

Completed acquisition by Beijer Ref AB (publ) of HRP Holdings Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6596/16

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 7 June 2016. Full text of the decision published on 18 July 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Prior to the transaction under review, Beijer Ref AB (publ) (**Beijer**) owned 44% of the issued share capital of HRP Holdings Limited (**HRP**). On 1 February 2016, Beijer acquired the remaining issued share capital of HRP (the **Merger**). Beijer and HRP are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that a relevant merger situation has been created.
3. The Parties overlap in the wholesale supply of refrigeration and air conditioning systems and components, as well as spare parts and air source heat pumps in Great Britain (**GB**). The CMA assessed the impact of the Merger in relation to:
 - (a) the wholesale supply of refrigeration components;
 - (b) the wholesale supply of refrigeration systems; and
 - (c) the wholesale supply of air conditioning systems and components (**air conditioning products**).

4. The CMA noted that if no competition concerns were identified on the basis of these narrow frames of reference, there would also be no concerns on a wider basis. Given that the CMA did not find a realistic prospect of a substantial lessening of competition (**SLC**) in these frames of reference (see paragraph 9), it chose not to conclude on the relevant product frame of reference.
5. Given the Parties' low turnover and share of supply in the sale of heat pumps and the lack of concerns raised by customers in regard to this product, the CMA did not consider this overlap further.
6. In terms of the geographic frame of reference, on a cautious basis the CMA considered competition for each product on both:
 - (a) a national (GB) basis, for those customers with planned, non-urgent needs when delivery is an option; and
 - (b) a local basis, for those customers with an urgent need when delivery is not a preferred option. For the local frame of reference, the CMA used a catchment area based on a 20 mile radius from each of HRP's branches.
7. For each of the product frames of reference in paragraph 3, the CMA assessed whether the Merger would give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
8. The CMA used information obtained from Beijer and the views of third parties to examine whether sufficient competitive constraints remained post-Merger to prevent the merged entity from raising prices, reducing discounts or reducing the quality of its products or service to customers on a national and/or local basis. The evidence that the CMA received demonstrated that, for each of the product frames of reference:
 - (a) On a national (GB) level (for customers with planned, non-urgent needs):
 - (i) the Parties are not each other's closest competitors;
 - (ii) several strong competitors remain who compete at least as closely with the Parties; and
 - (iii) customers have multiple accounts with different wholesalers and can and do switch between them.
 - (b) On a local level (for customers with urgent needs), assessed using a 20 mile radius, post-Merger there would remain at least four competing fascias in all local areas except for Norwich.

- (c) In Norwich, although the Merger would result in a reduction from four to three fascias, Beijer's two remaining local competitors are the two largest national wholesale suppliers other than Beijer, and were identified by third parties as significant competitors to Beijer. In addition, these competitors' locations are sufficiently close to Beijer's branches in Norwich for customers to be able easily to switch their purchases to them, even for urgently needed requirements. In addition, the CMA notes that, in Norwich, Beijer faces some out of market constraints arising from the fact that most customers have goods delivered from national suppliers and travel to or from locations other than Norwich for jobs requiring refrigeration and/or air conditioning products. These customers therefore have a good understanding of, and access to, prices in areas where there are more than three competing suppliers.
9. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC in any market as a result of horizontal unilateral effects.
10. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

11. Beijer is a public company incorporated in Sweden. Beijer is active globally in the wholesale supply of refrigeration components, refrigeration systems, air conditioning products and air source heat pumps. In 2015, its global sales were approximately £0.7 billion. In the UK, Beijer operates through two subsidiaries, Dean & Wood Limited (**Dean & Wood**) and Refrigeration Wholesale Limited (**RW**). Dean & Wood has 15 branches and had a turnover of £45.2 million in 2015; RW has 12 branches and had a turnover of £9.3 million in 2015.
12. HRP is also active in the wholesale supply of refrigeration components, refrigeration systems, air conditioning products and air source heat pumps. HRP has 16ⁱ branches across GB. HRP's turnover was £38.7 million in the financial year ending 31 December 2015.

Transaction

13. Prior to the Merger, Beijer owned 44% of the shares of HRP. On 17 November 2015, the Parties entered into a Put and Call Option Agreement, enabling Beijer to exercise an option to acquire the remaining

56% of the shares of HRP. On 18 November 2015, Beijer published a press release announcing the Merger. Also on 18 November 2015, the existing directors of HRP resigned and were replaced by directors appointed by Beijer. On 13 January 2016, Beijer informed the CMA that it had acquired *de facto* control of HRP on 18 November 2015. On 15 January 2016, Beijer served notice of its intent to exercise its option rights. On 1 February 2016, Beijer exercised these rights and completed the acquisition of the outstanding 56% of the shares of HRP.

14. For the purposes of a merger reference, where a person acquires control of an enterprise during a series of transactions or successive events within a single two-year period, sections 27(5) and 29 of the Enterprise Act 2002 allow them to be treated as having occurred simultaneously on the date of the last transaction.¹ The CMA considers it appropriate to treat the transactions or successive events that took place between 18 November 2015 and 1 February 2016 as having occurred simultaneously on 1 February 2016, the date on which Beijer obtained *de jure* control of HRP.
15. The transaction has not been notified to any other jurisdictions.

Jurisdiction

16. As a result of the Merger there has been a change in Beijer's level of control in HRP from no control, or at most material influence, to a controlling interest² and, for this reason, Beijer and HRP have ceased to be distinct.
17. As set out in paragraph 14, the CMA considered it appropriate to treat 1 February 2016 as the date on which Beijer obtained *de jure* control of HRP. The four-month period within which the CMA may make a phase 1 decision in completed mergers, pursuant to section 24 of the Act, commenced on this date. On 3 March 2016, the CMA sent a notice to Beijer under section 25(2) of the Act to stop the four-month period, because Beijer had not complied with a requirement set out in a notice under section 109 of the Act (**the Notice**). Information and documents required by the CMA, as set out in the Notice, had not been provided by Beijer to the satisfaction of the CMA.
18. On 4 April 2016, the CMA restarted the four-month period in accordance with section 25(3)(b) of the Act. The end of the four-month period is therefore 29 June 2016.

¹ [Mergers: Guidance on the CMA's Jurisdiction and Procedures](#), paragraph 4.33.

² [Merger Assessment Guidelines](#), paragraphs 3.2.5 & 3.2.14.

19. Beijer submitted that the combined share of supply of Beijer and HRP did not exceed 25% in respect of the supply of goods of any description in the UK or in a substantial part of it.
20. Beijer provided estimates of their competitors' turnover in both refrigeration and air conditioning. Beijer also provided details of the postcodes of its locations and the locations of its competitors with a trade counter. Using the figures provided by Beijer, the CMA calculated that the Parties have a combined share of approximately [30–40]% in the national wholesale supply of refrigeration components, approximately [10–20]% in the national wholesale supply of refrigeration systems and approximately [30–40]% in the national wholesale supply of air conditioning products (calculated on the basis of those wholesalers with more than one location, as a proxy for being able to supply nationally, and which offer a trade counter to customers (see Tables 1 to 3)). The CMA notes that these share of supply figures do not take into account competitors which offer a delivery-only service (and hence do not have a trade counter).
21. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
22. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
23. The CMA opened an own-initiative investigation into the Merger by sending a request under section 109 of the Act to Beijer on 17 February 2016.³ The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 April 2016 and the statutory 40 working day deadline for a decision is therefore 8 June 2016. The Merger was considered at a Case Review Meeting.⁴

Counterfactual

24. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

³ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9–6.19 and 6.59–60.

⁴ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

a realistic prospect of a counterfactual that is more competitive than these conditions.⁵

25. Beijer submitted that [REDACTED], and highlighted the following factors as evidence of HRP's poor recent performance:
- (a) HRP's sales revenues had fallen steadily for the last few years. Sales in 2014 were down 2% on 2013, and down 18% on 2012, and [REDACTED].
 - (b) HRP had been trading at a loss for the last two years (HRP recorded a loss before tax of £243,000 in 2014, and £3.5 million in 2015).
 - (c) [REDACTED]
 - (d) [REDACTED]
26. Beijer submitted that an alternative purchaser of HRP would not be found given Beijer's pre-existing 44% stake in HRP.
27. The CMA notes that, because the HRP business was sold 'off-market' to Beijer and never marketed to other potential purchasers, there is no evidence to support Beijer's submission that no other party would have bought the business. Therefore, the CMA has no reason to believe that HRP would not have continued to operate in competition with Beijer, either under its pre-Merger ownership arrangements or under the ownership of another firm. For this reason, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual against which to assess the competitive effect of the Merger.

Background

Products offered

28. The Parties provide, on a wholesale basis, refrigeration systems and components, air conditioning products and air source heat pumps. Customers can either purchase for delivery (representing approximately [REDACTED]% of the Parties' overall sales by revenue) or collect from one of the Parties' trade counters (approximately [REDACTED]% of the Parties' overall sales by revenue). Customers are typically equipment installers, manufacturers and tradesmen.

⁵ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

Beijer told the CMA that wholesalers add value to customers by offering technical support and advice, as well as accounts with credit.

29. While offering many of the same products, some wholesalers stock products of some manufacturers that their competitors do not. For example, HRP stocks products from Samsung and Toshiba,ⁱⁱ which Beijer does not.

Pricing and negotiation

30. [✂]

31. [✂]

32. [✂]

Frame of reference

33. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁶

Product scope

34. The Parties overlap in the wholesale supply, by delivery or collection, of refrigeration systems and components, air conditioning products and air source heat pumps.
35. Given the Parties' low turnover and share of supply in heat pumps and the lack of any concerns raised by customers in regard to this product, the CMA has not considered this overlap further.
36. The CMA has considered whether there are separate product frames of reference for the wholesale supply of refrigeration and air conditioning products, and whether any narrower frames of reference are appropriate, such as the separate provision of components and systems for each of refrigeration and air conditioning. The CMA also considered whether it is

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

appropriate to include direct supply from manufacturers in the same frame of reference as wholesale supply.

Wholesale supply of refrigeration and air conditioning products

37. Beijer submitted that there is a single frame of reference for all refrigeration and air conditioning products as wholesalers tend to offer both refrigeration and air conditioning products, serving a wide range of different types of customers (eg contractors and original equipment manufacturers (**OEMs**)).
38. The CMA notes that, given the specific requirements of customers when buying refrigeration and air conditioning products, there is little or no demand-side substitution between refrigeration and air conditioning products. Responses to the CMA's investigation from competitors indicated that they tend to supply both refrigeration and air conditioning products, though some smaller competitors provide only one type of product.
39. Given that there are some dedicated refrigeration or air conditioning suppliers, and given that the CMA focuses primarily on demand side substitution when determining frames of reference, the CMA believes that it is appropriate to consider the wholesale supply of refrigeration and air conditioning products in separate frames of reference.

Narrower frames of reference within refrigeration and/or air conditioning

40. Beijer submitted that wholesalers offer a broad range of products and that customers will often purchase products in a bundle. Beijer said that, in previous cases in relation to the wholesale supply of electrical products,⁷ the Office of Fair Trading (**OFT**) and the CMA had not found it necessary to delineate the market with reference to different products as customers purchase bundles and wholesalers typically stock a similar wide range of products. Beijer also submitted that, whilst it internally recognised differences between the supply of refrigeration systems and components, it did not draw the same distinction between systems and components in air conditioning.
41. Competitors responding to the CMA's investigation stated that they stocked broadly the same range of products as the Parties and as other competitors in both refrigeration and air conditioning. In relation to air conditioning, one competitor told the CMA that it did not draw a distinction between systems and components as an air conditioning system contains fewer components (it

⁷ For example, [ME/5417/12: Completed acquisition by Rexel UK Limited of certain assets of Wilts Wholesale Electrical Company Limited](#) and [ME/5161/11: Completed acquisition by Edmundson Electrical Limited of Electric Center](#).

consists of an outside box, inside box, and components linking the two)⁸ and, compared with a refrigeration system, it is less likely to break down. Another competitor also made this point but said that, internally, it reported air conditioning split between components and systems. However, in relation to refrigeration, some competitors stated that they only focused on refrigeration components and not systems, indicating that these could be considered separately.

42. On the basis of this evidence, and on a cautious basis, the CMA assessed the Merger within separate frames of reference for refrigeration systems and components due to potentially different conditions of competition, but considered air conditioning systems and components together (air conditioning products) as the conditions of competition for these products are similar. The CMA did not conclude on the product frame of reference as no SLC was found on any basis.

Direct supply from manufacturers

43. Competitor wholesalers told the CMA that they competed with direct supply from manufacturers for systems but not for components, in both air conditioning and refrigeration. However, customers told the CMA that manufacturers made very little direct supply to them. The CMA also notes that manufacturers do not have trade counters and therefore cannot compete for some urgent sales which require nearby collection.
44. On a cautious basis, the CMA has not included direct supply from manufacturers within the frame of reference. However, the CMA has taken it into account within its competitive assessment, in particular in relation to competition in refrigeration systems rather than in components, and in relation to purchases that are delivered rather than collected.

Conclusion on product scope

45. The CMA has not concluded on the product frame of reference as no SLC has been found on any basis. However, for the reasons set out above, and on a cautious basis, the CMA has assessed the impact of the Merger in the following product frames of reference:
 - Wholesale supply of refrigeration components.
 - Wholesale supply of refrigeration systems.

⁸ This description was also provided by Beijer.

- Wholesale supply of air conditioning products.

Geographic scope

46. The CMA considered whether the geographic frame of reference should be national and/or local.
47. Beijer submitted that, in relation to each product frame of reference, competition takes place primarily at a national level, but that there may be an element of local competition for those customers who have an urgent requirement. Beijer said that few customers have a single 'national account' in which they appoint a 'lead' wholesaler for the whole of the UK. It said that customers tend to accept deliveries either to their location or their end customers' locations, or will visit the nearest wholesaler for any urgent needs.
48. Beijer submitted that it did not have the data necessary to enable it to identify catchment areas for all its branches, eg the areas covered by 80% of each branch's customers, due to the fact that customers occasionally purchased from other branches a long distance from their home branch. However, Beijer was able to adjust for this difficulty for some specific branches.
49. Beijer submitted that it was not appropriate to assess local competition based on a small (eg ten mile) radius as, unlike in some other markets (eg electrical wholesaling, where wholesalers have branches in many towns), only the very largest refrigeration and air conditioning wholesalers have over 20 branches nationally (ie Climate Center, FSW and Beijer) and most have less than ten branches to achieve national coverage.
50. The CMA investigated the extent to which customers required trade counter sales compared with delivery sales (ie a 'local' service compared with one that could be supplied by any national supplier), and the maximum distance customers would be willing to travel to a trade counter. The responses were the same for both refrigeration and air conditioning.
51. All competitors said that they offered a national delivery service, both large competitors with multiple branches and small single site competitors.
52. Customers who responded to the CMA generally stated that whether they ordered goods for delivery or purchased from a trade counter depended on the circumstances, with customers noting that delivery was convenient but trade counters were important for urgent collections.
53. Customer responses indicated that the maximum distance they were willing to travel to visit a trade counter was between six and 30 miles, with the average being 17 miles. Customers told the CMA that when they have an urgent need,

they will tend to use their nearest branch. Competitors estimated that 80% of their customers purchasing from their trade counters had travelled between 15 to 25 miles.

54. On the basis of this evidence, and on a cautious basis, the CMA has assessed the impact of the Merger on competition on both a national basis, for those customers with planned, non-urgent needs when delivery is an option; and on a local basis, for those customers with an urgent need when delivery is not a preferred option.
55. The CMA used a local geographic frame of reference of 20 miles around each HRP branch. The CMA believes a catchment area of 20 miles is appropriate in the present case based on the evidence it has received from competitors and customers. However, the CMA notes that this catchment area has not determined the competitive assessment in any mechanistic way and the CMA has considered whether there are customers within the catchment area who are more acutely affected by the Merger, and taken account of the constraint posed by competitors outside this area.
56. The CMA considered whether a 20 mile radius would still be appropriate for branches in the London area, given the lower average traffic speeds in London. Beijer estimated that, for the HRP branch in Walthamstow, customers accounting for 80% of collection turnover are located up to [✂] miles from the branch. Similarly, one competitor told the CMA that collection customers at their London trade counter predominantly come from within a 20 to 30 mile radius; and another competitor told the CMA that many of its collection customers at its branches in the London area are based in other parts of the country (coming from as far away as Cardiff), travelling into London for jobs. This evidence suggested that a 20 mile catchment area was also appropriate for the London area.
57. The CMA also notes that, although not all the branches that a customer uses may be suitable alternatives for all of their purchases, especially when they have an urgent need, the fact that customers tend to travel significant distances for jobs allows them to be aware of prices available at competing branches in a wide area. The CMA believes this places customers in a better negotiating position when making collection purchases.

Conclusion on geographic scope

58. For the reasons set out above, and on a cautious basis, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- (a) On a national basis, for those customers with planned, non-urgent needs when delivery is an option.
 - (b) On a local basis, with a 20 mile catchment area, for those customers with an urgent need when delivery is not a preferred option.
59. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since it found no competition concerns on any basis.

Conclusion on frame of reference

60. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- Wholesale supply of refrigeration components on a national basis.
 - Wholesale supply of refrigeration components on a local basis.
 - Wholesale supply of refrigeration systems on a national basis.
 - Wholesale supply of refrigeration systems on a local basis
 - Wholesale supply of air conditioning products on a national basis.
 - Wholesale supply of air conditioning products on a local basis.

Competitive assessment

Horizontal unilateral effects

61. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.⁹ Horizontal unilateral effects are more likely when the merger parties are close competitors.

⁹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

62. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the wholesale supply of refrigeration components, the wholesale supply of refrigeration systems, and the wholesale supply of air conditioning products, on both national and local bases.

National horizontal effects in refrigeration components and systems

Shares of supply

63. Beijer provided the CMA with turnover estimates for their competitors which provide refrigeration systems and components via a trade counter and which have more than one trade counter location. Where possible, the CMA has attempted to verify or replace these estimates with figures provided by each competitor, split by systems and components. However, where it has not been possible to obtain figures directly, the CMA has used the estimate provided by Beijer.^{10,11}
64. The analyses of refrigeration components and refrigeration systems followed the same methodology and are therefore discussed together.
65. Table 1 shows estimated shares of the national wholesale supply of refrigeration components. Table 2 shows estimated shares of the national wholesale supply of refrigeration systems. In both cases, and on a cautious basis, the CMA only included suppliers with more than one trade counter location.

¹⁰ Beijer's estimates were broadly accurate (sometimes an overestimate, sometimes an underestimate). The CMA believes that the estimates used are representative.

¹¹ When splitting systems from components the CMA has had splits provided by Beijer and three third party competitors. For the remaining competitors where revenue and a split was not provided, the CMA has taken a weighted average of the splits provided and attributed 17% of revenue to systems and 83% to components.

Table 1: Estimated market shares in the national wholesale supply of refrigeration components, last financial year*

<i>Supplier</i>	<i>Turnover (£m)</i>	<i>Market share (%)</i>	<i>Number of branches</i>
Beijer	[X]	[20–30]	27 ⁱⁱⁱ
HRP	[X]	[10–20]	16 ⁱ
Combined (excluding delivery only suppliers)†	[X]	[30–40]	43 ^{iv}
Combined (including delivery only suppliers)	[X]	[20–30]	43 ^{iv}
Climate Center	[X]	[20–30]	47 ^v
FSW	[X]	[10–20]	25 ^{vi}
Brymec	[X]	[5–10]	3
TFS	[X]	[5–10]	3
Thermofrost	[X]	[0–5]	3
Kooltech	[X]	[0–5]	7
RSL	[X]	[0–5]	6 ^{vii}
Hotfrost	[X]	[0–5]	2
Smith Brothers Stores	[X]	[0–5]	12
PAC	[X]	[0–5]	2
Total (excluding delivery only suppliers)	[X]	-	-
Delivery only suppliers†	[X]	-	-
Total (including delivery only suppliers)	238.6	-	-

Source: CMA calculations based on data provided by Beijer and competitors.

* The Parties and suppliers who provided data did not all have the same financial year. The CMA therefore based its calculations on data provided on each supplier for the most recently available financial year. The differences in time periods covered by different financial years did not materially alter suppliers' relative market shares.

† 'Delivery only suppliers' are those that offer delivery of products only and not trade counter sales.

Table 2: Estimated market shares in the national wholesale supply of refrigeration systems, last financial year*

<i>Supplier</i>	<i>Turnover (£m)</i>	<i>Market share (%)</i>	<i>Number of branches</i>
Beijer	[X]	[10–20]	27 ⁱⁱⁱ
HRP	[X]	[0–5]	16 ⁱ
Combined (excluding delivery only suppliers)†	[X]	[10–20]	43 ^{iv}
Combined (including delivery only suppliers)	[X]	[10–20]	43 ^{iv}
Climate Center	[X]	[30–40]	47 ^v
FSW	[X]	[20–30]	25 ^{vi}
Brymec	[X]	[5–10]	3
TFS	[X]	[5–10]	3
Thermofrost	[X]	[0–5]	3
Kooltech	[X]	[0–5]	7
Hotfrost	[X]	[0–5]	2
Smith Brothers Stores	[X]	[0–5]	12
PAC	[X]	[0–5]	2
Total (excluding delivery only suppliers)	[X]	-	-
Delivery only suppliers†	[X]	-	-
Total (including delivery only suppliers)	48.3	-	-

Source: CMA calculations based on data provided by Beijer and competitors.

* The Parties and competitors who provided data did not all have the same financial year. The CMA therefore based its calculations on data provided on each supplier for the most recently available financial year. The differences in time periods covered by different financial years did not materially alter suppliers' relative market shares.

† 'Delivery only suppliers' are those that offer delivery of products only and not trade counter sales.

66. The Merger will strengthen Beijer's position as the largest wholesaler in refrigeration components nationally by revenue. Climate Center will remain the largest wholesaler in terms of its branch network (at 47^v branches compared to Beijer's 43^{iv}) but, post-Merger, Beijer will have a [30–40]% market share (on the narrow basis of trade counter-based wholesalers)

compared with Climate Center which has [20–30]% and FSW which has [10–20]%.

67. The Merger will not change the relative rankings of refrigeration system wholesalers. Climate Center and FSW will remain the largest followed by Beijer. Post-Merger, Beijer will have [10–20]% market share (on the narrow basis of trade counter-based wholesalers) compared with Climate Center which has [30–40]% and FSW which has [20–30]%.
68. However, the CMA notes that, customers who do not have an urgent requirement can also use delivery-only suppliers (which do not have a trade counter). Using data provided by Beijer on a wider competitor set which includes all competitors, including those which offer delivery only, the Parties' estimated combined market shares are [20–30]% for refrigeration components with an increment of [10–20]% from the Merger, and [10–20]% for refrigeration systems, with an increment of [0–5]% from the Merger. The CMA believes that these market shares are more relevant when assessing national competition given comments from customers and competitors that trade counters are less relevant for national customers with planned, non-urgent needs.
69. In addition, the CMA notes that direct supply from manufacturers may pose some constraint. The CMA has limited evidence with which to calculate shares based on manufacturer supply but notes third party comments (summarised in paragraph 43) that manufacturer supply may be a constraint.

Closeness of competition

70. The CMA asked customers and competitors whether they considered the Parties to be close competitors in the provision of refrigeration components and systems. 15 customers and six competitors provided responses.
71. Eight customers considered the Parties to be close competitors. These customers noted that the Parties compete strongly on price, whilst noting that there are a number of other alternative wholesalers such as FSW and Climate Center. One customer noted that the Parties compete closely on the range of brands that they offer.
72. The customers who did not identify the Parties as close competitors stated that they were not close because HRP is particularly weak on range and customer service; and said that the Parties have a different focus, with HRP being focused more on air conditioning and Beijer being focused more on refrigeration.

73. The competitors who stated that the Parties were close competitors noted that the Parties offer similar products in similar regions. However, statements from competitors also suggested that there is nothing about the Parties' offerings which makes them particularly close competitors compared with anyone else. Competitors stated that differentiation is limited as all products are seen as commodities by customers, with most competitors stating that they 'compete on all levels' with the Parties and that they 'offer the same or similar products to a similar customer base.' Competitors who stated that they compete closely with the Parties include [X] and [X].

Competitive constraints

74. All the customers who responded to the CMA's investigation said that they use multiple suppliers for refrigeration components. Frequently cited suppliers included Climate Center (9 mentions), Thermofrost (5 mentions) and FSW (4 mentions). Customers said that they tend to choose their supplier of refrigeration components and systems by gathering quotes from multiple suppliers. Customers frequently cited three quotes as the number that they will typically seek. Those customers which stated that they received multiple quotes purchased from a range of suppliers, not just Beijer and HRP.

Conclusion on national horizontal unilateral effects in refrigeration components and refrigeration systems

75. On the basis of this evidence, the CMA believes that although the Parties are close competitors for the wholesale supply of refrigeration components and refrigeration systems on a national basis, they are not each other's closest competitor and there are several other strong competitors remaining which compete at least as closely with the Parties. The CMA notes that customers typically have multiple accounts with different wholesalers and can and do switch between them.
76. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the wholesale supply of refrigeration components or the wholesale supply of refrigeration systems on a national basis.

National horizontal unilateral effects in air conditioning products

77. Beijer provided the CMA with turnover estimates for its competitors which provide air conditioning products via trade counters at more than one location. Where possible, the CMA has attempted to verify or replace these estimates with figures provided by each competitor. However, where it has not been possible to obtain figures directly, the CMA has used the estimate provided by

Beijer.¹² Table 3 shows these estimated shares. On a cautious basis, the CMA only included suppliers with more than one trade counter location.

Table 3: Estimated market shares in the national wholesale supply of air conditioning products, last financial year*

<i>Supplier</i>	<i>Turnover (£m)</i>	<i>Market share (%)</i>	<i>Number of branches</i>
Beijer	[X]	[10–20]	27 ⁱⁱⁱ
HRP	[X]	[20–30]	16 ⁱ
Combined (excluding delivery only suppliers)†	[X]	[30–40]	43 ^{iv}
Combined (including delivery only suppliers)	[X]	[10–20]	43 ^{iv}
Climate Center	[X]	[20–30]	47 ^v
Kooltech	[X]	[10–20]	7
FSW	[X]	[5–10]	25 ^{vi}
Smith Brothers Stores	[X]	[5–10]	12
PAC	[X]	[0–5]	2
Thermofrost	[X]	[0–5]	3
TFS	[X]	[0–5]	3
Hotfrost	[X]	[0–5]	2
Total (excluding delivery only suppliers)	[X]	-	-
Delivery only suppliers†	[X]	-	-
Total (including delivery only suppliers)	154.2	-	-

Source: CMA calculations based on data provided by Beijer and competitors.

* The Parties and competitors who provided data did not all have the same financial year. The CMA therefore based its calculations on data provided on each supplier for the most recently available financial year. The differences in time periods covered by different financial years did not materially alter suppliers' relative market shares.

† 'Delivery only suppliers' are those that offer delivery of products only and not trade counter sales.

78. The Merger will create the largest wholesaler in air conditioning products nationally by revenue. Climate Center will remain the largest wholesaler in terms of its branch network (at 47^v branches compared to Beijer's 43)^{iv} but, post-Merger, Beijer will have a [30–40]% market share (on the narrow basis of trade counter-based wholesalers) compared with Climate Center, which has [20–30]% and Kooltech, which has [10–20]%.

79. However, customers who do not have a local requirement (eg the need to collect parts urgently) can use competitors which offer a delivery-only service (and hence do not have a trade counter). The table therefore reflects an overestimate of the Parties' market shares. Using data provided by Beijer on a wider competitor set, which includes all competitors, including those which offer delivery only, the Parties' estimated combined market share falls to [10–20]%, with an increment of [5–10]% from the Merger. The CMA believes that this market share is more relevant when assessing national competition given comments that trade counters are less relevant for national customers with planned, non-urgent needs.

80. In addition, the CMA notes that direct supply from manufacturers may pose some constraint. The CMA has limited evidence with which to calculate

¹² Beijer's estimates were broadly accurate (sometimes an overestimate, sometimes an underestimate). The CMA believes that the estimates used are representative.

shares based on manufacturer supply but notes third party comments (summarised in paragraph 43) that manufacturer supply may be a constraint.

Closeness of competition

81. The CMA asked customers and competitors whether they considered the Parties to be close competitors in the provision of air conditioning products. 11 customers and seven competitors responded.
82. Five customers considered the Parties to be close competitors. These customers noted that the Parties compete strongly on price, whilst noting that there are a number of other alternative wholesalers such as FSW and Climate Center. One customer noted that the Parties compete closely on the range of brands that they offer.
83. The customers who did not identify the Parties as close competitors stated that they were not close because HRP has been in decline (particularly in the North East of England), and because the Parties have a different focus, with Beijer being more focused on refrigeration.
84. Six competitors stated that the Parties were close competitors. These competitors noted that the Parties offer similar products in similar regions. However, statements from competitors also suggested that there is nothing about the Parties' offerings which makes them particularly close competitors compared with anyone else. One competitor stated that it competes with Beijer across its product range, another said that it competes with the Parties on a daily basis, and another said that it competes closely with the Parties.

Competitive constraints

85. Customers appear to use multiple suppliers for air conditioning products. Ten customers provided details relating to their top five suppliers of air conditioning products. Only two customers said they did not purchase from more than one supplier and only two customers said they bought air conditioning products from just the Parties. Customers mentioned a wider range of alternative suppliers for air conditioning products than for refrigeration products, with wholesalers including FSW, Climate Center and Kooltech, and manufacturers including Daikin and Mitsubishi all mentioned.
86. Most customers said that they choose their supplier of air conditioning products by gathering quotes from multiple suppliers. Four customers stated that they purchased by gathering quotes from more than one source, with three quotes frequently being cited by customers as the number of quotes that they seek.

Conclusion on national horizontal unilateral effects in air conditioning products

87. On the basis of this evidence, the CMA believes that, although the Parties are close competitors for the wholesale supply of air conditioning products on a national basis, they are not each other's closest competitor and there are several other strong competitors remaining which compete at least as closely with the Parties. The CMA notes that customers typically have multiple accounts with different wholesalers and can and do switch between them.
88. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the wholesale supply of air conditioning products on a national basis.

Local horizontal effects: refrigeration systems and components and air conditioning products

89. In relation to local horizontal effects, the CMA notes that both Parties offer refrigeration components, refrigeration systems, and air conditioning products from all of their branches, as do all the effective competitors in our local assessment. Therefore, the CMA used the same methodology for all three local frames of reference.
90. Customers told the CMA that for trade counter purchases, the most important factor determining their choice of supplier was price. In addition to price, customers also told the CMA that the location of a trade counter was important, as when they have an urgent need they will tend to use their nearest branch, regardless of which supplier that happened to be. As few customers identified it as an important factor, the CMA therefore considered that service quality was not important in determining trade counter customers' choice of supplier. The CMA's competitive assessment of local effects therefore focused on the impact of the Merger on price competition.

Methodology

91. The CMA considered local competition in the areas where the Parties overlap. To identify local overlaps, the CMA used the analysis carried out by Beijer on 20 mile radii around the target HRP branches (see paragraphs 55 to 57). The analysis found that three HRP branches (Bedford, Bury St Edmunds and Sheffield) did not have a Beijer branch (either Dean & Wood or RW) within 20 miles, while 13^{viii} HRP branches did. These were: Birmingham, Bristol, Dartford,^{ix} Fareham, Glasgow, Leeds, Merton, Newcastle, Norwich, Slough, Swanley, Walthamstow and Warrington. For these branches the CMA considered the number of remaining credible competing fascia within 20 miles of the HRP branch.

92. Beijer submitted that credible competitors are Climate Center, FSW, Kooltech, Smith Brothers Stores, Brymec, Thermofrost Cryo, RSL, AMP, Hawco and Space Air.¹³ However, on a cautious basis, the CMA considered it appropriate to refine this list of competitors to include only those which either:
- (a) were identified by customers in response to the CMA's market investigation as current alternative suppliers to the Parties; or
 - (b) told the CMA that they compete for trade counter sales with the Parties in both refrigeration and air conditioning and operated branches in the areas identified by the Parties.
93. This refined list of effective competitors comprises: Climate Center, Kooltech, Thermofrost, Smith Brothers Stores, and FSW. Although Smith Brothers Stores currently has a low market share in refrigeration, the CMA considers that it is an effective competitor to the Parties given that it has a relatively large network of branches (12) across GB and has opened two new branches in 2016 to date. A third party competitor also described Smith Brothers Stores as a new and disruptive market entrant.
94. All of the effective competitors identified supply across all product frames of reference so the same fascia counting exercise was applied. The CMA notes that this fascia counting exercise did not determine the competitive assessment in a mechanistic way. The CMA considered whether there were customers within the catchment area that were more acutely affected by the Merger, and took account of the constraint posed by competitors outside this area, making reference to these customers' actual locations.

Results and conclusion on local horizontal effects in most areas

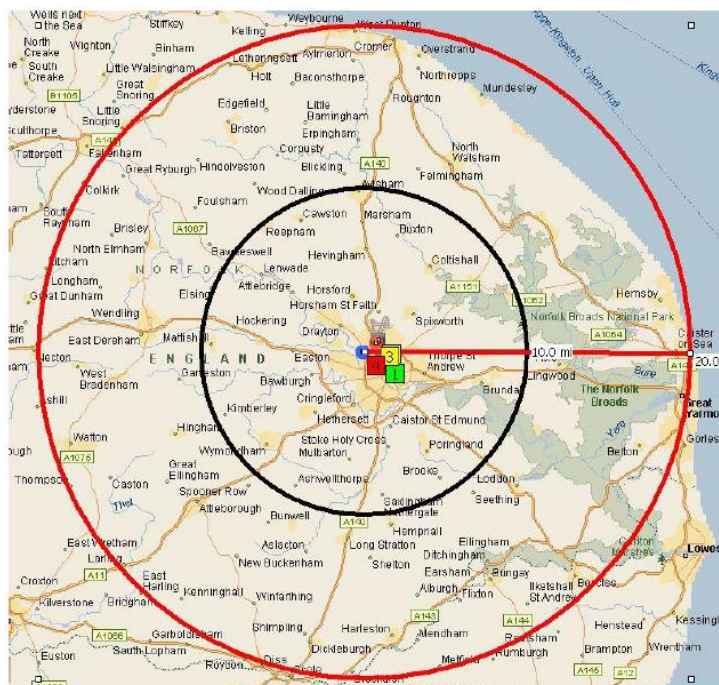
95. Using this methodology, the CMA found that, in all of the local areas except for Norwich, there would remain at least four competing fascias post-Merger.
96. On the basis of this analysis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the wholesale supply of refrigeration systems and/or components and/or air conditioning products in any local area, with the possible exception of Norwich which is discussed below.

¹³ Beijer considered all these competitors to have an annual turnover greater than £10 million.

Local analysis of Norwich

97. The Merger reduces the number of fascia within the 20 mile catchment area around the HRP site in Norwich from four to three, namely: Climate Center, FSW, and the Parties, as shown in Figure 1.

Figure 1: Competitors within 10 and 20 miles of the HRP Norwich branch



Competitors Within 10 Mile Radius of Branch

1. Climate Center Norwich
2. FSW Norfolk
3. HRP Norwich
4. Dean & Wood Norwich

Source: Beijer.

98. In relation to the Norwich area, Beijer submitted the following:
- (a) The remaining wholesalers (FSW and Climate Center) are strong national competitors, and are located very close to Beijer’s branches.
 - (b) [X] customers of Dean & Wood Norwich ([X]% of customers) and HRP Norwich ([X]%) are located some distance from Norwich and are closer to competitors in a location other than Norwich; either Chelmsford (FSW), Colchester (Greenmills), or Peterborough (Smith Brothers Stores).
 - (c) There are very few customers of the Norwich HRP branch who are purely local customers as:
 - (i) [X]% of the ‘home branch’ customers of Norwich HRP have goods delivered, and therefore have a choice of national wholesalers that offer delivery; and
 - (ii) [X]% of sales at the Norwich HRP branch are to non-branch customers, who therefore have out of market alternatives (ie they are customers of an HRP branch elsewhere with the parameters of

competition set by the conditions of competition relevant to that branch).

99. More generally in relation to local competition concerns, Beijer said that:
- (a) parameters of competition are currently set nationally in both refrigeration and air conditioning; and
 - (b) customers may not be truly local in that they may travel between jobs and have several 'out of market' alternatives.
100. Beijer also provided evidence which indicated that, in general, customers of Dean & Wood (the operator of its branch in Norwich) were more nationally focused than customers of RW, with RW customers more likely to purchase from their home branch ([REDACTED]% of RW purchases were made by a customer at their home branch compared with [REDACTED]% for Dean & Wood).¹⁴
101. Customers of the Dean & Wood and HRP branches in Norwich who responded to the CMA's investigation told the CMA that they purchased from multiple suppliers including Climate Center and FSW, as well as from 'out of area' suppliers such as Greenmills.
102. The CMA notes that, in Norwich, Beijer's two remaining local competitors, FSW and Climate Center, are the two largest national wholesalers other than Beijer, in terms of both revenues and number of branches, and have been identified by third parties as significant competitors to Beijer.
103. The CMA also notes the close proximity of the competing FSW and Climate Center branches. Climate Center Norwich is 1.4 miles and 1.7 miles respectively from the Dean & Wood branch and the HRP branch, and FSW Norwich is 0.6 miles and 2 miles respectively from the Dean & Wood branch and the HRP branch. The Dean & Wood and HRP branches in Norwich are located 2.1 miles apart. The CMA believes that the proximity of Beijer's competitors' branches makes it easier for customers to switch to these competitors, even for urgently needed requirements.
104. Evidence provided by third parties also supports the view of the Parties that out of market constraints are particularly strong in Norwich. Third parties indicated that many customers in Norwich are able to compare prices to other

¹⁴ Based on a simple average, unweighted for branch revenue.

areas where there are more than three suppliers, and can buy from these other areas, for the following reasons:

- (a) Most customers have goods delivered, for which there are many national competitors.
- (b) Some customers purchase from Norwich but have a home branch elsewhere.
- (c) Many customers travel out of the local area for jobs, enabling them to buy from branches out of the area.

Conclusion on local horizontal effects in Norwich

105. On the basis of this evidence, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of local horizontal unilateral effects in Norwich in relation to:

- (a) the wholesale supply of refrigeration components;
- (b) the wholesale supply of refrigeration systems; or
- (c) the wholesale supply of air conditioning products.

Barriers to entry and expansion

106. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In the present case, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

107. The CMA contacted customers and competitors of the Parties. Most customers who responded to the CMA's investigation had no concerns regarding the Merger. Seven of the 13 competitors who responded and a supplier noted that the Merger would increase the buying power of the merged firm, increasing their ability to compete for customers.

108. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

109. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.

110. The Merger will therefore **not be referred** under section 22(1) of the Act.

Kate Collyer
Deputy Chief Economic Advisor
Competition and Markets Authority
7 June 2016

ⁱ The CMA notes that HRP had only 15 branches across GB (please see end note ^{ix} for more detail).

ⁱⁱ The Parties clarified that HRP did not stock products from Toshiba but did stock products from Mitsubishi Heavy Industries.

ⁱⁱⁱ The CMA notes that Beijer has only 26 branches across GB and 1 branch in Northern Ireland (Dean & Wood in Belfast).

^{iv} The CMA notes that the Parties have only 41 branches combined across GB.

^v Climate Center told the CMA that it has only 45 branches across GB.

^{vi} The CMA notes that FSW has only 23 branches across GB.

^{vii} The CMA notes that RSL has only 5 branches across GB and 1 branch in Northern Ireland.

^{viii} The CMA notes that HRP had 12 branches which had a Beijer branch within 20 miles (please see end note ^{ix} for more detail).

^{ix} The CMA notes that HRP did not have a branch in Dartford. Due to the proximity of its Swanley branch to Dartford, this branch was sometimes referred to as 'HRP Dartford' informally during the investigation.