

Decision to launch reviews of 12 merger remedies dating from before 1 January 2006

Introduction

1. In its [2015/16 Annual Plan](#), the Competition and Markets Authority (CMA) committed to commence a programme of work to review its existing remedies systematically and to remove measures that are no longer necessary. As part of this, in April 2015, the CMA launched reviews of 71 structural merger remedies that had been put in place before 2005. These reviews resulted in 51 remedies being removed.
2. In its [2016/17 Annual Plan](#), the CMA committed to build on this work, launching further reviews of old merger or market remedies. This will include consideration of a further tranche of 38 merger remedies that are more than 10 years old. The CMA [sought views from stakeholders from 22 April to 20 May 2016](#) on which of these remedies it should review as part of this exercise.
3. The CMA has decided to launch reviews of 12 of these merger remedies and to assess the evidence for changes of circumstances in each case. The CMA is continuing to consider the remaining 26 merger remedies, and expects to announce further reviews later this year.

Jurisdiction

4. The CMA has a statutory duty to keep under review undertakings made under the Fair Trading Act 1973 as well as those under the Enterprise Act 2002. For Fair Trading Act 1973 undertakings, the CMA will advise the Secretary of State for Business, Innovation and Skills regarding retaining, varying or releasing undertakings, while for Enterprise Act 2002 undertakings, the CMA can reach the decisions itself.¹

¹ The 12 merger remedies in this decision document comprise 3 Fair Trading Act cases and 9 Enterprise Act cases.

Invitation to comment

5. The CMA launched an invitation to comment on the 38 merger remedies under consideration on 22 April 2016. This closed on 20 May 2016. The CMA received responses from 5 individuals / organisations. Of the responses, 4 respondents provided comments on the suitability of individual remedies under consideration, while one additional respondent provided details of research materials.

Decisions on reviews to launch

6. The CMA has decided to launch reviews of the following 12 merger remedies:
 - (a) Allied Domecq plc / Carlsberg A/S (1992)
 - (b) Arriva plc / Lutonian Buses (2000)
 - (c) Charter Consolidated plc / Anderson Strathclyde plc (1982)
 - (d) Hartley Industrial Trust Ltd / Alan J Lewis and Jarmain and Son Ltd (1992)
 - (e) Hoverspeed UK Ltd / Hoverlloyd Ltd (1981)
 - (f) Inntrepreneur Estates / Scottish Courage (1995)
 - (g) National Express Group plc / Midland Main Line Ltd (1997)
 - (h) National Express Group plc / Prism Rail plc (2001)
 - (i) Nutricia Holdings Ltd / Valio International UK Ltd (1997)
 - (j) Robert Wiseman Dairies plc / Scottish Pride Holdings plc (1997)
 - (k) Serco Group Ltd (Nimbus) / National Air Traffic Services (2001)
 - (l) Thomas Cook Group Ltd / Interpayment Services Ltd (1996)

Prioritisation principles

7. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes to undertake across its areas of responsibility. The CMA has assessed all the information available in relation to the 38 merger remedies in reaching its decision in the light of its published [prioritisation principles](#) as described below. These principles are impact, strategic significance, risk and resources. We consider each of these in turn below.

- (a) Concerning the impact of reviewing these merger remedies, the CMA expects to deliver reductions in regulatory burdens generating indirect benefits for consumer welfare from the release of remedies that are no longer necessary. The CMA considers this to be likely in a number of cases given the behavioural restraint imposed on firms by these remedies as well as their age. Moreover, the removal of remedies that are no longer appropriate allows the CMA to focus its resources on monitoring remedies that continue to generate benefit for consumers and the UK economy.
- (b) The CMA considers these reviews to represent a strategic priority, as this work not only reflects the CMA's statutory duty to keep under review orders and undertakings, but also the CMA's published priorities in the current financial year.
- (c) In relation to risk, the CMA notes that all remedies being considered are over 10 years old, with some considerably older. Given the age of these remedies, it is likely that a significant proportion of them may no longer be appropriate given market and other developments likely to have taken place. While there is at least some risk of the reviews not leading to many remedies being varied or released, there is a realistic prospect of finding a change of circumstances in each of the 12 remedies selected for review at this time.
- (d) Regarding the resources involved in these reviews, the CMA considers that conducting reviews of 12 merger remedies where there may be expected to be synergies from a number of remedies being in similar sectors or having similar characteristics means that this work would involve a modest amount of resource and would represent an efficient way to undertake these reviews.

Conclusion

8. The CMA has reached a decision to launch reviews of the remedies arising from the 12 merger transactions listed above. In reaching this decision, the CMA has obtained sufficient evidence, through its own research and from responses to its consultation, to have established a realistic prospect of finding a change of circumstances in each of the 12 cases to be reviewed. Moreover, the CMA has assessed the reviews of these 12 remedies against its published prioritisation criteria and found the launch of these reviews to be consistent with the criteria.

Stakeholder views

9. The CMA is seeking views from interested parties as to whether or not there is a case for removing or varying any of these undertakings.
10. Those responding should provide their views, supported with relevant evidence where possible, in writing to the CMA either by email or by post as set out below:

Peter Hill
Competition and Markets Authority
7th Floor North
Victoria House
37 Southampton Row
London WC1B 4AD

Email: remedies.reviews@cma.gsi.gov.uk

11. Responses should be received by the CMA by 5pm on **15 July 2016**.