

# Anticipated acquisition by Celesio AG of Sainsbury's Supermarket Limited UK Pharmacy Business

## Decision on reference

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 29 December 2015. Full text of the decision published on 13 January 2016.

### ME/6558/15

1. Celesio AG (**Celesio**), through its subsidiary Lloyds Pharmacy Limited (**Lloyds**), has agreed to acquire the in-store community pharmacy business and hospital pharmacy business of Sainsbury's Supermarkets Limited (**Sainsbury's**) (the **Merger**). Lloyds and Sainsbury's are together referred to as the **Parties**.
2. On 11 December 2015, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this 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 the date of the SLC Decision, the CMA gave the Parties notice of the SLC Decision pursuant to section 34ZA(1)(b) of the Act. However, in order to allow the Parties the opportunity to offer undertakings in lieu of a reference (**UILs**) to the CMA in accordance with section 73(2) of the Act, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer UILs, it must do so within the five working day period specified in section 73A(1)(a) of the Act. The SLC Decision stated that if no UILs were offered to the CMA by the end of this period (ie, by 18 December 2015), or the Parties indicated before this deadline that they did not wish to offer such UILs, then the CMA would refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

5. Pursuant to section 34ZA(2) of the Act the CMA is not prevented from making a reference under section 33 of the Act in the event that it decides that the duty to refer does not apply because it is considering whether to accept undertakings under section 73 of the Act but no such undertakings are offered or accepted.
6. On 18 December 2015, the Parties informed the CMA that they would not offer such undertakings to the CMA.

## **Decision**

7. Therefore, pursuant to sections 33(1) and 34ZA(2) of the Act, the CMA has decided to refer the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation.

**Sheldon Mills**  
**Senior Director of Mergers**  
**Competition and Markets Authority**  
**29 December 2015**