

Anticipated acquisition by Wolseley UK Limited of Kooltech Limited

SUMMARY

Overview of the CMA's decision

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Wolseley UK Limited (**Wolseley**), a wholly owned subsidiary of Wolseley Group Limited (the **Wolseley Group**), of Kooltech Limited (**Kooltech**) gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in:
 - (a) the wholesale supply of air conditioning (**AC**) products in Aberdeen; and
 - (b) the wholesale supply of refrigeration products in Aberdeen.
2. Wolseley has agreed to acquire 100% of the issued share capital of Kooltech pursuant to a share purchase agreement. The CMA refers to this acquisition as the **Merger**. Wolseley and Kooltech are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
3. As the CMA has found that the Merger gives rise to a realistic prospect of an SLC, the Parties have until 30 November 2023 to offer undertakings in lieu of a reference (**UILs**) to the CMA that will remedy the competition concerns identified. If no such undertaking is offered, or the CMA decides that an undertaking offered is insufficient to remedy its concerns to the phase 1 standard, then the CMA will refer the Merger for an in-depth phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Enterprise Act 2002 (the **Act**).

Who are the businesses and what products/services do they provide?

4. Wolseley (wholly owned by Wolseley Group and ultimately owned by Clayton, Dubilier and Rice LLC) is a wholesaler which operates a number of distinct trading brands and sells plumbing, heating, cooling and infrastructure products in the UK.

Wolseley has around 500 branches across the UK, including 18 Wolseley Climate branches and 30 dual-branded branches shared between Wolseley Climate and Wolseley Pipe through which it sells AC and refrigeration products.

5. Kooltech is a wholesaler provider of AC and refrigeration products in the UK. It has eight branches in the UK.
6. The Parties overlap in the wholesale supply of AC products and refrigeration products, both on a UK-wide basis and at a local level (in locations where both are present). The Merger does not raise competition concerns at the national level and therefore the loss of competition at the local level has been the focus of the CMA's investigation.

Why did the CMA review this merger?

7. The CMA has a duty to investigate mergers that could raise competition concerns in the UK where a merger meets certain jurisdictional tests.
8. The CMA has concluded that it has jurisdiction to review this Merger: the CMA believes that it is or may be the case that each of Wolseley and Kooltech is an enterprise, that they will cease to be distinct as a result of the Merger and that the share of supply test is met.

What evidence did the CMA look at?

9. In assessing this Merger, the CMA considered a wide range of evidence.
10. The CMA received several submissions and responses to information requests from the Parties. This included information about the nature of the Parties' businesses, the products offered by the Parties, the size of catchment areas in each local area and the Parties' revenues and shares of supply.
11. The CMA spoke to and gathered evidence from other market participants, including customers, competitors and suppliers (Original Equipment Manufacturers (**OEMs**)) to the Parties, to better understand the competitive landscape.
12. The CMA also examined the Parties' own internal documents, which show how they run their business, how they view their rivals in the ordinary course of business and how they view the geographic scope at which competition takes place (ie national and/or local).

What did the evidence tell the CMA...

...on whether wholesalers of AC and refrigeration products compete at a national or local level?

13. Third-party evidence indicated that most customers with non-urgent needs prefer to order products for delivery rather than collect them and therefore the CMA has assessed the Merger on a national basis.
14. The CMA also believes that the Parties set some aspects of their wholesale offer locally, taking account of local competitive conditions, and that customers with an urgent need or for whom delivery is not a preferred option are generally only willing to travel a particular distance to collect AC and refrigeration products. Accordingly, the CMA has also assessed whether the Merger raises competition concerns at the local level, using catchment areas based on the location of the Parties' customer base.
15. Accordingly, the CMA has considered the impact of the Merger for AC products and refrigeration products, respectively on a:
 - (a) National (UK) basis for those customers with planned, non-urgent needs when delivery is an option; and
 - (b) Local basis for those customers with an urgent need or when delivery is not a preferred option.

...about the effects on competition of the Merger?

16. The CMA looked at whether the Merger would lead to an SLC in the wholesale supply of AC and refrigeration products in the UK and at the local level.
17. At the national level, the CMA found no competition concerns on the basis that: (i) notwithstanding some differentiation in the Parties' focus and operation they are close competitors, but also compete against a number of similarly close competitors; (ii) the Merged Entity would have a relatively modest market position, with a share of supply of around [20-30]% in AC and [20-30%] in refrigeration; and (iii) the Parties would continue to face strong competition from other AC and refrigeration product wholesale providers such as Beijer, TF solutions, Smith Brothers, FSW and to some extent OEM suppliers such as Mitsubishi Electric and Daikin.
18. At the local level, the CMA considered the impact of the Merger in the catchment areas where the Parties have a significant combined presence. The geographic

presence of suppliers (including the Parties) is varied, and not all of the strong competitors identified at the national level are present in the local areas where the Parties overlap. To identify areas of possible concern, the CMA used a filtering methodology, similar to that used in previous investigations, and then conducted further analysis of areas that ‘failed’ the filter. Two areas failed the filter:

- (a) In Cambridge/Peterborough, while the CMA found that the Parties were close competitors, the CMA found no competition concerns on the basis that there would continue to face sufficient competition when taking into account not only the limited number of close competitors within the catchment areas, but also certain additional providers just outside the catchment areas that the CMA considers would also be an alternative for the Parties’ customers within this area.
- (b) In Aberdeen, the CMA found that the Parties are close competitors and that Merged Entity would be the only remaining provider of AC and refrigeration products in the area. The CMA found no evidence of any other material constraints on the Parties.

19. On this basis, the CMA found that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the wholesale supply of (i) AC products and (ii) refrigeration products in Aberdeen.

What happens next?

20. As a result of these concerns, the CMA believes the merger gives rise to a realistic prospect of SLC(s) in relation to the wholesale supply of AC products and refrigeration products in Aberdeen. The Parties have until 30 November 2023 to offer an undertaking which might be accepted by the CMA to address the SLC. If no such undertaking is offered, or the CMA decides that an undertaking offered is insufficient to remedy its concerns to the phase 1 standard, then the CMA will refer the Merger for an in-depth phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.