Anticipated acquisition by Ali Holding S.r.l. of Welbilt, Inc

Decision that undertakings might be accepted

ME/6956/21

Introduction

1. Ali Holding S.r.l. (**Ali**) has agreed to acquire Welbilt, Inc (**Welbilt**) (the **Merger**). Ali and Welbilt are together referred to as the **Parties**.

2. On 9 June 2022, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).

3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 10 June 2022, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

7. The SLC Decision 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. To address this SLC, the Parties have offered to give undertakings in lieu of a reference (the **Proposed Undertakings**) to divest Welbilt's global ice machine business, which operates primarily under the Manitowoc and Koolaire brands, including all core assets (the **Divestment Business**). The Divestment Business includes, in particular, the tangible assets (eg the primary manufacturing facilities, including the Manitowoc, Wisconsin, USA and Monterrey, Mexico facilities, as well as the design centre, manufacturing lines, assembly and warehousing activities of the Hangzhou, China, facility) and intangible assets (eg Intellectual Property Rights) that contribute exclusively to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business. The Parties also offered certain transitional service arrangements (**TSAs**) to ensure the continuity of the operations of the Divestment Business immediately post-divestiture.

8. Under the Proposed Undertakings, the Parties have offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

The CMA's provisional views

9. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.[1]

10. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that they would result in the clear-cut divestment of the entire horizontal overlap in relation to the supply of ice machines in the UK resulting from the Merger. As such, the Proposed Undertakings should restore competition to the level that would otherwise have been lost following the Merger.

11. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation and notes that the Parties have already put forward a proposed purchaser for the Divestment Business (Pentair plc).

12. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after the Parties have entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects

[1] *Mergers remedies (CMA87)*, December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

of the Proposed Undertakings.[2] In order to consider the proposed purchaser as being suitable, the CMA will need to be satisfied that the purchaser suitability criteria in the Remedies Guidance are met.[3] These criteria include the requirement that the proposed purchaser has the financial resources, expertise, incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with the merged entity in the relevant market. In addition, the proposed purchaser will be expected to obtain all necessary approvals, licences, and consent from any regulatory or other authority.[4]

13. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

14. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer is effective and credible such that the competitive constraint provided by Welbilt absent the Merger is replaced to a sufficient extent.

Consultation process

15. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.[5]

Decision

16. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 22 August 2022 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 18 October 2022 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Colin Raftery
Senior Director

---

[2] See *CMA 87,* paragraphs 5.28–5.32, and *CMA2*, paragraph 8.34.
[3] See *CMA 87,* Chapter 4 (in particular paragraphs 4.30-4.34) and Chapter 5 (in particular paragraphs 5.20-5.32).
[4] *CMA2*, paragraph 5.21.
[5] *CMA2*, paragraph 8.29.

Competition and Markets Authority
13 June 2022