

Completed Acquisition by Eville & Jones (Group) Limited of Vorenta Ltd

Decision that undertakings might be accepted

ME/2023/22

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 20 March 2023. Full text of the decision published on 6 April 2023/

Introduction

1. Pursuant to a share purchase agreement dated 9 September 2022, Eville & Jones (Group) Limited (**E&J**) acquired the whole issued share capital of Vorenta Ltd (**Vorenta**), including its subsidiaries Hall Mark Meat Hygiene Limited (**HallMark**) and Meat and Livestock Commercial Services Ltd (**MLCSL**) (the **Merger**). E&J and Vorenta are together referred to as the '**Parties**'.
2. On 6 March 2023, 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 the Parties 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 E&J the 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. Accordingly, on 13 March 2023, E&J 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 E&J 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 in relation to:
 - (a) the outsourced supply of Meat Official Controls¹ to the FSA in England and Wales;
 - (b) the supply of products of animal origin (**POAO**) Export Health Certificates in Great Britain;
 - (c) the outsourced supply of Official Veterinarians to undertake POAO Border Inspections² in England; and
 - (d) the outsourced supply of Inspectors to undertake certain inspections (**Agricultural Inspections**)³ on behalf of the Rural Payments Agency (**RPA**) in England (the **SLC Areas**).
8. To address this SLC, E&J has offered to give undertakings in lieu of a reference to divest the entire Vorenta business, including MLCSL and HallMark, and all assets of the business (the **Proposed Undertakings**). Under the Proposed Undertakings, E&J has also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

The CMA's provisional views

9. When considering whether to accept UILs, the CMA has an obligation under the Act to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any resulting adverse effects.⁴ The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and

¹ Meat Official Controls are the document and physical checks of animals, carcase and offal to ensure compliance with hygiene, food and feed law and rules on animal health and welfare in meat production establishments.

² Border Inspections are inspections over POAO being imported into the UK from certain third countries at border control posts.

³ Agricultural Inspections are inspections carried out by, or on behalf the RPA, before the RPA makes grants or payments to farmers, traders, or landowners under a number of funding schemes available in the UK.

⁴ [Mergers remedies \(CMA87\)](#), December 2018, paragraph 3.30.

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.⁵

10. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that they would result in at the divestment of the overlapping activities identified by the SLC Decision in the SLC Areas. As such, the Proposed Undertakings may result in replacing the competitive constraint provided by Vorenta that would otherwise be lost following the Merger.
11. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation, in particular in light of the fact that Vorenta was a stand-alone business prior to the Merger that exerted a competitive constraint on E&J in the SLC Areas. The divestment of the entire Vorenta business will restore competition to the level that would have prevailed absent the Merger. The information currently available to the CMA suggests that there are no material implementation risks involved in this divestment.
12. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after E&J has entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects of the Proposed Undertakings. In order to consider the proposed buyer as being suitable, the CMA will need to be satisfied that the purchaser suitability criteria in the Remedies Guidance are met.⁶ These criteria include the requirement that the proposed purchaser has the financial resources, expertise, incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with the merged entity in the relevant market.
13. The CMA considers that the Upfront Buyer Condition is necessary in this case, in accordance with its guidance that at Phase 1, the CMA will generally require an upfront buyer unless it considers that there are reasonable grounds for not doing so and, in particular, where the risk profile of the remedy does not require it.⁷

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

⁶ [Mergers remedies \(CMA87\)](#), December 2018, in particular paragraphs 4.30-4.34, and 5.20-5.32.

⁷ [Mergers remedies \(CMA87\)](#), December 2018, paragraph 5.29.

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.
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. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer is effective and credible such that the competitive constraint provided by Vorenta absent the Merger is replaced to a sufficient extent.

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.⁸

Decision

17. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by E&J, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 19 May 2023 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 17 July 2023 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for an in-depth Phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Sorcha O'Carroll
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Competition and Markets Authority
20 March 2023

⁸ [Mergers remedies \(CMA87\)](#), December 2018, paragraphs 4.27–4.28.