

Notice of consultation on provisional advice to the Secretary of State for Business, Innovation and Skills from the CMA's review of structural merger undertakings under the Fair Trading Act 1973

23 September 2015

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Please note that [REDACTED] indicates figures which have been deleted for reasons of commercial confidentiality.

Introduction

1. The Competition and Markets Authority's (CMA) annual plan for 2015/16¹ noted the start of a systematic review of existing merger, market and monopoly remedies, which may lead to the removal of measures that are no longer necessary and/ or may be restricting or distorting competition.

¹ See [CMA annual plan 2015/16](#), paragraphs 4.12 and 4.17.

2. The CMA announced on 26 March 2015 that it had launched a review of all structural merger remedies put in place before 1 January 2005 and to which the mergers provisions of either the Fair Trading Act 1973 or the Enterprise Act 2002 apply.
3. This notice concerns 18 structural merger remedies under the Fair Trading Act 1973. The CMA's decisions on merger remedies under the Enterprise Act 2002 will follow later in 2015.²

Jurisdiction

4. The CMA has a statutory duty under sections 75J, 88(4) and 88(5) of the Fair Trading Act 1973 to keep under review undertakings and orders made under the Fair Trading Act 1973. The CMA must, from time to time, consider whether, by reason of any change of circumstances:
 - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
 - (b) an order is no longer appropriate and needs to be varied or revoked.
5. Where the CMA considers a remedy under the Fair Trading Act 1973 is no longer appropriate it is the CMA's role to advise the Secretary of State for Business, Innovation and Skills on whether to release or vary the remedy.

Undertakings which have lapsed

6. This review has found that 11 of the 18 merger remedies have lapsed. In these cases, the CMA will not be providing advice to the Secretary of State for Business, Innovation and Skills, but will remove these cases from the CMA's register of undertakings and orders. These cases are listed in the table below.

² The CMA's 26 March announcement listed 22 Fair Trading Act 1973 remedies. However, this review has treated two separate remedies concerning Mills & Allen and Avenir Havas Media – Brunton Curtis together; we have noted that undertakings in the Carlton – United News Media merger were proposed but never entered into; and of the two further cases, William Hill – Grand Metropolitan falls to be examined under the Enterprise Act 2002, and the undertakings in the Rockware – United Glass merger were removed in 2006.

Table 1: Lapsed undertakings

| <i>Undertakings given by</i> | <i>Target business</i> |
|--|--|
| Bass plc and Punch Group Limited | 550 pubs owned by Allied Domecq |
| BET Environmental Services plc | Johnson Group Cleaners plc |
| British Petroleum Company plc | Century Oils Group Limited |
| British United Provident Association Limited | Community Hospitals Group plc |
| Davy Corporation plc | British Rollmakers Corporation Limited |
| Eurocanadian Shipholdings Limited | Furness Withy and Company Limited and Manchester Liners Limited |
| European Ferries Group Limited | Sealink Limited |
| Guest Keen and Nettlefolds plc | AE plc |
| Kingfishers plc | Dixons plc |
| Pilkington Brothers Limited | UKO International Limited |
| Stagecoach Holdings plc | Cambus Holdings Limited |

Provisional advice

7. The CMA's provisional advice in relation to each of the remaining seven merger remedies is set out in the annexes noted in Table 2 below. In each case, our provisional advice is that the remedies should be revoked.

Table 2: Undertakings on which the CMA intends to advise the Secretary of State for Business, Innovation and Skills

| <i>Undertakings given by</i> | <i>Target business</i> | <i>Decision detail in Annex</i> |
|---|--|---------------------------------|
| Avenir Havas Media SA and Mills & Allen Ltd | Brunton Curtis Outdoor Advertising Ltd | 1 |
| Boots Company Ltd | House of Fraser Ltd | 2 |
| Elders IXL Ltd | Scottish and Newcastle plc | 3 |
| Enserch Corporation | Davy Corporation Ltd | 4 |
| Granada Group Ltd | Forte plc | 5 |
| Standard Chartered plc | The Royal Bank of Scotland Group plc | 6 |
| Williams Holdings plc | Racal Electronics plc | 7 |

Consultation on the CMA's provisional advice

8. The CMA is consulting on its provisional advice to the Secretary of State for Business, Innovation and Skills in each of the seven cases described above and in the relevant annexes below.
9. This consultation will close on **6 October 2015**. If you wish to respond to this consultation, please contact the CMA as follows:

Bob MacDowall

7th Floor North
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

Email: remedies.reviews@cma.gsi.gov.uk

10. Following this consultation, the CMA will consider the responses received and the evidence and views presented and will assess the impact of these responses on its provisional advice before advising the Secretary of State for Business, Innovation and Skills of its final advice in these cases.
11. The decisions in these cases will be taken by the Secretary of State for Business, Innovation and Skills.

Annex 1: Avenir Havas Media SA and Mills & Allen Limited – Brunton Curtis Outdoor Advertising Limited – review

Undertakings given by

Avenir Havas Media SA (Avenir) and Mills & Allen Limited (Mills and Allen)

Jurisdiction

Fair Trading Act 1973

Details of the transaction

In April 1991, Havas SA (Havas), through Avenir, acquired, through Avenir's wholly-owned subsidiary Mills & Allen, Brunton Curtis Outdoor Advertising Ltd (Brunton Curtis).

Monopolies and Mergers Commission report published

21 November 1991

The market concerned

1. Before the merger, Mills & Allen was the leading supplier of roadside poster advertising services in the United Kingdom, with a market share (including a number of sales agreements with other companies) of some 22.1%. Brunton Curtis was also a poster contractor, with a market share of some 5.3%. Other main suppliers were More O'Ferrall PLC (19.8%), Maiden Outdoor Advertising Ltd (Maiden) (13.6%) and Allam & Co Limited (9.2%), the remaining 30% share being accounted for by a large number of generally small firms. As a result of the merger Mills & Allen had acquired a number of panels which it sold pursuant to undertakings given following a 1987 report of the Monopolies and Mergers Commission (MMC) on another merger. The MMC examined the industry afresh and assessed the effects of this merger on the market in the light of the then current circumstances.
2. Roadside posters accounted for less than 5% of display advertising expenditure in the UK. The MMC considered the extent to which roadside posters could be regarded as a distinct market. It concluded that while there was some substitutability between roadside posters and other advertising media, that this was insufficient to offset the effects of any loss of competition between poster contractors.
3. The MMC also considered whether it was valid to distinguish the effects of the merger on the different panel sizes. Different sizes of poster tend to address

somewhat different audiences, smaller posters (particularly 4-sheets) being aimed mainly at pedestrians, larger posters (48-sheets and above) mainly at road users. Since the MMC's 1987 report, a new 6-sheet panel, positioned on bus shelters and with back illumination, had been introduced, which had been marketed to attract advertisers from the larger 48-sheet panels. In the MMC's view, however, while there was a degree of overlap between roadside panels of different sizes and some complementarity in their use, neither the 6-sheet nor the 4-sheet panels could be regarded as providing effective competition to 48-sheet and larger panels.

Theory of harm

4. The merger increased Mills & Allen's share of 48-sheet and larger roadside panels to some 33.8% (significantly larger than the second largest supplier of such panels, Maiden with 19%), with a more pronounced effect in a number of regions. The MMC regarded as well-founded the concern of a number of parties from whom it heard that the merger, by enhancing the ability of Mills & Allen to sell panels in packages, was likely to operate to the disadvantage of users, and to weaken the position of other poster contractors.
5. Although new poster contractors entered the industry quite frequently in a small way, there were significant barriers to growth, in particular planning regulations which limited the number of new panels that could be erected. The MMC found that the threat of potential entry would not act as a constraint upon the behaviour of existing contractors. It believed, therefore, that the effect of the merger was to reduce competition and choice in the supply of 48-sheet and larger roadside panels, and this was expected to lead in time to higher prices than would be achieved in a more competitive situation. There were not sufficient benefits resulting from the merger to offset the adverse effects the MMC identified.

Description of the undertakings

6. The undertakings were given on 8 June 1992 and required that Avenir and Mills & Allen sell all the 48-sheet and larger panels which were owned or otherwise under the control of Brunton Curtis at the date of its acquisition by Mills & Allen. They also required Avenir and Mills & Allen:
 - (a) Not to hold any interest in any of the 2,768 48 sheet and larger panels (the Panels) and the sites on which they were located ('the Sites'), which were held by Brunton Curtis immediately before its acquisition by Avenir Havas Media SA, and which were disposed of pursuant to these undertakings.

- (b) Not to hold or have an interest in more than 15% of the issued share capital of any company holding an interest in any Panel or Site, or more than 15% of the voting rights exercisable at meetings of any such company.
- (c) To procure that no employee or director of Mills & Allen holds or is nominated to any directorship or managerial position in any undertaking holding an interest in any Panel or Site.
- (d) Not to participate in the formulation of the policy of any person with respect to the carrying on of any business relating to the display of posters on Panels or Sites.

History of the companies since the undertakings were given³

7. Mills & Allen Limited (company number 00825315) was renamed JCDecaux Limited on 31 December 2002 and is still active.
8. Brunton Curtis Outdoor Advertising Limited (company number 02393530) was renamed Dolphin Outdoor Advertising Holdings Limited on 13 July 1993 and was dissolved on 21 March 2006.

Change of circumstances

9. The CMA considers that there has been a change of circumstances which makes it appropriate to release the undertaking on the grounds that it has been over twenty years since the divestment of the 2,768 48-sheet and larger panel sites and, as such, the inherent ongoing creation, removal, acquisition and disposal of advertising panels and sites over this long period of time has made it impossible to monitor and enforce the remedy.

Provisional advice

10. Accordingly the CMA proposes to advise that Mills & Allen Limited be released from the undertakings.

³ Source: Companies House data.

Annex 2: Boots Company Limited and House of Fraser – review

Undertakings given by

Boots Company Limited (Boots)

Jurisdiction

Fair Trading Act 1973

Details of the transaction

Contemplated acquisition by Boots of House of Fraser Limited (HoF).

Monopolies and Mergers Commission report published

30 July 1974

The markets concerned

1. The MMC indicated that the area of greatest overlap was in the retailing of toiletries and cosmetics where the combined enterprise would have had a market share of 28.9%.
2. The Competition Commission's 2006–08 report on groceries⁴ and a report for European Retail Research,⁵ noted that the retailing in the UK had changed substantially since 1974; with significant growth among grocery retailers across a number of areas of retailing, including toiletries and cosmetics.
3. By way of comparison, in 2015, Tesco had over 3,500 stores in the UK, while Alliance Boots had over 4,000 pharmacies in the UK.⁶ HoF had around 60 department stores in the UK,⁷ while other department stores including Marks & Spencer had many more stores than HoF in the UK.⁸
4. The internet has also emerged as a new sales channel. Boots, and especially HoF, are smaller players in a much larger retail sector in the UK, worth, in 2008, £256 billion. According to the report referred to above, the top 25 retailers in the UK accounted for 56% of retail sales.

⁴ Competition Commission (2008), [Groceries market investigation – Final report](#).

⁵ [Retailing in the United Kingdom – a synopsis](#): Institute for Retail Studies, University of Stirling, Steve Burt, Leigh Sparks and Christopher Teller, a January 2010 working paper published by the University of Stirling.

⁶ Wikipedia, [Health and Beauty Retail](#).

⁷ [House of Fraser website](#).

⁸ [Marks & Spencer store list](#).

5. These changes have helped to broaden the options for consumers seeking these products with current options including toiletries and cosmetics stores, general retailers like supermarkets, department stores as well as options for purchasing online both from existing retail brands and online only suppliers.

Theory of harm

6. The MMC expected that the strong feelings of resentment within HoF about the proposed acquisition and a recent lack of enthusiasm by Boots to proceed with it would lead to a net reduction in the efficient uses of resources. The MMC considered that the companies were best left independent of each other.
7. The MMC also said, at paragraph 132 of its report, that:

with this degree of concentration already existing in the retail field [combined enterprise would have 2.7% of retail sales and top 25 retailers had a 28.5% share of sales], any merger of retailing organisations on the scale of that proposed is, in our view, a cause for concern. In the first place there would be an immediate loss of a wholly independent decision centre among large retailers. The fewer such centres there are, the less chance there is of competition in the broad sense of the word.

8. The MMC recommended that the acquisition should not be allowed to proceed.

Description of the undertakings

9. Boots gave undertakings after publication of the MMC's report not to acquire any shares in HoF and its subsidiaries if such an acquisition might result in a merger situation qualifying for investigation; and to consult the Director General of Fair Trading before taking any steps which may result in enterprises carried on by Boots ceasing to be distinct from enterprises carried on by HoF.

History of the companies since the undertakings were given⁹

10. Boots (company number 00027657) and HoF (company number SC021928) are still trading.

⁹ Source: Companies House data.

Change of circumstances

11. In the CMA's view there have been changes in the overall UK retailing sector outlined above and a change to the respective positions in the market of the parties to this prospective merger from 1974. These changes in circumstances, along with the passage of time reducing some of the concerns identified in the MMC's report, lead the CMA to consider that the undertakings are no longer appropriate.

Provisional advice

12. The CMA proposes to advise that the undertakings are no longer appropriate and that Boots should be released from them.

Annex 3: Elders IXL Limited and Scottish and Newcastle Breweries plc – review

Undertakings given by

Elders IXL Limited (Elders)

Jurisdiction

Fair Trading Act 1973

Details of the transaction

1. During late 1987 and in 1988 Elders acquired a substantial shareholding in the UK brewer Scottish & Newcastle Breweries plc (S&N). Elders, a conglomerate based in Australia, had acquired another United Kingdom brewer, Courage, in 1986 and also owned brewing companies in Australia and Canada, made a full bid for S&N in October 1988. The Secretary of State for Trade and Industry referred this bid, 'the merger in contemplation', to the Monopolies and Mergers Commission (MMC) on 9 November 1988.
2. On the day the merger reference was announced, Elders acquired a further substantial block of shares taking its total holding to 23.6%. The Secretary of State made a second reference, 'the merger in being', on 7 December 1988.
3. The MMC considered the extent to which Elders' shareholdings, by far the largest individual shareholding in S&N, enabled it to control or materially to influence the policy of S&N. It decided that while Elders would not be able to control S&N it could use its shareholding materially to influence the policy of the company.

Monopolies and Mergers Commission report published

21 March 1989

The market concerned

4. The companies overlapped in the brewing and supply of beer in the UK. Table 2.7 in the MMC's report indicated that, according to S&N's estimates, Courage (owned by Elders) had a UK market share of 10.7% and S&N 11.0%, while Bass had 21.0%.
5. Paragraph 2.43 of the MMC report indicated that, in Scotland, S&N and Courage each had a 40% market share while Allied Domecq had 13%.

6. The table below indicates that by 2008, Elders (now SABMiller/Carlton United Breweries – see below) had no presence in the UK market, primarily following the sale of Courage to Scottish and Newcastle in 1996.

Table 1: Shares of beer sales in the UK by value across on-trade and off trade, 2008

| <i>Company</i> | <i>Share of beer sales (%)</i> |
|-------------------------------------|--------------------------------|
| Scottish and Newcastle | 30 |
| Molson Coors | 20 |
| Inbev | 20 |
| Carlsberg | 14 |
| Diageo | 5 |
| Others (regional and local brewers) | 11 |

Source: Key note report, Brewers and the beer market – 2008.

7. In 2008 SABMiller combined Miller Brewing Company with the US business of Molson Coors, to create its MillerCoors joint venture in the USA. Furthermore, in 2011 SABMiller, acquired the Fosters Group in Australia.¹⁰
8. SAB Miller has a 58% share in the MillerCoors US joint venture with the remainder held by the Molson Coors Brewing Company. Molson Coors Europe is the company owned by the Molson Coors Brewing Company which is active in Europe including the UK. SABMiller/Carlton United Breweries was not a significant player in the UK market in 2014. Market shares in the supply of beer in the UK in 2015 are shown in the table below.

Table 2: Market shares in the supply of beer in the UK in 2015

| <i>Company</i> | <i>Shares in the supply of beer (%)</i> |
|---|---|
| Heineken UK Limited | 17.6 |
| Molson CoorsBrewing Company UK Limited | 15.0 |
| InBev Limited | 12.0 |
| Carlsberg UK Limited | 10.7 |
| Greene King Limited | 2.3 |
| Charles Wells and Company Limited | 2.0 |
| Marston's plc | 1.6 |
| The Fuller Beer Company | 1.4 |
| Shepherd Neame Limited | 1.4 |
| BrewDog plc | 1.0 |
| Others (all under 1.0%, including Meantime Brewery Limited) | 35.0 |

Source: March 2015 IBISWorld Industry Report (C11.050) – Beer Production in the UK.

9. As shown above, SABMiller/Carlton United Breweries' market share in the supply of beer in the UK is insignificantly low, forming parts of the 'Others' category and having less than 1% on a national basis.

¹⁰ See: [SABMiller website](#).

10. Since the MMC report, the brewing and pub sector in the UK has changed in structure, through the release of 11,000 pubs from brewery tie via the beer orders. This led to the creation of large retail pub chains, such as Enterprise Inns and Punch Taverns that were not owned by brewers, with many brewers selling off at least part of their pub estates into separate enterprises. In 1989, the five largest brewers had between them a 77% share of the market for the supply of beer.¹¹ All these brewers had direct control of pub estates. Now, only one large national brewer, Heineken UK Limited, has a pub estate, and this comprises only about 3%¹² of the UK's pubs. Several larger regional brewers also have pub estates but it is clear that the vertical links between brewers and pubs have diminished since the time of the merger.

Theory of harm

11. The MMC found that the merger may be expected to have the following adverse effects in the brewing industry:
 - (a) A reduction of consumer choice and competition between brands by leading to a large increase in the scope of the control of a single brewer.
 - (b) A reduction in competition for the supply of beer to the free trade.
 - (c) A restriction of competition by the strengthening of the present duopoly of suppliers in Scotland.
 - (d) A reduction of competition in the market to supply beer to off-licences.
 - (e) The creation of a second major beer group which, together with Bass, would control over 40% of the supply of beer.

Description of the undertakings

12. The undertakings (given on 5 July 1989) required Elders to reduce its shareholding in S&N such that Elders no longer had material influence in the company.

History of the companies since the undertakings were given¹³

13. Elders is not recorded by Companies House. It is an Australian company which is still active at the time of this review, and was renamed Fosters Group Limited.¹⁴ Fosters Group Limited was renamed Carlton and United Breweries

¹¹ Source: OFT report on the 1995 inquiry into brewers wholesale pricing policy.

¹² Source: Key note reports – Public Houses 2015.

¹³ Source: Companies House data, unless otherwise stated.

¹⁴ See: [delisted Australia website](#).

and purchased by SABMiller Beverage Investments on 16 December 2011.¹⁵
– SABMiller has world-wide interests in brewing and the supply of beer.¹⁶

14. S&N (company number SC016288) was renamed Scottish and Newcastle plc on 16 September 1991 and was renamed again Scottish & Newcastle Limited on 17 June 2008. It is active but is now only as a holding company. It was acquired by Heineken and Carlsberg on 31 March 2008 and the UK operations were split off to Netherlands-based Heineken.¹⁷ The company is no longer quoted on the stock exchange is now owned by Heineken NV

Change of circumstances

15. The CMA considers that the reduction in share of SABMiller in the UK brewing market represents a change in circumstance, as there is no longer a significant competitive overlap in this market in the UK.
16. The CMA also notes that there have been wider changes in the brewing and pubs sector in the UK in recent years, including the growth of pub companies unrelated to breweries that have reduced the significance of some brewing firms in their ownership of pubs in the UK.

Provisional advice

17. Given the change in circumstance identified above, the CMA proposes to advise that the undertakings are no longer appropriate and that Carlton United Breweries should be released from them.

¹⁵ See: [Carlton & United Breweries website](#).

¹⁶ See the [SABMiller Annual Report for 2015](#).

¹⁷ See: [BBC news: 'S&N shareholders approve takeover'](#).

Annex 4: Enserch Corporation and Davy Corporation Limited – review

Undertakings given by

Enserch Corporation (Enserch)

Jurisdiction:

Fair Trading Act 1973

Details of the transaction

Proposed acquisition of the Davy Corporation Limited (Davy) by Enserch.

Monopolies and Mergers Commission report published

31 July 1981

The market concerned

Engineering – process plant

Theory of harm

1. The MMC said that since Enserch (which was a US company) did not engage in engineering contracting in the United Kingdom there was no question of a detriment to the public interest arising from reduced competition. The MMC foresaw detriments to exports and employment arising from the loss of Davy's national character as a British bidder in overseas markets, the lengthening of the chain of management command, and the effects of certain United States legislation. It therefore concluded that the proposed merger may be expected to operate against the public interest because it would be likely to lead to a lower level of exports of both engineering services and manufactured goods than would be obtained in the absence of the merger. The lower level of exports would lead necessarily to a lower level of employment. The reduction in Davy's operations which the MMC foresaw would, it thought, be damaging to the development and diffusion of engineering skills in the British economy.

Description of the undertakings

2. Enserch undertook (on 10 September 1981) not to acquire Davy and not to take any further steps to implement the proposed merger and not to renew its offer to acquire the shares of Davy.

History of the companies since the undertakings were given¹⁸

3. Enserch was acquired by Energy Future Holdings.¹⁹
4. In 1992, Trafalgar House acquired Davy. Trafalgar House itself was acquired by Kvaervner in 1996. Davy (Company number 00006662) is in liquidation.

Change of circumstances

5. The relevant engineering business of the Davy Corporation Enserch was dissipated in the course of the various mergers²⁰ Davy was involved in. Furthermore, the Davy parent company is in liquidation. These two factors lead the CMA to conclude that there has been a change of circumstances such that the undertakings are no longer appropriate.

Provisional advice

6. The CMA proposes to advise that Enserch is released from the undertakings.

¹⁸ Source: Companies House data, unless otherwise stated.

¹⁹ See [Energy Future Holdings website](#). The CMA has not received evidence on whether, following that acquisition, Enserch still exists as a legal entity. If Enserch has ceased to exist then the undertakings would be regarded as lapsed. As the CMA has not received specific evidence its provisional advice is for the Secretary of State to release the undertaking for completeness.

²⁰ See [Johnson Matthey Process Technologies website](#).

Annex 5: Granada Group Limited and Forte plc – review

Undertakings given by

Granada Group Limited (Granada)

Jurisdiction

Fair Trading Act 1973

Details of the transaction

Granada acquired Forte plc in early 1996 after a hostile bid process.²¹

The market(s) concerned

The provision of goods and services at motorway service areas.

Theory of harm

1. There were concerns about a reduction in competition and consumer choice in the provision of goods and services at motorway service areas.

Description of the undertakings in lieu of reference

2. The undertakings, given on 9 July 1996, required Granada to sell and not reacquire the business, defined as its 'Welcome Break' business in:
 - (a) the motorway service areas listed in schedule 1 to the undertakings;
 - (b) the budget hotels (the budget hotels located at 16 of the motorway service areas; and
 - (c) the sites listed in schedule 2 to the undertakings.
3. Granada was to require the buyer of the business not to acquire the right to use, or have any other right in the 'Happy Eater', 'Little Chef' or 'Travelodge' brands six months after completion of the sale. There were price-capping undertakings in place pending fulfilment of this undertaking but these have ceased to have effect as the undertaking was fulfilled since, on 6 March 1997, Granada sold to Investcorp its Welcome Break business, including 21 motorway service areas.²²

²¹ Neale, B, Milsom, T, Hills, C, & Sharples, J (1998), '[The Hostile Takeover Process: A Case Study of Granada Versus Forte](#)', *European Management Journal*.

²² See OECD (1997), [changes to competition laws and policies adopted or envisaged](#).

History of the companies since the undertakings were given²³

4. Granada (company number 00290076) is active but non-trading. The motorway service business was divested in 2001, now known as Moto, and is no longer part of the business.
5. There is no trace of Forte plc in Companies House records.

Change of circumstances

6. Granada has ceased owning motorway service areas, with the motorway service business, now known as Moto, divested in 2001.²⁴ Given that it is no longer active in this market and has not been for 14 years the CMA considers that the undertakings are no longer appropriate.

Provisional advice

7. The CMA proposes to advise that the undertakings are no longer appropriate and that Granada should be released from them.

²³ Source: Companies House data.

²⁴ See [Motorway Services Online: Operators](#).

Annex 6: Standard Chartered plc and the Royal Bank of Scotland Group plc – review

Undertakings given by

Standard Chartered plc (SC)

Jurisdiction

Fair Trading Act 1973

Details of the transaction

SC made a bid for The Royal Bank of Scotland Group plc (RBS).

Monopolies and Mergers Commission report published

15 January 1982

The market(s) concerned

1. SC and RBS supplied banking services but at the time of the merger, SC's activities did not overlap with RBS. The MMC noted at paragraph 5.1 of its report that SC was registered in the UK but conducted most of its business overseas. It noted, at paragraph 12.5 of its report, that there would be no significant reduction in competition in the UK if SC and RBS merged.
2. The MMC report noted that at the time of the merger two companies provided 80% of the banking services in Scotland, of which RBS was one.
3. Today there are three large banks in Scotland – Clydesdale bank – which is owned by National Australian Bank, RBS and Bank of Scotland which is part of the Lloyds Group.
4. Market shares in 2014²⁵ were as set out in the table below.

²⁵ Sourced from the confidential version of the retail banking market investigation [updated issues statement](#) appendices.

Table 1: Market shares in 2014

| Bank (% market shares by all active accounts at the end of 2014) | Personal current account banking | | SME banking | |
|--|----------------------------------|----------|-------------|----------|
| | UK | Scotland | UK | Scotland |
| Royal Bank of Scotland | [X] | [X] | [X] | [X] |
| Lloyds Banking Group | [X] | [X] | [X] | [X] |
| Clydesdale Bank | [X] | [X] | [X] | [X] |
| HSBC | [X] | [X] | [X] | [X] |
| Santander | [X] | [X] | [X] | [X] |
| Barclays | [X] | [X] | [X] | [X] |
| TSB | [X] | [X] | [X] | [X] |
| Nationwide | [X] | [X] | [X] | [X] |
| Others | [X] | [X] | [X] | [X] |

Source: CMA estimates made in the course of its [retail banking market investigation](#).

Theory of harm

5. The MMC made the following points in Chapter 12 of its report:

- In certain cases the comparative economic difficulties of regions such as Scotland have been accentuated by the acquisition of locally managed and controlled businesses by companies from outside, whether elsewhere in the UK or overseas.
- Such acquisitions have consequences for the scope and scale of local control and management and its responsiveness to local needs. The development of a 'branch economy' creates the danger that it will be the operation in Scotland that is first to be closed or reduced in hard times, while the main business elsewhere is maintained. Further, a local operation, even while it flourishes, will generally be responsible for fewer and less important functions than if it were a wholly independent concern. Overall direction of the enterprise is typically moved to the head office of the acquiring company, and with it major decisions in such areas as corporate and market strategy, financial policy, labour relations and the employment of senior personnel. The scope of the local managing director's job is correspondingly narrowed.
- An important factor in Scotland's economic difficulties has been the progressive loss of morale which the taking over of large companies has caused; and we accept that this is damaging to Scotland. Entrepreneurial spirit and business leadership depend critically on self-confidence, and on balance we believe that such self-confidence has been weakened.
- Not only has the financial sector retained a strong Scottish character, it has also been one of the more successful sectors in the Scottish economy, providing increasing employment over a number of years when employment in manufacturing has been falling and when unemployment

has been high relative to most other regions of Great Britain. At present approximately 80% of clearing bank deposits in Scotland are held by the two clearing banks with their headquarters and direction there; but if RBS were acquired by one of the bidders, substantially less than one-half of clearing bank deposits would be held by the remaining Scottish bank with headquarters and direction in Scotland.

- RBS is therefore an important company in an exceptionally important and prosperous Scottish industry; and it is a company not only registered in Scotland, but managed and controlled there. RBS is perhaps the largest remaining company of which management and control are located in Scotland. We recognise that a large part of the business and profits of the group relates to England. But the degree of control and management exercised by Scots from Edinburgh, the size of the company and the importance of it and its industry for Scotland lead us to conclude that removal of management and control of the group from Scotland would be a serious detriment.
6. The MMC concluded that the contemplated merger's effects on career prospects, initiative and business enterprise in Scotland would be damaging to the public interest of the UK as a whole and that these adverse effects outweighed any benefits that the MMC could foresee.

Description of the undertakings

7. The undertakings, given on 11 June 1982, required SC not to acquire control of RBS or of enterprises carried on by it.

History of the companies since the undertakings were given²⁶

8. SC (company number 00966425) and RBS (company number SC045551) are still active.

Change of circumstances

9. The public interest reasoning for the undertakings was founded on adverse effects which were unrelated to competition in banking services in Scotland or the UK.
10. Notwithstanding that, in any event there have been wider changes in the character of the market since 1982 with two of the three large banks in Scotland now non-Scottish-owned. The situation where one bank is prohibited

²⁶ Source: Companies House data.

by an undertaking from seeking to acquire another on such a basis is now inconsistent with the current market.

Provisional advice

11. In the light of the above points, the CMA considers that the above undertakings are no longer appropriate. Therefore the CMA proposes to advise that SC is released from the undertakings.

Annex 7: Williams Holdings plc and Racal Electronics plc – review

Undertakings given by

Williams Holdings plc (Williams)

Jurisdiction

Fair Trading Act 1973

Details of the transaction

Williams made a bid for the safes and locks business of Racal Electronics plc.

The market concerned

Locks and safes

Theory of harm

The merger would have resulted in competition concerns arising from high market shares in locks and safes.

Description of the undertakings in lieu of reference

1. The undertakings, given on 4 December 1991, were never put into effect as Williams' bid for Racal Electronics was unsuccessful. The undertakings required Williams to dispose within 15 months of all interests in Racal's UK lock safe and security vault business together with its non-UK safe and lock businesses to the extent that the UK business is dependent on these ('the Business'). Following such disposal, at any time when Williams carries on or has control of any other business of the manufacture or supply of locks in the UK, Williams was required:
 - (a) not to hold any interest in the Business; or any shares or interest in shares in any company carrying on or having control of the Business; or any other interest carrying an entitlement to vote at meetings of any such company;
 - (b) not to acquire, other than in the ordinary course of business, any assets of the Business;
 - (c) to procure that none of its employees or directors will hold or be nominated to any directorship or managerial position in any company or other undertaking carrying on or having control of the Business; and

(d) not to participate in the formulation of any policy concerning the Business.

History of the companies since the undertakings were given²⁷

2. Williams (company number 00585729) changed its name to Williams Limited on 28 May 1997 and again to Chubb Group Limited on 28 February 2001. It is still active.
3. Racal Electronics plc (company number 00497098) was renamed Thales Electronics plc on 20 December 2000 and Thales Electronics Limited on 19 April 2013. It is still active.

Change of circumstances

4. As the 1991 annual report of the Director General of Fair Trading noted (at page 35), Williams' bid for Racal Electronics was unsuccessful and consequently the undertakings were not enforced. Accordingly the CMA considers that the undertakings are no longer appropriate.

Provisional advice

5. The CMA's proposes to advise that the undertakings are no longer appropriate and that Chubb Group Limited should be released from them.

²⁷ Source: Companies House records.