



EUROPEAN COMMISSION  
DG Competition

***Case M.10016 – BELLIS / ASDA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERCER PROCEDURE**

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Article 4(4)  
Date: 08/12/2020



## EUROPEAN COMMISSION

Brussels, 8.12.2020  
C(2020) 8964 final

### **PUBLIC VERSION**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying party**

**To the UK Competition and Markets Authority**

**Subject: Case M.10016 – Bellis / Asda**  
**Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> in conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community,<sup>2</sup> for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area.<sup>3</sup>**

**Date of filing: 3.11.2020**

**Legal deadline for response of Member States: 24.11.2020**

**Legal deadline for the Commission decision under Article 4(4): 8.12.2020**

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 29, 31.1.2020, p. 7–187, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

<sup>3</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Dear Sir or Madam,

## 1. INTRODUCTION

- (1) On 3 November 2020, the Commission received by means of a reasoned submission (the 'Reasoned Submission') a referral request pursuant to Article 4(4) of the Merger Regulation with respect to a concentration which would result from a proposed transaction by which Bellis Acquisition Company 3 Limited ('Bellis', Jersey) intends to acquire control of Asda Group Limited ('Asda', United Kingdom), by way of a purchase of shares (the 'Proposed Transaction'). Bellis and Asda are hereafter referred to as the 'Parties'.
- (2) The Parties request that the operation be examined in its entirety by the competent authorities of the United Kingdom.
- (3) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to a proposed concentration may request that it be referred in whole or in part from the Commission to the Member State(s) where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (4) A copy of the Reasoned Submission was transmitted to all Member States on 3 November 2020.
- (5) By e-mail of 24 November 2020, the Competition and Markets Authority (the 'CMA') as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

## 2. THE PARTIES

- (6) **Bellis** is a limited liability company jointly controlled by Mr Mohsin Issa, Mr Zuber Issa ('Issa Brothers') and TDR Capital LLP ('TDR'), created on 30 September 2020 for purposes of the transaction in question to acquire all issued ordinary shares in the capital of Asda.
- (7) TDR is an investment firm incorporated in the United Kingdom and headquartered in London. It has invested in a variety of sectors including in road fuel retail, gyms and health clubs, UK social housing refurbishment services, modular construction, pubs and restaurants, vehicle remarketing services, home textiles, and coastal transport. TDR is jointly controlled by its founding members, [names]. Neither of them manages or controls other undertakings.
- (8) Issa Brothers and TDR (on behalf of the investment funds it manages) also control EG Group Limited ('EG Group'), each owning 50% of its ordinary share capital and voting rights. EG Group is a British retailer based in Blackburn (United Kingdom), which operates a network of fuel stations, convenience retail stores, and food-to-go concessions in Europe, the United States, and Australia.
- (9) **Asda** is a British supermarket retailer, headquartered in Leeds, West Yorkshire, active in the retailing of food, apparel, general merchandise products, fuel, and services throughout the United Kingdom and online. Asda is a wholly owned subsidiary of Asda Holdings UK Limited ('Asda Holdings'), a limited liability company incorporated in England and Wales. Walmart Inc. ('Walmart'), a company

incorporated in Delaware, United States, is the ultimate parent company of Asda Holdings.

### **3. THE PROPOSED TRANSACTION**

- (10) The Proposed Transaction is to be achieved by means of the acquisition by Bellis of all the issued ordinary shares in the capital of Asda from Asda Holdings, pursuant to a share purchase agreement entered into on 2 October 2020. Following the Proposed Transaction, Asda will be jointly controlled by the Issa Brothers and TDR, through Bellis.
- (11) It follows that the Proposed Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **4. UNION DIMENSION**

- (12) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (TDR: EUR [...]; EG Group: EUR [...]; Asda: EUR [...]). Each of them has an Union-wide turnover in excess of EUR 250 million (TDR: EUR [...]; EG Group: EUR [...]; Asda: EUR [...]). While Asda achieves more than two-thirds of its Union-wide turnover in the United Kingdom, TDR and the EG Group do not achieve more than two-thirds of their respective Union-wide turnover within one and the same Member State.
- (13) Therefore, the concentration has a Union dimension within the meaning of Articles 1(2) and 3(1)(b) of the Merger Regulation.

### **5. ASSESSMENT**

- (14) The Parties' activities overlap in the retail supply of road fuel and auto-LPG in the United Kingdom.
- (15) The Parties' activities also overlap in car washing services, retail supply of groceries, procurement of road fuel, procurement of auto-LPG and procurement of groceries. However, these overlaps derive from, and are generally more limited than, their overlap in the retail supply of road fuel.<sup>4</sup> Hence, the remainder of this decision focuses on road fuel and auto-LPG.

#### **5.1. Relevant product markets**

##### *5.1.1. Retail supply of road fuel*

- (16) In its prior decisional practice, the Commission considered that the retail supply of road fuels constitutes a relevant product market, which encompasses sales made at

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<sup>4</sup> For instance, with regard to car washing services, paragraph 106 of the Form RS states that '[t]he parties' combined share at the national level in the UK is likely to be well below 20%', while paragraph 108 further adds that '[d]espite the absence of reliable share data at the local level, the parties believe that the market for car washing services is not an affected market and, in any event, to the extent that any horizontally affected market did arise it would likely be identified also in relation to the retail supply of road fuel.' Similar arguments are also submitted with regard to the other relevant markets mentioned in paragraph 12.

all service stations, both branded and unbranded, in and outside an integrated retail network.<sup>5</sup> The Commission left open the question whether a further segmentation into (i) motorway and non-motorway retail fuels market, (ii) different types of fuels (gasoline, diesel and auto-LPG), and (iii) B2B and B2C customers was necessary.<sup>6</sup>

- (17) For its part, the CMA has defined a market encompassing retail supply of road fuel, without further segmentation between petrol and diesel, while identifying the retail supply of auto-LPG as a separate market.<sup>7</sup>
- (18) In *CD&R Fund IX/MRH GB*, on a similar request for referral to the CMA, the Commission considered the market for the retail supply of road fuel and retail supply of auto-LPG separately, without further segmentations.<sup>8</sup>

### 5.1.2. Retail supply of auto-LPG

- (19) In its prior decisional practice, the Commission assessed whether the retail supply of auto-LPG could constitute a separate product market, being distinct from the supply of gasoline and diesel, but ultimately left the market definition open.<sup>9</sup>
- (20) For its part, the CMA concluded in its prior decisional practice that the retail supply of auto-LPG should be considered separately from the retail supply of road fuel, given the limited supply-side substitutability between auto-LPG and other road fuels (as specialist equipment must be installed at fuel stations), as well as the lack of demand-side substitutability (as cars need to be adapted to use it).<sup>10</sup>

## 5.2. Relevant geographic market

### 5.2.1. Retail supply of road fuel

- (21) In its decisional practice, the Commission has considered the market for the retail supply of road fuels as national in scope, due to overlapping catchment areas and chains of substitution. However, it has also acknowledged the possible local nature of this market as consumers commonly use local service stations.<sup>11</sup>

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<sup>5</sup> M.9414 – *Kuwait Petroleum Belgium/U Car Services/Vp Oil/Certain Businesses from Uhoda*, para. 11; M.8867 – *CD&R Fund IX/MRH GB*, paras. 11-12; M.8000 – *DCC/Dansk Fuels*, para. 15; M.7849 – *MOL Hungarian Oil and Gas /ENI Hungaria/ENI Slovenija*, paras. 17-20; M.7603 – *Statoil fuel and retail/Dansk fuels*, paras. 24-42.

<sup>6</sup> M.9414 – *Kuwait Petroleum Belgium/U Car Services/Vp Oil/Certain Businesses from Uhoda*, para. 11.

<sup>7</sup> CMA decision of 25 April 2019, case ME/6752-18 – *J Sainsbury Plc/Asda Group Ltd* (Final Report), paras. 14.5 and 14.6; CMA decision of 5 October 2018, case ME/6750/18 – *CD&R Fund IX/MRH (GB) Limited*, para. 33; CMA decision of 23 December 2015, case ME/6563/15 – *MRH/Esso*, para. 28.

<sup>8</sup> M.8867 – *CD&R Fund IX/MRH GB*, paras. 22-23.

<sup>9</sup> M.8867 – *CD&R Fund IX/MRH GB*, para. 13; M.7680 – *DCC Group/Butagaz*, para. 17; M.7161 – *DCC Energy/Qstar Försäljning/Qstar/Card Network Solutions*, para. 14.

<sup>10</sup> CMA decision of 25 April 2019, case ME/6752-18 – *J Sainsbury Plc/Asda Group Ltd* (Final Report), paras. 14.5 and 14.6; CMA decision of 5 October 2018, case ME/6750/18 – *MFG/MRH*, paras. 34 and 38; CMA decision of 26 August 2015, case ME/6534/15 – *MFL/Shell*, para. 27.

<sup>11</sup> M.9414 – *Kuwait Petroleum Belgium/U Car Services/Vp Oil/Certain Businesses from Uhoda*, para. 15; M.7388 – *MOL/Lukoil Czech Republic*, para. 26; M.5781 – *Total Holdings Europe SAS/ERG SPA/JV*, para 31.

- (22) In the past, the CMA considered the retail supply of road fuel at both national and local level, looking at catchment areas with a 10-minute driving time radius in urban areas and 20 minutes in rural areas.<sup>12</sup>

#### 5.2.2. Retail supply of auto-LPG

- (23) In previous decisions, the Commission considered the market for the retail supply of auto-LPG as national in scope, but ultimately left the geographic market definition open.<sup>13</sup> In *CD&R Fund IX/MRH GB*, the Commission referred to the CMA precedents at the time and looked at drive-time isochrones of 40 minutes around the sites.<sup>14</sup>
- (24) The CMA has considered, in addition to the national market, local markets defined using 10-, 20-, 30-, and 40-minute drive-time isochrones.<sup>15</sup>

### 5.3. Assessment of the referral request

#### 5.3.1. Legal requirements

- (25) According to the Commission Notice on Case Referral in respect of concentrations (the ‘Notice’),<sup>16</sup> in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4) of the Merger Regulation, the following two legal requirements must be fulfilled:
- a) there must be indications that the concentration may significantly affect competition in a market or markets,<sup>17</sup> and
  - b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>18</sup>
- (26) With regard to the first requirement, and in light of the information submitted by the Parties in the Reasoned Submission, the Proposed Transaction may significantly affect competition in the markets for the retail supply of road fuel and the retail supply of auto-LPG, always in relation to certain local geographic markets located exclusively within the United Kingdom.
- (27) Specifically, the Parties submit that, at the local catchment area level, there are [various] affected markets for the retail supply of road fuel and several affected markets for the retail supply auto-LPG in the United Kingdom.<sup>19</sup> In all these markets, the Parties’ combined market shares range from 20% to more than 40%.
- (28) Therefore, the first legal requirement set forth in Article 4(4) of the Merger Regulation is met.

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<sup>12</sup> CMA decision of 5 October 2018, case ME/6750/18 – *CD&R Fund IX/MRH (GB) Limited*, paras. 31 and 33; CMA decision of 23 December 2015, case ME/6563/15 – *MRH/Esso*, para. 28.

<sup>13</sup> M.8867 – *CD&R Fund IX/MRH GB*, para. 17; M.7680 – *DCC Group/Butagaz*, paras. 19 and 20.

<sup>14</sup> M.8867 – *CD&R Fund IX/MRH GB*, para. 23.

<sup>15</sup> CMA decision of 5 October 2018, case ME/6750/18 – *MFG/MRH*, paras. 35 – 38.

<sup>16</sup> The Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5.3.2005, p. 2–23.

<sup>17</sup> Further developed in point 17 of the Commission Notice on Case Referral.

<sup>18</sup> Further developed in point 18 of the Commission Notice on Case Referral.

<sup>19</sup> Annex 4, Form RS.

- (29) With regard to the second requirement, the Commission considers that the relevant retail markets are national or smaller than national in scope. The Proposed Transaction would thus not lead to any affected markets that could be wider than the United Kingdom or to any affected markets outside of the United Kingdom. Furthermore, the markets in question present all the characteristics of distinct markets with conditions of competition that are clearly distinguishable from those in other markets, especially in other EEA Member States.
- (30) Therefore, the second legal requirement set forth by Article 4(4) of the Merger Regulation is met.

### 5.3.2. *Additional factors*

- (31) In addition to the verification of the legal requirements, point 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular ‘*whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case*’.
- (32) In addition, point 23 of the Notice states that ‘*[c]onsideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned*’.
- (33) In this case, the Commission considers, first, that the effects of the Proposed Transaction would likely to be confined to the United Kingdom and, in light of the information submitted in the Reasoned Submission, would have their main economic impact in the United Kingdom. Each of the plausible potentially affected markets is not wider than national in scope and all of them are located in the United Kingdom. Therefore, the CMA is well placed to examine the case.
- (34) Second, the CMA has assessed concentrations in the retail fuel and associated (e.g., groceries) sectors<sup>20</sup> and, as a result, has substantial experience and expertise in examining the markets in question. The CMA is therefore well placed to examine this case.
- (35) Third, the requested referral would preserve the ‘one-stop shop’ principle, as this case would be referred in its entirety to a single competition authority, which is an important factor of administrative efficiency.

### 5.3.3. *Conclusion on the referral request*

- (36) In the light of the foregoing and on the basis of the information provided by the Parties in the Reasoned Submission, the Commission concludes that the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market(s) within a Member State which presents all the characteristics of a distinct market.

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<sup>20</sup> CMA decision of 25 April 2019, case ME/6752-18 – *J Sainsbury Plc/Asda Group Ltd*; CMA decision of 5 October 2018, case ME/6750/18 – *CD&R Fund IX/MRH (GB) Limited*; CMA decision of 21 July 2017, case ME/6677/17 – *Tesco/Booker*; CMA decision of 23 December 2015, case ME/6563/15 – *MRH/Esso*; CMA decision of 26 August 2015, case ME/6534/15 – *MFL/Shell*.

- (37) Moreover, the requested referral would be consistent with points 19-23 of the Notice, in particular because the CMA appears to be the most appropriate authority to examine the Proposed Transaction.

**6. CONCLUSION**

- (38) For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the CMA. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*