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

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 30 March 2022. Full text of the decision published on 27 May 2022.

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

SUMMARY

1. The shareholders[1] 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.

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[1] Other than Deo Volente Limited.
[2] The Parties are not active in Northern Ireland.

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 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 £8 million (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

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[3] Merger Assessment Guidelines (CMA129), March 2021, paragraphs 2.11 and 3.1.
[4] The Parties' response to question 15 of the CMA's Request for Information (**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 [✂].

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 [✂].

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, less 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 [✂] and [✂]).

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, [✂] 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 111) 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.

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

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.

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**).

ASSESSMENT

PARTIES

47. MHL is the parent company of Medina, and is headquartered in the UK. MHL is owned by Deo Volente Limited, Sheazad Hussain and Mohammed Azam (the **Medina Shareholders**). Medina is active in the supply of fresh milk, cream (including packaged and bulk cream) and other dairy and grocery products in the UK. Prior to October 2020, Medina was also active in the processing of raw milk to create fresh milk and cream through its Watson's Dairy processing facility in Southampton.[11] The turnover of Medina in the year ended October 2021 was £[✂], all of which was generated in the UK.

48. Nijjar Group Holdings is the parent company of Freshways. Nijjar Group Holdings is owned by Rajinder Singh Nijjar, Balvinder Singh Nijjar, Ravinder Singh Nijjar and Kalvinder Singh Nijjar (the **Freshways Shareholders**). Freshways is active in the supply of fresh milk, cream (including packaged and bulk cream) and other dairy and grocery products in the UK. Freshways is also active in the processing of raw milk to create fresh milk and cream through its dairy processing facility in Acton.[12] The turnover of Freshways in the year ended 31 December 2021 was £[✂], all of which was generated in the UK.

TRANSACTION

Background to the Merger

49. The Merger has been in contemplation since at least May 2019.[13] On 1 November 2019, the Parties agreed heads of terms.[14] On 20 July 2021, the Parties entered into a binding agreement to merge (see paragraph 50). During this time, 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;[15] outsourcing processing and

[11] In October 2020, Medina closed Watson's Dairy. Medina submitted that Watson's Dairy remains 'mothballed' (ie closed, but within the Medina business) and Medina has no current plans to reopen Watson's Dairy for the foreseeable future. Final Merger Notice submitted by the Parties dated 31 January 2022 (**FMN**), paragraphs 3(a).2 and 11(a).4; and [✂], 19 December 2020. In addition to Watson's Dairy, Medina previously had access to processing capacity through agreements with Buckley Farm, West Yorkshire (which, Medina submits, terminated in July 2020) and Müller in relation to its Severnside facility (see footnote 109). FMN, paragraph 14(a).4.
[12] Freshways also has access to additional capacity through arrangements with third parties including [✂]. See response to question 10 of the CMA's RFI dated 22 November 2021; and FMN, paragraph 14(a).6.
[13] FMN, paragraph 11(a).28.
[14] Medina and Freshways, Annex 'Annex 008 - [✂]' to the FMN.
[15] Comprising the closure of depots in Southall, Bristol, Barking (Medina sold this site), Leeds, Rochdale, Derby, and New Covent Garden between November 2019 and May 2021. Medina submitted that each of these closures was driven by a desire to reduce costs as much as possible and, in the case of Barking, to

packaging of milk to Freshways (enabling the closure of Watson's Dairy); and entering into joint purchasing arrangements for bread and other dairy and grocery products (the **joint arrangements**).[16] Further, in January 2021, Freshways agreed to provide Medina with funding totalling £8 million (the **Freshways loans**).[17]

The Merger Agreement

50. On 20 July 2021, MHL, Nijjar Group Holdings, the Freshways Shareholders and the Medina Shareholders other than Deo Volente Limited (the **Medina Family Shareholders**)[18] entered into an agreement to bring Medina and Freshways under common ownership by transferring all of the shares of MHL and Nijjar Group Holdings to a newly incorporated parent company, Medina Freshways Holdings Limited (**MFHL**) (the **Merged Entity**) (the **Merger Agreement**).

51. Under the Merger Agreement, on completion of the Merger, the Medina Family Shareholders (together) and the Freshways Shareholders (together) will each hold 50% of the issued ordinary share capital of MFHL.[19] Each will have equal rights to receive dividends and capital and each will have the right to appoint and maintain an equal number of board representatives, each with equal voting rights.[20] Completion of the Merger is subject to, amongst other things, the Parties having received confirmation that the CMA will not refer the Merger to an in-depth investigation.[21]

PROCEDURE

52. The CMA's mergers intelligence function identified this transaction as warranting an investigation.[22]

53. On 24 August 2021, the CMA imposed an initial enforcement order on MHL, Nijjar Group Holdings, the Medina Shareholders and the Freshways Shareholders (together, the **Addressees**) (the **IEO**).[23]

raise funds in order to pay outstanding debts. Medina's response to question 2 of CMA's RFI dated 23 December 2021; Medina, Annex [✂], slide 17, to Medina's response to question 1 of the CMA's section 109 notice dated 11 February 2022.

[16] Medina's response to question 2 of CMA's RFI dated 23 December 2021. See also, Medina, Annex [✂], slides 12, 15 and 16, to Medina's response to question 1 of CMA's section 109 notice dated 11 February 2022.

[17] Email from [✂], Michelmores LLP, to the CMA of 5 February 2021 at 22:29.

[18] Under the Merger Agreement, Deo Volente Limited's shares in MHL are to be transferred to the Medina Family Shareholders or their connected persons (as defined under the Merger Agreement) prior to completion of the Merger.

[19] Medina and Freshways, Annex 'Annex [002] - [✂]', clauses 3.1.1 and 4.2.1.1 to the FMN.

[20] Pursuant to agreed form profit distribution and joint venture agreements between the Medina Family Shareholders, the Freshways Shareholders and MFHL to be entered into on completion.

[21] FMN, paragraph 2(d).3(d) and Medina and Freshways, Annex 'Annex [002] – [✂]', clause 2.1 to the FMN.

[22] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2revised), January 2021 (as amended on 4 January 2022), paragraphs 6.4 - 6.6.

[23] Initial enforcement order (publishing.service.gov.uk).

54. On 8 November 2021, the CMA issued directions to the Addressees to appoint a monitoring trustee to report on, amongst other things, whether appropriate steps were being taken to maintain the Parties' respective businesses as a going concern, in line with their obligations under the IEO.[24]

JURISDICTION

55. The CMA believes that the Merger (as described in paragraphs 50 and 51) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.[25]

56. Each of Medina and Freshways is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

57. Post-Merger, neither Medina nor Freshways will continue to be carried on under the same ownership and control. Accordingly, to determine whether the turnover test in section 23(1) of the Act is satisfied, the CMA took the total value of the UK turnover of Medina and Freshways and deducted the turnover of the enterprise with the highest value UK turnover (Freshways).[26] The UK turnover of Medina exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

58. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

59. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 2 February 2022 and the statutory 40 working day deadline for a decision is therefore 30 March 2022.

THIRD PARTY VIEWS

60. The CMA contacted customers and competitors of the Parties and other interested third parties.

61. Several customers expressed concerns that the Merger is likely to reduce competition and lead to price increases. Some competitors raised concerns that the Merger is likely to reduce competition for customers served by the Parties.

[24] Directions to appoint a monitoring trustee (publishing.service.gov.uk).
[25] Section 33(1)(a) of the Act.
[26] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2revised), January 2021 (as amended on 4 January 2022), paragraph 4.55.

62. A number of third parties thought the Merger may have a positive impact on competition by securing the future of one or both of the Parties. Several third parties had neutral or no views as to whether the Merger would give rise to an SLC.

COUNTERFACTUAL

63. Applying the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger (ie the counterfactual).[27]

64. The counterfactual may consist of the prevailing, or pre-merger, conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.[28] The counterfactual assessment will often focus on significant changes affecting competition between the merger firms, such as entry into new markets in competition with each other, significant expansion by the merger firms in markets where they are both present, or exit by one of the merger firms.[29]

65. The Parties submitted that the relevant counterfactual in this case 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**).[30]

66. 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:[31]

    (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**).

67. 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.[32]

68. Therefore, in assessing the relevant counterfactual, the CMA considered whether there is compelling evidence that it is inevitable that, absent the Merger (1) Medina would exit the markets in which it is active and (2) there would be not have been an alternative, less anti-competitive purchaser for Medina or its assets.

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[27] Merger Assessment Guidelines (CMA129), March 2021, paragraphs 2.11 and 3.1
[28] Merger Assessment Guidelines (CMA129), March 2021, paragraph 3.2.
[29] Merger Assessment Guidelines (CMA129), March 2021, paragraph 3.8.
[30] The Parties' response to question 15 of the CMA's RFI of 21 October 2021.
[31] Merger Assessment Guidelines (CMA129), March 2021, paragraphs 3.21 and 3.23.
[32] Merger Assessment Guidelines (CMA129), March 2021, paragraph 3.23.

69. 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.[33] As set out above (see paragraph 49), the Merger has been in contemplation since at least May 2019, during which time Medina entered into the joint arrangements with Freshways and obtained the Freshways loans. The CMA therefore considered whether the joint arrangements and Freshways loans were entered into in contemplation of the Merger.

(a) In relation to the joint arrangements, the Parties submitted that such arrangements are common in the industry, were entered into on arms' length terms and were not contingent on the Merger.[34] However, the CMA received some evidence from the Parties that the decisions to enter into these arrangements in their current form were influenced by concurrent discussions about a possible merger.[35]

(b) In relation to the Freshways loans, the Parties submitted that these were provided in order to enable Medina to meet the repayment demands of its lenders, at a time when all other sources of funding had been exhausted, in anticipation of the Merger.[36] On this basis, the CMA considers that the Freshways loans would not have been provided had the Merger not been in contemplation.

70. The CMA has therefore taken the potential impact of the Merger into account in its assessment by considering whether the joint arrangements or Freshways loans 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) or to there being no alternative, less anti-competitive purchasers for the Medina business or its assets.

Limb 1: Absent the Merger, would Medina have exited?

71. 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 and (4) whether Medina could restructure itself successfully to avoid exit.[37] The CMA then considered whether the joint arrangements or Freshways loans may have contributed to Medina

[33] Merger Assessment Guidelines (CMA129), March 2021, paragraph 3.4.
[34] FMN, paragraph 11(a).28; and Medina's response to question 3 of the CMA's RFI of 3 February 2021.
[35] For example, a business case for the Merger, dated December 2019, discusses the following 'synergy savings': [✂] (Slides 17-23). Slide 24 summarises the status of these synergy savings, including: [✂] (slide 18). Freshways, Annex 'Annex [018]B [✂]' dated December 2019 to the FMN.
[36] Email from [✂], Michelmores LLP, to the CMA of 20 January 2021 at 17:50. Freshways has [✂]. Freshways' response to the CMA's 28 February 2022 RFI.
[37] Merger Assessment Guidelines (CMA129), March 2021, paragraph 3.28.

being unable to meet its financial obligations in the near future (including by limiting refinancing or restructuring options available to Medina).

72. In its assessment, the CMA reviewed Medina's audited accounts and management accounts, a broad set of Medina's contemporaneous internal strategy and other documents, including 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 [✂], as described below.

Medina's financial performance in the last five years

73. Medina submitted that, up until 2018, it had been pursuing a growth strategy following its acquisition of a toll processing arrangement option (**TPAO**) from Müller, pursuant to which Medina had the option to require Müller to process up to 100 million litres of fresh milk per annum from its Severnside dairy for the purpose of supplying this milk to national multiples.[38] In 2017, Medina announced a significant investment in a development programme to upgrade its Watson's Dairy processing facility in order to service the fresh milk and cream requirements of such customers.[39] It also won contracts from [✂] and [✂] (approximately [✂] million and [✂] million litres per year, respectively); [✂] (approximately [✂] million litres per year); and [✂] (approximately [✂] million litres per year).[40]

74. The CMA received evidence that Medina has been unsuccessful in pursuing this strategy since mid-2018. Medina lost, or decided not to retender for, its contracts with [✂] in June 2018, [✂] in September 2019 and [✂] in June 2020 (all of which, Medina submitted went to [✂]).[41] Documents prepared by Medina[42] and its external

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[38] FMN, paragraph 11(a).26. The CMA approved Medina as the purchaser of the TPAO (see Case – ME/6524/15 - Muller UIL acceptance decision (publishing.service.gov.uk), 19 October 2015). On the basis of evidence available at the time, the CMA considered that Medina had sufficient funds to support the operation of the TPAO and the required investment in its own facilities to supply national multiples. In its assessment, the CMA noted financial challenges faced by Medina in recent years, in particular in 2011 to 2013, but was satisfied that, at the time, those challenges had been resolved. The CMA considered that Medina had access to significant equity funding from its shareholders, had recently strengthened its balance sheet and was operating with low debt levels, and would likely have access to additional lending.
[39] Medina press release, 'Medina Dairy announces £3.5 million investment programme' (6 March 2017) http://www.medinadairy.co.uk/medina-dairy-announces-3-5-million-investment-programme/.
[40] FMN, paragraph 3(a).(2) and 11(a).27; Medina, Annex [✂], slide 3, to Medina's response to question 12 of the CMA's section 109 notice dated 9 February 2021.
[41] Medina submitted that it: (i) lost the [✂] contract in June 2018 to [✂] (ii) tendered for [✂] in July 2019 but was unsuccessful (Medina was informed of this loss in September 2019 and the contract terminated in September 2020); and (iii) lost [✂] to [✂] in June 2020 but this was not a formal tender. Medina submitted that it did not have distribution infrastructure (to service the contract) and, with the Müller TPAO nearing its five-year conclusion, costs (of servicing the contract) were likely to rise. FMN, paragraphs 11(a).27, 16(a)3-5 and 21(a).7. See also footnote 42.
[42] An internal Medina strategy document discussing the future of Watson's Dairy notes 'Watsons was always an economically viable site. However, it became costly due to the volume mix and number of label changes. Also, the [✂] contract made the site unfeasible due to the segregation and other requirements.' [✂], 19 December 2020.

advisers[43] show that Medina had difficulties servicing these contracts and was unable to do so profitably. The challenges faced by Medina in servicing these contracts is public knowledge.[44]

75. The CMA also received evidence that Medina was facing significant pressures that were impacting the dairy supply chain generally, and milk processors in particular, since at least the second half of 2018.

(a) A presentation prepared by [✂] on behalf of Medina to address concerns from Medina's lenders in February 2019 explains that '[s]ignificant changes to milk and cream prices during the second half of 2018 resulted in a materially different outlook for profitability'[45] resulting in '[f]inancial covenant breaches reported in September, October, November and December 2018. Lenders requested a financial reforecast through to June 2019 following the initial covenant breaches in the Autumn.'[46]

(b) Industry reports document that the entire dairy supply chain has been facing inflationary cost pressures – including as a result of the COVID-19 pandemic – at a magnitude that had not been experienced for many years, with dairy processors in particular facing widespread cost increases including for energy, transport, labour, packaging, warehousing, and distribution, with little scope to recover costs through efficiency savings.[47]

(c) Third party liquid milk processors announced cost cutting measures including the closure of certain processing facilities[48] or the exit of liquid milk processing

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[43] For example, a June 2020 presentation prepared by [✂], on behalf of Medina, for potential lenders to Medina, forecasts improvement in Medina's commercial outlook as a result of the exit of 'loss making' contracts with [✂] and [✂]. Medina, Annex [✂], slide 16, to Medina's response to question 1 of the CMA's section 109 notice dated 11 February 2022. In this context, [✂] notes that Medina took the decision not to retender for the [✂] contract.

[44] In 2019, Kite Consulting observed '[t]o some extent [new players entering and developing in a mature market] is happening now in dairy, with Sainsbury's move to bring Tomlinsons (sic) and Medina in as new suppliers over the last few years. However, it is not a secret that this has been a challenge for these sites.' Kite Consulting, 'The future of the liquid milk processing sector' (June 2019) < Kite-Project-Reset-report-FINAL.pdf (kiteconsulting.com)>, page 5. Tomlinson's administrators later attributed Tomlinson's deterioration and eventual collapse in part to significant trading losses incurred further to winning a large contract (see footnote 50).

[45] Medina, Annex [✂] dated 8 February 2019, slides 4 and 11, to Medina's response to question 2 of the CMA's section 109 notice dated 11 February 2022.

[46] Medina, Annex [✂] dated 8 February 2019, slide 4, to Medina's response to question 2 of the CMA's section 109 notice dated 11 February 2022.

[47] Kite Consulting, 'Project Reset: Why we face a new normal in dairy product prices' (November 2021) < Kite-Project-Reset-report-FINAL.pdf (kiteconsulting.com)>, page 9. See also ADHB, 'Dairy profitability challenged by rising input costs' (October 2021) < Dairy profitability challenged by rising input costs | AHDB>.

[48] For example, in 2019, Müller announced a £100 million,12-month cost and margin improvement programme to adapt to a changing market environment including global diary market volatility, decline in consumption and changes in retailing, which later led to the closure of its Foston processing facility. Müller, '£100m Müller programme aims to transform fresh milk business' (13 February 2019) <https://www.muller.co.uk/our-company/media#/pressreleases/ps100m-muller-programme-aims-to-

altogether.[49] In October 2019, Tomlinson's Dairies Limited (**Tomlinson's**) collapsed due to 'significant cash flow pressures and trading results deteriorated over recent months due to factors such as increased energy costs and low commodity cream prices that have impacted the dairy industry'.[50]

76. The CMA examined Medina's audited financial accounts for the periods ending 27 October 2018, 26 October 2019, and 31 October 2020 (the most recent available period).[51] These show that Medina's financial position has deteriorated since the latter half of 2018.

(a) The audited accounts show that Medina made a profit before tax of £2.1 million in the 53 week period to 31 October 2020, as compared to a loss of £12.3 million for the 52 weeks to 26 October 2019, and a loss of £7.1 million for the 78 week period to 27 October 2018.[52] The improvement in the 53 week period to 31 October 2020 followed operational efficiencies generated as a result of Medina's rationalisation of its distribution network through depot closures (see paragraph 84) and the disposal of properties worth £5.7 million. This reduced the operating loss to £1.0 million (as compared to £9.6 million in the period to 26 October 2019).[53] From as early as 2019, Medina was therefore already relying on major asset sales to manage cash flow. Moreover, the unaudited management accounts show [✂][54] [✂].

(b) The accounts also show that Medina had net liabilities of £4.9 million for the period ending 31 October 2020,[55] as compared to net liabilities of £7.9 million

transform-fresh-milk-business-2835935>; Müller, 'Müller Milk & Ingredients confirms wind down of Foston dairy' (1 July 2019) < https://www.muller.co.uk/our-company/media#/pressreleases/muller-milk-and-ingredients-confirms-wind-down-of-foston-dairy-2892715>.

[49] In June 2019 Kite Consulting reported that the closure of Foston 'takes the amount of liquid milk processing capacity that has closed over the last few months alone to an estimated 600m litres' (comprising the capacity of Foston (absorbed into other Müller sites), Pensworth (exited liquid milk) and Yeo Valley (sold to Arla). Kite Consulting, 'The future of the liquid milk processing sector' (June 2019) < Kite-Project-Reset-report-FINAL.pdf (kiteconsulting.com)>, page 3.

[50] PwC, 'Tomlinson's Dairies Limited - in administration "the Company"' (14 October 2019) <Tomlinson's Dairies (pwc.co.uk)>. Tomlinson's administrators noted that the business had made significant trading losses further to winning a large contract in 2017 and, despite operational and financial management changes, agreeing revised terms with its creditors and support from customers, experienced a significant deterioration in financial performance, including as a result of the impact of adverse changes in energy prices, commodity cream prices and plastic bottle costs. Further to an unsuccessful sales process for the business and assets as a whole, the administrators proceeded to sell Tomlinson's' property and assets on a break up basis. PwC, 'Joint administrators' progress report from 14 October 2019 to 13 April 2020' <tdl_first_progress_report.pdf (pwc.co.uk)> , pages 7 and 8.

[51] Medina, Annex '[15A]'[✂]' to Medina's response to question 7 of the CMA's section 109 notice dated 1 March 2022. Audited accounts for more recent years are not available as Medina has not yet prepared and finalised them, so the CMA considered management accounts for the period from November 2020 to January 2022.

[52] Medina changed its reporting period resulting in a 78 week period.

[53] Medina, Annex 'Annex [015]B [✂], pages 2 and 4 to the FMN.

[54] Medina, Annex [✂] to Medina's response to the monitoring trustee's RFI sent from the monitoring trustee to the CMA on 17 March 2022 at 17:23.

[55] Medina, Annex '[15A] [✂]', page 13, to Medina's response to question 7 of the CMA's section 109 notice dated 1 March 2022.

for the period ending 26 October 2019 and net assets of £4.1 million for the period ending 27 October 2018. The improvement for the 53 week period to 31 October 2020 followed the property sales and rationalisations referred to above. Despite these, Medina only saw a £3 million change in its net liabilities. The unaudited management accounts show net liabilities of £7.6 million for the period ending 31 October 2021[56] demonstrating that the improvement in Medina's net liabilities was short-lived.

(c) With respect to key performance indicators, the accounts show that retail sales fell to £774 per head per day for the period ending 31 October 2020 (£791 per head per day for the period to 26 October 2019; £1,286 per head per day for the period to 27 October 2018) reflecting lower sales volumes in the foodservice sector. Production costs at Medina's milk processing facilities rose significantly to 4.47 pence per litre (**p/l**) (3.70p/l for the period to 26 October 2019; 3.08p/l for the period to 27 October 2018).[57]

(d) While the audited financial accounts for the period ending 31 October 2020 were prepared on a going concern basis, the directors took account of measures taken after 31 October 2020, including the Freshways loans and the proposed Merger, in their assessment. The accounts note that, in light of the risk of further operating challenges, the directors had identified a range of measures which were within their control to protect the group and company's liquidity position. However, the accounts note that, given the Merger had not completed, there was material uncertainty regarding events or conditions that may continue to impact performance, for example, the pace of the sales improvement in the hospitality sector, for example due to customer behavioural change as a result of the pandemic, that may impact Medina's future liquidity position if the measures identified by the directors were not taken. Accordingly, they concluded that there was 'material uncertainty which may cast significant doubt as to [Medina's] ability to continue as a going concern and therefore it may be unable to realise its assets and discharge its liabilities in the normal course of business'.[58]

77. Management accounts for Medina for the period from May 2018 to January 2022[59] also show that Medina's financial position has been deteriorating since mid-2018. Gross profit margins fluctuated during the period between May 2018 and October 2020, averaging approximately 15%. Since November 2020, however, Medina's

[56] Medina, Annex [✂] to Medina's response to the monitoring trustee's RFI sent from the monitoring trustee to the CMA on 17 March 2022 at 17:23.
[57] Medina, Annex '[✂]', page 2, to Medina's response to question 7 of the CMA's section 109 notice dated 1 March 2022.
[58] Medina, Annex '[✂]', note 1 at page 19, to Medina's response to question 7 of the CMA's section 109 notice dated 1 March 2022.
[59] Medina, Annexes 'B3.03 – Annex 24 – [✂]' and [✂] to Medina's response to the monitoring trustee's RFI sent from the monitoring trustee to the CMA on 17 March 2022 at 17:23 and 'Annex [004]- [✂]' to the FMN.

gross profit margins have been steadily declining from 15% to [✂]% in January 2022. Medina's management accounts also show that the Medina business has been operating at a near consistent operating loss from May 2018 until January 2022.[60]

78. Documents prepared by external advisers (discussed further in relation to Medina's funding options from paragraph 86) show that since at least early 2020, Medina has been relying on creditor goodwill to manage cash flow to an unsustainable extent, and that its cash position has remained fragile notwithstanding such goodwill.

(a) A review of Medina's short term cash flow prepared in March 2020 by [✂] on behalf of Medina's lenders at the time, [✂] and [✂], noted that '[✂]'. [✂] further noted that '[✂]'.[61]

(b) With regard to Medina's cash headroom, [✂] further stated that [✂]'.[62]

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

79. During the CMA's investigation, Medina raised concerns regarding the imminent threat to its ability to operate as a going concern absent the Merger.[63]

80. On 8 December 2021 and in its second report of 10 January 2022, the monitoring trustee (see paragraph 54) alerted the CMA to the risk that Medina would be forced to cease trading imminently. This was due to the fact that Medina has no overdraft facility (and therefore must maintain a positive cash balance to continue to operate as a going concern), had net current and net total liabilities and was forecasting a weekly trading deficit that would result in negative cash headroom (prior to any mitigation) in the short term.[64] The monitoring trustee observed that Medina was managing cash flow by relying on trade creditors to agree to defer payments. It concluded that any refusal by Medina's creditors to agree to further deferments, and/or any increases in costs or decreases in revenue exceeding the limited headroom available would force Medina to cease trading.[65]

81. The CMA also considered evidence from Medina's internal documents, including its weekly cashflow forecasts, management accounts and internal notes of weekly management meetings. This showed that, consistent with the findings of the

[60] Medina has made an operating profit in only 8 months out of 44 months since May 2018.
[61] Medina, Annex [✂], page 15, to Medina's response to the CMA's section 109 notice dated 11 February 2022.
[62] Medina, Annex [✂], page 6, to Medina's response to the CMA's section 109 notice dated 11 February 2022.
[63] For example, email from [✂], DWF LLP, to the CMA of 6 December 2021 at 15:40.
[64] Monitoring Trustee Initial Report for the period from 4 December 2021 to 7 January 2022, section 3.2.
[65] Monitoring Trustee Initial Report for the period from 4 December 2021 to 7 January 2022, paragraph 3.2.23.

monitoring trustee, Medina is at high risk in the short term of being unable to meet its financial obligations as they fall due.

(a) A review of Medina's weekly short term cash flow forecasts (**STCFs**) for the period 4 December 2021 to 9 April 2022 show that Medina is forecast to trade at a net deficit over this period.[66] Week on week, the STCFs forecast a deteriorating position with an accumulating trade deficit. As of the beginning of December, the STCF reported cash headroom of just over £500 thousand. This is limited given that in the second week of trading in December, Medina had a net cash outflow of just over £103 thousand. [✂].

(b) The forecasts predict that the company's headroom will be [✂]. The STFCs include suggested 'mitigations' in order to manage this deficit. However, mitigations listed are simply to delay payments further and request further creditor support. Between December and April, Medina is forecast to rely on [✂]. In other words, Medina is relying solely on creditor support to manage its current financial position and has no other means of generating cash to meet its financial obligations. This strategy is not sustainable.

(c) Medina does not have access to an overdraft facility, having lost access to its [✂] facility in January 2019 and its [✂] facility in November 2020.[67][i] Moreover, as discussed further below, Medina does not have access to any external lending facilities other than Freshways.

(d) Medina submitted a list of its material creditors,[68] who are owed a total of approximately £37 million as of the end of November 2021.[69] The CMA notes that, of the £37 million, 43.7% (£16.3 million) relate to trade creditors. The magnitude of Medina's credit balance held by trade creditors reflects the extent to which Medina has relied on trade creditors to agree to extend credit as a means of continuing to finance its operations.

82. A review of Medina's weekly management meeting notes for the period September 2020 to November 2021 showed that discussions among Medina's management during this period focused on [✂].[70] For instance, in the management notes dated 26 February 2021, Medina's management states that [✂].[71] In subsequent notes, dated 16 April 2021, Medina's management describes these mitigation measures as

[66] Medina, Annex 92 [✂] to the FMN; Medina's response to the monitoring trustee's RFI sent from monitoring trustee to the CMA on 17 March 2022 at 17:23. The email includes the following two attachments: [✂] and [✂].
[67] Medina's response to the CMA's RFI of 28 February 2022. Email from [✂] to the CMA at 09:23 on 30 December 2020.
[68] Those whom Medina owes at least £500 thousand.
[69] FMN, paragraph 11(a).42.
[70] Medina, Annexes 42 - 85, [✂] to the FMN.
[71] Medina, Annex 'Annex [056] - [✂]' to the FMN.

including [✂].[72] As mentioned in paragraph 81(b), mitigations identified in the STCFs reviewed weekly by management were to [✂].

83. On the basis of the evidence considered above, the CMA found that, absent the Merger, Medina would be unable to meet its financial obligations in the near future if the Merger does not proceed.

84. As explained in paragraph 69, 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. The CMA has therefore taken the potential impact of the Merger into account in its assessment by considering whether the joint arrangements or Freshways loans may have contributed to Medina being unable to meet its financial obligations in the near future.

(a) With regard to the joint arrangements, the CMA received evidence that the joint arrangements did not harm – and in fact improved – Medina's financial performance. In a presentation to potential lenders prepared in June 2020, [✂] describes these arrangements as 'operational cost saving initiatives'[73] and attributes a positive outturn in FY 2020 and performance improvements expected in FY21 and 22 to collaboration with Freshways, including significant processing savings from the closure of Watson's Dairy.[74] Indeed, Medina's management accounts show that its overheads, which include transport costs and all costs associated with running the various facilities it operates (including depots and processing facilities) steadily declined from £1.6 million per month in November 2019 to £1.2 million per month in November 2020. Medina's total overheads have continued to decline steadily to £975 thousand per month in January 2022. With regard to distribution depots specifically, Medina's management accounts note a decline in the overhead 'Depot Wages' over the same period from £537 thousand per month to £375 thousand per month. They have since continued to decline, reaching £277 thousand per month in January 2022.[75]

(b) With regard to the closure of Watson's Dairy specifically, the CMA notes that Medina's inability to use the facility did not result in an inability to service

[72] Medina, Annex 'Annex [063] - [✂]' to the FMN.
[73] Medina, Annex [✂] slide 12, to Medina's response to question 1 of the CMA's section 109 notice dated 11 February 2022 describes Medina's collaboration with Freshways, explaining 'Medina and Freshways have started working together on cost saving initiatives' and sets out the following initiatives delivered to date: 'Processing optimisation – transferring production between facilities to maximise production capacity and minise production costs'; 'Opportunities to perform milk swaps between the two businesses, reducing haulage costs'; 'Elimination of other duplicate haulage routes (e.g. from factory to customer)'; 'Elimination of duplicate depot infrastructures'; and 'Procurement savings from consolidating bread between two businesses'.
[74] Medina, Annex [✂] slides 12 and 16 to Medina's response to question 1 of the CMA's section 109 notice dated 11 February 2022.
[75] Medina's management accounts from November 2018 to November 2020; and Medina's management accounts from October 2020 to January 2022.

national multiple contracts ([✂], [✂]) profitably. Indeed, Medina had been unable to service these contracts profitably while it was using the Watson's facility primarily for those contracts. In any event, Medina's exit from these contracts (see paragraph 74) preceded Medina's closure of the Watson's facility (October 2020).

(c) With regard to the Freshways loans, the CMA considers that, on the evidence presented below, it is not realistic that Medina could have found alternative sources of funding to Freshways in the time required by its lenders. The CMA considered whether the Medina Shareholders could have made a cash injection for the purposes of refinancing the [✂] and [✂] arrangements. For the reasons set out at paragraph 91, the CMA considers that the Medina's Shareholders would not have provided the cash injection required to refinance the [✂] and [✂] arrangements. The CMA therefore considers that, absent the Freshways loans, Medina would have exited the markets in which it is active at that point.[76]

85. The CMA therefore considers that the joint arrangements and the Freshways loans did not contribute to Medina's financial deterioration. Accordingly, the CMA considers that the relevant counterfactual is one in which Medina would be unable to meet its financial obligations in the near future.

Medina's funding options

86. To understand whether there could be any sources of financing available to Medina that Medina could rely on to avoid exit in the near future absent the Merger, the CMA considered Medina's engagement with existing and potential lenders in the last four years. In particular, the CMA had regard to evidence from Medina's internal documents from this period, including correspondence with Medina's lenders and documents prepared by external advisers on behalf of Medina and Medina's lenders, as well as evidence from [✂] and external advisers, [✂], as described below.

87. The evidence received by the CMA shows that Medina's most recent financing agreements with lenders 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.

(a) Between 2015 and 2018, Medina had access to an invoice discounting facility with [✂] which was initially limited to £18.5 million.[77] On 1 September 2017,

[76] For completeness, the CMA notes that the terms of the Freshways loans (with a principal of £[✂] and an interest rate of [✂] were at least consistent with those of non-trade lenders. [✂].
[77] Letter from [✂] to [✂] (Medina) dated 11 October 2017. Medina, Annex [✂], page 1, to Medina's response to question 5 of the CMA's section 109 notice dated 11 February 2022. [✂] attached to email from [✂] to [✂] (among others at Medina), dated 8 July 2020.

Medina hired a debt verification agency at the request of [✂].[78] An 11 October 2017 letter to [✂] of Medina, set out [✂] concerns regarding Medina's ongoing cash position.[79] The letter summarised the options available to Medina which Medina and [✂] had discussed during a recent meeting between the two parties. These options were: refinancing, entering into an accelerated customer payment scheme, seeking an injection from shareholders, external investment or an insolvency process.[80]

(b) In early July 2018, Medina secured refinancing from [✂] and [✂] based on financial projections assuming EBITDA of approximately £5.6 million for the year ending June 2019.[81]

(c) Further to a series of breaches of Medina's financial covenants in September to November 2018, however, [✂] and [✂] requested a reforecast of Medina's financial projections to the end of June 2019.[82] Medina engaged [✂] to assist in the preparation of the reforecast, which significantly pared down EBITDA projections for the year ending June 2019 from an initial forecast of approximately £5.6 million to a revised forecast of approximately £1.9 million.[83] A presentation prepared by [✂] on behalf of Medina attributes £2.6 million of the £3.7 million reduction to trading conditions in September to December 2018, in particular to a materially different outlook for milk and cream prices during this period.[84]

(d) In April 2019, Medina prepared a further presentation for [✂] and [✂] to address concerns including with regard to Medina's financial performance, governance, reporting and compliance with banking facilities.[85] Among other things, Medina provided an update on its short-term liquidity, which Medina said 'remains tight but manageable at the moment'.[86] The presentation includes a graph showing a decline in Medina's week on week cash headroom from April to May 2019. The CMA notes that the graph shows that headroom is

[78] Email from [✂] to Medina dated 1 September 2017 at 10:34. Medina, Annex [✂] to Medina's response to question 5 of the CMA's section 109 notice dated 11 February 2022.
[79] Letter from [✂] to [✂] (Medina) dated 11 October 2017. These concerns were as a result of Medina's financial performance during the quarter ending July 17, in which Medina reported loss of £1.2 million and a negative EBITDA of £415 thousand resulting in a breach of Medina's financial operating covenants.
[80] Letter from [✂] to [✂] (Medina) dated 11 October 2017. Medina, Annex [✂] to Medina's response to question 5 of the CMA's section 109 notice dated 11 February 2022.
[81] [✂].
[82] Medina, Annex [✂], slide 4 to Medina's response to question 2 of the CMA's section 109 notice dated 11 February 2022.
[83] Medina, Annex [✂], slides 4 and 11, to Medina's response to question 2 of the CMA's section 109 notice dated 11 February 2022.
[84] Medina, Annex [✂], slide 3, to Medina's response to question 2 of the CMA's section 109 notice dated 11 February 2022.
[85] Medina, Annex [✂] to Medina's response to question 8 of the CMA's section 109 notice dated 26 January 2022.
[86] Medina, Annex [✂], slide 10, to Medina's response to question 8 of the CMA's section 109 notice dated 26 January 2022.

limited, with a forecast deficit for the week ending 18 May 2019. The CMA also notes that there are certain explanations to the slight improvements to the headroom shown, such as: (i) 'farmer payments were delayed until after the bank holiday weekend' and (ii) 'headroom remain tight W/E 18/05/19. This is the week we had forecast the £150k owed to [✂], however, we have taken this out of the forecast temporarily'.[87] However, these explanations are short term and do not provide on-going improvements to the cash position.

(e) [✂].[88] [✂].[89]

(f) In February 2020, Medina, [✂] and [✂] instructed [✂] to explore the options available to them.[90]

88. The CMA also received evidence that Medina required external funding to refinance the agreements terminated in January 2021 in order to avoid exit at that point.

(a) A report prepared by [✂] in June 2020, undertaken on behalf of Medina, [✂] and [✂] notes that Medina was pursuing a refinancing and a merger process with Freshways (which entailed a refinancing of the debt of the prospective merged entity). It set out a contingency plan for Medina, [✂] and [✂] in the event that the proposed refinancing and merger with Freshways were unsuccessful, including a detailed contingency plan for Medina in respect of an optimal insolvency strategy.[91] According to the report, the scenarios in which Medina would remain solvent absent the contemplated merger with Freshways were effectively limited to refinancing [✂]'s exposure through funding from alternative sources.[92]

(b) In a later report from December 2020, considering the risk that alternative external funding would not materialise in the timeframe required by its lenders, [✂] advised that Medina should immediately engage [✂] to run a concurrent accelerated sales process and administration planning exercise in order to seek an outcome that maximised returns to both [✂] and [✂] and other

[87] Medina, Annex [✂], slide 10, to Medina's response to question 8 of the CMA's section 109 notice dated 26 January 2022.
[88] [✂].
[89] [✂].
[90] Medina, Annex [✂], slide 2, to Medina's response to question 2 of the CMA's section 109 dated 26 January 2022.
[91] Medina, Annex [✂], slide 2, to Medina's response to question 2 of the CMA's section 109 dated 26 January 2022.
[92] Relying on continued customer and supplier support and the sale of Medina as a going concern to an alternative purchaser were discounted as viable options, nor were further restructuring or an attempt to grow the Medina business organically considered. Medina, Annex [✂], slides 2, 9 and 29, to Medina's response to question 2 of the CMA's section 109 dated 26 January 2022.

creditors. In the absence of a successful sales process, through an administrator or otherwise, [✂] noted that Medina ‘[✂].’[93]

(c) [✂].[94]

89. The CMA received evidence prepared by or received directly from Medina’s advisers that showed that, in order to obtain external financing to meet the repayment requirements of its lenders, from June 2020 Medina reached out to a large pool of potential lenders other than Freshways. All declined to refinance the arrangements by the deadline set by Medina’s existing lenders. Several indicated significant concerns regarding Medina’s financial viability and ability to continue as going concern.

(a) In July 2020, [✂], on behalf of Medina, started reaching out formally to a range of lenders with regard to refinancing Medina’s existing debts to [✂] and [✂].[95] The initial shortlist contained a total of nine lenders with whom (informal) discussions had started and a list of a further nine lenders that Medina’s advisers were not minded to approach. Most of these nine lenders had either previously lent to Medina (and Medina’s advisers considered they would therefore be unwilling to lend again), or had previously rejected a proposal to become a lender to Medina for a variety of reasons, including the quality of Medina’s financial reporting and Medina’s financial performance.[96]

(b) After initially engaging with the nine lenders in the schedule, [✂] reduced the list of potential lenders to three. It had ruled out the remaining six as these had indicated to [✂] that they had concerns with the quality of Medina’s financial reporting and/or Medina’s financial performance and ability to repay debts.[97] Subsequently, [✂][ii] engaged [✂] to negotiate with the three shortlisted lenders, namely [✂], [✂] and [✂].

(c) By December 2020, [✂] had confirmed it was no longer interested in financing Medina, citing lack of sufficient credit insurance on key debtors as the primary reason.[98] Nucleus had also confirmed that it would be unable to reach an agreement within the required deadline set by [✂]. Finally, on 17 December

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[93] Medina, Annex [✂], slide 7, to Medina’s response to question 2 of the CMA’s section 109 notice dated 11 February 2022,
[94] [✂].
[95] Email from [✂] to Medina, dated 19 June 2020 at 14:55.
[96] Medina, Annex [✂] to Medina’s response to question 2 of the CMA’s section 109 notice dated 26 January 2022. Among other things, the report notes that, in 2017, Medina approached [✂], [✂] and [✂] regarding financing and was turned down due to concerns regarding ‘quality of [Medina’s] sales ledger’, ‘perceived difficulty of the deal’ and ‘Medina’s financial performance’, respectively.
[97] Medina, Annex [✂] to Medina’s response to question 2 of the CMA’s section 109 notice dated 26 January 2022.
[98] Medina, Annex [✂], slide 5, to Medina’s response to question 2 of the CMA’s section 109 notice dated 11 February 2022.

2020, [✂] confirmed that it would be unwilling to lend to Medina, citing its poor debt history as one of the main reasons.[99]

(d) Thus, by the end of December 2020, [✂] had exhausted all external lending options [✂] had shortlisted in June 2020. [✂] added that '[✂]'.[100]

(e) In January 2021, Freshways therefore agreed to provide Medina with the Freshways loans to enable Medina to pay its debts to [✂] and [✂].[101]

90. Accordingly, the CMA considers that Medina has exhausted all realistic external funding options available to it which could enable it to recover its financial position and avoid exit in the near future.

91. The CMA considered whether, absent the Merger, the Medina Shareholders could make a cash injection to avoid Medina's exit. Given Medina's financial performance since at least 2018, its failure to retain or secure external financing other than from Freshways as well as its failure to successfully restructure via other means (see paragraph 95), the CMA considers that it is not realistic that the Medina Shareholders would fund a cash injection sufficient to avoid Medina's exit.

92. The CMA has taken the potential impact of the Merger into account in its assessment by considering whether the joint arrangements or Freshways loans may have reduced the likelihood of funding options being available to Medina to avoid exit.

(a) With regard to the joint arrangements, for the same reasons as set out in paragraph 84(a) and (b) the CMA considers that these initiatives did not reduce the likelihood of funding options being available to Medina to avoid exit.

(b) With regard to the Freshways loans, the CMA considers that, as set out at paragraph 84(c), it is implausible that Medina could have found alternative sources of funding to Freshways in the time required by its lenders, and as such would have exited the markets in which it is active at that point.

93. The CMA therefore considers that the joint arrangements and the Freshways loan did not reduce the likelihood of funding options being available to Medina to avoid exit. Accordingly, the CMA considers that the relevant counterfactual is one in which Medina has exhausted all realistic external funding options available to it.

Restructuring options available to Medina

94. To understand whether there would be any restructuring options available to Medina absent the Merger, the CMA considered the cost-reduction and other strategies

[99] Email from [✂] to the CMA at 09:23 on 30 December 2020.
[100] Email from [✂] to the CMA at 09:23 on 30 December 2020.
[101] FMN, paragraph 11(a).51-52.

undertaken by Medina to improve its commercial outlook in the years prior to the Merger. In particular, the CMA had regard to evidence from Medina's internal documents, including presentations prepared by or for Medina's lenders in the context of Medina's engagement with its lenders, discussed above.

95. The evidence considered by the CMA shows that, since 2018, Medina has taken a number of internal cost-saving measures as well as initiatives with commercial partners (customers, suppliers and other dairy processors including Freshways) to reduce costs and improve its financial position.[102] These steps include reducing head office count, selling assets, outsourcing processing to third parties (to reduce processing costs),[103] closing depots and entering into distribution agreements with third parties (to reduce distribution costs), entering into joint purchasing agreements for bread and other products (to reduce procurement costs), attempting to negotiate better contract terms with key customers[104] and key suppliers,[105] exiting loss making contracts, and obtaining agreement from creditors to write-off outstanding debts.[106]

96. As explained above, the CMA received evidence that these measures temporarily improved Medina's financial position (in particular for the financial year ending 30 October 2020). However, notwithstanding all these steps, the improvement in Medina's performance was short lived.

97. On this basis, taken together with the evidence considered by the CMA regarding Medina's engagement with existing and prospective lenders in the years prior to the Merger, the CMA considers that Medina has exhausted all realistic means of restructuring itself successfully to avoid exit in the near future.

98. The CMA has taken the potential impact of the Merger into account in its assessment by considering whether the joint arrangements or Freshways loans reduced the likelihood of alternative restructuring options being available to Medina to avoid exit.

    (a) With regard to the joint arrangements, the CMA considered whether Medina had a realistic option of entering into arrangements with other third parties (potentially on more favourable terms). The CMA assessed whether such

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102 See Medina Annex [✂], slide 12, to Medina's response to question 2 of the CMA's section 109 notice dated 11 February 2022 and Medina, Annex [✂], slide 11, to Medina's response to question 8 of the CMA's section 109 notice dated 26 January 2022.

103 Medina submitted that, in 2018 and early 2019, Medina approached three dairy companies then active in processing milk in Wales, namely [✂], [✂] and [✂]. Medina wanted a processor in Wales so that milk sourced in Wales could be processed in Wales, thereby cutting distribution costs. In January 2019, Medina opted for [✂]. Medina's response to questions 9 to 12 of the CMA's section 109 dated 26 January 2022; and FMN, paragraph 19(a).

104 Medina, Annex [✂], slide 11, to Medina's response to question 8 of the CMA's section 109 notice dated 26 January 2022.

105 See, for instance, email from Medina to [✂] dated 15 February 2020 at 9.20am.

106 [✂] agreed to write-off [✂], and a [✂]. This debt arose because Medina had not paid a total of £[✂] it owed to [✂] ([✂], produced in June 2020 by Medina with assistance from [✂], for potential lenders).

arrangements were likely to have been available to Medina from the beginning of 2019 (ie before it began entering into the joint agreements with Freshways). The CMA received evidence that Medina had explored the possibility of entering into processing agreements with third parties.[107] In addition, the CMA asked third parties active in markets in which Medina is or was recently active (ie active liquid milk processors and competitor wholesalers active in Great Britain)[108] whether since 2019 they had provided or offered Medina such services and, if so, on what terms. The CMA also asked active liquid milk processors whether they offer, or have offered since 2019, toll processing services to any third party. On the basis of the response received from third parties, the CMA considers that it is not realistic that Medina would have had alternative opportunities to enter into operational cost-saving arrangements with third parties had it not entered into such initiatives in collaboration with Freshways.[109]

(b) With regard to the Freshways loans, the CMA considers that, as set out at paragraph 84(c), it is implausible that Medina could have found alternative sources of funding to Freshways in the time required by its lenders, and as such would have exited the markets in which it is active at that point.

99. The CMA therefore considers that the joint arrangements and the Freshways loans did not reduce the likelihood of Medina being able to successfully restructure to avoid exit. Accordingly, the CMA considers that the relevant counterfactual is one in which Medina has exhausted all realistic restructuring options available to it.

Conclusion on Limb 1

100. The CMA believes, based on the evidence considered above, that:

(a) it is inevitable that, in the absence of the Merger, Medina would be unable to meet its financial obligations in the near future and would not have any realistic funding options or restructuring options available to it to avoid exit.

[107] In 2018 and early 2019, Medina approached three dairy companies then active in processing milk in Wales (see footnote 109).
[108] The Parties are not active in Northern Ireland.
[109] Response to the CMA's questions of 11 February 2022 sent to companies active in processing and/or distributing fresh milk. Regarding toll processing arrangements, all but two of the seven dairy processors which responded to the CMA's questions confirmed to the CMA that they do not offer, and have not offered since 2019, toll processing services to any third parties. One of the two which offers toll processing services is [✂]. The other is [✂]. The CMA notes that [✂].
Regarding joint distribution arrangements, the CMA notes that none of the seven dairy companies which responded to its questions said that they either had provided, or considered providing, fresh milk distribution services for Medina since 1 January 2019.

(b) the joint arrangements and the Freshways loan have not increased the likelihood of the circumstances in (a) arising (and in fact had the opposite effect, delaying Medina's inevitable exit).

101. The CMA therefore believes that the test for Limb 1 of the exiting firm counterfactual is met.

Limb 2: Absent the Merger, would there be an alternative, less anti-competitive purchaser to Freshways for the Medina business or its assets?

102. As set out in paragraph 66, for the CMA to conclude that Limb 2 has been satisfied at Phase 1, it would need to believe, on the basis of compelling evidence, that there would not have been an alternative, less anti-competitive purchaser for Medina or its assets to Freshways absent the Merger.[110]

103. When considering if there were alternative purchasers, the CMA will seek to identify who the alternative purchaser(s) might have been and take this into account when determining the counterfactual. In that context, the CMA may consider the marketing process for the target firm as well as offers received for it. However, the CMA will not restrict its analysis to alternative purchasers who were willing to pay the same or similar price that was agreed in the merger under investigation, but rather if there was an alternative purchaser willing to acquire the firm at any price above liquidation value. Importantly, the CMA will also consider alternative purchasers that would have operated the business as a competitor.[111] 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. The CMA then considered whether the joint arrangements or Freshways loans may have contributed to there being no alternative, less anti-competitive purchasers for the Medina business or its assets.

104. 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.[112] 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.

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[110] Merger Assessment Guidelines (CMA129), March 2021, paragraph 3.21(b).
[111] Merger Assessment Guidelines (CMA129), March 2021, paragraph 3.30.
[112] See paragraphs 107 and 114.

105. 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.

106. In its assessment, the CMA reviewed 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 potential purchasers.

Alternative purchasers of the Medina business

107. 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.

108. 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.[113] 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 in this period.

109. As set out above, in June 2020, [✂], advisers to Medina's lenders, produced a report setting out a contingency plan for Medina, [✂] and [✂] in the event that the proposed refinancing and merger with Freshways were unsuccessful, including a detailed contingency plan for Medina in respect of an optimal insolvency strategy. In its report, [✂] considered the exit options available to [✂] and [✂] including the sale of the Medina business as a going concern or through a pre-packaged administration sale:

    (a) With regard to the possibility of a sale of Medina as a going concern, [✂] 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

[113] Medina's response to question 8 of CMA section 109 notice dated 26 January 2022.

third party trade sale, ruled out potential investor interest. The report states in particular that '[✂].'[114]

(b) With regard to the possibility of a pre-packaged administration sale, although the report considered that investor interest, in addition to interest from smaller competitors seeking to expand operations, could 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.[115] [✂]. The report emphasised that, [✂].

110. On the basis of the evidence considered above, the CMA 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.[116]

111. 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[117] as well as larger (ie those who may have the financial resources to consider such an acquisition) wholesaler competitors[118] in the supply of fresh milk and other dairy and grocery products to understand whether they had any interest in acquiring Medina (or any of its assets). As the Merger has been in contemplation since 2019, the CMA asked whether they had any interest in acquiring Medina (or its assets) or had considered acquiring 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 [✂] and [✂]).

112. On the basis of this evidence, the CMA considers that, absent the Merger, there are no realistic alternative purchasers to Freshways for the Medina business or all of its assets that would operate the business or all of its assets as a competitor.

Alternative purchasers of some of Medina assets

113. 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.

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[114] Medina, Annex [✂], slides 9 and 29, to Medina's response to question 2 of the CMA's section 109 dated 26 January 2022.

[115] Medina, Annex [✂], slide 10, to Medina's response to question 2 of the CMA's section 109 dated 26 January 2022.

[116] This is consistent with the CMA's findings in Case ME/6524/15 - Muller/Dairy Crest that, due to the specific characteristics of the industry, the only realistic buyers of Dairy Crest as a whole would have been those which could capture material synergies from such acquisition.

[117] As identified by the Parties. Medina and Freshways, 'Annex [022] – Market Shares Spreadsheet (updated)', tab 'Sites' (Capacity), to the FMN.

[118] In the CMA's assessment, considering competitors identified by the Parties. 'Medina Competitors Contact Details 31.01.2022' and 'Annex [028] - Freshways Third Party Contact Details (updated 31.01.2022)' to the FMN.

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).

114. In order to understand the likelihood of there being alternative purchasers for some of Medina's assets, the CMA reviewed 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.[119] 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, [✂] expressed an interest in acquiring Watson's Dairy for use in markets in which Medina is not active.[120] 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.[121] Medina's internal documents also reflect that, in the context of the challenges faced across the dairy sector (see paragraph 75), the prospect of there being interest in the purchase of material assets, such as Watson's Dairy, from Medina is limited.[122] The CMA considers that the most plausible purchasers of some of Medina's assets who would operate these assets as competitors are those already active to some extent in the markets in which Medina is or was recently active. As set out paragraph 111, the CMA asked those potential purchasers (ie active liquid milk processors and competitor wholesalers active in Great Britain) whether they had any interest in acquiring Medina (or any of its assets) or had considered acquiring Medina (or any of its assets) since 2019.

(a) A milk processor responded that it would be interested in purchasing production equipment of Medina's should it be available which it would use additionally to add to its production facilities.[123]

(b) A wholesaler said that, in principle, it would consider options to acquire assets of other businesses within the dairy industry. This wholesaler added that it was not able to tell if it had an interest in specific Medina assets as it did not know

[119] Medina's response to questions 11 and 12 of CMA section 109 notice dated 26 January 2022.
[120] [✂] was interested in acquiring Watson's Dairy in order to use it as [✂]. Medina's response to question 11 of the CMA's section 109 notice dated 25 January 2022. Medina is not active in [✂].
[121] 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.
[122] An internal Medina strategy document with regard to the future of Watson's Dairy states 'it is not wise to invest in a milk factory in today's climate as the return is very little. Although, milk is the main aspect of our business, currently, [✂]. Therefore, selling other products is key.' [✂], 19 December 2020
[123] Email from [✂] to the CMA at 10:52 on 14 February 2022.This respondent specified that the equipment it would be interested in would be '[✂]' which it '[✂]' (see email from [✂] to the CMA at 14:26 on 17 February 2022).

what those assets were. This wholesaler said that if any of such assets were available for purchase, it would give that '[✂]'.[124]

(c) Lastly, one processor mentioned that it showed interest in purchasing a specific piece of manufacturing equipment in use at Watson's Dairy [✂].[125]

115. The responses indicate that, since 2019, with one exception (see (c) above), Medina has not received any expression of interest for its assets. 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.

116. On the basis of these responses, taken together with the evidence from the contemporaneous internal documents reviewed by the CMA, 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 'less anti-competitive' purchasers than Freshways in this scenario) absent the Merger.

Impact of the joint arrangements and Freshways loans

117. The CMA has taken the potential impact of the Merger into account in its assessment by considering whether the joint arrangements or 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 in paragraphs 112 and 116 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

118. The CMA believes, based on the evidence considered above, that:

(a) it is inevitable that, if the Merger does not proceed, there would be no alternative, less anti-competitive purchaser for Medina or its assets than Freshways; and

[124] Email from [✂] to the CMA at 12:17pm on 18 February 2022.
[125] Email from [✂] to the CMA at 9.48am on 14 February 2022.

(b) the joint arrangements and the Freshways loan have not reduced the likelihood of there being an alternative, less anti-competitive purchaser for Medina or its assets.

119. The CMA therefore believes that the test for Limb 2 of the exiting firm counterfactual is met.

Conclusion on the counterfactual

120. 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.

DECISION

121. 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.

122. The Merger will therefore **not be referred** under section 33(1) of the Act.

Naomi Burgoyne
Director, Mergers
Competition and Markets Authority
30 March 2022

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[i] The first sentence of paragraph 81(c) should read as follows: 'Medina does not have access to an overdraft facility, having lost access to its [✂] facility in January 2019 and its [✂] account established in November 2020 not allowing an overdraft facility.'
[ii] '[✂]' should be read as 'Medina'.