

Anticipated merger of Nijjar Group Holdings (Acton) Limited and Medina Holdings Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6907/20

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

SUMMARY

1. The shareholders¹ of Medina Holdings Limited (**MHL**), the parent company of the Medina group (**Medina**), and the shareholders of Nijjar Group Holdings (Acton) Limited (**Nijjar Group Holdings**), the parent company of the Freshways group (**Freshways**), have agreed to merge (the **Merger**). Medina and Freshways are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Medina and Freshways is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties both supply fresh processed liquid milk (**fresh milk**), cream and other dairy and grocery products in the UK.² Prior to October 2020, both Parties were also active in the processing of raw milk in the UK.
4. The Merger has been in contemplation since at least May 2019. Since this date, Medina has undertaken a number of initiatives in collaboration with Freshways. These include rationalising its distribution network through depot closures and entering into associated distribution arrangements with Freshways; outsourcing

¹ Other than Deo Volente Limited.

² The Parties are not active in Northern Ireland.

processing and packaging of milk to Freshways (enabling the closure of the Watson's Dairy); and entering into joint purchasing arrangements for bread and other dairy and grocery products (the **joint arrangements**). Further, in January 2021, Freshways agreed to provide Medina with funding totalling £8m (the **Freshways loans**).

The exiting firm counterfactual

5. The CMA assesses whether a merger could lead to a substantial lessening of competition (**SLC**) relative to the competitive situation without the merger (the **counterfactual**).³
6. The Parties submitted that the relevant counterfactual is one in which, absent the Merger, Medina would have exited the markets in which it is active as a result of financial failure (the **exiting firm counterfactual**).⁴
7. For the CMA to accept an exiting firm counterfactual at Phase 1, it must believe, based on compelling evidence, that it is inevitable that, absent the Merger:⁵
 - (a) the firm would have exited (through failure or otherwise) (**Limb 1**); and
 - (b) there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question (**Limb 2**). In assessing whether there would have been alternative purchasers, the CMA will consider alternative purchasers that would have operated the business as a competitor.⁶
8. Where the CMA concludes that a merging firm would exit absent the merger and there would not have been an alternative, less anti-competitive purchaser for the firm or its assets, it will not find an SLC.⁷
9. As set out in the CMA's guidance, only events that would have happened in the absence of the merger under review - and are not a consequence of it - can be incorporated into the counterfactual.⁸ As noted above, the Merger has been in contemplation since at least May 2019. The CMA has taken the potential impact of

³ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 2.11 and 3.1.

⁴ The Parties' response to question 15 of the CMA's RFI of 21 October 2021.

⁵ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 3.21 and 3.23.

⁶ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.30.

⁷ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.23.

⁸ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.4.

the Merger into account in assessing both the potential exit of Medina and the availability of alternative purchasers for Medina or its assets.

Limb 1 – Medina’s exit

10. To assess whether it is inevitable that, absent the Merger, Medina would have exited through financial failure, the CMA considered: (1) Medina’s financial performance over the last five years (2) Medina’s current financial position, including whether Medina will be able to meet its financial obligations in the near future (3) whether Medina could refinance its operations to avoid exit in the near future and (4) whether Medina could restructure itself successfully to avoid exit in the near future.
11. In its assessment, the CMA reviewed Medina’s audited accounts and management accounts, contemporaneous internal strategy and other documents as well as correspondence between Medina and its lenders, external advisers and other third parties since at least 2018. The CMA also received evidence directly from third parties, including [redacted].

Medina’s financial performance in the last five years

12. The CMA found that Medina has been in financial difficulty since at least 2018. Medina’s lenders first raised concerns about Medina’s financial position in late 2018 following the breach of key financial covenants in Medina’s financing agreements.
13. The CMA examined Medina’s audited financial accounts and management accounts over the last five years to assess Medina’s financial performance over time. This showed that Medina’s performance has continued to deteriorate since 2018 despite significant steps taken by Medina to reduce costs and improve its financial position (discussed below).
14. Against the backdrop of its ongoing financial difficulties since 2018, Medina’s lenders engaged external advisers from early 2020 to monitor its financial situation and advise on the options available to Medina and its lenders. These advisers have produced documents which show that Medina’s financial position has declined further.

Medina’s current financial position and ability to meet its financial obligations in the near future

15. During the CMA’s investigation, the monitoring trustee (appointed at the direction of the CMA), alerted the CMA to the risk that Medina would be forced to cease trading imminently. Evidence from Medina’s internal documents including management

accounts, weekly cashflow forecasts and notes of management meetings show that Medina is forecast to run out of cash in [X].

16. Medina does not have (and would, in practice, be unable to obtain) access to an overdraft facility and therefore needs to stay cash positive. Medina's only available strategy to stay cash positive is to delay payments to trade creditors. The monitoring trustee and other external advisers have noted that this strategy is not sustainable.
17. The CMA therefore found that Medina will be unable to meet its financial obligations in the near future if the Merger does not proceed.

Medina's funding options

18. Medina's most recent financing arrangements terminated in January 2021, at the request of lenders, owing to concerns regarding Medina's financial performance since 2018 and its ability to meet repayment terms.
19. The CMA received evidence that Medina needed to refinance these arrangements in order to avoid exit. Evidence from Medina's external advisers show that Medina reached out to a large pool of potential lenders other than Freshways, all of whom declined to refinance the arrangements by the deadline set by Medina's existing lenders. Several potential lenders indicated significant concerns regarding Medina's financial viability and ability to operate as a going concern.
20. Accordingly, the CMA considers that Medina has exhausted all realistic funding options to avoid exit in the near future if the Merger does not proceed.

Restructuring options available to Medina

21. Since 2018, Medina has taken significant steps internally and with commercial partners to reduce costs and improve its financial position. These include reducing head-office count, selling assets, outsourcing processing (to reduce processing costs), closing depots and entering into distribution agreements (to reduce distribution costs), joint purchasing agreements (to reduce procurement costs), attempting to negotiate better terms with key customers and suppliers and obtaining agreement from creditors to write off outstanding debts.
22. Despite these steps, Medina has only managed to achieve temporary improvements to its financial position.

23. The CMA is therefore satisfied that Medina has exhausted all realistic means of restructuring itself successfully to avoid exit in the near future if the Merger does not proceed.

Impact of the joint arrangements and Freshways loans

24. Only events that would have happened in the absence of the Merger – and are not a consequence of it – can be incorporated into the counterfactual.
25. The CMA received evidence that the joint arrangements and Freshways loans would not have been entered into (at least not in their current form) had the Merger not been in contemplation.
26. The CMA therefore considered carefully whether they may have contributed to Medina being unable to meet its financial obligations in the near future (including by limiting refinancing or restructuring options available to Medina).
27. The CMA found that – to the contrary – the joint arrangements materially improved Medina’s financial position by reducing costs and generating cash. The CMA also found that Medina did not have realistic alternative partners with whom it could have entered into equivalent (or more favourable) commercial arrangements.
28. The CMA also found that the Freshways loans enabled Medina to repay its previous lenders, in circumstances where no other sources of financing were available to it. The CMA therefore considers that, absent the Freshways loans, Medina would likely have exited the markets in which it is active sooner.

Conclusion on Limb 1

29. Accordingly, the CMA considers that there is compelling evidence that it is inevitable that Medina would exit the markets in which it is active absent the Merger. Excluding the joint arrangements and the Freshways loans from the counterfactual assessment would not change this conclusion. The CMA therefore believes that Limb 1 of the exiting firm counterfactual is satisfied.

Limb 2 – alternative purchasers

30. To assess whether it is inevitable that, absent the Merger, there would be no alternative, anti-competitive purchasers for Medina or its assets, the CMA considered: (1) whether there are plausible alternative purchasers for the Medina business or its assets who would run the business as a competitor and (2) whether

there are plausible alternative purchasers for some of Medina's assets who would operate those assets as a competitor.

31. Medina did not market itself or its assets to potential purchasers other than Freshways and did not undertake a formal sales process prior or in parallel to entering into negotiations with Freshways in relation to a merger in early 2019. In circumstances where exiting businesses fail to run a meaningful sale process, the CMA would typically be unlikely to be able to reach the conclusion that there was no realistic prospect of a less anti-competitive purchaser, particularly within the context of a Phase 1 investigation.
32. In the particular circumstances of this case, the CMA was able to do so on the basis of evidence available from Medina's contemporaneous internal documents, in particular those prepared by external advisers acting on behalf of Medina's lenders, and from potential purchasers.

Alternative purchasers of the Medina business

33. The CMA considers that it is unlikely that there would be any alternative purchasers for the Medina business that would operate the business as a competitor in the event that the Merger does not proceed, given, as discussed above, its deterioration since at least 2018, lack of access to external financing and failed attempts to restructure.
34. In order to understand the likelihood of there being alternative purchasers for the Medina business or all of its assets, the CMA reviewed Medina's internal documents, including strategic plans and other documents, that set out strategic options considered by Medina since January 2018 other than pursuing the Merger. The CMA's review of this evidence indicates that Medina did not approach (or receive expressions of interests from) third parties other than Freshways regarding the purchase of Medina or all of its assets during this period.
35. A report prepared by advisers to Medina's lenders in June 2020 considered the exit options available to those lenders, including the sale of the Medina business. This ruled out the sale of Medina as a going concern to investors as a viable option. The report concluded that the significant losses made by Medina over a number of years, the significant degree to which Medina relied on trade creditors to agree to extend credit, and the significant level of cost reduction and optimisation required to make the business viable, which could only be achieved through a third party trade sale, ruled out potential investor interest. Although the report considered that investor interest might be aided through a pre-packaged administration sale (given

the ability to restructure the business and not assume legacy liabilities) the report highlighted significant risks with such an approach.

36. The CMA therefore considers that the most plausible alternative purchasers of the Medina business who would run the business as a competitor are those already active to some extent in the markets in which Medina is or was recently active.
37. The CMA therefore contacted all of the liquid milk processors (ie the companies active in the processing of raw milk to create fresh milk and cream) active in Great Britain as well as larger (ie those who may have the financial resources to consider such an acquisition) wholesaler competitors in the supply of fresh milk and other dairy and grocery products in Great Britain. The CMA asked potential purchasers whether they would be interested in buying Medina or its assets and, as the Merger has been in contemplation since 2019, whether they had considered purchasing Medina or its assets since 2019. There were no expressions of interest in purchasing the business or all of its assets (out of a total of 12 respondents, including [X] and [X]).
38. On the basis of this assessment, the CMA considers that there are no realistic alternative purchasers for the Medina business or all of its assets that would operate the business or its assets as a competitor, if the Merger does not proceed.

Alternative purchasers of some of Medina's assets

39. The CMA considers that a purchase of some of Medina's assets by an alternative purchaser would be less likely than a purchase of all of Medina's assets by an alternative purchaser to mitigate the loss of competition resulting from Medina's exit. However, this will depend on the asset(s) in question (eg, the acquisition of a processing facility such as Watson's Dairy is more likely to replace the loss of competitive constraint from Medina than the acquisition of standalone pieces of equipment).
40. To understand the likelihood of there being alternative purchasers for some of Medina's assets, the CMA reviewed Medina's internal documents, including correspondence with third parties and internal strategy documents, in order to understand whether Medina considered any such sales to purchasers other than Freshways since January 2018. The CMA's review of this evidence indicates that Medina did not approach (or receive expressions of interests from) third parties other than Freshways regarding the purchase of some of Medina's assets during this period subject to one exception. In mid-2020, [X] expressed an interest in

acquiring Watson's Dairy for use in markets in which Medina is not active.⁹ The CMA notes that this was the only expression of interest received by Medina, notwithstanding that the closure of Watson's Dairy was well-publicised.¹⁰ When the CMA approached potential purchasers (see paragraph 37) it also asked whether they would be interested in buying some of Medina's assets and whether they had considered purchasing some of Medina's assets (since 2019). While three respondents indicated that, in principle, they might be interested in acquiring certain assets, these expressions of interest were, in the CMA's view, highly speculative, and in each case indicated that any such interest would be in the acquisition of specific assets, such as individual pieces of equipment, on a piecemeal basis. The CMA does not consider that such piecemeal acquisitions would mitigate the loss of competition resulting from Medina's exit to any material extent.

41. On the basis of this assessment, the CMA considers that there are no realistic alternative purchasers for some of Medina's assets that would operate those assets to mitigate in a material way the loss of competition resulting from Medina's exit (ie there are no alternative, less anti-competitive purchasers than Freshways) absent the Merger.

Impact of the joint arrangements and Freshways loans

42. The CMA considered whether the joint arrangements and the Freshways loans may have contributed to there being no alternative, less anti-competitive purchasers for the Medina business or its assets. Based on the evidence considered above, which in each case covers the period from 2019, the CMA considers that its conclusions would be unchanged if Medina or its assets had been marketed for sale in January 2019, before the joint arrangements and Freshways loans were entered into.

Conclusion on Limb 2

43. Accordingly, the CMA considers that there is compelling evidence that it is inevitable that there would be no alternative, less anti-competitive purchaser for Medina or its assets than Freshways absent the Merger. Excluding the joint arrangements and the Freshways loan from the counterfactual assessment would not change this conclusion. The CMA therefore believes that Limb 2 of the exiting firm counterfactual is satisfied.

⁹ [redacted] was interested in acquiring Watson's Dairy in order to [redacted]. Medina's response to question 11 of the CMA's section 109 notice dated 25 January 2022. Medina is not active in [redacted].

¹⁰ See, eg, BBC, 'Hampshire's Watson's Dairy to close with loss of 144 jobs' (21 July 2020), [Hampshire's Watson's Dairy to close with loss of 144 jobs - BBC News](#).

Conclusion

44. The CMA therefore believes, based on the evidence it has received, that the relevant counterfactual is one in which, absent the Merger, it is inevitable that Medina would have exited the markets in which it is active and there would not have been an alternative, less anti-competitive purchaser for Medina or its assets than Freshways.
45. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
46. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).