

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

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

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 Girton 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 as ‘the SLC decision’. The text of the SLC decision is available on the CMA’s webpages.¹
2. Under section 73(2) 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 substantial lessening of competition 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.
3. 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 gave notice to MRH on 10 December 2015, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the

¹ See the [case page](#).

undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering MRH's offer. A copy of that notice is available on the CMA's webpages.² As set out in the SLC decision, the CMA believes that, in the absence of an appropriate undertaking, it would be under a duty to refer the Merger for a phase 2 investigation.

The undertaking offered

4. As set out in the SLC decision, the CMA found that the Merger gives rise to a realistic prospect of a substantial lessening of competition as a result of the lessening of competitive constraints between MRH Girton Spar Service Station and Esso City Service Station in Cambridge and between MRH Brighton Spar Service Station and Esso Patcham Service Station in Brighton.
5. To address the CMA's concerns, MRH has offered to divest either the MRH Girton site or the Esso City site, and the Esso Patcham site and related assets for these sites, including grocery outlets, by way of the sale of the freehold property 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 – the MRH Girton site and the Esso Patcham site) or by way of assignment of a leasehold interest (the Esso City site). MRH submitted that this divestment will remedy the SLC identified in the SLC decision.
6. The CMA considers that the proposed divestment of the MRH Girton site or Esso City site 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 stand-alone businesses.
7. As set out at paragraph 5 of the notice of 10 December 2015, the CMA does not consider it appropriate to seek an upfront buyer in respect of the Divestment Businesses.

Proposed decision and process going forward

8. For the reasons set out above, the CMA considers that the proposed undertaking offered by MRH is, in the circumstances of this case, appropriate

² See the [case page](#).

to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

9. The CMA therefore gives notice that it proposes to accept these undertakings in lieu of a reference for a phase 2 investigation. The text of the proposed undertakings is available on the case page.
10. Before reaching a decision as to whether to accept the proposed undertakings, the CMA invites interested parties to make their views known.
11. Representations should be made in writing to the CMA by 17:00 on 7 January 2016 and be addressed to:

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Deadline for comments: by 17:00 on 7 January 2016

12. The CMA will have regard to any representations made in response to this consultation and may make modifications to the proposed undertakings as a result. If the CMA considers that any representation necessitates any material change to the proposed undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.