

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

Decision that undertakings might be accepted

ME/7018/22

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 28 March 2023.

Introduction

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 Asda Group are together referred to as the **Parties**.
2. On 14 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 and Arthur 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 the Parties 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. On 21 March 2023, the Parties 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 the Parties 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 (i) the retail supply of road fuel in 11 local areas, and (ii) the retail supply of groceries at mid-size stores (**MSS**) in 3 local areas (together, the **SLC Areas**) as a result of horizontal unilateral effects. The SLC Areas are listed in Annex 1. In its assessment, the CMA identified catchment areas defined by drive-time isochrones centred on each of the Arthur, EG, and Asda sites. Where the Parties' and Arthur's sites overlapped, the CMA applied a decision rule to establish whether the Merger results in a realistic prospect of an SLC.
8. To address the competition concerns set out in the SLC Decision, the Parties have offered to divest a site in each of the SLC Areas, such that no areas would fail the CMA's decision rule following the divestment. The sites currently offered by the Parties (together the **Divestment Business**) are listed in Annex 1. The divestment will occur by way of a sale of the freehold or, subject to the CMA's approval, the grant of a leasehold title with a minimum 25-year term (which may be subject to a break clause at 15 years exercisable at the option of the purchaser) (where Arthur holds the freehold interest in the site), or by way of an assignment of a leasehold interest (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.¹ However, it is open to the parties to persuade the CMA that a proposed remedy that does not directly restore

¹ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

competition to pre-merger levels nevertheless clearly and comprehensively removes the SLC identified.²

10. 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.³ The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation. The Parties have provided evidence that the Divestment Business consists of standalone, profitable sites, that petrol stations are in high demand as assets to be acquired (as illustrated by a number of recent acquisitions of petrol stations), and that there are several potential suitable purchasers specifically for the sites included in the Divestment Business.⁴ For this reason, and consistent with the CMA's practice in previous cases involving the divestment of petrol stations, 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.⁵ For the purposes of the sale, the Parties propose to split the Divestment Business into a maximum of three packages, unless otherwise agreed by the CMA.⁶
11. 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.
12. 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

13. 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.⁷

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

³ The CMA notes that in one of the sites identified as an SLC area in the SLC Decision (Arthur Rochester (Anthony's Way)), the divestment does not remove the entire increment in the local area. In line with its previous decisions, the CMA considers that 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 SLC areas identified. See ME/6911/20 Completed acquisition by Bellis Acquisition Company 3 Limited of Asda Group Limited, June 2021; ME/6966/21 Completed acquisition by Clayton, Dubilier & Rice Holdings, LLC of Wm Morrison Supermarkets Limited, June 2022.

⁴ Mergers Remedies Form submitted on 21 March 2023, paragraphs 15 and 16; Confidential Annexes 5 to 8, and 10.

⁵ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (paragraphs 5.28 to 5.32).

⁶ Please see the Endnote on page 4.

⁷ [CMA2](#), paragraph 8.29.

ENDNOTE

i. Following clarification from the Parties, the last sentence in paragraph 10 should read: 'For the purposes of the sale, the Parties propose to divest the Divestment Business in a maximum of three packages, unless otherwise agreed by the CMA.'

Decision

14. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 30 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 25 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 a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
28 March 2023

ANNEX 1: SLC AREAS

Table 1: Road fuel

No.	Site name	Asda / EG / Arthur site	Proposed Divestment
1	Barnard Castle	Arthur	Arthur Barnard Castle
2	Calcutt	EG	Arthur Cirencester
3	Caledonian Road	Arthur	Arthur Caledonian Road
4	Earlston	Arthur	Arthur Earlston
5	Gnosall (Station Road)	Arthur	Arthur Gnosall (Station Road)
6	Lauder	Arthur	Arthur Lauder
7	Minsterley	Arthur	Arthur Minsterley
8	Oakdale (Ripon Road)	Arthur	Arthur Oakdale (Ripon Road)
9	Rochester (Anthony's Way)	Arthur	Arthur Rochester (Anthony's Way)
10	Stonehaven (Kirkton Road)	Arthur	Arthur Stonehaven (Kirkton Road)
11	Weycock Cross	Arthur	Arthur Weycock Cross

Table 2: MSS

No.	Site name	Asda / EG / Arthur site	Proposed Divestment
1	Earlston	Arthur	Arthur Earlston
2	East Peckham	Arthur	Arthur East Peckham
3	St Columb Minor (Henver Road)	Arthur	Arthur St Columb Minor (Henver Road)