

Acquisition by MRH (GB) Limited of 78 service stations from Esso Petroleum Company Limited

Introduction

1. On 26 November, the CMA decided under section 33(1) of the Enterprise Act 2002 (the Act) that it is or may be the case that the acquisition by MRH (GB) Limited (MRH) of 78 service stations from Esso Petroleum Company Limited (the **Merger**) may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom, specifically in the market for the retail supply of road fuel in local areas in Cambridge and Brighton. This would be as a result of the lessening of competitive constraints between MRH Gilton Spar Service Station and Esso City Service Station in Cambridge and between MRH Brighton Spar Service Station and Esso Patcham Service Station in Brighton. That decision of 26 November 2015 is referred to in this decision as ‘the SLC decision’.
2. On 3 December 2015, MRH proposed undertakings to the CMA under section 73(2) of the Act. As required under section 73A(1) of the Act, MRH made this offer within five working days beginning the day after the CMA notified it of the SLC decision under section 34ZA(1)(b) of the Act. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to MRH 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 therefore that the CMA is considering the offer.

The undertakings offered

3. Under section 73 of the Act, the CMA may, instead of making a reference of the Merger for an in-depth (‘phase 2’) investigation, 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 parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

4. MRH has offered to divest the petrol stations listed in the final column of the table in Annex A to this document, including their grocery outlets and related assets (where relevant) by way of sale of the freehold or, subject to the CMA's approval, the grant of a leasehold title with a minimum 15-year term (where MRH holds the freehold interest in the site) or by way of assignment of a leasehold interest. The CMA considers that the proposed divestment of both the MRH Gorton or Esso City sites and the Esso Patcham site is likely to provide a clear-cut and effective remedy for the SLC identified as it would enable a third party to enter and compete in these areas thereby replacing the competitive constraint that would otherwise be lost following the Merger. The CMA also considers that the proposed remedy would be capable of ready implementation as the proposed divestment sites are standalone businesses.

Upfront buyer

5. The CMA will only accept undertakings which are capable of ready implementation.¹ 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 there is only a small number of suitable candidate purchasers.'² In this case, MRH's proposed divestment packages are a standalone business, and it is considered that there are a number of potential purchasers, therefore the CMA has decided that, if it were to accept an undertaking, it does not need to include an upfront buyer provision.

Consultation process

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

The decision

7. For the reasons set out above, the CMA considers that there are reasonable grounds for believing that the undertakings offered by MRH, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 9 February 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 7 April 2016 if it considers

¹ *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122, December 2010), paragraph 5.7. This guidance has been adopted by the CMA (see *Mergers: Guidance on the CMA's Jurisdiction and Procedure* (CMA2, January 2014), Annex D).

² *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2, January 2014), paragraph 8.34.

³ *Idem*, paragraph 8.29.

there are special reasons for doing so. If no undertaking is accepted, the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

Andrea Coscelli
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Competition and Markets Authority
10 December 2015

Annex A: SLC sites and proposed Divestment Businesses

Table 1: SLC sites and proposed Divestment Businesses

<i>Name of MRH site</i>	<i>Address of MRH site</i>	<i>Name of Target site</i>	<i>Address of Target site</i>	<i>Site to be divested</i>
MRH Girton Spar	Huntingdon Road, Girton, Cambridgeshire CB3 0LQ	Eso City Service Station	Histon Road, Cambridge, Cambridgeshire, CB4 3JD	Either MRH Girton Spar or Eso City Service Station Eso Patcham Service Station
MRH Brighton Spar	Mill Road, Brighton, East Sussex, BN1 8ZF	Eso Patcham Service Station	Patcham Bypass, Brighton, East Sussex, BN1 8YE	

Source: MRH (GB) Limited.