

Completed acquisition by Asda Stores Limited of Arthur Foodstores Limited from Co-operative Group Limited

ME/7018/22

Summary of the Competition and Market Authority's decision on reference under section 22(1) of the Enterprise Act 2002 given on 14 March 2023.

SUMMARY

1. On 30 October 2022, Asda Stores Limited (**Asda**) completed the purchase of Arthur Foodstores Limited (**Arthur**) (the **Merger**). Arthur is a special purpose transaction vehicle created by Co-operative Group Limited (**the Co-op**) to sell its 132 petrol stations, with attached grocery stores. Asda is a wholly owned subsidiary of Asda Group Limited (**Asda Group**), which is indirectly jointly controlled by Mr Zuber Issa and Mr Mohsin Issa (together, **Issa Brothers**) and investment funds managed by TDR Capital LLP (**TDR**). The Issa Brothers and TDR also jointly own EG Group Limited (**EG**), which operates petrol filling stations (**PFSS**). The Issa Brothers, TDR, Asda and Arthur are together referred to as the **Parties**. Asda, Arthur, EG, and the other TDR portfolio companies are together referred to as the **Merged Entity**.
2. The CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**):
 - (a) in the retail supply of road fuel in 11 local areas; and
 - (b) in the retail supply of groceries at mid-size stores (**MSS**) in 3 local areas.
3. The Parties have until 21 March 2023 to offer undertakings in lieu of a reference to the CMA that will remedy the competition concerns identified. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Enterprise 2022 (the **Act**).

The basis of the CMA's assessment

4. The Parties overlap in the retail supply of (i) road fuel, (ii) groceries (both at MSS and at convenience stores), and (iii) auto-LPG in the UK. For each of these, the CMA considered the impact of the Merger at both the national and local levels.
5. For its local assessments, the CMA examined the Merger:
 - (a) for road fuel, within up to a 10-minute drive-time for non-supermarket PFSs, and up to a 20-minute drive-time for supermarket PFSs;
 - (b) for groceries, within:
 - (i) up to a 5-minute drive-time for urban areas and up to a 10-minute drive-time for rural areas for MSS; and
 - (ii) a 5-minute drive-time around each convenience store and a 1-mile radius around each standalone convenience store; and
 - (c) for auto-LPG, within 10-, 20-, 30- and 40-minute drive times.

CMA's assessment of the effects on competition of the Merger

Local assessment

6. In order to assess the competitive impact of the Merger in local areas for the supply of road fuel, the CMA used a decision rule that has been established across a number of previous investigations in this market. Decision rules are commonly used in phase 1 investigations to enable the competitive assessment of a large number of local areas to be carried out systematically, efficiently and at proportionate cost. The decision rule used in this case, which is described in full in the CMA's decision, takes into account the number of competing PFSs in each local area, the local shares of the Merged Entity, the asymmetric constraint that Asda exerts on Arthur, and whether Asda considers the Co-op's prices when setting prices in each local area.
7. The decision rule used to assess the impact of the Merger on the retail supply of groceries takes into account the number of competing groceries brands in each local area.
8. Using these decision rules, the CMA found that the Merger gives rise to a realistic prospect of an SLC:

- (a) in the retail supply of road fuel in 11 local areas; and
 - (b) in the retail supply of groceries at MSS in 3 local areas.
9. At the local level, the CMA did not find any competition concerns in relation to the retail supply of auto-LPG or the retail supply of groceries at convenience stores.

National assessment

10. With regard to the national retail supply of road fuel, groceries (both at MSS and convenience stores), and auto-LPG, on the basis of the Parties' limited shares of supply at a national level, and the availability of competing alternative suppliers, the CMA found no competition concerns.

Efficiencies

11. Asda submitted that the Merger will result in rivalry-enhancing efficiencies in both fuel and grocery retailing. Rivalry-enhancing efficiencies change the incentives of the merger firms and induce them to act as stronger competitors to their rivals. Rivalry-enhancing efficiencies may prevent an SLC by offsetting any anticompetitive effects.
12. A merger efficiency is not the same as a merged entity choosing to change the way it operates or integrating one merger firm into the operating model of the other merger firm. Rather, rivalry-enhancing efficiencies arise where a merger strengthens the ability and incentive of the merged entity to respond to market forces in a pro-competitive manner. Merger-specific changes that are likely to result in such a change include a reduction in the costs to produce the good or service, the bringing together of complementary research and development assets or a reduction in the costs of innovation.
13. In this case, Asda argued that its prices for both fuel and groceries are consistently lower than prices at the Arthur sites and therefore, after the Merger, prices at these sites will fall. Asda also argued that there will be some procurement efficiencies.
14. The CMA has considered Asda's submissions on efficiencies within its established framework for assessment, which includes considering whether the purported efficiencies will enhance rivalry and are specific to the Merger in question (ie whether the merger efficiencies are reliant on the merger in question or whether they could be brought about by other means). In doing so, the CMA has had regard to the high level of confidence needed, particularly within a phase 1 investigation, to

accept that any efficiencies would offset the competition concerns identified by the CMA.

15. The CMA considers that moving the Arthur fuel and grocery sites to Asda's pricing policy relates to a change in the strategy and business model of the acquired sites. This is not considered an efficiency within the CMA's established guidance. Operating models and corporate strategies can change over time, and a permanent structural change to the market (such as the one brought about by a merger) can weaken the market forces that restrain firms from, for example, raising prices.
16. The CMA has found that the purported efficiencies cannot be relied upon to enhance rivalry in the local areas where the Merger gives rise to a realistic prospect of an SLC. As these areas fail the CMA's decision rule, they are all areas in which both Parties are active at present and will face insufficient competition post-Merger. Further, the CMA considers that the purported efficiencies, including those relating to procurement, are not Merger-specific. This is because Asda is, by definition (because the decision rule is based on existing overlaps), already present in all of the relevant local areas, and because the Merger is not needed for Asda or Arthur to adopt lower prices in those local areas.
17. The CMA therefore considers that the purported efficiencies will not prevent the realistic prospect of an SLC in any of the relevant local areas.