

ANTICIPATED JOINT VENTURE BETWEEN ARÇELİK A.Ş. AND WHIRLPOOL CORPORATION

Issues statement

7 November 2023

The reference

1. On 11 October 2023, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the **Act**), referred the anticipated joint venture between Arçelik A.Ş. (**Arçelik**) and Whirlpool Corporation (**Whirlpool**) (the **Transaction**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Arçelik and Whirlpool are together referred to as the **Parties** and, for statements referring to the situation post-completion of the Transaction, as the **Merged Entity**.
2. In exercise of its duty under [section 36\(1\)](#) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (**UK**) for goods or services.

Purpose of this issues statement

3. In this issues statement, we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), taking into account the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation, and further evidence that will be obtained during our phase 2 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

4. The CMA's phase 1 decision¹ (**Phase 1 Decision**) contains much of the detailed background to this issues statement. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation.
5. As noted above, this issues statement sets out the main issues we are likely to consider in our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The Parties

6. Arçelik is a publicly listed Turkish company that supplies globally a broad range of home appliances and consumer electronics, including major domestic appliances (**MDAs**) and small domestic appliances (**SDAs**). In the UK, Arçelik supplies MDAs primarily under the Beko, Blomberg, Grundig, Arctic, Altus, Flavel and Elektrabregenz brands.² Arçelik generated approximately £[~~£~~] million of turnover in the UK in 2022.³
7. Whirlpool is a publicly listed US company that manufactures and markets globally a full line of domestic appliances and related products, including MDAs and SDAs. In the UK, Whirlpool supplies MDAs primarily under the Whirlpool, Indesit, Hotpoint, Ignis, Bauknecht and Privileg brands, and SDAs under the KitchenAid brand.⁴ Whirlpool's Europe, Middle East and Africa (**EMEA**) MDA business generated approximately £[~~£~~] million of turnover in the UK in 2022.⁵

The Transaction

8. On 16 January 2023, Arçelik and Whirlpool entered into a Contribution Agreement to bring into effect the Transaction. The Transaction comprises, among other matters, the contribution by Arçelik of its European MDA and SDA businesses, and by Whirlpool of its EMEA MDA business (including in the UK), to Beko Europe B.V. (**Beko Europe**), a newly incorporated company established by Arçelik. Upon completion, Arçelik will hold c.75%, and Whirlpool will hold c.25%, of the shareholding in Beko Europe. The Transaction is conditional on receiving merger control clearance from the CMA and other competition authorities.

¹ Available on the case page: [Arçelik / Whirlpool EMEA merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/cases/arcelik-whirlpool-emea-merger-inquiry).

² Final Merger Notice submitted to the CMA on 2 August 2023 (**FMN**), paragraphs 1.4 and 2.7.

³ FMN, Table 1. This turnover figure is of Koç Holdings A.Ş, the ultimate controlling entity of Arçelik.

⁴ FMN, paragraphs 1.5 and 2.10.

⁵ FMN, Table 1. Turnover figure converted to GBP.

9. Arçelik submitted that its strategic rationale for the Transaction is as follows:⁶
- (a) to improve its ability to compete with the broad range of MDA players in the UK and European Economic Area (**EEA**) by reducing costs, while continuing to drive innovation and sustainability efforts;
 - (b) to offer a wider range of products to respond faster to new market trends;
 - (c) to gain a complementary geographic presence to offer more comprehensive aftersales support;
 - (d) to enhance its competitiveness in the UK and EEA by combining the Parties' manufacturing expertise, brands, supply chains, distribution and sales networks, and product pipelines; and
 - (e) the possibility for growth in Beko Europe's market, by combining the Parties' innovation, research and development facilities, procurement and production systems.
10. Whirlpool submitted that its main strategic rationale for the Transaction is the opportunity to accelerate its portfolio transformation away from the European MDA sector [✂].⁷

Our inquiry

11. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us.

Jurisdiction

12. We shall consider the question of jurisdiction in our inquiry. In the case of an anticipated merger, a relevant merger situation exists where the following conditions are satisfied:⁸
- (a) Two or more enterprises⁹ have ceased to be distinct; and
 - (b) Either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the **turnover test**); or

⁶ FMN, paragraphs 2.18-2.21. Phase 1 Decision, paragraph 21.

⁷ FMN, paragraph 2.23-2.27. Phase 1 Decision, paragraph 22.

⁸ [Section 23](#) of the Act.

⁹ An enterprise is defined under [section 129\(1\)](#) of the Act as the activities, or part of the activities, of a business. A business includes a professional practice and any other undertaking which is carried on for gain or reward, or which supplies goods or services otherwise than free of charge.

- (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the **share of supply test**).
- 13. In its Phase 1 Decision,¹⁰ the CMA found that it had jurisdiction to review the Transaction on the basis that it believed that it is or may be the case that:
 - (a) each of Arçelik and the EMEA MDA business of Whirlpool is an enterprise, and that these enterprises will cease to be distinct as a result of the Transaction; and
 - (b) the turnover test is satisfied on the basis that the EMEA MDA business of Whirlpool generated more than £70 million turnover in the UK in the most recent financial year.

Counterfactual

- 14. We will compare the prospects for competition resulting from the Transaction against the competitive situation without the Transaction: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.¹¹
- 15. For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. The Phase 1 Decision found that the relevant counterfactual is the prevailing conditions of competition.¹²
- 16. The Parties submitted during the phase 1 investigation that the appropriate counterfactual should be the prevailing conditions of competition.¹³ However, Whirlpool also made several submissions stating that its position in the market has been [X] declining over recent years, and that, absent the Transaction, the most likely outcome would be that Whirlpool [X] its EMEA MDA business by either [X] or [X] reducing [X].¹⁴
- 17. Given the nature of these submissions, the CMA concluded in its Phase 1 Decision that they are most appropriately addressed in the counterfactual.¹⁵ However, the CMA concluded that there was considerable uncertainty as to what strategy would have been pursued by Whirlpool absent the Transaction,

¹⁰ Phase 1 Decision, paragraphs 25-28.

¹¹ [Merger Assessment Guidelines \(CMA129\) \(March 2021\) \(CMA129\)](#), paragraph 3.1.

¹² Phase 1 Decision, paragraphs 29-42.

¹³ FMN, paragraph 11.1.

¹⁴ See, for example, FMN, paragraph 15.19 and Phase 1 Decision, paragraphs 32-35.

¹⁵ Phase 1 Decision, paragraph 31.

and the extent to which Whirlpool would have been a weaker competitive force as a result (and over what timeframe).¹⁶

18. In view of the above, and subject to further evidence obtained in the phase 2 investigation, our starting point is that our assessment should be based on the prevailing conditions of competition, as the most likely counterfactual to the Transaction, but we welcome any further evidence on this part of our assessment.

Assessment of the competitive effects of the Transaction

Theories of harm

19. The term ‘theory of harm’ refers to a hypothesis about how the process of rivalry could be harmed as a result of a merger. Theories of harm provide a framework for assessing the competitive effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.¹⁷
20. In its Phase 1 Decision, the CMA found that the Transaction gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of each of the following MDA products in the UK:
 - (a) washing machines;
 - (b) tumble dryers;
 - (c) dishwashers; and
 - (d) cooking appliances (comprising cookers, ovens and hobs).
21. We are minded to focus our competitive assessment on these theories of harm at phase 2.
22. Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or following further analysis.
23. In its phase 1 investigation, the CMA also assessed the impact of the Transaction in relation to (a) the supply of refrigerators in the UK and (b) the supply of freezers in the UK. It found that the Transaction did not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in either case.¹⁸ We are not currently minded to pursue these theories of harm in our investigation; however, should any party have reason for believing that we

¹⁶ Phase 1 Decision, paragraph 40.

¹⁷ [CMA129](#), paragraph 2.11.

¹⁸ Phase 1 Decision, paragraph 119.

should investigate these theories of harm (or any new theories of harm), it should tell us and provide a reasoned submission.

Horizontal unilateral effects

24. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both), and is not limited to end consumers.¹⁹
25. When assessing whether a merger may give rise to an SLC as a result of horizontal unilateral effects, the CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.²⁰
26. In the Phase 1 Decision,²¹ the CMA found that there was a realistic prospect that the Transaction would raise significant competition concerns as a result of horizontal unilateral effects in the supply of washing machines, tumble dryers, dishwashers, and cooking appliances in the UK because:
 - (a) the Parties have high shares of supply in each of these product categories, and the Merged Entity would be the largest individual supplier in each category;
 - (b) evidence from internal documents, third parties and the CMA's pricing analysis indicated that the Parties compete closely with each other, particularly in the low- to mid-price ranges; and
 - (c) although the Merged Entity would continue to face some competition from alternative suppliers (such as Haier, BSH, Samsung and private label brands²²) the constraint from these suppliers was unlikely to be sufficient to prevent a significant reduction in competition in these product categories, in particular because most of these suppliers compete less closely with the Parties than the Parties do with each other (eg because

¹⁹ CMA129, paragraph 4.1.

²⁰ CMA129, paragraph 4.3.

²¹ Phase 1 Decision, paragraphs 13 and 138.

²² BSH operates under the Bosch, Siemens and Neff brands. Private label products are those manufactured by a third-party manufacturer but sold under the retailer's own brand name. Examples include Bush (Argos), Logik and Essentials (Currys) and Lamona (Howdens).

they are smaller and/or less present in the price ranges where the Parties are strongest).

How we propose to investigate the theories of harm further in phase 2

27. As part of our inquiry, we will use the data and information collected during the phase 1 investigation, and seek to expand this evidence base as appropriate.
28. We will consider:
 - (a) the role of retailers in shaping competition between suppliers of washing machines, tumble dryers, dishwashers and cooking appliances;
 - (b) the importance of price and other factors (such as brand, features, reliability and total running cost) in the supply of washing machines, tumble dryers, dishwashers, and cooking appliances;
 - (c) the extent to which the Parties compete closely, given the role of retailers and the importance of price and other factors. In its Phase 1 Decision, the CMA found that the Parties competed closely with each other, particularly in the low- to mid-price ranges.²³ We welcome further evidence on this point, including the extent to which there are meaningful product segmentations within each MDA category (eg based on price and quality);
 - (d) the Parties' plans and likely competitive trajectory absent the Transaction; and
 - (e) the constraint remaining from alternative suppliers post-Transaction, and whether this constraint may be sufficient to prevent a significant reduction in competition in the product categories under investigation. At this stage, we would particularly welcome evidence regarding the current and future competitive constraint on each of the Parties in the UK from:
 - (i) private label brands;
 - (ii) other suppliers active in the low- to mid-price range (such as Haier and Hisense);²⁴
 - (iii) other suppliers, including those whose current focus is outside the low- to mid-price range.

²³ Phase 1 Decision, paragraphs 13 and 117.

²⁴ In the UK, Haier primarily operates under the Hoover, Candy and Haier brands, and Hisense primarily operates under the Hisense and Fridgemaster brands.

Market definition

29. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.²⁵ The CMA is therefore required to identify the market or markets within which an SLC may be expected to result. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.²⁶
30. It is recognised that there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.²⁷ In many cases, especially those involving differentiated products, there is often no ‘bright line’ that can or should be drawn and the CMA will generally not need to come to finely balanced judgements on what is ‘inside’ or ‘outside’ the market. Rather, it can be more helpful to describe the constraint posed by different categories of product or supplier as sitting on a continuum between ‘strong’ and ‘weak’.²⁸
31. In the Phase 1 Decision, the CMA considered each of washing machines, tumble dryers, dishwashers, cooking appliances, refrigerators and freezers as distinct frames of reference.²⁹ The CMA also considered evidence relating to a number of potential further segmentations, namely: (i) built-in versus freestanding appliances, (ii) branded versus non-branded appliances, (iii) price segmentations, and (iv) further segmentation of cooking appliances into cookers, ovens and hobs. The CMA did not consider it necessary to define separate frames of reference based on any of these segmentations, but took account of such factors in its competitive assessment.
32. In relation to geographic scope, the CMA considered the appropriate frame of reference to be the UK.³⁰
33. We currently consider that the frame of reference adopted in the Phase 1 Decision is an appropriate starting point for our analysis of market definition. We anticipate that this analysis will largely draw on the same evidence that informs our competitive assessment.

²⁵ Section 36(1)(b), the Act.

²⁶ CMA129, paragraph 9.1.

²⁷ CMA129, paragraph 9.4.

²⁸ CMA129, paragraph 9.4.

²⁹ Phase 1 Decision, paragraph 64.

³⁰ Phase 1 Decision, paragraphs 60-63.

Countervailing factors

34. We will consider whether there are countervailing factors which prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
35. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Transaction.³¹
36. We will also consider any relevant evidence submitted to us by the Parties that the Transaction is likely to give rise to efficiencies that will enhance rivalry, such that the Transaction may not be expected to result in an SLC.³²

Possible remedies and relevant customer benefits

37. Should we conclude that the Transaction may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
38. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Transaction and, if so, what these benefits are likely to be and which customers would benefit.³³

Responses to this issues statement

39. Any party wishing to respond to this issues statement should do so in writing, by no later than **5pm (UK time) on Tuesday 21 November 2023** by emailing Arçelik.Whirlpool@cma.gov.uk.

³¹ [CMA129](#), paragraphs 8.28-8.46.

³² In order to reach a view that such efficiencies prevent or mitigate any SLC found, the CMA must be satisfied that the evidence shows that that the merger efficiencies: (a) enhance rivalry in the supply of those products where an SLC may otherwise arise; (b) are timely, likely and sufficient to prevent an SLC from arising; (c) be merger-specific; and (d) benefit customers in the UK ([CMA129](#), paragraph 8.8).

³³ [Merger Remedies \(CMA87\) \(13 December 2018\) \(CMA87\)](#), paragraphs 3.4 and 3.15-3.24.