford, CW7 3HP
6.	Little Clacton The Street	35 the Street, Little Clacton, CO16 9LD
7.	Buntingford Baldock Road	Baldock Road, Buntingford, SG9 9BL
8.	Brentwood Warley The Keys	The Keys, Eagle Way, Warley, Brentwood, CM13 3BP
9.	Dorking North Holmwood	North Holmwood Post Office, Spook Hill, Dorking, RH5 4HH
10.	Perth Oakbank Road	168a Oakbank Road, Perth, PH1 1HA
11.	Bolton Newbrook Road	58 Newbrook Road, Over Hulton, Bolton, BL5 1ER
12.	Ottery St Mary Yonder Street	2-4 Yonder Street, Ottery St Mary, EX11 1HD
13.	Rogerstone St Johns Crescent	33-35 St. John's Crescent, Rogerstone, Newport, NP10 9EY
14.	Matson 75 Matson Avenue	75 Matson Avenue, Matson, Gloucester, GL4 6LL
15.	Bath Larkhall	7 Lambridge Buildings, Larkhall, Bath, BA1 6RS
16.	Stourbridge Queensway	49 Queensway, Stourbridge, DY9 9HJ
17.	Highworth High Street	18 High Street, Highworth, Swindon, SN6 7AG
18.	Newbury Kingsclere Swan Street	Swan Street, Kingsclere, Newbury, RG20 5ND
19.	Alderley Edge London Road	63 London Road, Alderley Edge, SK9 7DY
20.	Paddock Wood Commercial Road	19/23 Commercial Road, Paddock Wood, Tonbridge, TN12 6EN
21.	Purfleet Garrison Parade	4/6 Garrison Parade, Purfleet, RM19 1ST
22.	Felixstowe Trimley	206/208 High Street, Trimley St.Martins, Felixstowe, IP11 0SN
23.	Lewes South Chailey	South Street, South Chailey, Lewes, BN8 4BG

24.	Buglawton St Johns Road	St Johns Road, Buglawton, Congleton, CW12 2BA
25.	Steyning High Street	64 High Street, Steyning, BN44 3RD
26.	Hadlow The Broadway	1-2 the Broadway, Hadlow, Tonbridge, TN11 0BZ
27.	Belbroughton High Street	29-31 High Street, Belbroughton, Stourbridge, DY9 9ST
28.	Lincoln Jasmine Road	Unit 1 Birchwood Shopping Centre, Jasmine Road, Lincoln, LN6 0PY