

# Acquisition by Ali Holding S.r.l. of Welbilt, Inc.

## Decision on relevant merger situation and substantial lessening of competition

**ME/6956/21**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 9 June 2022.

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

### SUMMARY

1. On 14 July 2021, Ali Holding S.r.l. (**Ali Group**) agreed to purchase the entire issued ordinary share capital of Welbilt, Inc. (**Welbilt**) (the **Merger**). Ali Group and Welbilt are together referred to as the **Parties** or, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Ali Group and Welbilt is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply 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 overlap in the supply of a number of commercial foodservice equipment products in the UK. In particular, the CMA has assessed the impact of the Merger in the supply of speed ovens and ice machines in the UK.
4. In relation to speed ovens, the Merged Entity would become the largest supplier of speed ovens in the UK, but the increment brought about by the Merger is small and the evidence indicates that the Parties are not particularly close competitors. The CMA also found that the Merged Entity will continue to face strong competition from several strong rivals. The CMA believes that these constraints are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of speed ovens in the UK.

5. In relation to ice machines, the Parties submitted that they believed that the Merger would give rise to a realistic prospect of an SLC arising from horizontal unilateral effects in the supply of ice machines in the UK. The Parties waived their normal procedural rights, including their right to an issues meeting and a discussion at a case review meeting, and requested that the case be fast tracked to the consideration of undertakings in lieu of a reference (**UILs**). In light of the Parties' submission that the test for reference is met, and the evidence available to the CMA in relation to the impact of the Merger on competition, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of ice machines in the UK.
6. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 16 June 2022 to offer undertakings that might be accepted by the CMA. If no such undertakings are offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

# ASSESSMENT

## PARTIES

7. Ali Group is an Italian corporation with headquarters located in Milan, Italy. It is active primarily in the manufacture, marketing, and servicing of commercial foodservice equipment globally, including in the UK. Ali Group has 58 manufacturing facilities in 15 countries and sales and service subsidiaries throughout Europe, North America, South America, the Middle East, and Asia Pacific. Ali Group's turnover in 2021 was approximately [X] worldwide and approximately [X] in the UK.<sup>1</sup>
8. Welbilt is an international company that is publicly listed on the New York Stock Exchange.<sup>2</sup> It is active primarily in the design, manufacture, and supply of commercial foodservice equipment globally, including in the UK. Welbilt has nineteen manufacturing facilities globally. Welbilt's turnover in 2021 was approximately £1.55 billion worldwide and approximately [X] in the UK.<sup>3</sup>

## TRANSACTION

9. Pursuant to an agreement dated 14 July 2021, Ali Group agreed to purchase all of the issued ordinary shares of Welbilt. The Merger is subject to certain conditions, including regulatory approval from the CMA.<sup>4</sup>
10. The Merger is also subject to merger control approval by the European Commission and the US Department of Justice. The competition authorities of Canada, Colombia, and Russia reviewed the Merger and identified no competition concerns.<sup>5</sup>

## PROCEDURE

11. The CMA commenced its Phase 1 investigation on 24 May 2022.
12. On 16 February 2022, the Parties informed the CMA that they believed that the Merger gives rise to a realistic prospect of an SLC arising from horizontal unilateral effects in the supply of ice machines in the UK and requested that the case be fast tracked to the consideration of UILs. As part of the request, the Parties agreed to waive their normal procedural rights, including their right to an issues meeting and a discussion at a case review meeting, in relation to ice machines in the UK.<sup>6</sup>

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<sup>1</sup> Final consolidated merger notice submitted to the CMA by the Parties on 23 May 2022 (**FMN**), paragraph 45.

<sup>2</sup> Welbilt [2021 Annual Report](#), page 8.

<sup>3</sup> FMN, paragraph 49.

<sup>4</sup> FMN, paragraph 3.

<sup>5</sup> FMN, paragraphs 13-19.

<sup>6</sup> [Guidance on the CMA's Jurisdiction and Procedure \(CMA2\) \(CMA2\)](#), paragraph 7.1.

13. As set out in the CMA's guidance,<sup>7</sup> merger parties are able to waive their rights in relation to certain procedural steps within a merger investigation in order to enable a binding outcome to be arrived at more quickly. In agreeing to fast-track the case to the consideration of UILs, the CMA has, in keeping with the process set out in its Guidance, had regard to its administrative resources and the efficient conduct of the case and decided that it was appropriate to proceed with an accelerated Phase 1 timetable, reaching a decision ahead of its statutory 40 working day deadline.

## JURISDICTION

14. The CMA believes that the Merger (as described at paragraph 1) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.<sup>8</sup>
15. Each of Ali Group and Welbilt is an enterprise within the meaning of section 129 of the Act. As a result of the Merger, these enterprises will cease to be distinct for the purposes of sections 23(1)(a) and 26 of the Act.
16. Under section 23 of the Act, the share of supply test is met if the merging enterprises supply or acquire goods or services of a particular description in the UK and will, after the merger, supply or acquire 25% or more of those goods or services in the UK as a whole or in a substantial part of it. The merger must also result in an increment to the share of supply (the **share of supply test**).<sup>9</sup>
17. The Parties overlap in a number of commercial foodservice equipment products. The Parties' combined share of supply of ice machines in the UK is approximately [40-50%], with an increment of [0-10%] (see paragraph 61 below).<sup>10</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.
18. 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.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 May 2022 and the statutory 40 working day deadline for a decision is therefore 21 July 2022.

## COUNTERFACTUAL

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual

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<sup>7</sup> [Guidance on the CMA's Jurisdiction and Procedure \(CMA2\) \(CMA2\)](#), paragraphs 7.8-7.13.

<sup>8</sup> Section 33(1)(a) of the Act.

<sup>9</sup> Section 23(2A)(a) of the Act.

<sup>10</sup> Based on CMA calculations.

against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>11</sup>

21. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect.<sup>12</sup> Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## FRAME OF REFERENCE

22. In assessing an anticipated merger, the CMA is required to consider whether it is the case that the merger 'may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services'.<sup>13</sup>
23. Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms.<sup>14</sup> In some cases, market definition can be an important part of the overall merger assessment process. In other cases, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, will capture the competitive dynamics more fully than formal market definition.<sup>15</sup> The approach taken by the CMA will reflect the circumstances of the case.<sup>16</sup>

### ***Product frame of reference***

24. The CMA's assessment of the Merger focussed on the Parties' overlaps in relation to the supply of speed ovens and ice machines in the UK. The CMA found no evidence to suggest any plausible concerns arising from the merger in any other products or services.<sup>17</sup>

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<sup>11</sup> See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

<sup>12</sup> The Parties did, however, submit that competitive pressures on the Parties were likely to increase as a result of the Coronavirus (COVID-19) pandemic. FMN, paragraphs 113-118.

<sup>13</sup> Section 33(1) of the Act.

<sup>14</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

<sup>15</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

<sup>16</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

<sup>17</sup> The Parties also overlap in other commercial foodservice equipment, namely ovens (including combi ovens, conveyer ovens and microwave ovens), fryers, griddles, ranges, braising pans/titling skillets, kettles, holding and warming equipment, and coffee machines. However, the CMA found no evidence of competition concerns in relation to any of these products, including due to small combined shares of supply and/or a very small increment following the Merger and a lack of any third party concerns. Therefore, these overlaps are not considered further in this decision.

### ***Speed ovens***

25. Speed ovens combine microwave, impingement, radiant heat, convection, and/or grill technologies to cook a product faster than other oven technologies. They typically use a hot cavity with radiant / grill heating elements or pure microwave power approximately up to double typical domestic power levels. Within the speed oven category are high speed ovens which are compact, countertop appliances that use a combination of microwave, convection cooking, and impingement (high speed, focused hot air) to produce high quality food quickly. The impingement technology allows high speed ovens to cook at a faster rate than speed ovens.<sup>18</sup>
26. The evidence gathered by the CMA suggests that speed ovens can be distinguished from regular ovens on the basis of their technology and cooking speeds. Customers told the CMA that speed ovens can perform functions that other types of ovens cannot, and that there is limited demand-side substitutability between speed ovens and other types of oven. In this case, it was not necessary for the CMA to reach a conclusion on the product frame of reference since no competition concerns arise on any plausible basis.

### ***Ice machines***

27. Ice machines produce ice for different uses, such as restaurants, hotels, bars, medical use, and industrial applications. The Parties submitted that ice machines may be differentiated according to (i) the technology used to produce the ice, (ii) the type of ice produced, and (iii) the capacity of the machines. According to the Parties, customers generally split ice machines into five types: self-contained cubers, modular cubers, flake machines, scale ice machines (used to make industrial ice) and nugget ice machines.
28. As set out above, the Parties submitted to the CMA that the test for reference is met in relation to the supply of ice machines in the UK and requested that the CMA fast-track the case to the consideration of UILs (which would involve the divestment of a global ice machines business). The CMA has therefore not had to consider whether the product frame of reference could be narrower (and has also not received any evidence to suggest that the product frame of reference could be wider).

## ***Geographic frame of reference***

### ***Speed ovens***

29. The CMA received evidence in its market investigation suggesting that the market for speed ovens is likely to be national. For example, one customer noted that geographic proximity is an important factor when considering what brand of speed oven to purchase, and that purchasing from a manufacturer in the UK is certainly

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<sup>18</sup> FMN, paragraph 302.

preferable in terms of pricing and reliability of stock.<sup>19</sup> Another customer noted that it is best if manufacturers are located geographically closer, as this makes communication and maintaining a commercial relationship easier.<sup>20</sup> Another customer explained that it is largely irrelevant where the product has been manufactured, but that it would generally only purchase from manufacturers that have some UK presence. The CMA did not have to reach a conclusion on the geographic frame of reference since no competition concerns arise on any plausible basis.

### ***Ice Machines***

30. The Parties highlighted the European Commission's decision in *Manitowoc / Enodis*,<sup>21</sup> which found that the market for ice machines could be EEA-wide, although there were some indications pointing to a national market definition. Given the Parties request that the CMA fast track the case to the consideration of UILs that involve the divestment of a global ice machines business, the CMA did not have to conclude on the geographic frame of reference.

### ***Conclusion on frame of reference***

31. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of ice machines and speed ovens in the UK.

## **COMPETITIVE ASSESSMENT**

### **Horizontal unilateral effects**

32. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>22</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
33. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in (i) the supply of speed ovens in the UK, and (ii) the supply of ice machines in the UK.

### ***Horizontal unilateral effects in the supply of speed ovens in the UK***

34. The Parties are active in speed ovens in the UK under the following brands:

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<sup>19</sup> Note of call with [redacted], paragraph 19.

<sup>20</sup> Note of call with [redacted], paragraphs 30-31.

<sup>21</sup> Case M.5180 – *Manitowoc / Enodis* (19 September 2008).

<sup>22</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.1.

(a) Ali Group supplies speed ovens in the UK under the Lainox, Falcon and Amana / XpressChef / MenuMaster brands.

(b) Welbilt supplies speed ovens in the UK under the Merrychef brand.<sup>23</sup>

35. In its assessment, the CMA considered: (i) shares of supply of the Parties; (ii) closeness of competition between the Parties; and (iii) the competitive constraints remaining post-Merger.

### *Shares of supply*

36. Table 1 below sets out estimated ranges of the Parties' and other suppliers' shares of supply in relation to speed ovens in the UK.<sup>24</sup>

**Table 1: Estimated ranges of the Parties' and other suppliers' shares of supply in relation to speed ovens in the UK**

<i>Supplier</i>	<i>2021 shares of supply (%)</i>
Ali Group	[0-10%]
Welbilt	[40-50%]
<b>Combined</b>	[40-50%]
Middleby	[10-20]
Panasonic	[5-10]
Unox	[0-5]
Prática	[0-5]
Others	[10-20]
<i>Total</i>	<i>100</i>

Source: Evidence from the Parties and third parties.<sup>25</sup>

37. Table 1 shows that the Merged Entity will be the largest supplier of speed ovens in the UK with a high combined share of supply of [40-50%]. The data also shows, however, that the Merger will result in a very small increment, given that Ali Group's share of supply was just [0-10%].

38. Post-Merger, the Merged Entity will be constrained by Middleby (which manufactures speed ovens under the TurboChef brand<sup>(i)</sup>), which will be the second largest supplier of speed ovens in the UK with a share of supply of [10-20]%, and a number of other players including Panasonic (whose revenues from the supply of speed ovens were double that of Ali Group in 2019), Unox, and Prática, all of which have a similar or larger market presence than Ali Group at present.

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<sup>23</sup> FMN, paragraph 291.

<sup>24</sup> The available data from the Parties and third parties allowed the CMA to calculate an approximate range of shares of supply (as opposed to precise shares of supply). The ranges calculated are a sufficiently strong indicator of the Parties' and other suppliers' market strength and the CMA's assessment does not depend upon precise shares of supply.

<sup>25</sup> FMN, Annex 017.



### *Closeness of competition*

39. The Parties submitted that they do not consider each other to be their closest competitor, including because of their relative sizes and different customer base. As set out above, Welbilt's share of supply in speed ovens in the UK is much larger than that of Ali Group. The Parties also submitted that, whilst the products and features of speed ovens manufactured by Ali Group and Welbilt and other competitors are broadly similar, Welbilt's speed ovens are predominantly sold to large multi-store operators, such as quick service restaurants (**QSRs**), while Ali Group's speed ovens are not established with QSR customers and are mainly sold to small restaurants, pubs, and cafes. The Parties maintained that large multi-store operators appear to prefer the speed and reliability of the more established TurboChef and Merrychef brands.<sup>26</sup>
40. The CMA gathered evidence from a range of speed oven customers. These include distributors (who purchase speed ovens from the Parties and sell them onto dealers or end-customers), dealers (who purchase speed ovens from the Parties, either directly or through distributors, and then sell them on to end-customers), and 'key account' customers (end-customers such as QSRs or supermarkets that typically purchase speed ovens in large volumes).
41. Customers identified the following factors as important when selecting a speed oven: price, features and performance of the oven (eg size of the oven, technology used, time required to cook food and the quality of the cooked food), brand recognition, and aftersales support.
42. Although a few customers told the CMA that the Parties' speed ovens have similar features, customers generally confirmed the Parties' submissions that Welbilt is a much stronger supplier of speed ovens in the UK than Ali Group. Welbilt's speed ovens are renowned for their quality and aftersales service (which Welbilt manages inhouse).<sup>27</sup> Overall, customers indicated that Welbilt's speed ovens are the most popular choice for a speed oven in the UK, with one customer noting that, 'Welbilt are offering a better machine, at a more competitive price, with superior after-sales services [than Ali Group or its competitors]'.<sup>28</sup>
43. Furthermore, the Parties' internal documents indicate that the Parties do not focus primarily on each other, and instead regularly monitor several other speed oven suppliers.<sup>29</sup> For example, one of Ali Group's internal documents suggests that it considers Welbilt and Middleby's speed ovens as 'premium' products compared to

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<sup>26</sup> FMN, paragraph 291.

<sup>27</sup> Note of call with [redacted], paragraph 29 -[redacted]. Also note of call with, [redacted], paragraph 36, [redacted].

<sup>28</sup> Note of call with [redacted], paragraph 13.

<sup>29</sup> [redacted] dated 12 December 2017, page 2; [redacted] dated 2019, pages 6-12; [redacted] dated July 2019, pages 3, 11 and 16; and [redacted] dated 10 September, pages 43-44.

Ali Group's speed ovens, which it labels as 'mass' products.<sup>30</sup> In support of this point, the Parties submitted that in 2020 the weighted average price in the UK for Welbilt's speed ovens was [£3,000 - £3,500] and for Ali Group's speed ovens was [£2,000 - £2,500].<sup>31</sup>

44. On this basis, the CMA considers that the Parties' speed ovens do not compete closely in the UK.

#### *Competitive constraints from existing and potential rivals*

- Existing competitors

45. The Parties submitted that they are constrained by Middleby's TubroChef<sup>32</sup> and a range of smaller players.
46. Middleby is the second largest supplier of speed ovens in the UK with a share of supply of [10-20]%. It currently supplies a wide range of speed ovens with impingement, ventless operation, and smart technology. It is also planning to launch a new speed oven in the UK using a new technology combination that will be capable of cooking multiple products at the same time (compared to the current speed ovens which can only cook one product at a time).<sup>33</sup>
47. The Parties noted that many of Welbilt's largest customers were either won from, or lost to, Middleby, including: [redacted].<sup>34</sup>
48. A significant number of third parties identified Middleby as a strong supplier of speed ovens. One customer informed the CMA that customers would switch to Middleby's speed ovens in response to a hypothetical price rise of Welbilt's speed ovens.<sup>35</sup>
49. The Parties submitted that, in addition to Middleby, there are several other players with a similar or larger presence than Ali Group in the UK market, which offer speed ovens using a range of different technology combinations:
- (a) Some suppliers, such as Prática and Atollspeed, offer speed ovens with similar technology to that of the Parties (in particular, impingement technology, which some customers told the CMA helps to produce better quality of cooked food).
  - (b) Other suppliers, such as Panasonic (which is at least double the size of Ali Group) and Maestrowave, use different technology in their speed ovens but consider themselves to compete closely with the Parties. For example, [redacted]

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<sup>30</sup> [redacted] (no date available), page 46.

<sup>31</sup> FMN paragraphs 213-214.

<sup>32</sup> This should be read as Turbochef.

<sup>33</sup> Note of call with [redacted], paragraphs 14-15.

<sup>34</sup> FMN, paragraph 330.

<sup>35</sup> Note of call with [redacted], paragraph 36.

told the CMA that it considers its [redacted] speed ovens to compete very closely with Ali Group's speed ovens.<sup>36</sup>

50. The CMA found that several customers consider these smaller players to be an effective alternative to the Parties. Customers also told the CMA that some of these rivals offer high-quality products and will likely significantly increase their market presence in the UK over the next few years.<sup>37</sup>
  - Recent and potential new entrants
51. The Parties submitted that the market for speed ovens is a growing segment with several new entrants.
52. The Parties noted that barriers to entry are low, including because the technology used by the Parties is not proprietary or licensed from a third-party. According to the parties, most relevant patents around the combination of impingement, convection, and microwave technologies for speed ovens (regardless of the arrangement) have expired, with the remaining patents being related to accessories only. This makes it relatively easy for generic brands to enter and price aggressively.<sup>38</sup>
53. The Parties submitted that brands from Asia (e.g., Sanyo, Midea, Nopein, and Saco) are entering the UK speed ovens market and are expected to continue to expand their product offerings. According to the Parties, these brands are expected to exert a strong degree of pricing pressure, as they represent a cheaper alternative with comparable technology.
54. Some third parties told the CMA that customers would be willing to switch to a new speed oven supplier if the new product offered an improvement on the current products. The CMA found that many of the new and emerging speed oven technologies are marketed as an improvement on current speed ovens (eg by introducing new capabilities or using innovative technology in order to produce better results).<sup>39</sup>
55. Furthermore, the Parties argued that large chain customers (such as Subway, Starbucks, Pret-à-Manger and McDonald's) have sufficient resources and expertise to accelerate the new development of competing products, including by sponsoring entry of alternative suppliers in a short period of time. The Parties submitted that this

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<sup>36</sup> [redacted] response to the CMA's Speed Oven Questionnaire.

<sup>37</sup> [redacted], response to the CMA's Dealers and Distributors Questionnaire.

<sup>38</sup> FMN, footnote 213.

<sup>39</sup> Eg note of call with [redacted], paragraph 21- "innovation is a key feature of the kitchen equipment market generally, especially around the issue of manufacturing products that promise lower energy consumption". Also, note of call with [redacted], paragraph 29- "innovation would be a key reason behind making a decision to procure new equipment". [redacted] cited reduction in energy consumption as an example of important innovation in the market.

had happened in the past, with one example being McDonald's sponsoring the entry of Henny Penny (which now produces a large number of fryers).<sup>40</sup> [redacted].<sup>41</sup>

56. The CMA found that several competitors are developing new speed ovens that have recently launched or are expected to launch over the next year:
- (a) **Unox:** Unox launched the world's first self-washing combi speed oven in March 2022, under the Speed.X brand, and this product is already available in the UK.<sup>42</sup> This is in addition to the Speed.Pro product, launched in December 2020, which is the first ever baking speed oven (ie a convection oven and a speed oven in a single piece of equipment).<sup>43</sup> Unox told the CMA that [redacted].<sup>44</sup>
  - (b) **Ovention:** Ovention told the CMA that it has recently launched a speed oven in the US (the MiSA-a12).<sup>45</sup> While this product is not currently available in the UK, Ovention [redacted]. Furthermore, [redacted], Ovention noted that the MiSA-a12 product [redacted].<sup>46</sup>
  - (c) [redacted]: [redacted] told the CMA that it is currently working to launch a speed oven. The speed oven will be first launched in the US but [redacted] sees no barriers in launching it in the UK (especially given that it has experience of launching commercial foodservice products in the UK following launch in another geography). [redacted] speed oven will use a new [redacted] technology which [redacted] expects will enable customers to cook food to a higher quality.<sup>47</sup>
57. In addition, the Parties submitted that Mychef recently launched a speed oven using a new impingement technology named 'Quick', targeting mostly bars, cafes, service stations, beach bars and food trucks, amongst other customers.<sup>48</sup> The CMA was not able to obtain further details on the launch from Mychef.
58. The CMA therefore notes that potential entrants generally do not consider barriers to entry and expansion to be significant and that several suppliers have recently entered or have entry plans for the UK market. However, given the constraint that the Merged Entity will face from established suppliers (as described above), the CMA has not had to consider the impact of potential new entry on competition in the market for speed ovens, on the basis that no concerns would arise even where the constraint offered by recent and potential new entrants is not taken into account.

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<sup>40</sup> FMN, paragraphs 388-399.

<sup>41</sup> Note of call with [redacted], paragraphs 16-17.

<sup>42</sup> See [https://www.unox.com/en\\_gb/lines/speed-x/](https://www.unox.com/en_gb/lines/speed-x/).

<sup>43</sup> See [https://www.unox.com/us\\_us/lines/speedpro/](https://www.unox.com/us_us/lines/speedpro/).

<sup>44</sup> [redacted] response to the CMA's Speed Oven Questionnaire.

<sup>45</sup> See <https://oventionovens.com/ovention-ovens/misa/>.

<sup>46</sup> [redacted] response to the CMA's Speed Oven Questionnaire, and follow-up email from [redacted] addressing further questions by the CMA, dated 28 December 2021.

<sup>47</sup> Note of call with [redacted], paragraphs 6-10.

<sup>48</sup> FMN, paragraph 371. See also <https://mychef.distform.com/en/mychef-quick/>.

### *Conclusion on horizontal unilateral effects in the supply of speed ovens in the UK*

59. While the Merged Entity will be the largest supplier of speed ovens in the UK, with a significant combined share of supply, the increment brought about by the Merger is relatively small, the Parties are not close competitors, and the Merged Entity will continue to face competition from several credible rivals post-Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of speed ovens in the UK.

### *Horizontal unilateral effects in the supply of ice machines in the UK*

60. The Merged Entity will be the largest supplier of ice machines in the UK with an estimated combined share in 2019 of [40 – 50%] with an increment of [5 - 10%].<sup>49</sup>

61. Table 2 below shows the Parties' estimated shares by value in the market for the supply of ice machines overall in the UK in 2019.<sup>50</sup>

**Table 2: Estimated ranges of the Parties' and other suppliers' shares of supply in relation to ice machines in the UK**

<i>Supplier</i>	<i>2019 shares of supply (%)</i>
Ali Group	[30 – 40%]
Welbilt	[5 – 10%]
<b>Merged Entity</b>	<b>[40 – 50%]</b>
Hoshizaki	[20-30]
Brema	[0-5]
Saro Group	[5-10]
Ziegra	[0-5]
ITV	[0-5]
Middleby	[0-5]
Whirlpool	[0-5]
Maja	[0-5]
Other	[5-10]
<i>Total</i>	<i>100</i>

Source: FMN, table 34.<sup>51</sup>

62. The Parties submitted that there were no significant differences between the Parties' ice machine products.<sup>52</sup> Third parties that responded to the CMA's market testing

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<sup>49</sup> FMN, paragraph 612.

<sup>50</sup> The CMA has set out 2019 shares of supply in this decision as these are more representative than shares of supply in 2020 given that the Parties and third parties submitted that 2020 revenues were impacted by the Coronavirus (COVID-19) pandemic. However, the CMA's assessment does not depend on the use of 2019 shares of supply.

<sup>51</sup> As above, the CMA has set out 2019 shares of supply in this decision as these are more representative than shares of supply in 2020 given that the Parties and third parties submitted that 2020 revenues were impacted by the Coronavirus (COVID-19) pandemic. However, the CMA's assessment does not depend on the use of 2019 shares of supply.

<sup>52</sup> FMN, paragraph 249.

indicated that the Parties compete closely in relation to ice machines.<sup>53</sup> In addition, one of the Parties' internal documents suggested that the Parties are two of only three "tier one" suppliers of ice machines with other suppliers labelled as "tier two" or "tier three".<sup>54</sup>

63. The Parties submitted that they are aware that the Merger will bring together two strong competitors globally active in the supply of ice machines,<sup>55</sup> and accepted that the test for reference is met in respect of the supply of ice machines in the UK.
64. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC in the supply of ice machines in the UK.

## **BARRIERS TO ENTRY AND EXPANSION**

65. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>56</sup>
66. In relation to speed ovens, the CMA has not had to conclude on barriers to entry or expansion, as the Merger does not give rise to competition concerns in relation to the supply of speed ovens in the UK on any basis. As noted above, the CMA did find evidence that several well-established suppliers are in the process of entering or expanding in the supply of speed ovens in the UK.
67. In relation to ice machines, the CMA has not had to conclude on barriers to entry or expansion because the Parties accepted that the test for reference is met and requested that the case be fast tracked to consideration of UILs.

## **THIRD PARTY VIEWS**

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

## **CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION**

69. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of ice machines in the UK.

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<sup>53</sup> [redacted] response to the CMA's Ice Machine Questionnaire; [redacted] response to the CMA's Ice Machine Questionnaire; and [redacted] response to the CMA's Ice Machine Questionnaire.

<sup>54</sup> [redacted] (no date available), page 6.

<sup>55</sup> FMN, paragraph 614.

<sup>56</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 8.40.

# DECISION

70. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
71. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>57</sup> The Parties have until 16 June 2022<sup>58</sup> to offer an undertaking to the CMA.<sup>59</sup> The CMA will refer the Merger for a phase 2 investigation<sup>60</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>61</sup> by 30 June 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Colin Raftery**  
**Senior Director**  
**Competition and Markets Authority**  
**9 June 2022**

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- (i) This has been corrected from an earlier version send to the Parties.

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<sup>57</sup> Section 33(3)(b) of the Act.

<sup>58</sup> Section 73A(1) of the Act.

<sup>59</sup> Section 73(2) of the Act.

<sup>60</sup> Sections 33(1) and 34ZA(2) of the Act.

<sup>61</sup> Section 73A(2) of the Act.