Completed acquisition by Topps Tiles Plc of certain assets of Tildist Realisations Limited (formerly CTD Tiles Limited)

Decision that undertakings might be accepted

ME 7123/24

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Contents

INTRODUCTION

1. On 19 August 2024, Topps Tiles Plc (**Topps**) acquired certain assets (including the right to occupy 30 stores, selected stock, fixtures and fittings, all intellectual property, and employees transferred under TUPE regulations), formerly of CTD Tiles Limited (**CTD**) (the **Merger**). Topps and CTD are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

2. On 17 February 2025, 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**). Unless otherwise stated, all defined terms are as defined in 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 Topps 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 Topps 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 24 February 2025, Topps 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 Topps 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 as a result of horizontal unilateral effects in the supply of tiles to Retail customers and in the supply of tiles to Trade customers in the local areas around six of the Parties' stores in the UK. In its assessment, the CMA identified

catchment areas surrounding each of the Topps and CTD stores. The CMA used a single average catchment area of 24 minutes' drive time for both Parties' stores. The CMA then applied a decision rule by which the Merger gives rise to a realistic prospect of an SLC in the supply of tiles to Retail customers and in the supply of tiles to Trade customers in local areas where, after the Merger, two or fewer effective competitors remain. This resulted in six SLCs in total, affecting areas in Dorking, Aberdeen, Inverness and Edinburgh (the **SLC Areas**).

8. To address this SLC, Topps has offered to give undertakings in lieu of a reference to divest a site or sites (pertaining to either CTD or Topps) in each of the SLC Areas, including store inventory, store-specific customer and supplier lists as well as store-level management and staff (the **Divestment Sites**), such that no areas would fail the CMA's decision rule following the divestment (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]

10. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLCs identified by the CMA, given that they would remove entirely the overlap between the Parties in the supply of tiles to Retail customers and in the supply of tiles to Trade customers in each of the SLC Areas. As such, the Proposed Undertakings may result in replacing the competitive constraint provided by CTD 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. Topps proposes to divest the entire increment in each of the SLC areas, either through the divestment of the local CTD store, or through the divestment of all Topps stores that fall into the relevant catchment area.[2]

12. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation. Topps has provided evidence that the Divestment Sites are viable, commercially attractive sites that could be operated on a standalone basis, with goodwill, staff, store-specific customer lists, equipment, fixtures and fittings forming part of the divestment package for each of

[1] Mergers remedies (**CMA87**), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).
[2] Merger Remedies Form submitted on 28 February 2025 (**Merger Remedies Form**), paragraphs 1.2–1.3.

the Divestment Sites.[3] Topps has also provided evidence that there are several potential purchasers for the Divestment Sites, whether they are divested individually or in combination. Topps submitted that it has already received expressions of interest covering all of the Divestment Sites from a range of potential purchasers, and that the UK tile market is generally dynamic with sites regularly being transferred both on a single and multi-site basis.[4] This is consistent with evidence seen by the CMA during its investigation, that prior to the Merger, each of the relevant CTD Divestment Sites was subject to interest and offers from potential buyers other than Topps. Topps has also submitted financial figures (current and forecasted) for each of the Divestment Sites. In each of the SLC Areas there is at least one store which is profitable, by a significant margin, and is forecasted to remain that way for at least the next two years. For these reasons, 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]

13. 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.

14. 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.

15. Section 94 of the Act places a duty on any person to whom the Final Undertakings accepted by the CMA relate to comply with them. Any person who suffers loss or damage due to a breach of this duty may bring an action. Section 94 of the Act also provides that the CMA can seek to enforce the Final Undertakings accepted by the CMA by civil proceedings for an injunction or for any other appropriate relief or remedy. Under sections 94AA and 94AB of the Act, the CMA can impose financial penalties in respect of a failure to comply with the Final Undertakings accepted by the CMA without reasonable excuse as set out in Annex 1 and the *Administrative penalties: Statement of Policy on the CMA's approach (CMA4)*.

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.[6]

[3] Merger Remedies Form, paragraph 2.2.
[4] Merger Remedies Form, paragraph 2.2.
[5] CMA87, paragraphs 5.28 to 5.32
[6] CMA87, paragraphs 4.27–4.28.

DECISION

17. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Topps, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 1 May 2025 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 30 June 2025 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.

Joel Bamford
Executive Director, Mergers
Competition and Markets Authority
3 March 2025

ANNEX 1

ENFORCEMENT OF UNDERTAKINGS GIVEN UNDER SECTION 73 – IMPOSITION OF CIVIL PENALTIES

Imposition of civil penalties

1. Under section 94AA(1), the CMA may impose a penalty on a person—

   (a) from whom the CMA has accepted an enforcement undertaking, or

   (b) to whom an enforcement order is addressed,

   where the CMA considers that the person has, without reasonable excuse, failed to comply with the undertaking or order.

2. In deciding whether and, if so, how to proceed under section 94AA(1) the CMA must have regard to the statement of policy which was most recently published under section 94B at the time of the failure to comply.

Amount of penalty

3. A penalty under section 94AA(1) is to be such amount as the CMA considers appropriate.

4. The amount must be—

   (a) a fixed amount,

   (b) an amount calculated by reference to a daily rate, or

   (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.

5. A penalty imposed under section 94AA(1) on a person who does not own or control an enterprise must not—

   (a) in the case of a fixed amount, exceed £30,000;

   (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day;

   (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.

6. A penalty imposed under section 94AA(1) on any other person must not—

(a) in the case of a fixed amount, exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;

(b) in the case of an amount calculated by reference to a daily rate, for each day exceed 5% of the total value of the daily turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;

(c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.

7. In imposing a penalty by reference to a daily rate—

(a) no account is to be taken of any days before the service on the person concerned of the provisional penalty notice under section 112(A1), and

(b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the person complies with the enforcement undertaking or enforcement order.