

# COMPLETED ACQUISITION BY LINDAB INTERNATIONAL AB OF HAS-VENT HOLDINGS LIMITED

## **Issues statement**

## 28 May 2024

#### The reference

- On 3 May 2024, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Lindab International AB (Lindab), via Lindab Limited (Lindab UK), of HAS-Vent Holdings Limited (HAS-Vent) (the Merger) (together, the Parties or, for statements referring to the future, the Merged Entity) for further investigation and report by a group of CMA panel members (the Inquiry Group).
- 2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

# Purpose of this issues statement

- 3. In this issues statement, we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
- 4. The CMA's phase 1 decision (the **Phase 1 Decision**)<sup>1</sup> contains much of the detailed background to this issues statement. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation.

<sup>&</sup>lt;sup>1</sup> Available on the CMA case page: Lindab / HAS-Vent merger inquiry - GOV.UK (www.gov.uk).

5. As noted above, this statement sets out the issues we are likely to consider in our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

# **Background**

#### The Parties

- 6. Lindab is a ventilation company headquartered in Sweden and listed on the Nasdaq Stockholm exchange. In the UK, Lindab is primarily active through Lindab UK and Ductmann, which both manufacture and distribute ventilation system products, including ducts and fittings.<sup>2</sup> Lindab UK is headquartered in Northampton and operates from a total of 22 branches (19 of which are in England and Wales), while Ductmann, headquartered in Bilston, operates from a total of 2 branches (both in England).<sup>3</sup> Lindab is also active in the UK via the following additional subsidiaries:
  - (a) Disys Technologies Limited, a company based in the UK that manufactures control systems and smoke dampers used in ventilation systems (whose products are also sold by Lindab UK);
  - (b) Firmac UK Limited, a company based in the UK that manufactures machines that make rectangular ducts;
  - (c) Spiro International SA (**Spiro**), a company based in Switzerland that manufactures and supplies machines for making circular and flat oval ducts; and
  - (d) Lindab Sp. z o.o. (**Direct Vent**), a company based in Poland that manufactures and supplies pressed circular fittings (whose products are also sold by Ductmann).
- 7. Lindab's total turnover in the UK was £[%] million in 2023.4
- 8. HAS-Vent is a UK company headquartered in Wombourne, also active in the manufacture and distribution of ventilation system products, including ducts and fittings.<sup>5</sup> HAS-Vent operates from a total of 10 branches, all located in England.<sup>6</sup> HAS-Vent's turnover in the UK was £[%] million in 2023.<sup>7</sup>

<sup>&</sup>lt;sup>2</sup> Lindab's response of 31 October 2023 to the CMA's request for information of 24 October 2023, page 1; Lindab's Part 2 response of 14 November 2023 to the CMA's Enquiry Letter of 7 November 2023 (**Enquiry Letter Response Part 2**), pages 4-5.

<sup>&</sup>lt;sup>3</sup> Enquiry Letter Response Part 2, pages 6-7, 10 and 18. In this issues statement, when we refer to the total number of branches owned by Lindab, it relates to the sum of the Lindab UK and Ductmann branches.

<sup>&</sup>lt;sup>4</sup> Enquiry Letter Response Part 2, page 1.
<sup>5</sup> Lindah's response of 31 October 2023 to the CMA's request for inform

<sup>&</sup>lt;sup>5</sup> Lindab's response of 31 October 2023 to the CMA's request for information of 24 October 2023, page 1.

<sup>&</sup>lt;sup>6</sup> Enquiry Letter Response Part 2, page 19.

<sup>&</sup>lt;sup>7</sup> Enquiry Letter Response Part 2, page 1.

#### The transaction

- 9. Lindab, via Lindab UK, acquired the entire issued share capital of HAS-Vent for approximately £[≫] million pursuant to a sale and purchase agreement dated 5 October 2023.<sup>8</sup> The transaction also completed on 5 October 2023.
- 10. Lindab has submitted that the main rationale for the Merger is to:
  - (a) strengthen Lindab's market position in the supply of circular ducts and fittings used in ventilation systems in the UK; and
  - (b) allow Lindab to expand in the supply of rectangular, flat oval and Colorduct ducts and fittings used in ventilation systems in the UK.<sup>9</sup>

## **Our inquiry**

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

#### **Jurisdiction**

- 12. In the case of a completed merger, a relevant merger situation exists where the following conditions are satisfied:<sup>10</sup>
  - (a) Two or more enterprises 11 have ceased to be distinct; and
  - (b) Either:
    - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year; or
    - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the **share of supply test**).
- 13. In its Phase 1 Decision, the CMA found that it had jurisdiction to review the Merger on the basis that it believed that it is or may be the case that: 12
  - (a) each of Lindab and HAS-Vent is an enterprise, and that these enterprises have ceased to be distinct as a result of the Merger; and

<sup>&</sup>lt;sup>8</sup> Lindab Internal Document, Annex 96, '096- Lindab-s109(1a)-Q4-Share Purchase agreement dated 05 October 2023', 5 October 2023, page 9.

<sup>&</sup>lt;sup>9</sup> Enquiry Letter Response Part 2, page 11. HAS-Vent's Colorduct product is a form of coloured ducting.
<sup>10</sup> Section 23 of the Act.

<sup>&</sup>lt;sup>11</sup> An enterprise is defined under section 129(1) of the Act as the activities, or part of the activities, of a business. A business includes a professional practice and any other undertaking which is carried on for gain or reward, or which supplies goods or services otherwise than free of charge.
<sup>12</sup> Phase 1 Decision, paragraphs 28-33.

- (b) the share of supply test is satisfied on the basis that Lindab and HAS-Vent have a combined share of supply of more than 25% by revenue, with a [10–20%] increment, in the supply of circular ducts and fittings in England and Wales.
- 14. We shall consider the question of jurisdiction in our inquiry.

#### Counterfactual

- 15. We will compare the prospects for competition resulting from the Merger against the competitive situation without the Merger: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.<sup>13</sup>
- 16. For completed mergers, the CMA generally adopts the pre-Merger conditions of competition as the counterfactual against which to assess the impact of the merger. In assessing whether a different counterfactual is appropriate, the CMA will often focus on significant changes affecting competition between the merger firms, where there are reasons to believe that those changes would make a material difference to its competitive assessment.<sup>14</sup>
- 17. During its phase 1 investigation, the CMA did not receive submissions from the Parties or other evidence to support assessing the Merger against an alternative counterfactual. In its Phase 1 Decision therefore, the CMA assessed the impact of the Merger against a counterfactual of the pre-Merger competitive conditions.<sup>15</sup>
- 18. Our starting point for the phase 2 investigation is therefore that the pre-Merger conditions of competition form the most likely counterfactual to the Merger.

  We welcome any evidence on this as part of our assessment.

# Assessment of the competitive effects of the Merger

# Theory of harm

19. The term 'theory of harm' refers to a hypothesis about how the process of rivalry could be harmed as a result of a merger. Theories of harm provide a framework for assessing the competitive effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.<sup>16</sup>

<sup>&</sup>lt;sup>13</sup> Merger Assessment Guidelines (CMA129) (MAGs), March 2021, paragraph 3.1.

<sup>&</sup>lt;sup>14</sup> MAGs, paragraph 3.1.

<sup>&</sup>lt;sup>15</sup> Phase 1 Decision, paragraphs 34-35.

<sup>&</sup>lt;sup>16</sup> MAGs, paragraph 2.11.

- 20. In its Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of circular ducts and fittings in England and Wales.<sup>17</sup> We intend to focus our competitive assessment on this theory of harm at phase 2.
- 21. In its phase 1 investigation, the CMA also assessed the impact of the Merger in relation to (a) the distribution of flat oval ducts and fittings in England and Wales and (b) customer foreclosure in the manufacture of flat oval ducts and fittings in England and Wales. It found that the Merger did not give rise to a realistic prospect of an SLC in either case. <sup>18</sup> We do not currently intend to pursue these theories of harm in our investigation. Should any party have reason for believing that we should investigate these theories of harm (or any new theories of harm), it should tell us and provide a reasoned submission.
- 22. We may revise our theory of harm as the inquiry progresses and the identification of a theory of harm does not preclude an SLC being identified on another basis following further work, or on receipt of additional evidence.

Horizontal unilateral effects in the supply of circular ducts and fittings in England and Wales

- 23. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that would otherwise provide a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.<sup>19</sup>
- 24. When assessing whether a merger may give rise to an SLC as a result of horizontal unilateral effects, the CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity postmerger.<sup>20</sup>
- 25. In the Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of circular ducts and fittings in England and Wales, because:<sup>21</sup>
  - (a) the Merger involves the combination of the market leader and second largest supplier of circular ducts and fittings in England and Wales.
     Together, the Merged Entity supplies just less than half of the market and is the largest supplier by a significant margin;

<sup>&</sup>lt;sup>17</sup> Phase 1 Decision, paragraphs 1 and 148.

<sup>&</sup>lt;sup>18</sup> Phase 1 Decision, paragraphs 120-122 and 138.

<sup>&</sup>lt;sup>19</sup> MAGs, paragraph 4.1.

<sup>&</sup>lt;sup>20</sup> MAGs, paragraph 4.3.

<sup>&</sup>lt;sup>21</sup> Phase 1 Decision, paragraph 105.

- (b) internal documents and third-party evidence indicate that the Parties are close competitors, and that the Merger would eliminate a strong competitor;
- (c) the Parties provided a list of suppliers they submitted competed with the Parties. For many of these suppliers, the CMA did not receive sufficient evidence that these suppliers are a material competitive constraint on the Parties. The alternative suppliers identified by the Parties were assessed to be considerably smaller than the Merged Entity, have a much smaller branch network and many have a regional focus. Several are also distributors without independent manufacturing capabilities and at phase 1 the CMA found that these distributers would provide only a limited constraint on the Merged Entity; and
- (d) several third parties, including nearly all competitors responding to the CMA's questionnaire, expressed concerns about the impact of the Merger on competition.
- 26. As regards the Parties' submissions on barriers to entry and expansion in the supply of circular ducts and fittings being low, the CMA assessed those submissions and did not consider entry and expansion to be timely, likely and sufficient to prevent the SLC arising from the Merger.<sup>22</sup>

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

- 27. In order to investigate this theory of harm at phase 2, we will use the information collected during the phase 1 investigation and seek to expand this evidence base as appropriate.
- 28. We intend to conduct further analysis of market definition, shares of supply and competitive constraints. Amongst other factors, we will consider evidence on:
  - (a) the importance of factors including price, delivery time, and the ability to offer a wide range of ventilation system components in the supply of circular ducts and fittings;
  - (b) how closely the Parties compete in the supply of circular ducts and fittings and whether this varies across areas; and
  - (c) the constraint remaining from alternative suppliers post-Merger, including the constraint from suppliers of other types of ducts and fittings used in ventilation systems, and whether this varies across areas.

<sup>&</sup>lt;sup>22</sup> Phase 1 Decision, paragraph 106.

29. Subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.

#### Market definition

- 30. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.<sup>23</sup> The CMA is therefore required to identify the market or markets within which an SLC has resulted, or may be expected to result. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.<sup>24</sup>
- 31. In its Phase 1 Decision, the CMA considered the impact of the Merger on the supply of circular ducts and fittings in England and Wales. <sup>25</sup> In its phase 1 investigation, the CMA did not receive any evidence suggesting that customers would switch between circular, rectangular and oval ducts and fittings to any material degree. The CMA also found that the competitor set in the manufacture of different types of ducts was different and firms cannot easily shift their production capacity between different types of ducts, such that supply side factors would not lead the CMA to aggregate the narrower markets into a single product market. Therefore, at phase 1 the CMA considered each of circular, rectangular and oval ducts and fittings to be distinct markets.
- 32. In relation to geographic scope, at phase 1 the CMA considered that the Parties did not compete materially with one another in Scotland and Northern Ireland. The CMA also considered that, while there are both local and national aspects to the supply of circular ducts and fittings, the appropriate geographic market for its assessment was the supply of circular ducts and fittings in England and Wales. Therefore, the CMA conducted its phase 1 assessment at the aggregate level, while taking into account the different strength of each competitor across different regions, where appropriate.<sup>26</sup>
- 33. We currently consider this is an appropriate starting point for our analysis in the phase 2 inquiry and we expect our view of market definition will be largely drawn from the same evidence that informs our competitive assessment.

  During our inquiry we will also consider further evidence regarding the extent to which the supply of other types of ducts and fittings constrains the Parties; whether the competition the Parties face occurs at a local or national level or both and we will consider whether there are important differences in the

<sup>&</sup>lt;sup>23</sup> Section 35(1)(b), the Act.

<sup>&</sup>lt;sup>24</sup> MAGs, paragraph 9.1.

<sup>&</sup>lt;sup>25</sup> Phase 1 Decision, paragraphs 45-68.

<sup>&</sup>lt;sup>26</sup> Phase 1 Decision, paragraphs 60-64.

competitive constraints on the Merged Entity from different suppliers across different areas.

## Countervailing factors

- 34. We will consider whether there are countervailing factors which prevent or mitigate any SLC that we may find.<sup>27</sup> Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
- 35. In its Phase 1 Decision, the CMA did not consider that entry or expansion in the supply of circular ducts and fittings would be timely, likely and sufficient to prevent any SLC from arising. In the phase 2 inquiry, we will consider any further evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.<sup>28</sup>
- 36. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger has not resulted, or may not be expected to result, in an SLC.<sup>29</sup>

#### Possible remedies and relevant customer benefits

- 37. Should we conclude that the Merger has resulted, or may be expected to result, in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
- 38. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be, and which customers would benefit.<sup>30</sup>

## Responses to this issues statement

39. Any party wishing to respond to this issues statement should do so in writing, no later than 17:00 on Tuesday 11 June 2024 by emailing Lindab.HASVent@cma.gov.uk.

<sup>&</sup>lt;sup>27</sup> MAGs, paragraph 8.1.

<sup>&</sup>lt;sup>28</sup> MAGs, paragraphs 8.28-8.43.

<sup>&</sup>lt;sup>29</sup> In order to reach a view that such efficiencies prevent or mitigate any SLC found, the CMA must be satisfied that the evidence shows that that the merger efficiencies: (a) enhance rivalry in the supply of those products where an SLC may otherwise arise; (b) are timely, likely and sufficient to prevent an SLC from arising; (c) are merger-specific; and (d) benefit customers in the UK (MAGs, paragraph 8.8).