

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

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

- 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) of HAS-Vent Holdings Limited (HAS-Vent) (the Merger), for further investigation and report by a group of CMA panel members (the Inquiry Group). Lindab and HAS-Vent are together referred to as the Parties.
- On 10 November 2023, the CMA made an initial enforcement order (the Initial Order) addressed to Lindab, Lindab Limited and HAS-Vent in accordance with section 72(2) of the Act to prevent pre-emptive action. The Initial Order is still in force. On 15 May 2024, the CMA issued written directions under the Initial Order that, for the purpose of securing compliance with the Initial Order, a monitoring trustee (Monitoring Trustee) must be appointed in accordance with the terms provided for in those written directions. The Monitoring Trustee was formally appointed on 24 May 2024.
- 3. In its provisional findings on the reference notified to the Parties on 22 August 2024, the CMA provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result in a substantial lessening of competition (**SLC**) in the market for the supply of circular ducts and fittings in the local areas centred around Nottingham and Stoke-on-Trent.
- 4. The CMA also provisionally concluded that this SLC has resulted or may be expected to result in adverse effects, for example in the form of reduced choice and higher prices compared to what would otherwise have been the case absent the Merger. ²

¹ CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17) March 2014, (corrected November 2015).

² Further detail on the Provisional SLC is set out within the Provisional Findings Report.

- 5. This Notice sets out the actions which the Inquiry Group considers it might take for the purpose of remedying, mitigating or preventing the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.³
- 6. This Notice is intended as a starting point for discussion with the Parties and third parties, including customers and competitors.⁴ A remedies working paper, containing a detailed assessment of the different remedies options and setting out the Inquiry Group's provisional decision on remedies, will be sent to the Parties for comment (but not published) at a later date in the investigation.⁵
- 7. The CMA invites comments on possible remedies by 17:00 (UK time) on Thursday 5 September 2024.6

CMA criteria for remedies

- 8. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.⁷
- 9. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects.⁸
- 10. The effectiveness of a remedy is assessed by reference to its:9
 - (a) impact on the SLC and its resulting adverse effects the aim being to restore the process of rivalry between firms seeking to win customers' business over time;
 - (b) duration and timing remedies need to be capable of timely implementation and to address the SLC effectively throughout its expected duration;
 - (c) practicality, in terms of its implementation and any subsequent monitoring and enforcement; and

³ See: Lindab/HAS-Vent merger inquiry.

⁴ Merger Remedies (CMA87), December 2018, paragraph 4.56.

⁵ CMA87, paragraph 4.64.

⁶ Responses to the Notice are typically requested within 14 days of publication of the Notice (and in any event, no less than seven days) so that they can be considered before response hearings (Mergers: guidance on the CMA's jurisdiction and procedure (CMA2 revised), January 2021 (as amended 4 January 2022), paragraph 13.1.

⁷ Section 35(4) of the Act; and CMA87, paragraph 3.3.

⁸ CMA87, paragraph 3.5.

⁹ CMA87, paragraph 3.5.

- (d) risk profile, in particular to seek a remedy that has a high degree of certainty of achieving its intended effect.
- 11. Having identified the effective remedy options, the CMA will select the least costly and intrusive remedy that it considers to be effective and seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.¹⁰

The provisional SLCs

- 12. We have provisionally found that the Merger may be expected to result in an SLC in the following local areas around:
 - (a) Stoke-on-Trent; and
 - (b) Nottingham.

Initial views on possible remedy options

- 13. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC and/or any resulting adverse effects that have been provisionally identified.
- 14. As set out in published remedies guidance, in merger inquiries, the CMA normally prefers structural remedies, such as divestiture of a standalone business, over behavioural remedies designed to regulate the ongoing behaviour of the merger parties or control market outcomes (eg prices, quality or product range), because:¹¹
 - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry lost as a result of the merger;
 - (b) behavioural remedies generally give rise to risks around one or more of specification, circumvention, market distortion, and monitoring and enforcement,¹² are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and

¹⁰ CMA87, paragraph 3.4.

¹¹ CMA87, paragraphs 3.5(a) and 3.46.

¹² For further information on each of these risks, see CMA87, paragraph 7.4.

- (c) structural remedies rarely require monitoring and enforcement once implemented.
- 15. In the following section we set out our initial views on each of the following categories of possible remedies:
 - (a) Divestiture remedy options;
 - (b) Behavioural remedy options; and
 - (c) Other remedy options.

Divestiture remedy options

- 16. In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a standalone basis independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed. 14
- 17. In the present case, to ensure that the remedy is comprehensive, the divestiture package would need to be capable of competing effectively under separate ownership. We would therefore need to be confident that the divestiture package contained all the assets, staff and capabilities necessary to be able to continue to compete effectively, and that the process of separating these assets from the relevant Party's business would not risk materially impairing the competitive capabilities of the divested business.
- 18. At this stage, we have identified the following potential structural remedies:
 - (a) divestiture of an overlapping site in each of the SLC areas (Stoke-on-Trent and Nottingham); or

¹³ CMA87, paragraph 5.7.

¹⁴ CMA87, paragraph 5.12. Purchaser risk refers to the risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser; composition risk refers to the risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market (CMA87, paragraph 5.3).

- (b) in the event that remedy (a) is found not to be effective, divestiture of the entire HAS-Vent business.
- 19. We will consider responses on each of the above options, as well as any other divestiture remedies put forward as part of this consultation.

Behavioural remedy options

20. Our initial view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC or any resulting adverse effect that it has provisionally identified, given our initial view that there are significant risks in designing effective behavioural remedies, including the risks of specifying the form of conduct or market outcome with sufficient precision in a dynamic technological market and the challenges in monitoring compliance. We will consider any behavioural remedies put forward as part of this consultation.

Other remedy options

- 21. More generally, the CMA will consider any other practicable remedies that the Parties, or any interested third parties, may propose that could be effective in addressing the SLC and/or any resulting adverse effects which we have provisionally identified.
- 22. Where the merger parties propose remedy options for the CMA's consideration, the CMA's engagement on remedies with limited prospect of being effective can reduce the CMA's ability to focus on remedies that have a greater prospect of being effective. Therefore, in keeping with the CMA's guidance on remedies and in view of the statutory deadline for us to publish our final decision on any SLC and remedies, we will not conduct a detailed consideration of proposed remedies unless those proposing remedy options can demonstrate that their proposed remedy options will satisfactorily address the SLC and/or any resulting adverse effects identified in the Provisional Findings Report.
- 23. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLC or any resulting adverse effects that we have provisionally identified.

Invitation for comments on a possible divestiture remedy

- 24. In evaluating possible divestitures as a remedy to the SLC and/or any adverse effects that have been provisionally identified, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:¹⁵
 - (a) the scope of the divestiture package;
 - (b) identification of a suitable purchaser; and
 - (c) ensuring an effective divestiture process.

The scope of the divestiture package

- 25. To be effective in remedying the provisional SLC, any divestiture package would need to be appropriately configured to address the SLC and/or adverse effects that we have provisionally identified, and be attractive to potential purchasers in order to enable the purchaser to operate effectively as an independent competitor.
- 26. We note that the scope of the divestiture package needed to allow a purchaser to compete as a standalone business will rely to some extent on the identity and capabilities of the purchaser. However, our initial view is that as a starting point, the scope of the package should be sufficiently broad to address the risk that the scope will be too constrained or not appropriately configured to attract a suitable purchaser.
- 27. As noted above, at this stage, the divestiture options under consideration are:
 - (a) divestiture of an overlapping site in each of the SLC areas (Stoke-on-Trent and Nottingham); or
 - (b) in the event that remedy (a) is found not to be effective, divestiture of the entire HAS-Vent business.

Divestiture of an overlapping site in each of the SLC areas

- 28. Regarding option (a), our initial views are that:
 - (a) Divestment of an overlapping site in each of the SLC areas would remedy, mitigate or prevent the SLCs. We will consider whether a

¹⁵ CMA87, paragraphs 5.3-5.4.

- divestiture package should consist of either Lindab-owned sites, or HAS-Vent owned sites, or whether one branch from each Party could be divested ('mix-and-match'). We will also consider whether a mix-andmatch remedy creates additional composition risks.
- (b) Currently, only one of the Lindab sites (Nottingham) includes manufacturing facilities. Manufacturing for the whole of HAS-Vent is carried out at a single site at Womborne. We note that some competitors manufacture their own circular ducts and fittings and will therefore already have their own manufacturing capability, and other competitors source their circular ducts and fittings from third parties. We will consider whether manufacturing assets should be included in the divestiture package, and to what extent inclusion, or exclusion, would limit the pool of potential purchasers or the choice of sites, or would make it more difficult for the purchaser(s) to compete.
- (c) Back-office functionalities (including the staff supporting those functions) are unlikely to be required by the purchaser(s) of the divestment package and could, in any event, be quickly and easily established by the purchaser(s). However, to the extent that back-office support is needed on a temporary basis to facilitate the smooth transfer of the divestment sites, this should be at the option of the purchaser(s).
- (d) Divestment of all staff working at each divestment site is necessary. We consider branch managers to be key staff given that they hold customer relationships and customer contacts, and their transfer to the purchaser(s) is therefore important to support the ongoing viability of the divestment sites.
- (e) Divestment of staff with national responsibilities at HAS-Vent and/or Lindab is not likely to be required given our understanding that branch managers at a local level take on responsibility for the day-to-day running of the local branch and the majority of commercial decisions (including decisions on pricing and discounts), and a purchaser could provide equivalent capabilities.
- (f) The divestment package could be sold to one or two purchasers. We note that the SLCs are local, and scale is not required to compete in the market for the supply of circular ducts and fittings. A sale of the divestment sites to separate purchasers may result in a larger pool of purchasers thereby reducing purchaser risks associated with the divestment. However, having separate purchasers would require there to be two suitable purchasers rather than one, and may introduce additional execution risk through running two parallel sales processes.

- 29. Notwithstanding our preliminary position on the appropriate scope of the divestiture package outlined above, we invite views on the following issues of scope:
 - (a) Whether the divestiture package should consist of only HAS-Vent or Lindab owned overlapping sites. Alternatively, whether sites from both HAS-Vent and Lindab could be included in the divestiture package ('mix-and-match').
 - (b) Whether the two sites should be sold to a single purchaser.
 - (c) Whether the divestiture package should include manufacturing assets from either Lindab or HAS-Vent. Alternatively, whether a purchaser would not require manufacturing assets as it would be able to source its own or third parties' circular ducts and fittings. To what extent a divestiture package that did, or did not, have any manufacturing assets would limit the number of potential purchasers?
 - (d) Concerning manufacturing for a HAS-Vent only divestment package, should HAS-Vent's manufacturing site in Wombourne be added to the divestment package at the option of the purchaser(s)?
 - (e) Whether a Lindab-only divestment would be attractive to potential purchasers, especially those with existing manufacturing capacity, given that Lindab Nottingham has manufacturing capability and therefore would have higher operating costs than a branch with no manufacturing capability?
 - (f) Whether all the employees at each site would be required.
 - (g) Whether any other staff would be required, and if so, in which functions eg staff with national responsibilities.
 - (h) What back-office functions, if any, should transfer to the purchaser(s) to support the divestiture package, or whether a transitional services agreement (TSA) should be offered by the Parties. If a TSA is required, what would be the appropriate scope and duration of the TSA?
- 30. Any other elements/assets/capabilities that may be required to ensure that the divestiture package is appropriately configured to be attractive to potential purchasers, and to enable the purchaser to operate effectively as an independent competitor.

Full divestiture of HAS-Vent

31. We also invite views on whether a full divestiture of HAS-Vent would be an effective remedy to the provisional SLC.

Identification of a suitable purchaser

- 32. Purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available. As such, in line with CMA guidance, we will need to be satisfied that a prospective purchaser:¹⁶
 - (a) is independent of the Parties;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the market for the supply of circular ducts and fittings in the local areas centred around Stoke-on-Trent and Nottingham; and
 - (d) will not create further competition concerns. 17
- 33. In addition, our initial view is that a prospective purchaser should have the capabilities and business functions (including, but not limited to, IT systems, purchasing, and payroll) that can support the divested branch(es).
- 34. The CMA invites views on whether there are any other specific factors to which the CMA should pay particular regard in assessing purchaser suitability for either remedy option in this case, eg:
 - (a) whether a proven capability of operating a business supplying circular ducts and fittings or a ventilation business in an adjacent market to the supply of circular ducts and fittings, is essential or desirable;
 - (b) whether any particular purchaser (or types of purchaser) might fail to meet the purchaser suitability criteria set out in paragraph 32 above;
 - (c) whether there are any other factors that we should consider when identifying a suitable purchaser for the divestiture package;

¹⁶ CMA87, paragraph 5.20 and 5.21

¹⁷ CMA87 (December 2018), paragraph 5.20 and 5.21.

- (d) whether there is a risk that Lindab will be incentivised to divest a divestment business to a weak or otherwise inappropriate purchaser, or that a suitable purchaser is not available; and
- (e) whether a sale of the divestiture package to one or more purchasers would create any risks.

Effective divestiture process

- 35. The CMA invites views on the appropriate timescale for achieving a divestiture, particularly in the case of multiple purchasers.
- 36. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
- 37. A Monitoring Trustee is already in place, and we would expect this to continue throughout any divestiture process. We invite views on whether any additional risks may arise during the divestiture period and whether the functions of the Monitoring Trustee should be amended to oversee the divestiture.
- 38. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
 - (a) the Parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that the Parties will not procure divestiture to a suitable purchaser within the initial divestiture period.
- 39. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

Cost of remedies and proportionality

40. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to completed mergers, the CMA will not normally

- take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.¹⁸
- 41. The CMA invites views on what costs are likely to arise in implementing each remedy option, and whether each option is proportionate in relation to the SLC and its adverse effects.

Relevant customer benefits

- 42. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.¹⁹
- 43. Relevant customer benefits are limited by the Act to benefits to customers²⁰ in the form of:²¹
 - (a) lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not in the market(s) in which the SLC concerned has, or may have, occurred, or may occur); or
 - (b) greater innovation in relation to such goods or services.
- 44. The Act provides that, in relation to a completed merger, a benefit is only an RCB if:²²
 - (a) it has accrued, or may be expected to accrue within a reasonable period, as a result of the creation of the relevant merger situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
- 45. We welcome views on the nature of any RCBs and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the divestiture remedy options set out above (see paragraphs 18(a) and (b)) or any other remedies that may be put forward for our consideration.

¹⁸ CMA87 (December 2018), paragraph 3.8 and 3.9.

¹⁹ Section 36(4) of the Act, see also CMA87 (December 2018), paragraph 3.15 and 3.16.

²⁰ For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution; they are therefore not limited to final consumers (section 30(4) of the Act; see also CMA87, paragraph 3.18).

²¹ Section 30(1)(a) of the Act, see also CMA87, paragraph 3.17

²² Section 30(2) of the Act, see also CMA87, paragraph 3.19.

Next steps

- 46. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish us to consider, by 17:00 (UK time) on Thursday 5 September 2024 (see Note (i)). Comments should be provided by email to Lindab.HASVent@cma.gov.uk.
- 47. A copy of this notice will be posted on the CMA website

Kirstin Baker Inquiry Group Chairman 22 August 2024

Note

(i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the Provisional Findings announced on 22 August 2024. Parties have until 17:00 (UK time) on Thursday 12 September 2024 to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.