

Completed acquisition by Morrisons of McColl's

DECISION ON ACCEPTANCE OF UNDERTAKINGS IN LIEU OF REFERENCE

ME/7002/22

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 27 October 2022. Full text of the decision published on 10 November 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**).
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 31 August 2022, Morrisons offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.¹
4. The CMA gave notice to Morrisons on 23 September 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 Morrisons' offer (the **UILs Provisional Acceptance Decision**).

¹ Morrisons offered these undertakings in lieu of a reference in advance of the statutory deadline for doing so, which was 15 September 2022.

5. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.²

The undertakings offered

6. 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 convenience groceries in 35 local areas (the **SLC Areas**) as a result of horizontal unilateral effects.
7. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, Morrisons has offered undertakings 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 (applied by the CMA in its SLC Decision) following the divestment (the Divestment Sites currently offered by Morrisons are listed in **Annex 1** to the UIL Provisional Acceptance Decision; each of these is a McColl's site).
8. Furthermore, the divestment will occur by the assignment or grant of leases to a purchaser or purchasers who would need to be approved by the CMA.
9. The text of the undertakings is set out in the text of the consultation on the CMA webpages (the **UILs**).³

Consultation

10. On 10 October 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 Appendix A of this decision.⁴ 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.⁵
11. The CMA received two submissions during the consultation period, which are summarised below:
 - (a) One respondent objected to the divestment of the McColl's/Morrisons Daily store at The Keys, Eagle Way, Warley, Brentwood, CM13 3BP (the **Store**). This respondent considered that the Store does not fail the CMA's decision rule, and that its divestment could result in the loss of the Morrisons Daily brand and a reduction in competition in the local area. The CMA confirmed,

² See [Morrisons / McColl's merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/morrisons-mccolls-merger-inquiry)

³ See [Morrisons / McColl's merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/morrisons-mccolls-merger-inquiry)

⁴ The full consultation text was published on [Morrisons / McColl's merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/morrisons-mccolls-merger-inquiry)

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

however, that the Store is in an area that fails the CMA's decision rule.⁶ Consistent with its decision rule, the CMA found that the Merger would result in the Parties owning a high proportion of convenience stores in the local area, which could result in an SLC. Morrisons offered to divest the Store to remedy that particular SLC. The CMA cannot prescribe the form that the UILs should take, nor can it order Morrisons to sell a specific site to remedy the SLC. The CMA found that the UILs would result in the relevant local area no longer failing the CMA's decision rule. Regarding the loss of the Morrisons Daily brand, the UILs require the sale of the Divestment Sites to a suitable purchaser, or purchasers, who will continue to operate the relevant site as a going concern. As a result, the CMA believes that the UILs will preserve competition in this local area and protect the local community from the reduction in competition that could otherwise have arisen as a result of the Merger.

- (b) One respondent raised concerns about the divestment of the McColl's/Morrisons Daily store at 33-35 St. John's Crescent, Rogerstone, Newport, NP10 9EY emphasising its importance to their local community. The CMA acknowledges the submissions on the importance of this store to the community. Under the terms of the UILs,⁷ Morrisons must ensure that the divestment agreements for the sale of Divestment Sites contain a warranty that the purchaser (or purchasers) has the financial resources, expertise, incentive and intention to maintain and operate the store as part of a viable and active business in the local area. The CMA therefore considers that the UILs should result in the sale of the Divestment Sites to a suitable purchaser, or purchasers, who will continue operate the relevant site as a going concern.

- 12. Accordingly, these third party submissions did not cause the CMA to change its preliminary view that the UILs would be acceptable.
- 13. The CMA therefore considers that the UILs offered by Morrisons are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

Decision

- 14. For the reasons set out above, the CMA considers that the UILs provided by Morrisons 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

⁶ See SLC decision, Annex 1, No.11. MFG Warley is located at the Southend Arterial Road in CM13 3ES, Brentwood.

⁷ Clause 2.5 of the UILs

by Morrisons pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.

15. The undertakings, which have been signed by Morrisons and will be published on the CMA webpages, will come into effect from the date of this decision.

Sorcha O'Carroll
Competition and Markets Authority
27 October 2022

APPENDIX A

Completed acquisition by Morrisons of McColl's

ME/7002/22

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 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**).
2. On 8 September 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 situation⁸ 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 webpages.⁹
3. On 31 August 2022, Morrisons offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.¹⁰
4. On 23 September 2022, the CMA gave notice to Morrisons, 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 Morrison's offer (the **UIL Provisional Acceptance Decision**). The text of the UIL Provisional Acceptance Decision is also available on the CMA webpages.¹¹

⁸ 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.

⁹ See [Morrisons / McColl's merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/morrisons-mccoll-merger-inquiry).

¹⁰ Morrisons offered these undertakings in lieu of a reference in advance of the statutory deadline for doing so, which was 15 September 2022.

¹¹ See [Morrisons / McColl's merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/morrisons-mccoll-merger-inquiry).

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 convenience groceries in 35 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, Morrisons has offered undertakings 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 (applied by the CMA in its SLC Decision) following the divestment (the Divestment Sites currently offered by Morrisons are listed in **Annex 1**; each of these is a McColl's site).
7. Furthermore, the divestment will occur by the assignment or grant of leases to a purchaser or purchasers who would need to be approved by the CMA.
8. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).¹²

CMA ASSESSMENT

9. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings 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.¹³ The sale of the Divestment Sites will ensure that the SLC Areas no longer fail the CMA's decision rule.¹⁴
10. The CMA also considers that the Proposed Undertakings would be capable of ready implementation. This is because:
 - (a) Morrisons has provided evidence that the Divestment Sites are viable, standalone, and commercially attractive businesses;¹⁵
 - (b) 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 region¹⁶ to facilitate their purchase and ongoing management by a single buyer in each region; and

¹² See [Morrisons / McColl's merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/morrisons-mccoll-merger-inquiry).

¹³ [Merger remedies \(CMA87\)](#), December 2018, Chapter 3, paragraph 3.28.

¹⁴ In its SLC Decision, the CMA applied a decision rule to identify whether an SLC arose in local areas as a result of the Merger.

¹⁵ Mergers Remedies Form submitted 31 August 2022, Annex 5.

¹⁶ Mergers Remedies Form submitted 31 August 2022, paragraph 21.1.

- (c) Morrisons submitted that there are multiple credible potential purchasers for the Divestment Sites and that it has already received expressions interest from these purchasers.¹⁷

11. For these reasons, the CMA does not consider it necessary 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 webpages.¹⁸
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.¹⁹
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: 24 October 2022

¹⁷ Mergers Remedies Form submitted 31 August 2022, Annex 7.

¹⁸ See [Morrisons / McColl's merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/morrisons-mccoll-merger).

¹⁹ Under paragraph 2(4) of Schedule 10 to the Act.

Annex 1 – Proposed McColl’s Divestment Sites

	Divestment Site Name	Divestment Site Address
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