

Completed acquisition of Avanta Serviced Offices plc by Regus plc

ME/6537-15

1. On 10 April 2015, Regus plc (**Regus**) completed the acquisition of Avanta Serviced Office Group plc (of which Avanta Managed Offices Limited is a subsidiary) (**Avanta**) (the **Merger**). Regus and Avanta are together referred to as the **Parties**.
2. On 18 November 2015, 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 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 25 November 2015, Regus offered undertakings to the CMA for the purposes of section 73(2) of the Act.¹
4. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Regus 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 SLC Decision found a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of serviced office space in the

¹ As required under section 73A(1) of the Act, Regus 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.

Hammersmith, Victoria, Canary Wharf/Docklands, Euston/King's Cross, and Paddington areas of central London.

7. Regus has offered to sell Avanta's serviced office space centre in each of these areas (the **Divestment Businesses**) in order to address the competition concerns identified in the SLC Decision.² Under this proposal, Regus would sell the Divestment Businesses as going concerns, including the assignment to the buyer of all customer contracts relating to, and the transfer (under the TUPE regulations)³ of all centre-level Avanta staff working at, the Divestment Businesses. In cases where a Divestment Business is owned leasehold or is operated through a management contract, that lease or management contract would be assigned to the buyer.
8. Regus submitted that the landlord of the Hammersmith Divestment Business (1 Lyric Square, W6 0NB) may serve notice to terminate the lease on or before [X], in which case the lease would come to an end [X] (if the landlord does not serve notice to terminate the lease, the lease would run until [X]). Regus submitted that, should this circumstance arise, it is unlikely that any buyer would be interested in acquiring the Hammersmith Divestment Business given the limited operation time (less than a year) that would remain under the lease. Regus has therefore proposed a behavioural undertaking that would apply for the remainder of the lease period, should the landlord serve notice to terminate the lease early in accordance with the terms of the agreement. The behavioural undertaking would apply in place of the divestment undertaking in relation to the Hammersmith Divestment Business and would limit Regus's ability to raise prices or reduce quality at the Hammersmith Divestment Business until the lease terminates.

The CMA's provisional views

9. The CMA's aim when considering undertakings in lieu of a reference (UILs) is to seek an outcome that restores competition to the level that would have prevailed absent the merger.⁴

² The Divestment Businesses are: Hammersmith – 1 Lyric Square, W6 0NB; Victoria – 83 Victoria Street, SW1H 0HW; Canary Wharf/Docklands – 5 Harbour Exchange, E14 9GE; Euston/King's Cross – Evergreen House North, NW1 2DX; and Paddington – Merchant Square, W2 1AY.

³ The Transfer of Undertakings (Protection of Employment) Regulations 2006.

⁴ [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).

Structural divestments – all local areas

10. The CMA considers that the proposed structural divestments would remove the overlaps that resulted in the SLC finding in the Hammersmith, Victoria, Canary Wharf/Docklands, Euston/King's Cross, and Paddington areas of central London. Accordingly, the proposed structural divestments would remedy the competition concerns identified in the SLC Decision.

Behavioural undertaking – Hammersmith area

11. Since a merger involves a structural change to a market, the CMA's guidance states that structural undertakings (or, in appropriate cases, quasi-structural undertakings) will normally be the most appropriate remedy.⁵ However, the CMA's guidance states that the CMA will not reject out-of-hand behavioural remedy offers (that is, measures aimed at moderating the scope for a merged company to behave anti-competitively by controlling outcomes), and will consider behavioural undertakings in particular where a structural solution would be impossible or disproportionate and/or where the SLC is expected to have a relatively short duration.⁶
12. The CMA observes that, if the Hammersmith landlord were to serve notice of early termination on Avanta (as described in paragraph 8), the SLC in respect of the Hammersmith area would come to an end with the expiry of the Hammersmith lease. At this stage of its analysis, the CMA considers that the behavioural undertaking proposed by Regus would be a clear-cut, effective, and proportionate means of addressing the short-term SLC arising in the Hammersmith area. The CMA considers that, in these circumstances, it would be disproportionate to require Regus to divest one or more of the Parties' other centres in the Hammersmith area in order to address the short-term SLC.
13. The CMA also considered whether a behavioural undertaking might dampen Regus's incentive to seek to influence the landlord of the Hammersmith Divestment Business not to terminate the lease. Regus provided the CMA with evidence that the landlord's decision whether to terminate the lease would take account of factors that were independent of the relationship with Regus. The CMA is therefore satisfied that the behavioural undertaking would not adversely affect Regus's incentive to negotiate with the landlord.

⁵ [OFT1122](#), paragraphs 5.20 and 5.24

⁶ [OFT1122](#), paragraphs 5.38-43; [Merger Remedies: Competition Commission Guidelines](#) (CC8), paragraph 2.16. CC8 was adopted by the CMA (see [CMA2](#), Annex D).

Conclusion on the CMA's provisional views

14. For the reasons set out above and in the circumstances of the case, the CMA considers that the structural divestments and, if applicable, the behavioural undertaking in relation to the Hammersmith area are capable of achieving as comprehensive a solution as is reasonable and practicable to the SLC identified. The CMA therefore considers that, if the undertakings offered, or a modified version of them, were accepted by the CMA they would represent a clear-cut and effective remedy.⁷

Non upfront buyer

15. The CMA will only accept undertakings that are capable of ready implementation.⁸ In accordance with its guidance, 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. This might be the case, for example, where the CMA has reasonable doubts as to the ongoing viability of the divestment package and/or where there are few suitable candidate buyers.⁹ The CMA may also consider imposing an upfront buyer requirement where it considers that the competitive capability of the divestiture package may deteriorate pending the divestiture or completion of divestiture may be prolonged.¹⁰
16. The CMA has assessed whether an upfront buyer provision would be appropriate in the present case.
- (a) As noted above, Regus would sell the Divestment Businesses as going concerns, including the assignment of all customer contracts relating to, and the transfer under TUPE of all centre-level Avanta staff working at, the Divestment Businesses. Although landlord consents are necessary for the assignment of certain Divestment Business leases or management contracts, Regus has confirmed to the CMA that none of the landlords concerned have objected in principle to such consents. Accordingly, the CMA considers that the Divestment Businesses would be capable of being operated as standalone businesses by a suitable buyer or buyers.

⁷ See [OFT1122](#), paragraph 5.24.

⁸ See [OFT1122](#), paragraph 5.7.

⁹ See [CMA2](#), paragraph 8.34.

¹⁰ See [CC8](#), paragraph 3.19.

- (b) Regus has identified several potentially suitable buyers who have already expressed, or may reasonably be expected to express, an interest in purchasing the Divestment Businesses.
 - (c) The proposed undertakings envisage completion of the sale of the Divestment Businesses within a few months from the date on which the CMA formally accepts the UILs. Regus submitted, further, that the conversion and opening of each Divestment Business would take a very short period of time, and that a new serviced office space centre can typically be fully operational within [X] weeks of signing a lease (or sooner, depending on the extent to which the previous fit out is retained by the acquirer).
17. For these reasons and in the circumstances of the case, the CMA considers that if it were to accept the undertakings, or a modified version of them, it would not need to include an upfront buyer provision.

Consultation process

18. 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 to the Act.¹¹

Decision

19. For the reasons set out above, the CMA considers that there are reasonable grounds for believing that the undertakings offered by Regus, 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 February 2016 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings proposed by Regus, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 30 March 2016 if it considers that there are special reasons for doing so. If no undertakings are accepted, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

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¹¹ [CMA2](#), paragraph 8.29.