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CLEARY GOTTlieb STEEN & HAMILTON LLP

**ANTICIPATED ACQUISITION BY ARÇELİK A.Ş. OF THE EUROPE,
MIDDLE EAST AND NORTH AFRICA MAJOR DOMESTIC APPLIANCES
BUSINESS OF WHIRLPOOL CORPORATION**

**PARTIES' OBSERVATIONS ON THE CMA'S ISSUES
STATEMENT**

21 NOVEMBER 2023

ANTICIPATED ACQUISITION BY ARÇELİK A.Ş. OF THE EUROPEAN, MIDDLE EAST AND NORTH AFRICA MAJOR DOMESTIC APPLIANCES BUSINESS OF WHIRLPOOL CORPORATION

PARTIES' OBSERVATIONS ON THE CMA'S ISSUES STATEMENT

Arçelik A.Ş. (“Arçelik”) and Whirlpool Corporation (“Whirlpool”; together with Arçelik, the “Parties”) welcome the opportunity to comment on the CMA’s Issues Statement of 7 November 2023 (the “Issues Statement”), in the context of the CMA’s investigation into the anticipated acquisition by Arçelik of Whirlpool’s EMEA major domestic appliances (“MDA”) business (the “Transaction”).

The Parties’ Initial Submission of 24 October 2023 responded to the CMA’s Phase 1 Decision. It explains the context and rationale for the Transaction, the markets in which the Parties operate, and the significant competitive constraints they face. As the Issues Statement reflects the CMA’s Phase 1 Decision, the Parties refer the CMA to that Submission and do not repeat all of the points made in that Submission here.

In summary, for the reasons explained below, the Transaction will not result in an SLC in any MDA market in the UK.

1. The UK MDA Sector Is Highly Competitive

1.1 **The Transaction responds to structural changes in the MDA sector that have permanently reshaped the competitive landscape.** Over the last 10 years, established manufacturers have struggled to compete with the influx of appliances across all product categories from low-cost global suppliers based primarily in China and South Korea.¹ Asian manufacturers have enormous scale, deep financial resources (including, in some cases, state subsidies), and access to low-cost labour, raw materials, and larger scale production facilities. They produce MDAs across all categories and price points for sale around the world. Together, they have had a very significant impact on legacy European producers, some of which have exited the market.²

1.2 **Traditional Western suppliers, including Whirlpool, cannot compete with low-cost Asian producers, given their dependency on older, high-cost European production facilities.** Whirlpool publicly announced in April 2022 that its European business would not continue in its current form: it would either be sold or significantly scaled back.³ Arçelik, for its part, has been relatively successful in establishing itself in Europe (including the UK), but lacks the scale and efficiencies needed to remain competitive in this new environment. The Transaction will allow Beko Europe to achieve those

¹ See Reuters, “*Electrolux shares hit lowest since 2012 on high costs, reluctant customers,*” 30 October 2023, submitted to the CMA on 20 November 2023.

² See section 5 of the Initial Submission.

³ See Whirlpool Corporation, Q2 2022 Earnings Call, 26 July 2022, p. 5 and section 3 of the Initial Submission.

efficiencies.⁴ As a result, consumers will continue to benefit from security of MDA supply from a strong, efficient, and competitive European manufacturing base.

- **Low-cost Asian suppliers are pursuing, and will continue to pursue, entry and expansion strategies focused on the UK.** Asian suppliers have grown to account for [20-30]% of UK sales by value.⁵ Their share has increased by [10-20] percentage points in 15 years. Asian competitors have made clear their intention to further grow their UK presence in coming years:
 - 1.2.1 **Haier.** Haier is growing across a range of MDA price bands with its *Haier, Candy, and Hoover* brands, with the “*aim [...] to become the number one supplier*” in the UK by 2027.⁶
 - 1.2.2 **Samsung.** Samsung is already a well-established competitor in the MDA markets in the UK and is “*making a number of investments in the UK.*”⁷
 - 1.2.3 **Hisense.** Hisense is actively expanding in the UK, with its UK subsidiary experiencing over [10-20]% year-on-year growth in 2022. Hisense’s “*plans for the future revolve around [...] expanding [its] market presence in the UK,*” recognising the “*tremendous potential of the UK market.*”⁸
 - 1.2.4 **LG.** LG already offers a wide range of MDA products and it plans to “*leap to become the best in Europe [...] with a focus on the low-end and mid-range market.*”⁹
 - 1.2.5 **Midea.** Midea has aggressive expansion plans. It secured a deal with Euronics to distribute its MDA products in the UK from March 2023. In addition, Midea has already achieved GBP 2 million in sales of MDA products through Amazon in the UK and aims to increase these sales to GBP 100 million in the UK within five years.
 - 1.2.6 **TCL.** Identified as “*one of the world’s fastest-growing consumer electronics and home appliance companies,*”¹⁰ TCL’s MDA products are already available through various online retailers in the UK. The Parties expect TCL to leverage its position

⁴ See section 9 of the Initial Submission.

⁵ The equivalent figure for MDA4 markets is [20-30]% of UK sales by value. The aggregation is based on the following figures across MDA4 markets: [40-50]% (washing machines), [30-40]% (tumble dryers), [5-10]% (dishwashers) and [0-5]% (cooking appliances).

⁶ See KBB Review, “*Haier outlines plans for growth in UK,*” 13 July 2023.

⁷ See Frankland, “*‘Strong take-up’ as Samsung relaunches Kitchen Circle for KBB studios,*” 9 May 2022.

⁸ See Insider Media Limited, “*UK arm of manufacturing giant hails ‘remarkable growth’,*” 11 July 2023.

⁹ LG Electronics, 3 September 2023, KED Global.

¹⁰ See Gowan Home (formerly KAL), “*TCL joins Gowan Home,*” not dated.

as the second-largest manufacturer of TVs in the world and its substantial MDA manufacturing capacity to further expand in the UK.¹¹

- 1.3 **These suppliers have invested heavily in high-profile marketing and sponsorship and, as a result, their brand awareness has significantly increased.** Moreover, all of these Asian manufacturers are able to leverage established reputations in other product markets, including mobile phones, TVs and other consumer electronics, as a way to gain retailer listings and consumer recognition.
- 1.4 **Suppliers of branded MDA products are facing growing competition from private-label products.** Private-label products (*i.e.*, store-branded MDAs manufactured by third parties) have grown consistently to account for around [30-40]% of UK sales by volume.¹² This growth has been particularly evident in the lower range of the price spectrum, as many customers switch to lower-cost products at the expense of more traditional mid-range branded products. Several retailers are, at the same time, offering more private-label products with premium features at higher price points (*e.g.*, John Lewis, Argos and Currys).
- 1.5 **MDA suppliers face unprecedented economic and regulatory challenges.** Environmental and energy-consumption regulations, combined with input-cost increases in Europe (such as raw materials, logistics, and labour), mean that manufacturers need to find ever greater efficiencies just to be able to maintain their traditional margins, let alone compete with hyper-efficient Asian suppliers and private-label competitors. The new entity, Beko Europe, will benefit from cost and platform-related synergies that would help it meet new environmental regulations, while continuing to improve its existing products and compete effectively against Asian players.¹³
- 1.6 **On the demand-side, the Parties' customers exercise considerable power and set prices only after intense bilateral negotiations.**¹⁴ The Parties' customers – retailers, buying groups, and kitchen manufacturers – act as intermediaries between manufacturers and consumers. In every price band and for every set of features, they can choose among a wide range of products and brands. Their role as “gatekeepers” gives them considerable power, driving manufacturers to continuously price their products competitively and to improve their offerings in an effort to stand out in a fragmented marketplace. The bargaining leverage exercised by retailers reflects five inter-related considerations:

¹¹ In 2022, TCL produced 2 million refrigerators and 2.24 million washing machines (TCL 2022 Annual Report, p. 24). TCL is also the controlling shareholder of Homa, a major OEM supplier.

¹² The equivalent figure for MDA4 markets is that private-label products account for around [10-20]% of UK sales by volume. This aggregation is based on the following figures across MDA4 markets: [20-30]% (cooking appliances), [10-20]% (dishwashers), [10-20]% (tumble dryers), and [10-20]% (washing machines).

¹³ See paras. 4.1.6, 9.2 and 9.3 of the Initial Submission.

¹⁴ See section 8 of the Initial Submission.

- 1.6.1 ***First, a small number of customers account for a significant proportion of the Parties' sales.***¹⁵ The Parties' customer bases are highly concentrated.¹⁶ Because customers know that the Parties depend on them for a significant proportion of sales, they are able to extract highly competitive terms. Retailers' purchases of own-brand products from OEM suppliers also make them exceptionally informed customers, further strengthening their negotiating positions. As a result, they would not hesitate to de-list the Parties' products or reduce their purchases in the event of an attempt to increase prices post-Transaction.
- 1.6.2 ***Second, customers can and do switch between numerous MDA suppliers.*** Major MDA customers including [REDACTED], [REDACTED], [REDACTED], and [REDACTED] have de-listed, or threatened to de-list, the Parties' products.¹⁷ Retailers have a large range of alternative suppliers that they can switch to, including Western and Asian competitors. The fact that some competitors have relatively low market shares in the UK today does not mean that they are not credible alternatives for customers. These producers have the ability to supply large volumes of MDA products at low cost and have active expansion plans for the UK. They also supply a broad range of MDA products across all categories and price bands, offering customers a wide range of products from which choose. Post-Transaction, Beko Europe's overwhelming incentive will be to offer highly competitive prices to maintain sales volumes and avoid de-listing.
- 1.6.3 ***Third, retailers have used the emergence of low-cost Asian producers to strengthen their own positions.*** They have done so principally by using Asian producers: (i) as bargaining leverage to secure even better terms from established Western producers by threatening to de-list, reduce purchases or floor space, or redirect promotional efforts; and (ii) as a source of low-cost private-label appliances, which now represent [10-20]% by value and [20-30]% by volume of MDA6 sales, many of which are sold at lower price points.¹⁸
- 1.6.4 ***Fourth, consumers have little brand loyalty, particularly at lower price points, and so retailers have substantial influence on consumer choice.***¹⁹ The majority of consumers do not start their journey towards the purchase of a MDA product with a specific brand in mind. Instead, they look to retailers for advice (through online and in-store recommendations) and direction (through search results preferencing, promotional banners, and online ratings and comments). Retailers therefore play a critical role in shaping consumer decisions. Low levels of

¹⁵ See paras. 8.3 and 8.4 of the Initial Submission.

¹⁶ The three largest retailers/kitchen manufacturers that buy directly from Arçelik and Whirlpool together account for [REDACTED]% and [REDACTED]%, respectively, of their MDA sales in the UK. Smaller retailers tend to purchase their MDAs through large buying groups such as Euronics and E-square that exercise considerable buyer power.

¹⁷ See paras. 8.8 to 8.12 of the Initial Submission.

¹⁸ See para. 1.7.3 of the Initial Submission.

¹⁹ See para. 8.4 of the Initial Submission.

consumer brand loyalty means that retailers would have no hesitation in switching away from the Parties' brands should Beko Europe try to raise prices post-Transaction.

1.6.5 ***Fifth, negotiations do not take place on a product-by-product basis, but over a range of products sold by each manufacturer.*** Customers buy a range of products from each manufacturer, including the Parties, which extend across price bands and MDA categories. Customers use their buyer power over the whole range of products as leverage in negotiations. Negotiations take place frequently, often annually. Customers are able to extract an increasing number of concessions from manufacturers with each round of negotiations, as the competitive landscape evolves. As a result, any attempt to raise prices in one MDA market – even if the retailer decided not to delist that product – could be punished by reducing purchases or withholding promotion or other support in another market. This includes delisting products that are sold at higher price points with (in general) higher margins.²⁰

1.6.6 ***Sixth, Amazon is poised to become a significant retailer of MDAs in the UK.*** Amazon has unique resources, scale and consumer reach. It is already selling products from Midea, Haier and Samsung in its own name, in addition to offering many products through its Marketplace retailers. The growth of Amazon as a low-cost retailer will place even greater pressure on other retailers and, ultimately manufacturers, driving prices even lower.

1.7 **The UK MDA sector is intensely competitive on every relevant metric.** On the supply-side, numerous producers of largely commoditised appliances, faced with weak brand loyalty from consumers, compete intensely for retail floor space, online presence, and consumer attention.²¹ On the demand-side, consumers benefit from a vast array of appliances with similar functions and characteristics, sold under many brands and at many price points that can easily be compared with one another (the “sea of white”).²² A transaction affecting a market of this kind is inherently unlikely to raise competition concerns. The following data across all MDAs are striking:

- There are more than 20 suppliers of MDAs active in the UK.
- MDAs are sold under 160 brands in the UK (excluding private-label brands).²³
- Imports represent more than [90-100]% of UK sales.

²⁰ See paras. 1.7.5 and 1.12 of the Initial Submission.

²¹ See section 4 of the Initial Submission.

²² See para. 8.5.1 of the Initial Submission.

²³ The equivalent figure for MDA4 markets is 110 brands in the UK.

- Asian suppliers have grown to account for [20-30]% of UK sales by value.²⁴
- Private-label products have grown consistently to account for around [30-40]% of UK sales by volume.²⁵
- Whirlpool’s share of UK sales has declined by [10-20] percentage points in 15 years.²⁶ [§<].
- [§<].

1.8 **The market feedback obtained in Phase 1 confirmed that the UK landscape is highly competitive and fragmented.**²⁷ Third parties attested to “*other established brands*,” “*Chinese suppliers*,” and “*private-label*” products exercising a “*competitive constraint on the Parties*.”²⁸ Although the CMA characterised third-party responses to its market testing as “*mixed*,”²⁹ there was no consensus that the Transaction would be harmful. On the contrary, many respondents confirmed the sector’s competitiveness, and only a few raised any concerns about the Transaction.³⁰

²⁴ The equivalent figure for MDA4 markets is [20-30]% of UK sales by value. The aggregation is based on the following figures across MDA4 markets: [40-50]% (washing machines), [30-40]% (tumble dryers), [5-10]% (dishwashers) and [0-5]% (cooking appliances).

²⁵ The equivalent figure for MDA4 markets is that private-label products account for around [10-20]% of UK sales by volume. This aggregation is based on the following figures across MDA4 markets: [20-30]% (cooking appliances), [10-20]% (dishwashers), [10-20]% (tumble dryers), and [10-20]% (washing machines).

²⁶ The equivalent figure for MDA4 markets is that Whirlpool’s share of UK sales has declined by [20-30] percentage points in 15 years.

²⁷ The European Commission’s parallel review has determined that the Transaction raises no competition concerns in any of the 30 EEA jurisdictions. The Parties received an unconditional clearance decision from the Commission on 23 October. This decision follows a lengthy and detailed investigation into numerous European jurisdictions where the Parties’ shares are comparable to and in some cases higher than those in the UK (e.g., there are numerous EEA jurisdictions where the Parties’ combined market shares are comparable to or higher than the Parties’ combined market shares in the UK in one or more MDA4 categories, including shares exceeding [§<] (and, in one case, [§<]%). Given the similar conditions of competition that exist in the UK and Continental Europe, the Parties are confident that the CMA will reach the same view that the Parties will face intense competition from numerous rivals in the UK, as elsewhere in Europe.

²⁸ See, e.g., para. 101(a)-(c) of Phase 1 Decision.

²⁹ See, e.g., para. 105 of Phase 1 Decision.

³⁰ See, e.g., para. 105 of Phase 1 Decision. To the extent that competitors may have made unhelpful comments, they may well have been motivated by a desire to impede a transaction that could intensify competition. It is also important to note that many of the Parties’ customers are also significant competitors by virtue of their sale of private label products that compete directly with branded products.

2. **The Parties Are Not Uniquely Close Competitors**

- 2.1 **The Parties compete closely with many rival suppliers.** The Issues Statement finds that “*the Parties compet[e] closely with each other.*”³¹ This is unsurprising. In a market with largely commoditised products, weak brand loyalty, and numerous suppliers, most suppliers are likely to be close competitors of one another. Importantly, the Parties are not uniquely close – they do not have special attributes that insulate them from competition from others; on the contrary, they face many rivals with comparable or better products. In fact, each Party faces a large number of equally close competitors.³² There are more than 20 MDA suppliers active in the UK, selling MDAs under more than 160 brands. As a result, the competition that the Parties impose on each other is dwarfed by intense rivalry from traditional Western suppliers, Asian suppliers, and private-label products.³³
- 2.2 **The Parties’ MDA4 shares are well below levels that would typically give rise to competition concerns.** It is well-established that market shares at or around 30% are highly unlikely to give rise to concerns in particular where, as here, other relevant indicia evidence a highly competitive market, the Parties’ products are not “must have” brands or uniquely close competitors, and the Parties face credible threats of entry, expansion, delisting, and share erosion. The short-lived nature of market shares is further demonstrated by the stark decline in Whirlpool’s market position and rapid growth of Asian manufacturers.³⁴
- 2.3 **Price should not be relied upon as the basis for finding closeness of competition between MDA suppliers.** The following considerations are relevant in this connection:
- 2.3.1 ***First, the Parties compete with many suppliers across a continuum of prices.*** As acknowledged in the Phase 1 Decision³⁵ and the Issues Statement;³⁶ there are no established pricing categories. Suppliers are generally active at all price points or could easily make minor adjustments to their products, marketing, or brand positioning to compete at all price points.³⁷
- 2.3.2 ***Second, consumers shop across price bands, including to take account of the lifetime costs of different appliances.*** Many consumers use online comparison tools (such as Youreko) and consult buyer guides and consumer reviews (such as

³¹ See para. 28 of Issues Statement and paras. 13 and 17 of Phase 1 Decision.

³² The market feedback obtained by the CMA confirms that the Parties are not uniquely close competitors. In response to the CMA questionnaire, customers identified Haier, Electrolux, BSH, and Samsung as the Parties’ top competitors. See para. 102 of Phase 1 Decision.

³³ See para. 4.1 of the Initial Submission.

³⁴ By way of example, in tumble dryers, its UK share by value fell from [20-30]% (in 2018) to [10-20]% (in 2022). See paras. 4.1.3 to 4.1.6 of the Initial Submission.

³⁵ See para. 84 of Phase 1 Decision.

³⁶ See paras. 31 and 33 of Issues Statement.

³⁷ See para. 7.3 of the Initial Submission.

Which?) to identify other appliances – which may be higher-priced – with lower lifetime running costs. Retailers and consumer organisations actively encourage consumers to take running costs, reliability and other non-price features into account when deciding which appliance to purchase. As a result, products compete not only with others at the same price point, but across price points.³⁸ Moreover, the pricing quartiles analysed by the CMA in its Phase 1 decision are extremely narrow, meaning that products in different quartiles have prices that are only marginally higher or lower. This alone suggests there is close competition between products in neighbouring quartiles.

2.3.3 ***Third, the pricing of products is dynamic*** because manufacturers are able to adjust the prices of their products or extend their product portfolio with ease (e.g., by adding or removing features and functions, or via promotions by offering discounts).³⁹ This means that the competitive constraints that manufacturers exert on one another extend well beyond their current product portfolio and prices.

2.3.4 ***Fourth, the price positioning of specific SKUs at the retail level is heavily influenced by customers*** that negotiate individual pricing, reflecting discounts and funding for promotional activities, and increasingly take account of appliances' lifetime costs in pricing MDAs.⁴⁰

2.4 **The Parties' shares at low-mid price points will not confer market power.** The Parties recognise that there are certain price points in each market where their combined shares are higher than others. This is unsurprising. What matters is that no producer is confined to a particular part of the market, virtually all producers can and do compete across all price segments, and consumers compare appliances sold at different price points.⁴¹ If Beko Europe were to raise prices of products at certain price points, customers and consumers would quickly switch to any of the numerous other credible choices available. Moreover, to make any attempted price increase unprofitable, retailers and consumers would not need to switch all of their demand – only a small amount of switching would be needed. As a result, retailers would retain a similar level of buyer power post-Transaction as they have pre-Transaction.⁴² The following points are relevant in this connection:

2.4.1 ***Numerous rivals already compete at low-mid price points.*** Retailers derive their superior negotiating power not only from their size and sophistication, but also from the ready availability of other suppliers to whom they could switch if the Parties attempted to raise prices and the fact that they negotiate across all product

³⁸ See paras. 7.10 and 7.11 of the Initial Submission.

³⁹ See para. 7.3.2 of the Initial Submission.

⁴⁰ See paras. 1.11.2 and 8.13 of the Initial Submission.

⁴¹ The Phase 1 Decision recognises that “*there is no standard price segmentation used in the industry, and that suppliers active in one segment may still face competitive constraint from those active in other segments.*” See para. 91 of Phase 1 Decision.

⁴² The Parties refer the CMA to their Initial Submission where they set out in detail the considerations relevant in this respect. See section 7 of the Initial Submission.

categories and price points. The Phase 1 Decision acknowledges that there is a plethora of suppliers across the price ranges where the Parties are active.⁴³

2.4.2 ***Private-label products are intensely competitive at low-mid price points.*** Sales of private-label products have increased significantly in recent years (by [60-70]% in low-mid price points for MDA4 from 2018 to 2022). Private-label products are high-quality appliances, offering a wide range of features. They are promoted by retailers as branded products (e.g., as *Bush*-brand products) instore and online. The Phase 1 Decision recognises that private-label products compete with all other (branded) products.⁴⁴ This was also confirmed by third-party respondents to the CMA’s market test.⁴⁵ The Phase 1 Decision, however, underestimates the significance of private-label products, particularly at mid-level price points.⁴⁶

2.4.3 ***Private-label products offer competitive quality.*** Competition from private-label products should not be discounted based on any misconception about their quality or reliability. Many of the private-label products sold by UK retailers are made by Asian and Turkish companies that also make branded appliances in the same facilities. Whirlpool’s experience confirms that private-label OEMs make high-quality products. It has purchased MDAs on an OEM-basis from Homa, Midea, Galanz, TCL, and Vestel. Before placing its brands on those OEM products, Whirlpool thoroughly tested the products to ensure that they complied with applicable European regulatory requirements and a strict set of internal quality and safety parameters. Consumer research further supports the Parties’ view that private-label products are not different in terms of quality or reliability from branded products.

2.4.4 ***Several manufacturers are expanding at low-mid price points.*** Suppliers historically more active in higher price points (e.g. Samsung, BSH, and LG) have already expanded into low-mid priced bands in the UK in the last five years.⁴⁷ Asian suppliers have committed to expanding in Europe, including the UK, in respect of lower price bands.⁴⁸ In addition, many of these suppliers have

⁴³ The Phase 1 Decision acknowledges that there are “*several other competitors*” and that “*the Parties will continue to face some competition from alternative suppliers, including established European providers [...], Chinese providers [...] and Private-label brands.*” See paras. 13(c) and 83 of Phase 1 Decision. Brands such as AEG, Amica, Asko, Bauknecht, Beko, Bosch, Brandt, Candy, Electrolux, Fridgemaster, Glen Dimplex, Gorenje, Haier, Hoover, Hisense, Indesit, LG, Liebherr, Miele, Midea, Russell Hobbs, Samsung, Sharp, Siemens, SMEG, Whirlpool, and Zanussi are well-known across Europe (including the UK, where several of these brands have had a strong presence, historically).

⁴⁴ See para. 117(c) of Phase 1 Decision.

⁴⁵ See para. 101(c) of Phase 1 Decision (“*[T]wo thirds of customers considered Private-label brands to be a competitive constraint on the Parties.*”)

⁴⁶ This is evidenced by the preponderance of private-label products in each MDA4 category in the “*first quartile,*” as set out in the Phase 1 Decision. See paras. 1.12.3, 1.12.6 and 6.2 of the Initial Submission.

⁴⁷ See Annex 718 to the Initial Submission, including additional examples of potential expansion.

⁴⁸ See para. 1.3 above.

established positions in mid-lower price points in Continental Europe, creating a beachhead from which to expand into the UK.

2.4.5 ***Retailers decide which suppliers' products to sell at each price point.*** The Parties' customers are large and sophisticated buyers. They negotiate prices over an entire range of MDA products with a large number of MDA suppliers simultaneously. They decide from the array of options which brands and models to offer to their consumers across the price spectrum.⁴⁹ Even where MDA producers have secured listings with retailers during annual price negotiations, those retailers are not generally bound by specific purchasing obligations and are not prevented from delisting or de-prioritising individual SKUs throughout the year in favour of competing products. As a result, producers continually provide promotional support, price adjustments, and other incentives to ensure customers maintain focus on their SKUs and do not de-prioritise them in favour of competing products.

2.4.6 ***Retailers could sponsor expansion into low-mid price points.*** UK retailers have established relationships with OEMs that manufacture private-label products (including Vestel, Amica, Elica, and Electrolux, as well as Asian suppliers such as Haier, Hisense, Midea, TCL, and Meiling). If retailers wanted to offer a new brand at lower price points as an alternative to Beko Europe, they could easily sponsor entry or expansion in response to any attempted price increase post-Transaction.

2.4.7 ***Consumer decisions are not driven by price alone.*** Consumers do not make purchasing decisions based purely on price; they choose from a range of products with different prices depending on their specific needs, taking into account a wide range of attributes (*e.g.*, capacity, energy efficiency, water usage, product features, performance, noise). The CMA recognises that these "*are important factors that consumers take into account alongside price.*"⁵⁰ For example, many consumers will purchase a more expensive product with additional features or superior energy efficiency ratings (*e.g.*, in order to benefit from lower overall lifetime costs).

2.5 **Post-Transaction, the Parties' customers will have many credible alternatives to switch sufficient volumes to make any attempted price increase by Beko Europe unprofitable.** A small reduction in purchases of the Parties' MDAs by any of their customers (less than 5%) would render an attempted price increase by Beko Europe unprofitable. Delisting of all products would not be necessary to exert this pressure: it would be sufficient to increase the prominence of competing brands or retailer-owned private-label brands, and/or to focus any delisting on a small part of the range of products provided by Beko Europe for which the strongest alternatives exist.⁵¹

⁴⁹ For example, retailers can (and do) move products up and down the spectrum (between quartiles) and switch products in and out. A small adjustment (*e.g.*, a £10 promotion) can move a product from one quartile to another.

⁵⁰ See para. 84 of Phase 1 Decision.

⁵¹ See para. 1.13 of the Initial Submission.

3. In Conclusion, the Transaction Will Not Give Rise to Any SLC

3.1 **There is little disagreement between the Parties and the CMA in respect of many of the underlying facts.**⁵² Many of the constraints faced by the Parties (and their rivals) are recognised in the Phase 1 Decision. They include the prevalence of imports;⁵³ the growth of low-cost products from Asian producers;⁵⁴ the significance of private-label products;⁵⁵ and the fact that manufacturers compete across a price spectrum within each MDA category.⁵⁶ There is also broad agreement that the appropriate analytical framework for assessing the Transaction is one of intense bargaining between numerous suppliers and retailers that act as gatekeepers to consumers who have low brand loyalty.

3.2 **The competitive dynamics that the CMA recognises in cooling products apply equally to other MDA categories.**⁵⁷ The CMA rightly determined that the test for Phase 2 reference was *not* met in relation to refrigerators or freezers (together, “cooling products”) because of the number of competing suppliers (including private-label products).⁵⁸ It reached a different conclusion in respect of MDA4 on the ground that the Parties have higher shares in these categories at certain price points.⁵⁹ This distinction is artificial and overlooks the wider market dynamics at play: the Parties face the very same competitive constraints in the MDA4 markets as they do in cooling products. In particular, the observed experience in cooling is likely to occur in other MDA categories.

3.2.1 Cooling products are typically the first category to be targeted by new entrants because they have high penetration rates, are the least sophisticated MDA product and offer high sales volumes.

3.2.2 This strategy was pursued by Arçelik when it entered the UK and EEA and is currently being pursued by major Asian suppliers (including, in particular, Hisense, Haier, Homa, and Midea);

3.2.3 Low-mid price points are now heavily populated by private-label products, Haier (including *Hoover* and *Candy*) and Hisense. Other players, including LG and Samsung, have announced their intention to focus more intently on these price points.

⁵² See para. 1.1 of the Initial Submission.

⁵³ See, e.g., para. 61 of Phase 1 Decision.

⁵⁴ See, e.g., para. 117(c) of Phase 1 Decision.

⁵⁵ See, e.g., para. 117(c) of Phase 1 Decision.

⁵⁶ See, e.g., para. 85 of Phase 1 Decision.

⁵⁷ See para. 71.2 of the Initial Submission.

⁵⁸ See paras. 83, 94 and 99 of Phase 1 Decision and para. 23 of the Issues Statement.

⁵⁹ See para. 117 of Phase 1 Decision and para. 26(a) of the Issues Statement.

3.3 **The Parties are confident that the Phase 2 investigation will allow the CMA to exclude competition concerns in any MDA market.** The CMA’s findings at Phase 1 were, by their nature, preliminary and conservative. The CMA was required to consider only whether there is a “realistic prospect” of an SLC, and the Parties necessarily had little time to respond to the CMA’s developing thinking and gather additional evidence. The Parties therefore welcome the opportunity to provide additional evidence during the Phase 2 process to demonstrate that the Transaction will not result in an SLC in any market.