

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

DECISION ON ACCEPTANCE OF UNDERTAKINGS IN LIEU

ME/6956/21

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 11 July 2022.

Introduction

1. On 14 July 2021, Ali Holdings S.r.l. (**Ali Group**) agreed to acquire Welbilt, Inc (**Welbilt**) (the **Merger**). Ali Group 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 consists of arrangements that are in progress or in contemplation which, if carried into effect, 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 10 June 2022, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to the Parties on 13 June 2022, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering the Parties' offer (the **UILs Provisional Acceptance Decision**).
4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.¹

¹ See [Ali Holding S.r.l. / Welbilt, Inc merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/ali-holding-s-r-l-welbilt-inc-merger-inquiry).

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of ice machines in the United Kingdom.
6. As set out in the UIL Provisional Acceptance Decision, the Parties have offered to divest Welbilt's global ice machine business, which operates primarily under the Manitowoc and Koolaire⁽ⁱ⁾ brands, including all core assets (the **Divestment Business**). The text of the undertakings is available on the CMA webpages (the **UILs**).²
7. The Parties offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer before the CMA's final acceptance of the UILs. The Parties proposed Pentair plc³ (**Pentair**) as the upfront buyer. On 2 March 2022, Welbilt entered into a Purchase Agreement with Pentair Commercial Ice LLC, a subsidiary of Pentair, for the acquisition of the assets and shares that make up the Divestment Business.⁴ This agreement is conditional on acceptance by the CMA of the UILs, including approval of Pentair as the purchaser of the Divestment Business.

Consultation

8. On 22 June 2022, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs and invited interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex A of this decision.⁵ For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.⁶
9. The CMA received no submissions during the consultation period. The CMA has not otherwise become aware of any information that would cause the CMA to change its preliminary view that the UILs would be acceptable.

² See [Ali Holding S.r.l. / Welbilt, Inc merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/ali-holding-s-r-l-welbilt-inc-merger-inquiry).

³ The purchasing entity will be Pentair Commercial Ice LLC whose ultimate parent company is Pentair plc.

⁴ Amended on 6 June 2022 by Amendment No.1 to the Purchase Agreement.

⁵ The full consultation text was published on [Notice of consultation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/notice-of-consultation-on-welbilt-ice-machine-business).

⁶ [Merger remedies, \(CMA87\), December 2018](#), Chapter 3, in particular paragraphs 3.27, 3.28 and 3.30.

10. The CMA therefore considers that the UILs offered by the Parties are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and that Pentair is a suitable purchaser of the Divestment Business.

Decision

11. For the reasons set out above, the CMA considers that the UILs provided by the Parties are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by the Parties pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
12. The undertakings, which have been signed by the Parties and will be published on the CMA webpages, will come into effect from the date of this decision.

Colin Raftery
Senior Director
Competition and Markets Authority
11 July 2022

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

Annex 1:

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

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act.

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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.

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** and for statements referring to the future, **the Merged Entity**.
2. On 9 June 2022, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Act that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, 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**). The text of the SLC Decision is available on the CMA webpages.⁷
3. On 10 June 2022, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 13 June 2022, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, 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

⁷ See [Ali Holding S.r.l. / Welbilt, Inc merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/ali-holding-s-r-l-welbilt-inc-merger-inquiry).

under section 73(2) of the Act and that it is considering the Parties' offer (the **UIL Provisional Acceptance Decision**).

THE UNDERTAKINGS OFFERED

5. As set out in the SLC Decision, the CMA found 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. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, the Parties have offered 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. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).⁸
7. The Parties have also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer before the CMA finally accepts the Proposed Undertakings. The Parties have proposed Pentair plc⁹ (**Pentair**) as the upfront buyer. On 2 March 2022, Welbilt and Pentair Commercial Ice LLC entered into a Purchase Agreement for the Divestment Business. This agreement is conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Pentair as the buyer of the Divestment Business.

CMA ASSESSMENT

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC

⁸ See [Ali Holding S.r.l. / Welbilt, Inc merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/welbilt-inc-merger-inquiry).

⁹ The purchasing entity will be Pentair Commercial Ice LLC whose ultimate parent company is Pentair plc.

identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.¹⁰ This is because the Divestment Business comprises the entirety of the horizontal overlap in the supply of ice machines resulting from the Merger and would therefore restore the competitive constraint provided by Welbilt on Ali (and vice versa) that would otherwise have been lost as a result of the Merger.

9. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the Divestment Business is a viable standalone business and includes all tangible and intangible assets that enable Welbilt to viably operate and compete with Ali.
10. The Upfront Buyer Condition means that the CMA would only accept the Proposed Undertakings after Welbilt has entered into an agreement with a nominated buyer that the CMA considers to be suitable. The CMA considers that an Upfront Buyer Condition is necessary because the identity of the purchaser will affect the effectiveness of the Proposed Undertakings to remedy the CMA's competition concerns. The evidence available to the CMA currently indicates that Pentair has sufficient resources and expertise to provide the necessary management support to enable the Divestment Business to operate as a competitor to the Merged Entity immediately after the Merger.

Suitability of the proposed purchaser

11. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
 - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable;
 - (b) the proposed purchaser is independent of and unconnected to the merging parties that may compromise the purchaser's incentives to compete with the merged entity (eg reciprocal trading relationships or continuing financial assistance);

¹⁰ [Merger remedies \(CMA87\)](#), December 2018, Chapter 3, paragraph 3.28.

- (c) the proposed purchaser has sufficient capability, including access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor;
 - (d) the proposed purchaser is committed to, and has an appropriate business plan and objectives for competing in, the relevant markets, and that the purchaser has the incentive and intention to maintain and operate the relevant business as part of a viable and active business in competition with the merged entity and other competitors in the relevant market;
 - (e) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
 - (f) the acquisition by the proposed purchaser does not itself create a realistic prospect of further competition or regulatory concerns.¹¹
12. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 11 above, the CMA currently considers Pentair to be a suitable purchaser of the Divestment Business for the following reasons:
- (a) The CMA currently considers that the acquisition by Pentair of the Divestment Business would remedy, mitigate or prevent the SLCs concerned and any adverse effect resulting from them, achieving as comprehensive solution as is reasonable and practicable. This is because it would allow the Divestment Business to compete in the supply of ice machines, fully replacing the competitive constraint provided by Welbilt.
 - (b) The evidence available to the CMA indicates that Pentair and its related entities are independent of the Parties and do not appear to have any significant connection to the Parties that may compromise their incentives to compete with the Merged Entity;
 - (c) The evidence available to the CMA indicates that Pentair has the financial resources, expertise, experience, ability and incentive to maintain and develop the Divestment Business as a viable and active competitive entity:

¹¹ [Merger remedies \(CMA87\)](#), December 2018, paragraphs 5.20 to 5.27.

- (i) In relation to its relevant managerial, operational and technical expertise, Pentair was formed in 1966 and currently operates globally, including across Europe, North America and China. Pentair has experience in Commercial Water Solutions, serving similar channel and end-market customers with extensive experience in the foodservice industry. In particular, under the Pentair Everpure brand, Pentair offers an extensive line of water treatment products specifically designed for ice / ice maker applications, and partners with most of the leading ice distributors and dealers. Pentair provided detailed plans to integrate, maintain and develop the Divestment Business, and on this basis, the CMA considers that Pentair has the appropriate managerial, operational and technical expertise to operate the Divestment Business as an effective competitor in the supply of ice machines.
 - (ii) In relation to its financial resources, Pentair is a profitable and growing business. In the year ended 2021, Pentair had an operating profit of [X]. Pentair provided the CMA with evidence of its financial resources and debt funding arrangement, which show that it is capable of financing the acquisition, the ongoing development of the Divestment Business and its existing business. The CMA considers that Pentair has the necessary financial resources to operate the Divestment Business as an effective competitor in the supply of ice machines.
- (d) Pentair has discussed its plans for the Divestment Business with the CMA and provided detailed financial projections, based on the Manitowoc business' prior performance and assumptions about the revenue, as well as shared capabilities and synergy opportunities. The CMA considers that these assumptions are reasonable. Pentair separately provided the CMA with details of its management plans and operational strategy, including with transition and eventual integration of the Divestment Business into Pentair. The plans, financial projections, management plans and overall strategy indicate that Pentair has the necessary understanding of the Divestment Business's operational dynamics and its commitment to operating as a viable competitor to the Merged Entity and other competitors in the supply of ice machines.
- (e) Pentair's acquisition of the Divestment Business should not create a realistic prospect of further competition concerns, nor give rise to any risk of delay in the implementation of the Proposed Undertakings. Pentair does not currently operate any ice machines business in the UK such that there is no possibility of an SLC as a result of horizontal unilateral effects, nor are there any vertical

links between Pentair and either of the Parties that could give rise to competition concerns.

13. Therefore, subject to responses to this consultation, the CMA currently considers Pentair to be a suitable purchaser of the Divestment Business.

Proposed decision and next steps

14. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by Pentair are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
15. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.¹²
16. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.¹³
17. Representations should be made in writing to the CMA and be addressed to:

Georgia Zele

Principal Case Officer

Email: Georgia.Zele@cma.gov.uk

Telephone: 020 3738 6818

Deadline for comments: 7 July 2022

¹² See [Ali Holding S.r.l. / Welbilt, Inc merger inquiry - GOV.UK \(www.gov.uk\)](#).

¹³ Under paragraph 2(4) of Schedule 10 to the Act.