

# **Anticipated Acquisition by Wolseley UK Limited of Kooltech Limited**

## **NOTICE UNDER PARAGRAPH 2(1) OF SCHEDULE 10 TO THE ENTERPRISE ACT 2002 (THE ACT) – CONSULTATION ON PROPOSED UNDERTAKINGS IN LIEU OF REFERENCE PURSUANT TO SECTION 73 OF THE ACT.**

**ME/7038/23**

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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## 1. INTRODUCTION

1. Wolseley UK Limited (**Wolseley**) has agreed to acquire Kooltech Limited (**Kooltech**) (the **Merger**). Wolseley and Kooltech are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
2. On 23 November 2023, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpage.<sup>1</sup>
3. On 30 November 2023, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 7 December 2023, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the Parties' offer (the **UIL Provisional Acceptance Decision**).

## 2. THE UNDERTAKINGS OFFERED

5. As set out in the SLC Decision, the CMA found that the Merger gives rise to a realistic prospect of an 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.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA the Parties have offered undertakings to divest Kooltech's branch in Aberdeen (the **Divestment Business**). The text of the undertakings is available on the CMA webpage (the **Proposed Undertakings**).<sup>2</sup>
7. The Parties have also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer before the CMA finally accepts the Proposed Undertakings (**the Upfront Buyer Condition**). The Parties have proposed Fridge Spares Wholesale Ltd (**FSW**) as potential purchaser of the Divestment Business. The agreement with FSW will be conditional on acceptance

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<sup>1</sup> Visit the [Wolseley/Kooltech merger inquiry case page](#).

<sup>2</sup> Visit the [Wolseley/Kooltech merger inquiry case page](#).

by the CMA of the Proposed Undertakings, including approval of FSW as the buyer of the Divestment Business.

### **3. CMA ASSESSMENT**

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>3</sup>
9. This is because the Proposed Undertakings would remove entirely the horizontal overlap between the Parties in (a) the wholesale supply of AC products in Aberdeen and (b) the wholesale supply of refrigeration products in Aberdeen. As such, the Proposed Undertakings may result in replacing the competitive constraint provided by Kooltech that would otherwise be lost following the Merger.
10. The Divestment Business includes all assets required to operate Kooltech's branch in Aberdeen, all employees based at the Aberdeen branch and the customer list and goodwill associated with the Aberdeen customers, and these assets are capable of being transferred to an upfront buyer. While the Aberdeen branch does not hold any customer contracts (nationally or locally) and the Divestment Business will no longer receive back-office and strategic support from Kooltech, the Upfront Buyer Condition means that the CMA would only accept the Proposed Undertakings after Wolseley has entered into an agreement with a nominated buyer that the CMA considers to be suitable. The CMA considers that an Upfront Buyer Condition mitigates the composition risks (and related purchaser risk) associated with the Proposed Undertakings, and will ensure that the purchaser can provide the support that will no longer be provided by Kooltech and has a well-recognised brand in order to sustain or exceed the current revenue levels of the Divestment Business.
11. The evidence available to the CMA indicates that the proposed purchaser, FSW, has sufficient resources and expertise to provide the necessary back-office and strategic support, a well-recognised brand and existing customers in Aberdeen to enable the Divestment Business to operate as a competitor to Wolseley.

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<sup>3</sup> Merger remedies guidance ([CMA87](#)), December 2018, paragraph 3.28.

## Suitability of the proposed purchaser

12. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
- (a) The acquisition by the proposed purchaser must remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it, achieving as comprehensive a solution as is reasonable and practicable.
  - (b) The proposed purchaser should be independent from and have no significant connection to the merger parties that may compromise the purchaser's incentives to compete with the merged entity (eg an equity interest, common significant shareholders, shared directors, reciprocal trading relationships or continuing financial assistance). It may also be appropriate to consider links between the purchaser and other market players.
  - (c) The purchaser must have sufficient capability, including access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor.
  - (d) The CMA will wish to satisfy itself that the purchaser has an appropriate business plan and objectives for competing in the relevant market(s), and that the purchaser has the incentive and intention to maintain and operate the divested business as part of a viable and active business in competition with the merged entity and other competitors in the relevant market.
13. Divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.<sup>4</sup>

## FSW

14. Subject to the responses to this consultation, and having regard in particular to the criteria set out in paragraph 11 above, the CMA currently considers FSW to be a suitable purchaser of the Divestment Business for the following reasons:
- (a) the sale of the Divestment Business to FSW would remedy, mitigate or prevent the SLC, and any adverse effect resulting from them, achieving as comprehensive a solution as is reasonable and practicable for that SLC.
  - (b) The evidence available to the CMA indicates that FSW is independent and does not appear to have any significant connection to the Parties that may

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<sup>4</sup> CMA87, Chapter 5, paragraphs 5.20–5.27.

compromise its incentives to compete with Wolseley if it were to acquire the Divestment Business. FSW has no local branch in Aberdeen.

- (c) The evidence available to the CMA indicates that FSW has the appropriate financial resources, expertise (including managerial, operational and technical capability) and assets, and incentive needed to maintain and develop the Divestment Business as viable and active competitive businesses in competition with Wolseley and other competitors on an ongoing basis.
- (d) The evidence available to the CMA indicates that FSW is a well-recognised brand with a number of existing customers in Aberdeenshire, and has appropriate measures and plans in place to provide management, back office and support services to the Divestment Business if it were to acquire it.
- (e) The evidence available to the CMA indicates that the acquisition of the Divestment Business by FSW should not create a realistic prospect of further competition concerns, as FSW has no local branch in Aberdeen to supply AC or refrigeration products which means there is no existing overlap between Wolseley and FSW in this local area.

#### **4. PROPOSED DECISION AND NEXT STEPS**

- 15. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by FSW are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
- 16. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the Proposed Undertakings is available on the CMA web pages.<sup>5</sup>
- 17. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>6</sup>
- 18. Representations should be made by email to the CMA and be addressed to:

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<sup>5</sup> Visit the [Wolseley/Kooltech merger inquiry case page](#).

<sup>6</sup> Under paragraph 2(4) of Schedule 10 to the Act.

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**Deadline for comments: 30 January 2024**