

Anticipated acquisition by Wolseley UK Limited of Kooltech Limited

Decision on relevant merger situation and substantial lessening of competition

ME/7038/23

The Competition and Markets Authority's decision on relevant merger situation and substantial lessening of competition under section 33(1) of the Enterprise Act 2002 given on 23 November 2023. Full text of the decision published on 22 December 2023.

The Competition and Markets Authority (**CMA**) has excluded from this published version of the decision information which the CMA considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range, which are shown in square brackets.

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.

ASSESSMENT

PARTIES, TRANSACTION AND TRANSACTION RATIONALE

21. Wolseley is a wholesale provider of plumbing, heating, cooling and infrastructure products, based in the UK.¹ Wolseley is a wholly owned subsidiary of the Wolseley Group, which is ultimately owned by Clayton, Dubilier and Rice LLC.² Wolseley operates through a number of distinct trading brands such as Climate (for AC and refrigeration products and services), Plumb, Parts, Pipe, Burdens and Fusion Utilities.³ Wolseley has approximately 500 branches in the UK, of which 18 are dedicated Wolseley Climate only branches and a further 30 are dual-branded branches which are shared between Wolseley Climate and Wolseley Pipe.⁴
22. The UK turnover of Wolseley in the financial year ending 31 July 2022 was £1,729 million.⁵
23. Kooltech is a wholesale provider of AC and refrigeration products, based in the UK.⁶ Kooltech is a wholly owned subsidiary of Kooltech Holdings Limited which is ultimately owned by Samantha Sharp and Murray Sharp.⁷
24. The UK turnover of Kooltech in the financial year ending 31 October 2022 was £55 million.⁸
25. The Merger relates to the purchase by Wolseley of the whole of the issued share capital of Kooltech from Kooltech Holdings Limited.
26. The Parties submitted that the main strategic rationale for the Merger is to:
 - (a) Support Wolseley's objective to offer a more complete portfolio of products. The Merger will enable Wolseley to expand its AC operations [X].⁹
 - (b) Enable Wolseley to provide a specialist [X] offering to its existing customers.¹⁰

¹ Final Merger Notice submitted to the CMA on 25 September 2023 (FMN), paragraph 3.

² FMN, paragraph 3.

³ See [Home | Wolseley Corporate](#)

⁴ FMN, paragraph 20(d), 21.

⁵ FMN, paragraph 46.

⁶ FMN, paragraph 4.

⁷ FMN, paragraph 5 and Annex 2, FMN.

⁸ FMN, paragraph 47.

⁹ FMN, paragraph 10.

¹⁰ FMN, paragraph 11.

- (c) Enable the Parties to merge their respective [X] offerings ([X]), resulting in cost savings for customers [X].¹¹
- (d) Provide Kooltech access to specialist [X], a better [X] position in order to facilitate growth with [X] and greater efficiencies in terms of distribution, storage and logistics.¹²

PROCEDURE

- 27. As part of its phase 1 investigation, the CMA gathered a significant volume of evidence from the Parties and other market participants. The Parties also had opportunities to make submissions and comment on the CMA's emerging thinking throughout the phase 1 investigation.
- 28. The Merger was considered at a Case Review Meeting.¹³

JURISDICTION

- 29. The CMA believes that the Merger (as described in paragraph 25) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.¹⁴
- 30. Each of Wolseley and Kooltech is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
- 31. The Parties overlap in the wholesale supply of AC products at a national (UK) level with a combined share of supply by revenue of [20-30]% and an increment of [5-10]%.¹⁵ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
- 32. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 33. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 29 September 2023 and the statutory 40 working day deadline for a decision is therefore 23 November 2023.

¹¹ FMN, paragraph 12.

¹² FMN, paragraph 13.

¹³ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, from page 46.

¹⁴ Section 33(1)(a) of the Act.

¹⁵ See shares of supply set out in table 1 of this Decision.

COUNTERFACTUAL

34. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.¹⁶
35. In the present case, there is no evidence supporting a different counterfactual, and neither the Parties nor third parties have put forward arguments in this respect. Therefore, the CMA believes that the prevailing conditions of competition are the appropriate counterfactual.

BACKGROUND

Products offered

36. The Parties are wholesale providers of refrigeration products and AC products. AC and refrigeration products consist of whole systems of varying sizes as well as spare and ancillary parts for those systems such as pipes or refrigerants.
37. While offering many of the same products, some wholesalers stock products of some manufacturers that their competitors do not. For example, Kooltech stocks AC products from Mitsubishi Electric, whereas Wolseley sells Daikin and Fujitsu AC products.
38. Customers can either purchase these products and have them delivered (representing approximately [40-50%] and [80-90%] of Wolseley and Kooltech's respective sales by revenue) or collect them from one of the Parties' trade counters.¹⁷ Customers for AC and refrigeration products are generally contractors who are installing AC and refrigeration products on behalf of their own customers, the end users.¹⁸

¹⁶ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

¹⁷ Parties' response to the CMA's request for information dated 26 July 2023 (**RFI2 response**), Annex 053, p. 2.

¹⁸ FMN, 104.

Parameters of competition

39. During its investigation, the CMA sought to understand how competition works in the market for AC and refrigeration products.
40. The CMA considered evidence from third parties which indicates that for both AC and refrigeration products price is the most important factor when selecting a provider.¹⁹ Other important factors raised by a majority of customers included the service quality, stock availability, and the reliability and punctuality of orders. A small number of third parties noted that brand is important to fit job specification requirements or as a mark of quality. Competitors shared the view that price, stock availability, product range and brand were the most factors important factors when competing for customers.²⁰
41. Where collection of orders was required, the location of the nearest branch was also an important consideration for customers, with a strong preference expressed for branches located closer to the customer.²¹

FRAME OF REFERENCE

42. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on 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.²²
43. The Parties overlap in the wholesale supply of AC products and refrigeration products in the UK both at a national level and a local level.²³ The local overlaps are between some Wolseley sites and all Kooltech sites in Aberdeen, Birmingham, Fareham, Glasgow, Hayes, Manchester, Newcastle and Cambridge.

¹⁹ Third party responses to the CMA's customer questionnaire.

²⁰ Third party responses to the CMA's competitor questionnaire.

²¹ Third party responses to the CMA's customer questionnaire.

²² [CMA129](#), paragraph 9.4.

²³ The Parties (and their group companies) also overlap in the supply of (i) ventilation products; and (ii) heat pumps (FMN, footnote 11 and 31). Given the Parties' limited respective activities in these products and in the absence of any expressed concerns by any market participant, the CMA has not considered these overlaps any further in this Decision.

Product scope

44. The CMA considered the wholesale supply of AC products and refrigeration components and systems in its decision in *Beijer/HRP* but did not conclude on the relevant product frame of reference as no substantial lessening of competition (SLC) was found on any plausible basis.²⁴

Parties' submissions

45. The Parties submitted that they agreed with the CMA's approach in *Beijer/HRP* to assess the Merger on the basis of separate frames of reference for (a) AC products; (b) refrigeration systems; and (c) refrigeration components. However, the Parties submitted that it would also be appropriate to assess the market on the basis of a single frame of reference for refrigeration products (comprising of both refrigeration systems and refrigeration components).²⁵ The Parties further submitted that OEMs and distributors without a branch network but which offer a nationwide delivery should be part of the relevant product frames of reference.²⁶

CMA's assessment

46. The evidence received by the CMA indicates that AC products and refrigeration products should be separate frames of reference, as was the case in *Beijer/HRP*. However, with regard to further segmentation within refrigeration products, the CMA has used a single frame of reference for refrigeration products (comprising of both refrigeration systems and refrigeration components), as it would not lead to a different competitive assessment if systems and components were considered separately.
47. In *Beijer/HRP*, the CMA only included suppliers with more than one trade counter location in the frame of reference for the national wholesale supply of refrigeration components, refrigeration systems and AC products. In the present case, third-party evidence received by the CMA indicates that most customers with non-urgent needs prefer to order products for delivery rather than collect them.²⁷ Accordingly, the CMA considers that distributors which offer a nationwide delivery (but have no branches) should be included in the relevant national product frames of reference.
48. The evidence received by the CMA on whether OEMs should be included in the two relevant product frames of reference is mixed. Most AC product customers that

²⁴ [M/6596/16 Completed acquisition by Beijer Ref AB \(publ\) of HRP Holdings Limited \(Beijer/HRP\)](#).

²⁵ FMN, paragraphs 125 to 126.

²⁶ FMN, paragraph 162.

²⁷ Third party responses to the CMA's customer questionnaire.

responded to the CMA's investigation considered purchasing from an OEM to be a viable alternative.²⁸ The CMA's investigation suggests that some customers prefer OEMs, particularly for major projects, whereas other customers prefer the flexibility offered by wholesalers with regard to the availability of products, as well as better customer service.²⁹

49. A few OEMs that responded to the CMA's investigation considered that they compete with wholesalers such as the Parties³⁰, whereas another OEM indicated that it mainly competes with other OEMs.³¹ This OEM also noted that there are differences in the service offerings and customer demands from OEMs and wholesalers, and that they tend to attract different customers (with OEMs attracting higher spending customers).
50. On a cautious basis, the CMA did not include direct supply from OEMs within the relevant frames of reference. However, the CMA took into account the constraint from OEMs in its competitive assessment as discussed below.

Conclusion on product scope

51. For the reasons set out above, the CMA considered the impact of the Merger in the following product frames of reference:
 - (a) The wholesale supply of AC products; and
 - (b) The wholesale supply of refrigeration products.

Geographic scope

Parties' submissions

52. The Parties submitted that the vast majority of competition takes place at a national level.³² The Parties submitted that most of the key parameters of competition were determined at a national or regional level, rather than at the local level, and this indicated the limited capacity for local competition between the Parties.
53. The Parties submitted that for a significant proportion of the Parties' collection sales, including same-day collections, prices are determined at a national or regional level.³³ In particular, the Wolseley submitted that only a limited amount (between

²⁸ Third party responses to the CMA's customer questionnaire.

²⁹ Third party responses to the CMA's customer questionnaire.

³⁰ Third party response to the CMA's OEM questionnaire; Note of a call with a third party.

³¹ Third party response to the CMA's OEM questionnaire.

³² FMN, paragraphs 164, 167 to 169, 335 to 341.

³³ Parties' response to the Issues Letter, 30 October 2023, paragraph 1.3.3.

[X]% and [X]%) of same-day collected sales for AC and refrigeration products at its Cambridge, Peterborough and Aberdeen branches involved pricing set by those branches.³⁴ Kooltech submitted that it operated a central price list for all [X] products it sells, with [X].³⁵ Additionally, Kooltech submitted that, while its [X] locally on pricing, the extent of this is limited with the prices for the vast majority of its collection sales in Aberdeen and Cambridge being within [X]% of average prices across all of Kooltech's stores.³⁶ The Parties also submitted that other important parameters of competitions such as stock availability and service quality were also largely determined nationally or regionally.

54. The Parties also recognised that there is some local competition for orders placed by customers with an urgent demand, ie in time-sensitive situations or emergencies (where prompt repair or replacement of a particular AC or refrigeration system or product is essential) but that this forms a small part of the overall market.³⁷
55. The Parties submitted that non-urgent sales can be fulfilled by competitors (including those without a branch presence) located outside of the Parties' local catchment areas and who offer delivery options. As for urgent sales, the Parties submitted that they consider same-day collections³⁸ and, in a subsequent submission, out of hour collections/deliveries³⁹ to be a better proxy for urgent demand than collections overall with both accounting for a very low proportion of overall respective sales of the Parties.

³⁴ In relation to this, the Parties submitted that [X] for its customers. The Parties submitted that to ensure a [X] proposition and experience for customers across Wolseley's branch network, terms agreed with customers [X] apply on a national basis (Parties' response to the Issues Letter, 30 October 2023, paragraph 4.8 and 4.13).

³⁵ Parties' response to the Issues Letter, 30 October 2023, paragraph 4.19.

³⁶ Parties' response to the Issues Letter, 30 October 2023, paragraph 4.25. The Parties also submitted that other key parameters of competition are set at the national level, namely stock availability, service, branch opening times, and training to branch colleagues (Parties' response to the Issues Letter, 30 October 2023, paragraphs 4.1 to 4.49).

³⁷ FMN, paragraphs 167 to 169.

³⁸ Parties' response to the CMA's request for information dated 26 July 2023 (**RFI2 response**), paragraph 9.10 to 9.12. The Parties submitted that purchase orders for commercial AC systems and refrigeration systems are typically placed in advance and not bought 'off the shelf' by walking into a branch. This is because, among other reasons, there are long lead times with such orders (often six months or more) and advance orders guarantee availability on the product installation date and timely installation for the end-customer (for example, supermarkets, offices, hotels, etc). They also submitted that customers (end-users and contractors) of AC products and refrigeration products often hold informal competitive quote exercises (involving contacting multiple suppliers and several rounds of negotiation) before placing an order. As such, the Parties submitted that, there is generally no urgent demand for these types of products and orders can be fulfilled by suppliers located near the relevant customer location and by national suppliers/distributors or OEMs that have national delivery offerings (RFI2 response, paragraph 9.9). In particular, the Parties submitted that (a) for Kooltech, on a branch-by-branch basis, collected sales accounted for [X]% of orders received by branches on average, and same-day branch collections accounted for [X]% and [X]% of AC and refrigeration product sales respectively in 2022; and (b) for Wolseley, collections accounted for [X]% of total sales in 2022, and same-day branch collections accounted for [X]% and [X]% of AC and refrigeration product sales respectively in 2022 (RBB Economics' comments on the CMA's proposed local assessment methodology dated 9 October 2023 (**RBB 9 October submission**), section 3.2 to 3.3).

³⁹ Parties' response to the Issues Letter, 30 October 2023, paragraph 3.6 to 3.9.

CMA's assessment

56. As stated in paragraph 47, third-party evidence received by the CMA indicates that most customers with non-urgent needs prefer to order products for delivery rather than collect them. The CMA therefore is of the view that competition in the wholesale supply of AC and refrigeration products has a national aspect.
57. At the same time, the majority of AC and refrigeration products' customers that responded to the CMA's questionnaire also noted the importance of local sales counters, with urgent demand being specifically cited as the reason.⁴⁰ One customer, who has a substantial proportion of repair and maintenance work, noted that local branches are essential for its business as it makes multiple trips to the local branch(s) in a day and that next-day delivery would not meet its urgent requirement.⁴¹ Additionally, another customer told the CMA that collection from a trade counter is more suited to reactive/emergency work, which is a large part of its business.⁴²
58. Some third parties noted that local sales counters are also important in circumstances when delivery is not a preferred option. For example, some third parties said that collections are more cost effective and reliable (as opposed to delivery being more unpredictable) and having a sales counter means that they do not need to maintain stock on their premises.⁴³
59. The majority of competitors who responded to the CMA's questionnaire also acknowledged the value in offering counter collections, with urgent demand being the most cited reason.⁴⁴ One competitor, noted the importance of local branches and explained that a customer with urgent demand for a component is likely to purchase it from a local branch rather than wait for a delivery from another part of the country.⁴⁵
60. Some third parties also noted the importance of local branches for non-urgent demand. For example, one customer which would be willing to travel to collect products where demand is urgent, noted that in the case of non-urgent work, it would prefer to collect the product from a local branch.⁴⁶ A competitor explained that

⁴⁰ Third party responses to the CMA's customer questionnaire.

⁴¹ Note of a call with a third party.

⁴² Third party response to the CMA's customer questionnaire.

⁴³ Third party responses to the CMA's customer questionnaire.

⁴⁴ Third party responses to the CMA's competitor questionnaire.

⁴⁵ Note of a call with a third party.

⁴⁶ Note of a call with a third party.

local branches are also important for customers undertaking large projects because they may need unplanned installation accessories once construction has started.⁴⁷

61. The Parties themselves also noted that some customers prefer to collect AC and refrigeration products because they have a lack of storage capacity and, for such customers, it may be difficult to substitute between collection and delivery.⁴⁸

Internal documents

62. The CMA considers that the Parties' internal documents demonstrate that local presence is important to their business, particularly in relation to customers who have urgent demand.
63. A Wolseley internal document benchmarks Wolseley with other competitors on a few parameters, including the number and location of branches.⁴⁹ Further, Wolseley internal documents proposing a relocation and expansion of an existing branch in [redacted] and another document for the establishment of a new branch in [redacted] demonstrate that Wolseley continues to assess and expand its local footprint.⁵⁰ The latter document notes the proposed site's proximity to competitor branches and that it is suitably located for customers.⁵¹
64. Similarly, a Kooltech internal document produced in the context of Kooltech's sales process emphasises the value of Kooltech's local branches. In particular, the document references that Kooltech's branch network is strategically located and provides its customers with the ability to both collect products from a local branch.⁵²
65. A Wolseley internal document describes [redacted]. This document notes that re-active work can involve breakdowns and therefore immediate availability of stock is essential. In terms of Wolseley's service proposition, this document highlights the importance of having a core product range depth, as such customers prefer to collect the required products quickly from branches because they typically do not plan ahead and are short on time.⁵³
66. The CMA also notes the Parties' submission that customer research captured in Wolseley internal documents indicating that [redacted]% (in July 2023), [redacted]% (in June 2023) and [redacted]% (in May 2023) of Wolseley customers purchased products on the

⁴⁷ Note of a call with a third party.

⁴⁸ Parties' issues meeting presentation, slide 12.

⁴⁹ Annex 019, FMN slide 19, 35.

⁵⁰ Annex 042, FMN, Appendix 2; Annex 041, FMN, Appendix ii.

⁵¹ Annex 041, FMN, Appendix ii.

⁵² Annex 10.2, FMN, slide 13 and 41.

⁵³ Annex 11.3, FMN, page 18 and 19.

same day as needed is not representative of Wolseley's total customer base. However, even leaving aside precisely how representative these figures are, the CMA considers that these documents are nevertheless consistent with the position that material competition also takes place at the local level.⁵⁴

Local price setting and flexing of key parameters of competition

67. The CMA acknowledges that some aspects of the Parties' wholesale offer (including to some extent prices) are set with regard to competition taking place at a national or regional level. Nevertheless, the evidence submitted by the Parties also indicates that the Parties set and/or flex their offering at the local level with regard to local competitive conditions, [X].
68. Specifically, as set out in the FMN, in Wolseley's case, while list prices (ie the price for which an item is listed to be sold) are set centrally, Wolseley Climate's products are not generally sold at their list price. [X]. As for Kooltech, while Kooltech's standard prices and discount terms are set centrally, 'Kooltech's branches and salespeople do have some autonomy to allocate standard terms at the branch level and/or amend pricing based on customer spend and local preferences.'⁵⁵
69. As noted above in paragraph 53, the Parties provided some statistics in response to the Issues Letter to argue that local flexing of price is limited. The Parties submitted that: (i) manual pricing only accounts for [X]% of Wolseley products on average; and (ii) only [X]% of Kooltech's sales in Aberdeen and Cambridge vary within [X]% of the average price.⁵⁶ The Parties did not provide equivalent statistics for both Wolseley and Kooltech. The CMA notes that this level of price flexing is material and therefore broadly supports the position that local flexing can and does happen.
70. As regards other parameters of competition, the Parties' submissions similarly indicate that there is a material degree of local flexing. Whilst [X]% of Wolseley's product range is required to be stocked nationally, [X]% of stock is flexed at a local level.^{57, 58} Kooltech submitted that there is [X] amount of product range branch flexing but did not provide equivalent statistics.⁵⁹

⁵⁴ Parties' response to the Issues Letter, 30 October 2023, footnote 4. Annex 049, FMN, slide 3; Annex 048, FMN, slide 3; Annex 047, FMN, slide 3.

⁵⁵ FMN, paragraphs 366 and 370.

⁵⁶ Parties' response to the Issues Letter, 30 October 2023, Table 3 and 4.

⁵⁷ Parties' response to the Issues Letter, 30 October 2023, paragraph 4.34.

⁵⁸ The remaining [X]% of stock is described as "non-ranged" products which were either ordered for a specific customer requirement and since cancelled, incorrect or accidental orders that cannot be returned or old 'ranged' products that have now been 'de-ranged' centrally but are still available to order.

⁵⁹ Parties' response to the Issues Letter, 30 October 2023, paragraph 4.37.

71. The Parties also submitted evidence that key aspects of service quality are determined nationally or centrally. The Parties provided evidence of [X].⁶⁰
72. Finally, the CMA notes the Parties' submission that Wolseley Climate categorises customers' accounts in [X].⁶¹ The Parties' also submitted that [X] customers are those that [X] and that [X]% of Wolseley Climate's 2022 sales were generated from [X] customers.⁶²
73. The CMA considers that the fact that Wolseley categorises certain customer accounts as branch-owned is, in itself, indicative of the position that local branches have a material involvement in setting commercial strategy – at least for some customers. In addition, while certain Wolseley customers may be nationally or regionally 'owned', the evidence available to the CMA (on how competition for these customers takes place) does not enable it to assess what impact local competitive conditions might have on price negotiations at a national or regional level (eg where a customer is regionally 'owned', it is not apparent why the location that the customer operates in, and the availability of competitor stores in that area, would not be a material factor in customer negotiations). The CMA notes, in this regard, that irrespective of whether terms are set at a national or regional level, a material proportion of the Parties' collection customers only use a single branch.⁶³

Conclusion on geographic scope

74. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- (a) National (UK) for those customers with planned, non-urgent needs when delivery is an option; and
 - (b) Local for those customers with an urgent need or when delivery is not a preferred option.
75. In the local frames of reference, the CMA considers that it is appropriate to conduct the competitive assessment with reference to catchment areas. The methodology followed to identify relevant catchment areas is discussed within the competitive assessment below.

⁶⁰ Parties' response to the Issues Letter, 30 October 2023, 4.41 to 4.49.

⁶¹ RFI2 Response, paragraph 4.15 – 4.16; Parties' response to the CMA's request for information dated 25 August 2023 (**RFI3 Response**), paragraph 3.1 – 3.2.

⁶² Parties' response to the Issues Letter, 30 October 2023, paragraph 4.11 and table 1.

⁶³ Parties' response to the Issues letter, 31 October 2023, Tables 5 and 6.

Conclusion on frame of reference

76. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) The wholesale supply of AC products on a national (UK) basis.
 - (b) The wholesale supply of AC products on a local basis.
 - (c) The wholesale supply of refrigeration products on a national (UK) basis.
 - (d) The wholesale supply of refrigeration products on a local basis.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

77. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁶⁴ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the:
- (a) Wholesale supply of AC products on a national basis;⁶⁵
 - (b) Wholesale supply of each of AC products and refrigeration products, on a local basis.

Horizontal unilateral effects in the wholesale supply of AC products on a national basis

78. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the wholesale supply of AC products on a national basis, the CMA has considered (and discusses in turn below):

⁶⁴ [CMA129](#), paragraph 4.1.

⁶⁵ As for refrigeration products, based on the evidence gathered by the CMA, the CMA concluded that there are no plausible competition concerns in respect of the wholesale supply of refrigeration products on a national basis as a result of the Merger and this supply is therefore not discussed further in this Decision. In particular, the CMA estimated the Merged Entity would have a combined share in the wholesale supply of refrigeration products in the UK of [20-30]% with only a [0-5]% increment.

- (a) Shares of supply;
- (b) Closeness of competition between the Parties; and
- (c) Competitive constraints from alternative suppliers.

Shares of supply

79. Table 1 below presents share of supply estimates for the wholesale supply of AC products in the UK in 2022/23. These are based on revenue data submitted by the Parties and third parties. For third parties from which the CMA was unable to directly gather data, the CMA has relied on estimates provided by the Parties.

Table 1: Shares of supply in the wholesale supply of AC products in the UK (2022/23)

Provider	Share of supply (%)
Wolseley	[5-10]
Kooltech	[10-20]
Merged Entity	[20-30]
Beijer	[10-20]
TF Solutions	[10-20]
Smith Brothers	[5-10]
Cool Designs	[5-10]
FSW	[0-5]
Logicool	[0-5]
Ocean Air	[0.5]
Greenmills	[0-5]
Freedom Air Conditioning	[0-5]
Other	[0-5]
Total	100

Source: CMA analysis of Parties' submissions, third party responses to the CMA's competitor questionnaire.

Notes: Shares by revenue in 2022/23. Suppliers included only if the CMA was able to verify that they offer nationwide delivery.

80. The estimates show that that Beijer is the largest wholesaler of AC products in the UK, closely followed by Kooltech and TF Solutions.⁶⁶ There are a few other suppliers with moderate shares and a number of smaller suppliers. Post-Merger, the Merged Entity would be the largest wholesaler of AC products in the UK, albeit with a moderate combined share of [20-30]%.
81. The CMA considers that shares of supply give only a partial indication of a supplier's competitive strength because there is a degree of differentiation between the

⁶⁶ Consistent with the market share estimates, a Wolseley internal document notes that Beijer is the market leader in climate (Annex 019, FMN).

offerings of different suppliers.⁶⁷ Nevertheless, the CMA considers that the Merged Entity's share of supply does not raise *prima facie* competition concerns.

Closeness of competition between the Parties

Parties' submissions

82. The Parties submitted that they are not close competitors in the wholesale supply of AC products⁶⁸ because the Parties have different customers, with Kooltech having an in-house design and manufacturing capability and focuses on supplying larger customers with complex and bespoke requirements for which Wolseley does not compete. They also submitted that they stock different products: Kooltech distributes Mitsubishi Electric AC products whereas Wolseley is a wholesaler of Daikin and Fujitsu AC products.⁶⁹

CMA's assessment

83. The vast majority of competitors and just over half of customers responding to the CMA's questionnaire said that the Parties are close competitors in the wholesale supply of AC products.⁷⁰ Of these, one customer told the CMA that it often compares the prices of the Parties when purchasing AC products, another customer indicated that the Parties also closely compete with other suppliers such as FSW, and two competitors indicated that the Parties also closely compete with TF Solutions and Beijer (through its Dean & Wood branded sites).⁷¹
84. Customers and competitors also indicated that there is a degree of differentiation between the Parties' propositions, with Kooltech competing more closely with other suppliers that also offer a higher degree of design and technical support.⁷² In particular, one competitor that viewed the Parties as close competitors told the CMA that Kooltech competes more closely with FSW, Beijer, and TF Solutions as they offer a similar level of design and technical support.⁷³ Additionally, another customer

⁶⁷ For example, Greenmills has only one site in Bedford. The CMA has considered the impact of the Merger on a local basis separately.

⁶⁸ FMN, paragraph 173.

⁶⁹ FMN, paragraph 173.

⁷⁰ Third party responses to the CMA's competitor questionnaire; Third party responses to the CMA's customer questionnaire. Additionally, the CMA notes that some of the OEMs responding to the CMA's questionnaire indicated that the Parties were close competitors (Third party responses to the CMA's OEM questionnaire).

⁷¹ Third party responses to the CMA's customer questionnaire; Third party responses to the CMA's competitor questionnaire.

⁷² Third party response to the CMA's customer questionnaire; Third party responses to the CMA's competitor questionnaire.

⁷³ Third party response to the CMA's customer questionnaire. One customer and another competitor who noted that the Parties were close competitors also noted that Kooltech competes more closely with TF Solutions. By comparison, this competitor noted that Wolseley competes more closely with Beijer (through its Dean & Wood and HRP brands) and FSW (Third party response to the CMA's customer questionnaire); Third party response to the CMA's customer questionnaire.

indicated that the offerings of Kooltech, Cool Designs, and Beijer are more similar as each has a higher standard of design and technical support.⁷⁴

85. Many third parties also acknowledged that the Parties stock different brands of AC products⁷⁵ and that once an AC system has been installed, the AC brands stocked by a supplier are important when choosing between suppliers as the spare parts of different brands are not substitutes.⁷⁶ However, third parties also indicated that, at the point of installation, different brands of AC systems are substitutes.⁷⁷ Additionally, the CMA understands that brand is not important when purchasing other products sold by wholesalers such as ancillaries and refrigerant gases.⁷⁸ In this respect, the CMA considers that the Parties are likely to be close substitutes when suppliers are choosing between AC systems or purchasing other products such as ancillaries. Consistent with this position, many competitors emphasised that the Parties were close competitors because they stock Mitsubishi Electric and Daikin respectively, which are the two most popular brands of AC system.⁷⁹ For example, one competitor told the CMA that the Parties are driving competition against each other on the two major brands of AC system in the UK.⁸⁰
86. The CMA found that the Parties identify each other as competitors in their internal documents. In its internal documents, Wolseley frequently benchmarks itself against Kooltech and, among others, Beijer, FSW, and TF Solutions.⁸¹ Wolseley's internal documents also indicate that the extent of differentiation between wholesalers of AC products is limited.⁸² By comparison, Wolseley is mentioned less frequently in Kooltech's internal documents compared to other competitors.⁸³
87. Overall, the evidence available to the CMA indicates that, while there is some differentiation in the focus and operation of the Parties' supply of AC products, they

⁷⁴ Third party response to the CMA's customer questionnaire.

⁷⁵ Third party response to the CMA's customer questionnaire; Third party responses to the CMA's competitor questionnaire.

⁷⁶ Notes of calls with third parties; Third party responses to the CMA's competitor questionnaire.

⁷⁷ Although for larger projects, contractors will often specify the product brand to be used, reducing the choice of distributor, although in such instances the CMA understands that customer would be more likely to purchase products through an OEM (Notes of a calls with third parties; Third party responses to the CMA's competitor questionnaire). Additionally, it is noted that, while a few customers said that the exact brand of AC system stocked by a wholesaler was important, brand was mentioned relatively infrequently as a factor customers consider when choosing a supplier of AC products (Third party responses to the CMA's customer questionnaire).

⁷⁸ Note of a call with a third party.

⁷⁹ Third party responses to the CMA's competitor questionnaire.

⁸⁰ Third party response to the CMA's competitor questionnaire.

⁸¹ See, for example, the following Wolseley Internal Documents: Annex 012, FMN; Annex 011, FMN; Annex 039, FMN; Annex 019, FMN; Annex 025, FMN.

⁸² For example, a Wolseley internal document notes that '[><]'. Wolseley Internal Document, Annex 019, FMN. See also: Wolseley Internal Document, Annex 44, FMN.

⁸³ For example, one document benchmarks Kooltech against TF Solutions, Dean & Wood (operated by Beijer), and Daikin (Annex 10.2, to the FMN).

are close competitors but also compete against a number of similarly close competitors, including Beijer, FSW and TF Solutions.

Competitive constraint from alternative suppliers

Parties' submissions

88. The Parties submitted that the Merged Entity would face competition from a large number of national wholesalers of AC products, including but not limited to Beijer, FSW, Smith Brothers Stores, TF Solutions, and Greenmills. The Parties also submitted that the Merged Entity would face competition from Mitsubishi Electric, Daikin, and other OEMs of AC systems.⁸⁴

CMA's assessment

89. Based on the evidence outlined above, the CMA considers that the Parties, Beijer, TF Solutions, and other smaller suppliers are relatively close competitors in the wholesale supply of AC products. Reflecting this position, customers responding to the CMA's questionnaire frequently mentioned Beijer, Smith Brothers, Greenmills, Brymec, FSW, and TF Solutions as alternatives to the Parties.⁸⁵ The CMA also notes that a number of competitors told the CMA that the Parties compete with many national suppliers (even if one of these competitors, and two other competitors, also expressed concerns about the Merger).⁸⁶
90. As explained above, the CMA also considered the extent to which OEMs of AC products such as Mitsubishi Electric and Daikin impose a competitive constraint on the Parties on a national basis. As noted above, the CMA received mixed evidence on this point, although just over half of customers responding to the CMA's questionnaire said that purchasing directly from an OEM was a viable alternative and mentioned either Mitsubishi Electric or Daikin as an alternative to the Parties for AC products.⁸⁷
91. Therefore, the CMA considers that the Merged Entity would face competition from several credible wholesalers of AC products, as well as a more limited constraint from OEMs of AC systems (although as the Merged Entity will continue to face sufficient competition from other wholesalers post-Merger, the CMA has not had to

⁸⁴ FMN, paragraphs 203 and 204.

⁸⁵ Third party responses to the CMA's customer questionnaire. Additionally, competitors responding to the CMA's questionnaire frequently identified Beijer, TF Solutions, FSW, and Smith Brothers as competitors to their businesses, while Greenmills, AMP AC, Logicool, Cool Designs were also mentioned (Third party responses to the CMA's competitor questionnaire).

⁸⁶ Notes of calls with third parties; Third party responses to the CMA's competitor questionnaire.

⁸⁷ Third party responses to the CMA's customer questionnaire. Additionally, the majority of competitors also frequently mentioned OEMs as competitors (Third party responses to the CMA's competitor questionnaire).

conclude on the nature of the constraint from OEMs for the purpose of this decision).

Conclusion on horizontal unilateral effects in the wholesale supply of AC products on a national basis

92. For the reasons set out above, while the CMA considers that the Parties are close competitors in the wholesale supply of AC products (despite there being some differentiation in their respective supply of AC products), the CMA believes that the Merged Entity would have a moderate market share and would compete closely with numerous other credible wholesalers of AC products. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the wholesale supply of AC products on a national basis.

Horizontal unilateral effects in the wholesale supply of each of AC products and refrigeration products on a local basis

93. As noted above, the CMA found 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. This implies that each of the Parties' sites has a catchment area within which they compete for customers travelling from within the catchment area. The CMA also found that the Parties set and/or flex their offering at the local level with regard to local competitive conditions.

94. The CMA has therefore assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of each of AC products and refrigeration products with reference to these catchment areas.

95. The CMA has a wide margin of appreciation in its use of evidence.⁸⁸ Given the case-specific nature of merger investigations, the CMA may apply different analytical methodologies and approaches in different cases.⁸⁹ In the present case, the CMA considers that the appropriate approach to identifying local areas which raise significant competition concerns is to apply a filtering methodology. A filter screens out overlap areas where it is not realistic for competition concerns to arise, thereby identifying the remaining areas for assessment.⁹⁰ This approach is consistent with the CMA's approach in *Beijer/HRP*.

⁸⁸ See *Société Coopérative de Production SeaFrance SA v CMA* [2015] UKSC 75 paragraph 44.

⁸⁹ *JD Sport Fashion plc v Competition and Markets Authority* [2020] CAT 24, paragraph 97.

⁹⁰ [CMA129](#), paragraph 4.32.

Local area analysis

96. The Parties and at least the majority of the effective competitors in the CMA's local assessment sell both AC products and refrigeration products. On this basis and given the similarities in the nature of competition between the wholesale supply of AC and refrigeration products (see paragraph 40 above), the CMA used the same filter methodology for each product frame of reference.
97. In considering an appropriate filter to use, the CMA considered:
- (a) which competitors should be included in the effective competitor set, and the extent to which competitors falling outside of this effective competitor set impose any competitive constraint;
 - (b) the appropriate catchment areas within which to consider competitive constraints;
 - (c) which measure(s) of concentration best captures the competitive dynamics of the wholesale supply of AC products and refrigeration products; and
 - (d) the appropriate threshold(s) above which the CMA considers that competition concerns may arise.

Parties' submissions

98. The Parties submitted that a filtering approach similar to that applied in *Beijer/HRP* would be most appropriate for assessing the Merger. The Parties' submissions in relation to the appropriate methodology for the local area analysis are considered below.
99. The Parties submitted that the CMA should adopt an initial filter based on a 4-to-3 fascia count and then only investigate the areas that fail in more detail to better understand the impact of the transaction, taking into account all local parameters of competition.⁹¹ The Parties also submitted that the use of a 35% threshold with a 5% increment or a 5-to-4 fascia count threshold would be unduly conservative. In relation to this submission, the Parties noted that:⁹²
- (a) they would face a significant out-of-market constraints from suppliers, including OEMs, offering (next day) delivery services;

⁹¹ Parties' submission on the CMA's proposed local assessment methodology dated 9 October 2023, paragraphs 2.3 to 2.5 and 3.6 to 3.7.

⁹² RBB 9 October submission.

- (b) if the CMA concludes that some local competitors are not effective competitors, they will still represent an out of market constraint; and
- (c) there is differentiation between the Parties due to different business strategies and targeting different types of customers.

100. The Parties did not make any explicit submissions on whether shares of supply or fascia count would be a more appropriate measure for assessing local competition nor on the appropriateness of a 5% (or higher) increment.⁹³ In relation to shares, however, the Parties submitted that collection revenues substantially overestimate urgent demand and that the Parties are constrained for most collected sales by deliveries.⁹⁴ The Parties also submitted that 'truly urgent' demand, which is a more appropriate proxy for local demand, is limited, as evidenced by the limited usage of each Party's emergency out-of-hours service.⁹⁵

101. Finally, in relation to the appropriate catchment area for the CMA's analysis, the Parties submitted that they were not able to robustly provide 80% catchment areas for customers who collect goods, due to the fact that for most collected goods, no information about the customer's actual location is recorded.⁹⁶

Effective competitor set

102. As described in the frame of reference section above, the CMA believes that the relevant competitor set consists of other wholesalers of AC products and refrigeration products respectively.

103. In addition, the Parties submitted a list of third-party sites that they consider to be competitors in each local market.⁹⁷ On a cautious basis, the CMA considers a local competitor to be an effective competitor for the purposes of its local analysis if it:

- (a) Has revenues in the relevant product category and responded to the CMA's competitor questionnaire;

⁹³ The Parties submitted that it would be more appropriate to consider local areas as failing the filter only if both of these thresholds are met eg where the Parties have a combined share of more than 40% (with a 5% increment) and where the Merger leads to a fascia count reduction from four to three or less (RBB 9 October submission, page 3). However, the CMA notes that in this case it included a fascia count threshold on cautious basis due to concerns about the robustness of shares of supply estimates. Contrary to the Parties' submissions, the CMA believes that requiring both thresholds would be inappropriate as the CMA believes that competition concerns are plausible even in areas where the Merger has 'failed' one of the two filters.

⁹⁴ Parties' response to the Issues Letter, 30 October 2023, paragraph 3.2.2.

⁹⁵ Parties' response to the Issues Letter, 30 October 2023, paragraph 3.2.1.

⁹⁶ RF12 Response; RBB Economics' RF12 Local analysis submission, section 1.2.

⁹⁷ RF13 response, Appendix 1.

- (b) Was referred to as a competitor or an alternative to the Parties by two or more customers or competitors; or
- (c) Was referred to as a valid competitor/viable alternative to the Parties by a customer in the relevant local area.

Catchment areas

104. In line with its standard practice, the CMA has determined the local catchment areas around the Parties' sites by calculating the average 80th percentile drivetime (based on collection sales of AC and refrigeration products) for all the Parties' sites.⁹⁸
105. This yields a drivetime catchment area of 50 minutes, which the CMA used for the purpose of calculating shares of supply and fascia counts across all of the Parties' sites.⁹⁹ The CMA acknowledges that delineating catchment areas precisely in this case has been challenging, not least because only [X]% of Wolseley's collection orders specify a customer's location (meaning that catchment areas are based on a small sample of collection orders).¹⁰⁰ The CMA therefore compared this with the stated willingness of customers to travel to purchase AC and refrigeration products. Since the majority of respondents to the CMA's customer questionnaire indicated that they would not travel further than between 45 minutes to an hour to collect orders,¹⁰¹ the CMA considered the 50-minute catchment areas to be an appropriate choice for the filter. However, since a material proportion of customers indicated that they would travel up to an hour to collect AC and refrigeration products,¹⁰² the CMA also considered the constraints from sites located immediately outside the boundaries of a 50-minute drive time in its competitive assessment.¹⁰³

⁹⁸ An 80% catchment area is defined as the driving distance or drive time within which 80% of customers volumes were received in a given year. The CMA considers that catchment areas are best measured using drive time as AC and refrigeration products are typically transported by road to installation sites. The CMA also considers that collection revenues are the best estimate for local demand as they capture the portion of demand for which collection is urgent or delivery is not the preferred option.

⁹⁹ It is noted that using revenue data from either AC products or refrigeration products results in different catchment areas of [X] minutes respectively. Given the limited samples size for which data on customer locations is available, the CMA considers that it is more accurate to pool the customers together. The CMA considers that taking the simple average of 80% catchment areas is appropriate in this case as there is no evidence indicating that differences in individual catchment areas are due to systematic or area-specific differences in customers' willingness to travel (instead these differences may be misleading and caused by variation over time or small samples sizes).

¹⁰⁰ However, this represents on average [X] orders per site and the Parties submitted that it is a representative sample of collection customers overall (Parties' response to the CMA's request for information dated 12 September 2023, paragraph 1.1).

¹⁰¹ Third party responses to the CMA's customer questionnaire.

¹⁰² Third party responses to the CMA's customer questionnaire.

¹⁰³ The CMA also conducted sensitivity checks by applying the filter on the basis of larger catchment areas and no additional local areas failed the filter.

Concentration measure(s)

106. The CMA believes that shares of supply based on collection revenues most reliably capture the strength of the competitive constraint imposed by each wholesaler of AC and refrigeration products within each relevant catchment area. The CMA considers that collection revenues are the best available estimate for local demand as they capture the portion of demand which is urgent and where delivery is not the preferred option. The CMA acknowledges that delivery will be a viable alternative for some non-urgent collection orders, and this has been accounted for in the CMA's choice of threshold below.
107. The Parties submitted revenue data for each of their sites.¹⁰⁴ For third parties, the CMA received collection revenue data directly from a number of competitors.¹⁰⁵ For the third party sites from which the CMA was unable to directly gather data, the CMA has relied on collection revenue estimates submitted by the Parties.
108. Due to concerns about the robustness of the Parties' revenue estimates for third parties, and in line with *Beijer/HRP*, the CMA has also used a fascia count to measure concentration.¹⁰⁶

Threshold and increment

109. The CMA believes that a threshold of either a 40% combined share of supply (with a 5% increment) or a fascia count reduction from 4-to-3 or less is appropriate for the identification of areas raising *prime facie* competition concerns.¹⁰⁷ The CMA's assessment of the appropriate threshold in this case had regard to the following factors:
- (a) In line with the Parties' submissions, the CMA believes that the Parties face an out-of-market constraint from wholesalers of AC and refrigeration products that

¹⁰⁴ For Wolseley and Kooltech sites, the Parties' submitted collection revenue data for the FY2022/23 for both AC and refrigeration products (Parties' response to the CMA's follow-up questions dated 6 October 2023). Kooltech's reporting year runs from November to October and complete accounts for FY2022/23 were therefore not available, subsequently the Parties submitted revenue data for the first 11 months of the reporting year. On a cautious basis, the CMA has uprated these revenue figures by one month to obtain a full year of data.

¹⁰⁵ For competitor sites, the CMA reached out to third parties with sites identified as being within the overlap catchment areas and requested collection revenues for FY2022/23 separately for AC and refrigeration products.

¹⁰⁶ Fascia count is a count of the number of independent suppliers in a local market. While such a measure does not account for the relative strength of suppliers, it is readily observable and the CMA believes that it gives a reasonable indication of the local areas within which the Merger may raise significant competition concerns (particularly in areas where the competitor set includes other national wholesalers of AC and refrigeration products that compete closely with the Parties). Fascia counts have also been used in mergers in a wide range of sectors, including: groceries, sports retailers, and cinemas, as well as builders' merchants. The CMA notes that both shares of supply and fascia count were used in the decision rule in [ME/6911/20 Completed acquisition by Bellis Acquisition Company 3 Limited of Asda Group Limited](#).

¹⁰⁷ See footnote 93.

offer national delivery (including same-day or next-day delivery).¹⁰⁸ The CMA notes that the majority of customers for both AC and refrigeration products submitted that delivery was the preferred option for non-urgent requirements,¹⁰⁹ and the majority of the competitors responding to the CMA's investigation offer nationwide delivery next working day.¹¹⁰ The CMA took this constraint into account systemically (ie across all local areas) in setting the filtering threshold for potential concern.¹¹¹

- (b) Additionally, the CMA notes that branch collections, and same day branch collections, make up a small percentage of the Parties' total branch sales, especially for AC products.¹¹² Given this, the CMA considers that a large proportion of the Parties' branch sales will be constrained by delivery from third parties, which may limit the ability of the Parties to degrade aspects of their offering in response to reduced local competition.
- (c) The CMA found some evidence that there is a degree of differentiation between the Parties' offerings. As noted above, some third parties indicated that other suppliers may compete equally closely with the Parties (as they do with each other). For refrigeration products, a few customers also identified differences in the Parties proposition, including in their product range and the brands of refrigeration system they supply.¹¹³

Outcome of local analysis

110. Based upon the methodology set out above, the CMA identified competition concerns in five catchment areas within which either the Parties' combined share of collection sales exceeds 40% (with at least a 5% increment) or there would be fewer

¹⁰⁸ As noted above, the Parties may also face an additional constraint in each local area from OEMs of AC products that offer delivery, including delivery on a same day basis. For refrigeration customers, the evidence was mixed, some customers noted that direct supply from OEMs was an option, others preferred to use wholesalers noting the convenience of wholesalers stocking multiple brands (Third party responses to the CMA's customer questionnaire). All OEMs that responded to the CMA's questionnaire offer national delivery while most offer next-day delivery (Third party responses to the CMA's OEM questionnaire).

¹⁰⁹ Third party responses to the CMA's customer questionnaire.

¹¹⁰ Third party responses to the CMA's competitor questionnaire.

¹¹¹ This is because the CMA does not consider that the strength of the competitive constraint from delivery materially varies across different local areas. The CMA acknowledges that the constraint from delivery may be more significant in rural areas as customers may have less preference for collection compared to densely populated areas, for example in rural areas a customer's premises or their location of work may not be located nearby to a wholesaler's trade counter. At the same time, the constraint from delivery in some rural areas may be more limited, particularly for time sensitive orders, as the delivery options of nationwide suppliers are likely to be more limited (for example several suppliers told the CMA that they only offer same-day delivery to customers located in areas close to their sites (Third party responses to the CMA's competitor questionnaire)).

¹¹² In Kooltech's case, same day branch collections only accounted for [x<] % and [x<] % of AC and refrigeration product sales respectively in 2022. In Wolseley's case, same day branch collections only accounted for [x<] % and [x<] % of AC and refrigeration products respectively in 2022 (RBB 9 October submission, pages 9 and 10).

¹¹³ Third party responses to the CMA's customer questionnaire.

than four remaining effective competitors post-Merger. These are set out in Table 2 below.

Table 2: Combined shares, increment and fascia count for sites failing the filter

Centroid site	Product	Fascia reduction	Combined share by collection revenues (%)	Increment (%)
Kooltech Aberdeen	AC	2 to 1	100	[30-40]
Kooltech Aberdeen	Refrigeration	2 to 1	100	[30-40]
Wolseley Aberdeen	AC	2 to 1	100	[30-40]
Wolseley Aberdeen	Refrigeration	2 to 1	100	[30-40]
Wolseley Cambridge	Refrigeration	5 to 4	[40-50]	[5-10]
Wolseley Peterborough	AC	4 to 3	[40-50]	[10-20]
Wolseley Peterborough	Refrigeration	4 to 3	[60-70]	[5-10]

Source: CMA analysis of Parties' submissions and third party responses to the CMA's competitor questionnaire.

Notes: Wolseley's Cambridge and Peterborough sites overlap with Kooltech's Cambridge site. Catchment area centred on Wolseley Peterborough includes Wolseley Northampton. In addition to these overlaps, the CMA identified 27 other catchment areas within which the Parties overlapped but for which the threshold for concerns identified above was not met.

111. This indicates that the Merger raises *prima facie* competition concerns in Aberdeen, where the Parties do not face competition from any effective competitors, and in Cambridge/Peterborough, where Wolseley's Cambridge and Peterborough sites face competition from Kooltech in Cambridge and a small number of other effective competitors.

Assessment of the sites failing the filter

112. The CMA has assessed the likelihood of the Merger resulting in horizontal unilateral effects in each of the areas around the four sites that required a more detailed competitive assessment by reference to closeness of competition, competitive constraints from existing suppliers and entry and expansion.

Cambridge/Peterborough

113. Wolseley's Peterborough and Cambridge sites overlap with Kooltech's Cambridge site, which opened in June 2023. As a result, in the catchment area of Wolseley's Peterborough site the Merger results in a reduction of fascia from 4 to 3 in the wholesale supply of AC and refrigeration products respectively. The Merged Entity would have an estimated share by collection revenues of [40-50]% (with an increment of [10-20]%) and [60-70]% (with an increment of [5-10]%) for AC and refrigeration products respectively (the largest in each area) and would face competition from two Smith Brothers sites (located in Peterborough and Cambridge) and a Greenmills site in Bedford.

114. In the catchment area of Wolseley's Cambridge site, the Merger results in a reduction of fascia from 5 to 4, with the Merged Entity facing competition from Smith

Brothers and Beijer (each with a single site located in Cambridge) and Greenmills' Bedford site. However, the Merged Entity would have an estimated share by collection revenues of [40-50]% (with an increment of [5-10]%) for refrigeration products.

115. The CMA was unable to obtain local collection revenues from certain effective competitors, meaning that the share of supply estimates presented above are reliant on the accuracy of the Parties' revenues estimates for these suppliers. Additionally, as Kooltech's Cambridge store only opened recently, it was necessary to use estimates of its yearly revenues submitted by the Parties. As a result, when considering the likelihood of competition concerns in these local areas the CMA did not place significant weight on the precise share estimates.

Closeness of competition

Parties' submissions

116. The Parties submitted that they are not close competitors in Cambridge/Peterborough, including for customers with urgent (ie same day) collection requirements in Cambridge.¹¹⁴ The Parties submitted that they serve different customers, that collection sales are differentiated between the Parties' sites, and that, where there are material overlaps (eg in gas, ancillaries and AC systems), the Parties generally serve different customer types on the basis of collection sales identifying customer and product types.¹¹⁵
117. The Parties also submitted that the Parties' sites are not geographically close to one another, and face competition from competitors who are much closer to their branches.¹¹⁶

CMA's assessment

118. While there is some differentiation in the focus and operation of the Parties' supply of AC and refrigeration products respectively, the CMA believes that the Parties (and other suppliers active at the national level) are relatively close competitors. As

¹¹⁴ The Parties submitted that they compete for different customers and stock different products. In particular, the Parties submitted that: (i) Kooltech is an AC distributor for Mitsubishi Electric and its design and in-house manufacturing capability means that it focuses on larger commercial, complex and/or bespoke AC products; and (ii) Wolseley Climate is a wholesaler of Daikin and Fujitsu brands and does not compete for those AC projects (on which Kooltech focuses) which require design or manufacturing capability(FMN, paragraphs 173 and 407).

¹¹⁵ Parties' response to the Issues Letter, 30 October 2023, Annex 4.

¹¹⁶ In particular, the Parties submitted that the Parties' Cambridge branches are on the opposite sides of the city centre 21 minutes away and each have a competitor located within nine and 11 mins respectively. The Parties also submitted that Kooltech Cambridge is a long way from Wolseley's Peterborough store, a 43 min drive, which is a three minute drive from the Smith Brothers' Peterborough store.

noted above, the CMA found that the Parties are close competitors in the wholesale supply of AC products, with the majority of AC customers indicating that the Parties are close competitors. Similarly, the majority of customers responding to the CMA's inquiry indicated that the Parties were close competitors in the supply of refrigeration products.¹¹⁷ In particular, a customer located in Cambridge indicated that the Parties, Beijer, and other suppliers are equally close competitors in the supply of refrigeration products.¹¹⁸ A competitor also told the CMA that the Merger will reduce the number of alternatives for customers in some local areas and in particular Cambridge.¹¹⁹

119. The CMA considers that the analysis of collection revenues by customer and product type submitted by the Parties is subject to various limitations. Firstly, the analysis does not distinguish between AC and refrigeration products, which are (for the reasons set out above) separate frames of reference.¹²⁰ Secondly, while the analysis does show differences in the composition of collection customers and products, the CMA notes that closeness of competition is a relative concept and it is difficult to put any differences into context without comparable information for third parties (which the Parties were unable to provide).¹²¹ In this respect, the Parties' analysis does not constitute strong evidence on closeness of competition between the Parties relative to other suppliers in each local area (namely Smith Brothers, Greenmills, and Beijer). Given there is some differentiation between the offerings of the Parties, differences in the composition of the Parties' collection customers and sales data are to be expected and do not necessarily imply limited substitutability between the Parties or a limited ability to switch supplier in the event of price increases.¹²²

¹¹⁷ Third party responses to the CMA's customer questionnaire; Note of call with third party.

¹¹⁸ Third party response to the CMA's customer questionnaire.

¹¹⁹ Third party response to the CMA's competitor questionnaire.

¹²⁰ In relation to this, the CMA notes that a significant proportion of Wolseley's collections of AC and refrigeration products in Cambridge are in refrigeration, whereas for Kooltech they are in AC products, meaning that comparisons between the collection revenues of each reflect differences in the relative focus of the Parties and the CMA acknowledges that Wolseley is more focused on refrigeration.

¹²¹ For example, the Parties' submissions show that: (i) Kooltech's collection sales are more heavily weighted toward [redacted] compared to Wolseley; (ii) Kooltech does not supply '[redacted]' which account for [redacted]% and [redacted]% of collection sales for Wolseley Cambridge and Peterborough respectively. However, the CMA notes that closeness of competition a relative concept and, where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated (CMA129, from paragraph 4.10). In practice, this means that any assessment of closeness of competition would usually consider differences between the Parties' respective offerings against the offerings of third parties. The Parties were unable to submit collection revenues for third parties by customer and product type. In the context of a phase 1 investigation and noting that the Parties provided this analysis at a late stage of the CMA's investigation, the CMA was also unable to gather comparable figures from third parties. This means that a like-for-like comparison between the collection sales of the Parties and third parties had not been possible.

¹²² Additionally, it is noted that a material proportion of Kooltech's customers were categorised as 'unknown' and the data for Kooltech Cambridge is limited as it only opened in June 2023.

120. The CMA therefore considers that the analysis of collection revenue does not support the position that the Parties are not close competitors at the local level. In fact, the analysis indicates that there is a material degree of overlap in the types of products collected from Wolseley's Cambridge and Peterborough site and Kooltech's Cambridge site, namely in gas, ancillaries, and AC systems, which account for [X] of collection sales for Wolseley's Cambridge and Peterborough sites and Kooltech's Cambridge site.¹²³ Additionally, the CMA considers that any differentiation between the Parties (and third parties) is likely to be more limited at the local level as the CMA understands that gas and ancillaries are relatively undifferentiated.
121. In relation to the Parties' submissions concerning geographic closeness, the CMA considers that, in line with its standard practice, it has already taken into account the proximity of the Parties' own and rival sites to the centroid sites (on a consistent basis) across all areas of overlap by using 80% catchment areas. The CMA did not receive any evidence indicating that a departure from this approach (such as implementing distance weighting within the catchment area) is appropriate, nor did the CMA receive compelling evidence to suggest that additional drive time between competitors within a catchment area materially impacts the competitive constraint provided by a competitor (relative to other competitors located closer to the centroid).
122. For the reasons outlined above, the CMA considers that, while there is a degree of differentiation between the Parties' respective offerings, the Parties are close substitutes in the wholesale supply of AC and refrigeration products respectively in each of the catchment areas around Wolseley's Cambridge and Peterborough sites. At the same time, the CMA considers that other competitors within these catchment areas are also close competitors to the Parties.

Alternative constraints

Parties' submissions

123. The Parties submitted that a large part of Wolseley's and Kooltech's 2022 sales were delivered or collected later (ie not on a same day basis). The Parties submitted that for these customers, the Parties face a constraint from other suppliers located outside of the relevant catchment areas which offer delivery.¹²⁴

¹²³ Parties' response to the Issues Letter, 30 October 2023, Annex 4.

¹²⁴ FMN, paragraph 409

124. The Parties also submitted that same-day collections are also constrained by delivery. The Parties also explained that the number of urgent collections are limited, and that, as they cannot distinguish between urgent and non-urgent collection demand, it would be difficult for them to worsen terms for customers requiring products on an urgent basis as it would be unclear if these customer could switch to having these products delivered by a competitor.¹²⁵
125. The Parties also submitted that there are a number of competitors which are located just outside the boundary of the catchment areas in Cambridge/Peterborough, and for the catchment area around Wolseley Peterborough, not much further away than Kooltech Cambridge is from Wolseley Cambridge.¹²⁶
126. At a late stage of the investigation, the Parties noted that a material proportion of the Parties' collection sales (including in Cambridge/Peterborough) are for refrigerant gas, for which the Parties face an additional constraint from specialist suppliers of refrigerant gas located within the catchment area, namely BOC Gas & Gear (located in the same industrial estate as Wolseley Peterborough) and Mackay's (located 17 mins from Kooltech Cambridge and 5 mins from Wolseley Cambridge). The Parties also submitted that other products can be sourced from general builders' merchants located in each catchment area.¹²⁷

CMA's assessment

127. As discussed above in paragraph 109, the CMA considers that the available evidence supports the Parties' position that, at a local level, the Merged Entity will face a constraint in the wholesale supply of AC and refrigeration products from the delivery options of out of market competitors. As explained above, the constraint from competitors has been taken into account in setting the filtering threshold used in this case (and therefore would not, alone, be sufficient to conclude that the Merger does not give rise to competition concerns in the catchment areas around Wolseley Cambridge and Peterborough).
128. In all local analyses, the CMA will consider (in light of the specific circumstances of the markets at issue) the nature of the constraint exercised by competitors located outside the catchment area.

¹²⁵ Parties' response to the Issues Letter, 30 October 2023, paragraphs 1.3 and 2.1– 3.6. The Parties also submitted that truly urgent demand is limited, as evidenced by the limited usage of each Parties emergency out of hours service in Cambridge (Parties' response to the Issues Letter, 30 October 2023, paragraphs 3.6 – 3.9).

¹²⁶ Parties' response to the Issues Letter, 30 October 2023, paragraph 1.3.8; FMN, paragraphs 442 – 446.

¹²⁷ Parties' response to the Issues Letter, 30 October 2023, paragraphs 5.21 – 5.24.

129. In this case, the CMA was unable to precisely identify customer locations and catchment areas, for the reasons outlined in paragraph 105 and a material proportion of customers indicated that they would travel up to an hour (ie longer than the 50-minute drivetime upon which the catchment areas are based) to collect AC and refrigeration products. These constraints are particularly relevant in the Cambridge/Peterborough local area, where there are close competitors located just outside the catchment area (as discussed below).¹²⁸
130. In this context, the CMA considers that the Parties are likely to face a material out of market constraint from suppliers located immediately outside of the Cambridge/Peterborough catchment area (albeit these would still be weaker individual competitive alternatives than similar suppliers located within the catchment area, given that distance is an important parameter of competition. In particular, the CMA notes that:
- (a) For Wolseley Peterborough, there is a Beijer site located a 51-minute drive away in Cambridge, and a TF Solutions and another Smither Brothers site located 55 minutes away in Northampton. In this extended area, there are four independent competing fascia, namely Smith Brothers, Greenmill, Beijer, and TF Solutions, each of which are national suppliers identified by customers as being strong alternatives to the Parties.¹²⁹ Additionally, in this extended area the Merged Entity's share of supply would be [20-30]% (with a [5-10]% increment) and [40-50]% (with a [0-5]% increment) for AC and refrigeration products respectively, which is below the threshold for concern identified above.
 - (b) For Wolseley Cambridge, which fails the filter for refrigeration products only, there is an additional Beijer site located a 53-minute drive away in Bedford. The inclusion of this site reduces the Merged Entity's share of supply by collection revenues from to [40-50]% (with a [5-10]% increment) to [30-40]% (with a [5-10]% increment), which is below the threshold for concern. The CMA also notes that already within the catchment there are three independent competing fascia, ie Smith Brothers, Beijer, and Greenmills.
131. The CMA also notes that two suppliers identified by the Parties as competitors in each of AC and refrigeration products within the catchment area of Wolseley Peterborough, namely Orion Air and AC One, were excluded as effective competitors from the CMA's local analysis for the reasons outlined at paragraph 103 above. In particular, the CMA was not able to verify that AC One imposes a

¹²⁸ By contrast, there are no close competitors located just outside the Aberdeen catchment area.

¹²⁹ See paragraph 89 above.

constraint on the Parties as no respondent to the CMA's inquiry mentioned AC One as an alternative or a competitor. By comparison, one competitor noted that it competed with Orion Air, which implies that it may impose at least some competitive constraint in the local area around Wolseley's Peterborough site (although the CMA was not required to conclude on the nature of this constraint given, as set out below, it considers that the constraint from other suppliers is already sufficient to exclude competition concerns in this area).¹³⁰

132. The CMA also considered whether the Parties would face an additional constraint from standalone suppliers of refrigerant gas and from general builders' merchants. The Parties brought the potential presence of a constraint from such suppliers to the CMA's attention at a late stage of the investigation, meaning that the CMA was unable to assess this thoroughly in its market testing. Nonetheless, the CMA notes that in its market outreach no customer or competitor mentioned these suppliers as alternatives. An additional market outreach conducted by the CMA on this point was mixed and inconclusive. One supplier of refrigerant gases indicated that wholesalers of AC and refrigerant products compete with standalone suppliers of refrigerant gas.¹³¹ However, only one customer (located in Aberdeen) indicated that BOC was an alternative to the Parties for refrigerant gases, while no other customers mentioned standalone suppliers of gas or builders merchants as alternatives.¹³² Therefore, on a cautious basis, the CMA placed no material weight on the potential constraint from these suppliers.
133. The CMA also notes that two customers located in Cambridge told the CMA that the Merger would benefit their business.¹³³
134. On the basis of the evidence available, the CMA believes that in the catchment areas around Wolseley Peterborough and Wolseley Cambridge the Parties face strong constraints from suppliers located within each catchment area and a material but weaker constraint from suppliers located immediately outside of each catchment area, which, taken together, are sufficient to prevent a realistic prospect of an SLC in those areas.

Conclusion on horizontal unilateral effects in the wholesale supply of each of AC products and refrigeration products in the local level in Cambridge/Peterborough

135. For the reasons outlined above, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in

¹³⁰ Third party response to the CMA's customer questionnaire.

¹³¹ Third party response to the CMA's follow-up questions.

¹³² Third party responses to the CMA's follow-up questions.

¹³³ Third party responses to the CMA's customer questionnaire.

relation to the supply of each of AC and refrigeration products in the local area centred on Wolseley's Peterborough site and refrigeration products in the local area centred on Wolseley's Cambridge site.

Aberdeen

136. Wolseley's Aberdeen site overlaps with Kooltech's Aberdeen site and the Parties' sites are located within a two-minute drive from each other. As a result, in the catchment area for both sites, the Merger results in a reduction of fascia from two to one in the wholesale supply of AC and refrigeration products respectively and a corresponding share of supply of 100% (with an increment of [30-40]%).

Closeness of competition

Parties' submissions

137. The Parties submitted that they are not close competitors in Aberdeen, including for customers with urgent (ie same day) collection requirements in Aberdeen. The Parties submitted a breakdown of collection sales by product category and customer type for Wolseley's and Kooltech's Aberdeen sites. The Parties submit that they serve different customer types and sell different products.^{134, 135} Where there were substantial overlaps in product type sold (eg refrigerant gases), the Parties submitted that they serve different customer types.

CMA's assessment

138. As noted above, while there is some differentiation in the focus and operation of the Parties' AC and refrigeration product provision, the CMA believes that the Parties (and other suppliers active at the relevant level) are relatively close competitors.¹³⁶ In Aberdeen specifically, all of the Parties' customers contacted by the CMA noted that the Merger would represent a merger between the two main wholesalers of AC and refrigeration products in the UK.¹³⁷ In addition, one offshore customer submitted that Kooltech and Wolseley are the only viable options in Aberdeen for the products they sell.¹³⁸

¹³⁴ Parties' response to the Issues Letter, 30 October 2023, Annex 4.

¹³⁵ Specifically, the Parties submitted that [X] account for [X]% of Kooltech's collection sales but only [X]% of Wolseley collection sales. Similarly, [X] and [X] account for [X]% of [X]% of Wolseley's collected sales but only [X]% and [X]% of Kooltech's collected sales, respectively. As regards product sales, the Parties overlap significantly in the supply of refrigerant gases but [X]% of Kooltech's remaining collections are from ancillaries, whilst [X]% and [X]% of Wolseley's remaining collections are from AC spares and accessories and ancillaries respectively.

¹³⁶ See paragraphs 83 - 87.

¹³⁷ Notes of calls with third parties; Third party responses to the CMA's customer questionnaire.

¹³⁸ Third party response to the CMA's customer questionnaire.

139. For the reasons set out in paragraph 119 for Cambridge, the CMA does not consider the analysis of product or customer and product type compelling evidence that the Parties are not close competitors.
140. In addition, closeness of competition is a relative concept, and the smaller the number of significant players, the stronger the prima facie expectation that any two firms are close competitors.¹³⁹ As the only two suppliers of AC and refrigeration products in the Aberdeen catchment area, the Parties are necessarily each other's closest competitor in Aberdeen.

Alternative constraints

Parties' submissions

141. The Parties submitted that the majority of the Parties' sales are not associated with urgent demand. In Aberdeen, only [X]% of Kooltech's sales and [X]% of Wolseley's sales were ordered for same day collection.¹⁴⁰ As described in paragraph 124 above, the Parties also submitted that same-day collections are constrained by delivery. The Parties also submitted that for the customers that do not require same day delivery the Parties face a constraint from other suppliers located outside of the relevant catchment areas which offer delivery.¹⁴¹
142. The Parties submitted that SK sales is an additional competitor to the Parties within the catchment area.¹⁴² The Parties also submitted that there are a number of competitors which are located outside of the Aberdeen market, in Glasgow, Edinburgh, and Dundee, that would constrain the Parties post-merger.¹⁴³ The Parties submitted that they have recently lost orders to stores in these areas.
143. The Parties noted that a large proportion (c. [X]%) of the Parties' collection sales in Aberdeen are for refrigerant gas, for which the Parties face an additional constraint from specialist suppliers located within the catchment area, namely BOC Gas and Gear (BOC) (located 16 minutes from Kooltech), Buchan Power Tools (Buchan) (located 50 minutes from Kooltech), and Charles Reid Limited (CR) (located 55 minutes from Kooltech).¹⁴⁴
144. The Parties also submitted that a substantial amount of their sales in Aberdeen are to offshore customers. These customers also have an additional set of specialist

¹³⁹ [CMA129](#), from paragraph 4.10.

¹⁴⁰ FMN, paragraph 441.

¹⁴¹ FMN, paragraph 441.

¹⁴² FMN, paragraph 440.

¹⁴³ Parties' response to the Issues letter, 30 October 2023, paragraph 5.38.

¹⁴⁴ Parties' issues meeting presentation, slide 29.

suppliers that compete with the Parties for the sale of AC and refrigeration products.¹⁴⁵

CMA's assessment

145. As discussed above in paragraph 109, the CMA agrees that at a local level, the Merged Entity will face a constraint from the delivery options of out of market competitors. However, in the CMA's view, these constraints are not sufficient to mitigate the risk of horizontal unilateral effects in the Aberdeen catchment areas.
146. The CMA considered the constraint provided by SK Sales to the Merged Entity. SK Sales was excluded from the local analysis for the reasons outlined at paragraph 103 above. The CMA consulted a few customers of the Parties about the constraint provided by SK Sales and was told that it was seen as a ventilation supplier.¹⁴⁶ No other customer in Aberdeen identified SK Sales to be a competition constraint during the course of the CMA's investigation.
147. As concerns the constraint posed by suppliers located outside the catchment area, the suppliers identified by the Parties are located significantly outside the catchment area of Aberdeen. The nearest site is located over an hour away from the Parties in Dundee (ie outside the distance that any material body of customers indicated that they were willing to travel), and the sites in Edinburgh and Glasgow are further still. As for the sales that the Parties claimed had been lost to such competitors, the CMA received no evidence supporting these claims. Customers in Aberdeen did not mention any of the competitors proposed by the Parties as a viable option.¹⁴⁷ Indeed, the CMA notes that one customer of the Parties in Aberdeen expressed concerns about the Merger due to the lack of alternatives available.¹⁴⁸
148. Similarly, the CMA considered whether the Parties would face an additional constraint from standalone suppliers of refrigerant gas and general builders' merchants. The CMA consulted customers in Aberdeen on the competitive constraint posed by BOC, Buchan, and CR for refrigerant gases. Only one customer considered BOC to be a competitor in Aberdeen whilst none considered Buchan or CR to be a competitor.¹⁴⁹ Additionally, a supplier of refrigerant gases acknowledged that it would compete with the Parties.¹⁵⁰ Given the limited evidence on this point, including the extent to which customers are willing to multisource from specialist

¹⁴⁵ Parties' response to the Issues Letter, 30 October 2023, paragraph 5.41

¹⁴⁶ Notes of calls with third parties.

¹⁴⁷ Third party responses to the CMA's customer questionnaire.

¹⁴⁸ Note of call with third party.

¹⁴⁹ Third party responses to the CMA's follow-up questions.

¹⁵⁰ Third party response to the CMA's follow-up questions.

suppliers, the CMA placed no material weight on the potential constraint from these suppliers.

149. The CMA also considered the extent to which specialist suppliers compete with the Parties for offshore customers in Aberdeen. In market testing, customers in Aberdeen did not consider that any specialists listed by the Parties would be a viable alternative to the Parties and this was the same for offshore customers.¹⁵¹ One offshore customer submitted that Wolseley and Kooltech are the only viable options in Aberdeen for the products they sell.¹⁵² Another customer with offshore operations submitted that the Parties are the only providers of AC and refrigeration products in Aberdeen.¹⁵³ Therefore, the CMA did not consider these alternative suppliers to provide a sufficient competitive constraint on the Merged Entity.
150. On the basis of evidence available, the CMA believes that in the catchment areas of the Parties Aberdeen sites, the Parties are the only providers of AC and refrigeration products. The Merged Entity would therefore face only a minimal constraint from alternative suppliers.

Conclusion on horizontal unilateral effects in the wholesale supply of each of AC products and refrigeration products in the local level in Aberdeen

151. The CMA believes for the reasons set out above that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of each of AC and refrigeration products in the local area of Aberdeen.

BARRIERS TO ENTRY AND EXPANSION

152. Entry or expansion of existing firms in reaction to a merger may prevent or mitigate any SLC arising from that merger. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁵⁴
153. The Parties submitted that the wholesale supply of AC and refrigeration products are characterised by low barriers to entry, including because a full portfolio of products and specialist knowledge is not required to compete, while customers can, and do, easily switch between competitors for products.¹⁵⁵ The Parties submitted that there is a credible threat of entry in each local area, including in Aberdeen, and

¹⁵¹ Third party responses to the CMA's customer questionnaire.

¹⁵² Third party response to the CMA's customer questionnaire.

¹⁵³ Note of a call with a third party.

¹⁵⁴ [CMA129](#), from paragraph 8.40.

¹⁵⁵ FMN, paragraph 491.

provided several examples of competitors expanding into new local areas.¹⁵⁶ The Parties also submitted that expanding delivery options mean that out of area competitors will increasingly constrain the Parties.¹⁵⁷

154. Evidence gathered by the CMA on barriers to entry and expansion in the wholesale supply of AC and refrigeration products was mixed, but generally indicates that acquiring staff with specialist knowledge is a material barrier to entry and expansion.¹⁵⁸ In particular, many suppliers indicated that opening a new branch would be relatively easy,¹⁵⁹ although many other suppliers indicated that accessing staff with specialist knowledge would be difficult.¹⁶⁰
155. The CMA also gathered evidence on the expansion plans of other wholesalers of AC and refrigeration products, including their plans to open new branches or local storage facilities. No competitors indicated that they had plans to open a branch or facility in Scotland, in response to the Merger or otherwise.
156. In relation to the Parties' submissions concerning the constraint from expanded delivery options, the CMA agrees that if, in response to the Merger, competitors introduced more convenient delivery schedules, this could impose an additional constraint on the Parties in each local area, including in Aberdeen. However, the CMA notes that it has not received any evidence of competitors expanding their delivery options in Aberdeen. In any event, the CMA also considers that any such expansion would not be sufficient to prevent an SLC from arising. Firstly, as noted above, the CMA considers that not all collection sales could be substituted even with same-day delivery options, including because some customers prefer collection in certain circumstances, while the Parties would remain the only two suppliers from which customers in Aberdeen could readily access products from a trade counter. Secondly, the CMA considers that the delivery schedules of certain suppliers are likely to be more restricted in Aberdeen than in more densely populated areas. Specifically, the Parties noted that TF Solutions 'runs deliveries to Aberdeen every couple of days', while another competitor told the CMA that it only offers same day delivery in England for certain regions, and not in Aberdeen.¹⁶¹ On this basis, the CMA considers that an expansion of delivery schedules by existing competitors to customers located in Aberdeen would not be sufficient, timely or likely.

¹⁵⁶ FMN, paragraphs 482 – 486.

¹⁵⁷ FMN, paragraph 489.

¹⁵⁸ The CMA notes that there are no third party suppliers active in Aberdeen, meaning that expansion by a competitor would necessitate opening a new branch or distribution centre.

¹⁵⁹ Third party responses to the CMA's competitor questionnaire.

¹⁶⁰ Third party responses to the CMA's competitor questionnaire; Third party response to the CMA follow-up questions.

¹⁶¹ Parties' response to the Issues Letter, 30 October 2023, paragraph 5.38.3.

157. For the reasons set out above, the CMA did not receive evidence of an entry or expansion that would be sufficient, timely or likely to prevent a realistic prospect of an SLC in Aberdeen as a result of the Merger.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

158. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to:

- (a) the wholesale supply of AC products in Aberdeen;
- (b) the wholesale supply of refrigeration products in Aberdeen.

EXCEPTIONS TO THE DUTY TO REFER

159. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33 (2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the de minimis exception). The CMA considered below whether it is appropriate to apply the de minimis exception to the present case.

Markets of insufficient importance

160. In considering whether to apply the de minimis exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the importance of the market(s) concerned, taking into account the size of the market, the likelihood of the harm arising, the magnitude of competition potentially lost by the merger and the duration of such effects.¹⁶²

161. As the annual value in the UK of the markets concerned (ie the wholesale supply of (i) AC products and (ii) refrigeration products in Aberdeen) is less than £5 million, the CMA considered whether it would be appropriate to apply the de minimis exception in the present case.

¹⁶² [Mergers: Exceptions to the duty to refer \(CMA64\)](#), 13 December 2018.

'In principle' availability of undertakings in lieu

162. The CMA will generally not consider a reference justified where the annual value in the UK of the market(s) concerned is, in aggregate, less than £5 million unless a clear-cut undertaking in lieu of reference is in principle available.¹⁶³
163. In most cases, a clear-cut undertaking in lieu will involve a structural divestment to an independent third-party purchaser.¹⁶⁴ The CMA will not consider that UILs are in principle available where: (i) the CMA's competition concerns relate to such an integral part of a transaction that to remedy them via a structural divestment would be tantamount to prohibiting the merger altogether;¹⁶⁵ or (ii) the minimum structural divestment that would be required to ensure the remedy was effective would be wholly disproportionate in relation to the concerns identified.¹⁶⁶
164. The CMA considered whether a clear-cut UIL would be available in principle in the present case.

Parties' submissions

165. The Parties submitted that, if the CMA were to find a realistic prospect of a SLC in Aberdeen, then in principle the minimum structural divestment necessary to resolve the CMA's concerns would be a branch disposal. The Parties submitted that this was on the basis that a branch presence would be necessary to resolve the concerns relating to urgent demand for AC products and refrigeration products.¹⁶⁷
166. However, the Parties submitted that such a branch divestment would be wholly disproportionate as (i) the local demand (even if measured by collected sales or same day collected sales, as opposed to out of hour collections/deliveries which the Parties claimed to be a more accurate proxy for measuring local demand in their most recent submissions, as explained in paragraphs 55, 100 and 106, forms a very small part of the activities of the Parties' branches in Aberdeen; and (ii) collected sales and same day collected sales considerably overstate the extent of urgent demand.¹⁶⁸

¹⁶³ [CMA64](#), paragraph 9.

¹⁶⁴ [CMA64](#), paragraph 31.

¹⁶⁵ [CMA64](#), paragraph 32.

¹⁶⁶ [CMA64](#), paragraph 33. This same paragraph adds that '[i]t is not the role of the undertakings in lieu process effectively to invite parties to abandon their own transactions. On the contrary, the logic of first-phase remedies is to resolve competition concerns clearly whilst allowing the transaction, albeit in modified form, to proceed.'

¹⁶⁷ Parties' response to the Issues Letter, 30 October 2023, paragraph 6.11.

¹⁶⁸ Parties' response to the Issues Letter, 30 October 2023, paragraph 6.12 – 6.15. The Parties submitted that in Aberdeen, Kooltech's turnover from collected sales in 2023 FYTD was c. £[><] ([5-10]% of total branch turnover) from AC products and c.£ ([5-10]% of total branch turnover) from refrigeration products. The Parties did not submit equivalent figures for Wolseley's Aberdeen branch.

CMA's assessment

167. Given the nature of the industry and the businesses involved, the CMA considers that the divestment of one of the Parties' branches in Aberdeen to an independent third-party purchaser is in principle available and capable of resolving the competition concerns identified. The CMA notes, in this regard, that the availability of such a remedy has been referred to in the [X], which specifically provides for [X].¹⁶⁹ On this basis, it is clear that such a remedy [X].
168. The CMA considers that the divestment of one of the Parties' branches in Aberdeen would not be wholly disproportionate in relation to the concerns identified. While the proportion of sales relating to the areas of concern account for a limited proportion of the revenues relating to the assets that could be divested, this minimum structural divestment is not, in the CMA's view, wholly disproportionate in relation to the concerns identified.
169. Accordingly, the CMA considers that an 'in principle' clear-cut UIL is available to resolve the SLC that may arise from the Merger. It was, therefore, not necessary for the CMA to carry out a cost/benefit assessment set out in CMA64.

Conclusion on the application of the de minimis exception

170. Based on the above, the CMA believes that the markets concerned in this case are of sufficient importance to justify the making of a reference. As such, the CMA believes that it is not appropriate for it to exercise its discretion to apply the de minimis exception.

¹⁶⁹ Annex 004 to the FMN.

DECISION

171. The CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
172. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.¹⁷⁰ The Parties have until 30 November 2023¹⁷¹ to offer an undertaking to the CMA.¹⁷² The CMA will refer the Merger for a phase 2 investigation¹⁷³ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides¹⁷⁴ by 7 December 2023 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
23 November 2023

¹⁷⁰ Section 33(3)(b) of the Act.

¹⁷¹ Section 73A(1) of the Act.

¹⁷² Section 73(2) of the Act.

¹⁷³ Sections 33(1) and 34ZA(2) of the Act.

¹⁷⁴ Section 73A(2) of the Act.