

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

DECISION ON ACCEPTANCE OF UNDERTAKINGS IN LIEU OF REFERENCE

ME/7018/22

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 30 May 2023. Full text of the decision published on 1 June 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 (**PFSSs**). 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 situation¹ 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**).

¹ 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.

3. On 21 March 2023, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to the Parties on 28 March 2023, 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 the Parties' offer (the **UILs Provisional Acceptance Decision**).
4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.²

The undertakings offered

5. As set out in the SLC Decision, the CMA found 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.³ The SLC Areas are listed in Annex 1 of the UILs Provisional Acceptance Decision (attached here at Annex 2). 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.
6. As set out in the UILs Provisional Acceptance Decision, to address the SLC identified by the CMA the Parties have offered undertakings to divest a site in each of the SLC Areas to a suitable purchaser or purchasers, such that no areas would fail the CMA's decision rule following the divestment (the **Proposed Undertakings**). The Parties have offered to divest 13 retail fuel sites with attached grocery stores (together the **Divestment Business**), which are listed in Annex 1 of the UILs Provisional Acceptance Decision (the **UILs**) (attached here at Annex 2). Specifically, the Divestment Business comprises the following:
 - (a) all the transferable rights, assets, interests and obligations Arthur holds in each particular business, including without limitation: the freehold or long leasehold of the sites; inventory; the employees dedicated to the Divestment Business; relevant agreements; governmental approvals and permits (including petroleum licences) necessary for the operation of the Divestment Business, to

² See [Asda / Arthur \(Co-op\) merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/asda-arthur-co-op-merger-inquiry).

³ The CMA found a realistic prospect of an SLC in one of the sites in relation to both road fuel and MSS groceries. Accordingly, the CMA identified 13 total SLC Areas.

the extent transferable; and product and pricing information, account histories, and historic commercial data relating to the Divestment Business; and

- (b) the whole of the retail fuel and grocery business on the relevant site, including any forecourt beverage offerings.

Consultation

7. On 18 April 2023, 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 Annex 1 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
8. The CMA received two submissions during the consultation period. One submission was in support of the UILs (in particular, supporting a divestment remedy in the Rochester local area) and the other submission concerned matters not relevant to the CMA's consideration of the proposed UILs. Neither of these submissions raised concerns in relation to the CMA's proposed acceptance of the UILs and there is no other reason for the CMA to change its preliminary view that the UILs would be acceptable.
9. The CMA therefore considers that the UILs offered by the Parties are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

Decision

10. For the reasons set out above, the CMA considers that the UILs provided by the Parties 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 by the Parties pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
11. The undertakings, which have been signed by the Parties and will be published on the CMA webpages, will come into effect from the date of this decision.

⁴ The full consultation text was published on [Asda / Arthur \(Co-op\) merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/asda-arthur-co-op-merger-inquiry).

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

Colin Raftery
Senior Director
Competition and Markets Authority
30 May 2023

ANNEX 1

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

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

ME/7018/22

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 situation⁶ 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.⁷
3. On 21 March 2023, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 28 March 2023, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for

⁶ 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.

⁷ See [Asda / Arthur \(Co-op\) merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/asda-arthur-co-op-merger-inquiry).

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 Parties' offer (the **UIL Provisional Acceptance Decision**).

The undertakings offered

5. As set out in the SLC Decision, the CMA found 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.⁸ The SLC Areas are listed in Annex 1 of the UIL Provisional Acceptance Decision. 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.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA the Parties have offered undertakings to divest a site in each of the SLC Areas to a suitable purchaser or purchasers, such that no areas would fail the CMA's decision rule following the divestment (the **Proposed Undertakings**). The Parties have offered to divest 13 retail fuel sites with attached grocery stores (together the **Divestment Business**), which are listed in Annex 1 of the UIL Provisional Acceptance Decision. Specifically, the Divestment Business comprises the following:
 - (a) all the transferable rights, assets, interests and obligations Arthur holds in each particular business, including without limitation: the freehold or long leasehold of the sites; inventory; the employees dedicated to the Divestment Business; relevant agreements; governmental approvals and permits (including petroleum licences) necessary for the operation of the Divestment Business, to the extent transferable; and product and pricing information, account histories, and historic commercial data relating to the Divestment Business; and
 - (b) the whole of the retail fuel and grocery business on the relevant site, including any forecourt beverage offerings.
7. The Parties have offered to use their best endeavours and act in good faith and effect to the satisfaction of the CMA the divestment of the Divestment Business as a

⁸ The CMA found a realistic prospect of an SLC in one of the sites in relation to both road fuel and MSS groceries. Accordingly, the CMA identified 13 total SLC Areas.

going concern within an agreed timeframe and in no more than three packages, unless otherwise agreed in writing with the CMA.

8. The text of the Proposed Undertakings is available on the CMA webpages.⁹

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.¹⁰ This is because in the SLC Decision the CMA applied a decision rule to establish whether the Merger gave rise to an SLC in local areas, and divesting the Divestment Business will ensure that no areas identified as SLC Areas will continue to fail the CMA's decision rule.
10. The CMA also considers that the Proposed Undertakings would be capable of ready implementation. This is because:
- (a) The Divestment Business is comprised of established standalone, profitable retail fuel and grocery businesses and, as such, constitutes an attractive business for a wide variety of potential purchasers.
 - (b) The CMA does not have material concerns as to the viability or attractiveness of the Divestment Business to potential purchasers (ie composition risk) or the availability of suitable purchasers (ie purchaser risk).
 - (c) The CMA has also been provided with evidence of a number of potentially suitable purchasers who have expressed an interest in purchasing the Divestment Business.
11. For these reasons the CMA does not consider it appropriate 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

⁹ See [Asda / Arthur \(Co-op\) merger inquiry - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

¹⁰ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance \(OFT1122\)](#), December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2014, Annex D).

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 webpage.¹¹
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.¹²
15. Representations should be made in writing to the CMA and be addressed to:

Lily Xiao

Email: Lily.Xiao@cma.gov.uk

Deadline for comments: 3 May 2023

¹¹ See [Asda / Arthur \(Co-op\) merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

¹² Under paragraph 2(4) of Schedule 10 to the Act.

ANNEX 2: 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)