

Completed acquisition by the Midcounties Co-Operative Limited of Tuffin Investments Limited

ME/5452-12

The OFT's decision on reference under section 22 of the Enterprise Act 2002 (the **Act**) was given on 18 October 2012 (the **Decision**). The full text of the Decision was published 5 November 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. Midcounties Co-operative Limited (**Midcounties**) is a member-owned co-operative society that is active in the provision of a range of services including grocery retailing, travel retailing, pharmacy, child care, Post Office and funeral care. It provides these services from approximately 470 branches in the United Kingdom (**U.K.**). For the year 2011, Midcounties generated total net sales of approximately £641.1 million, of which approximately £503.3 million was from the retail supply of groceries.
2. Tuffin Investments Limited (**Harry Tuffins**) is comprised of the grocery and fuel¹ retailing business of Harry Tuffin Limited that was acquired by Midcounties.² Harry Tuffins operates 10 grocery stores, eight of which are also active in the retail supply of fuel. For the financial year ending 2011, Harry Tuffins generated total net sales of approximately £[] million, of which approximately £[] million was from the retail supply of groceries.

¹ This includes the supply of petrol, diesel and LPG.

² A water bottling business (Montgomeryshire Natural Spring Water Company) and a wildlife and country park (Churchstoke Country Park) together with certain other properties are not included in the transaction.

TRANSACTION

3. This transaction concerns the acquisition by Midcounties of the entire issued share capital of Harry Tuffins and was completed on 30 April 2012.
4. Midcounties provided Initial Undertakings to the OFT pursuant to section 71 of the Enterprise Act 2002 (the **Act**) for the purpose of preventing pre-emptive action and the OFT has agreed to certain derogations from these undertakings as set out in three consent letters dated 3 May, 16 July and 16 November 2012.

JURISDICTION

5. In the Decision, the OFT found that Midcounties and Harry Tuffins ceased to be distinct and that it is or may be the case that the share of supply test as per section 23(3) of the Act was met. Consequently, the OFT found that a relevant merger situation had been created.

BACKGROUND

6. In its Decision, the OFT found that the merger created a realistic prospect of a substantial lessening of competition in the retail supply of groceries in four local areas, namely: Bishop's Castle, Craven Arms/Church Stretton, Lydney and Coleford.
7. In reaching this decision, the OFT took into account, where applicable on an area by area basis, the following factors: illustrative price rise estimates of a magnitude to suggest potential competition concerns, lack of evidence to support entry of a competing fascia, the removal of a close competitor (by distance and/or according to survey results) and the number of third party concerns.
8. Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission (**CC**).

DIVESTMENT UNDERTAKINGS OFFERED BY MIDCOUNTRIES

9. To address the OFT's competition concerns, Midcounties offered to divest the Harry Tuffins' stores in Bishop's Castle and either the Harry Tuffins' or

the Midcounties' store in each of Craven Arms/Church Stretton,³ Lydney and Coleford.

10. As a structural remedy that will result in the removal of the overlap in each of the areas in which the OFT found that the test for reference was met, the OFT considers that the undertakings in lieu of a reference (**UILs**) are clear cut to resolve its concerns.
11. The OFT decided that, given the nature of the UILs offered by Midcounties in relation to Lydney and Coleford, and the commercial attractiveness of the stores in Bishop's Castle and Craven Arms, there was no need to include an upfront buyer provision in this case.
12. In its Decision the OFT therefore announced that it was suspending its duty to refer the acquisition to the CC under section 22 of the Act because the OFT was considering whether to accept the UILs from Midcounties.

CONSULTATION

13. On 3 December 2012 the OFT published the proposed UILs, inviting interested parties to give their views on them by 24 December 2012 pursuant to paragraph 2(1) Schedule 10 of the Act. The consultation text published on the OFT's website alongside the proposed UILs is set out in the attached Annex.
14. The OFT received no comments from interested parties during the consultation period.

DECISION

15. The Decision concluded that the merger would be referred to the CC if the parties failed to give suitable UILs to address the competition concerns identified in the decision.
16. The OFT considers that the UILs provided by Midcounties are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore

³ The parties stated their willingness to sell the Midcounties store in Church Stretton following further negotiation subsequent to the OFT's announcement of its Decision.

decided to accept the UILs offered by Midcounties pursuant to section 73 of the Act.

17. The merger will therefore not be referred to the CC and the UILs, which have been signed by Midcounties will come into effect from this date.

Annex

COMPLETED ACQUISITION BY THE MIDCOUNTIES CO-OPERATIVE LIMITED OF TUFFIN INVESTMENTS LIMITED

Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002

OFT's duty to refer

On 18 October 2012, the OFT announced its decision (the 'Decision') to suspend its duty to refer the completed acquisition by the Midcounties Co-operative Limited (Midcounties) of Tuffin Investments Limited (Harry Tuffins) to the Competition Commission under section 22 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings from Midcounties in lieu of reference.

In the Decision, the OFT set out the reasons why it concluded that it believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in relation to the retail supply of groceries around the local areas of Bishop's Castle, Craven Arms/Church Stretton, Lydney and Coleford. Accordingly, the OFT has a duty to refer the merger to the Competition Commission.

Divestment undertakings offered by Midcounties

To address the OFT's competition concerns, Midcounties offered to divest the Harry Tuffins' stores in Bishop's Castle and either the Harry Tuffins' or the Midcounties store in each of Craven Arms/Church Stretton,⁴ Lydney and Coleford. Although Midcounties has indicated a preference to sell the Harry Tuffins stores in each area, it is for Midcounties under the undertakings to achieve a sale of one of the relevant stores within the Divestment Period.

As a structural remedy that will result in the removal of the overlap in each of the areas in which the OFT found that the test for reference was met, the OFT considered in its Decision that Midcounties' offer of undertakings was, in principle, clear cut to resolve its concerns.

Process going forward

The acceptance by the OFT of these proposed undertakings in lieu is dependent on this public consultation.

⁴ The parties stated their willingness to sell Midcounties store in Church Stretton following further negotiation subsequent to the OFT's announcement of its Decision.

The OFT considers that the proposed undertakings offered by Midcounties are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the decision.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the proposed undertakings.

Download the proposed undertakings in lieu at [website link].
Before reaching a decision as to whether to accept the proposed undertakings, interested parties are invited to make their views known.

Representations should be made in writing to:

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Deadline for comments: 24 December 2012

