

Completed acquisition by BCA Marketplace plc of SMA Vehicle Remarketing Limited

ME/6549/15

1. BCA Marketplace plc (**BCA**) has acquired SMA Vehicle Remarketing Limited (**SMA**) (the **Merger**). BCA and SMA are together referred to as the **Parties**.
2. On 17 November 2015, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that the Merger constitutes a relevant merger situation and that this 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 24 November 2015, BCA offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, BCA made this offer within five working days beginning with the day after the CMA notified it of the SLC decision under section 34ZA(1)(b) of the Act.
4. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to BCA 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

5. 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.
6. The Parties' activities overlap in the supply of used vehicle auction services at physical auction sites. The CMA assessed the effects of Merger on competition for the supply of these services at a national level and at a local area level. The SLC Decision found that the Merger gives rise to a realistic

prospect of an SLC in relation to the supply of used vehicle auction services at physical auction sites in the Newcastle area.

7. BCA has offered to divest the SMA Newcastle business (the **divestment business**) in order to address the competition concerns identified in the SLC Decision hereinafter referred to as the **Proposed Undertaking**. The business will be divested as a going concern (together with all staff and property) by way of a trade and asset sale.

The CMA's provisional views

8. The CMA's starting point when considering undertakings in lieu of reference is to seek an outcome that restores competition to the level that would have prevailed absent the merger. However, the CMA is open to persuasion from the Parties that a proposed remedy that does not directly restore competition to pre-merger levels, nevertheless clearly and comprehensively removes the SLC identified.¹
9. The CMA considers that the Proposed Undertaking or a modified version of it might be acceptable as a suitable remedy to the SLC identified by the CMA, given that it would remove the increment and restore the competitor fascia count in the Newcastle area to the position prior to the Merger. Following divestment the purchaser will be able to operate the business as a competitor. As such, the Proposed Undertaking may result in replacing the competitive constraint provided by SMA that would otherwise be lost following the Merger.
10. The CMA currently considers that the Proposed Undertaking is capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertaking may be capable of ready implementation, in particular as BCA has provided evidence to the effect that a number of potential purchasers have already expressed an interest in the business.
11. For these reasons, the CMA currently considers that there are reasonable grounds for believing that the Proposed Undertaking, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act.
12. The CMA's decision on whether to ultimately accept the Proposed Undertaking or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed

¹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, paragraph 5.11. *OFT1122* was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

Undertaking is suitable to address the competition concerns identified by the CMA.

Upfront buyer

13. The CMA will only accept undertakings which are capable of ready implementation. The CMA's guidance states that 'the CMA will normally seek an upfront buyer where the divestiture package is not an existing standalone business and/or where the risk profile of the remedy requires it, for example where the CMA has reasonable doubts with regard to the ongoing viability of the divestment package and/or there is only a small number of suitable candidate purchasers'.²
14. The CMA has carefully assessed whether an upfront buyer provision would be appropriate in the present case. The CMA considers that the divestment business is a standalone business, capable of being run as such by a purchaser. As set out above, 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. Therefore, the CMA has decided that, if it were to accept the Proposed Undertaking, it does not need to include an upfront buyer provision.

Consultation process

15. Full details of the Proposed Undertaking will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.³

Decision

16. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertaking offered by BCA, or a modified version of it, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 29 January 2016 pursuant to section 73A(3) of the Act to decide whether to accept the undertaking, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 29 March 2016 if it considers that there are special reasons for doing so. If no undertaking is

² See [CMA2](#), paragraph 8.34.

³ *Ibid*, paragraph 8.29.

accepted, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Sheldon Mills
Competition and Markets Authority
1 December 2015