Anticipated acquisition by Dolby Medical Home Respiratory Care Limited (Vivisol) of Air Liquide Healthcare Limited's home oxygen services business

Decision on relevant merger situation and substantial lessening of competition

ME/7156/26

OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Dolby Medical Home Respiratory Care Limited (**Vivisol**) of the business assets of Air Liquide Healthcare Limited (**Air Liquide**) used to supply home oxygen services to National Health Service (**NHS**) patients in the South West of England, including the contract, staff and plant (the **ALUK HOS Business**), gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of home oxygen services in the UK.

2. Vivisol has agreed to acquire the ALUK HOS Business pursuant to a Business Purchase Agreement. The CMA refers to this acquisition as the **Merger**. Vivisol and Air Liquide 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 26 November 2026 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, then the CMA will refer the Merger 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. Vivisol and Air Liquide both provide home oxygen services to NHS patients in the UK.

5. Home oxygen services involve the supply of cylinders of gaseous medical oxygen and associated equipment, so that oxygen can be administered to patients at home rather than in hospital.

Why did the CMA review this merger?

6. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so. In this case, the CMA has concluded that the CMA has jurisdiction to review this Merger because a relevant merger situation has been created: Vivisol and the ALUK HOS Business are each an enterprise that will cease to be distinct as a result of the Merger and the share of supply test is met.

What evidence has the CMA looked at?

7. In assessing this Merger, the CMA considered a wide range of evidence in the round.

8. The CMA received several submissions and responses to information requests from the Parties. The CMA gathered information about the products and services provided by the Parties and the competitive landscape in which they operate.

9. The CMA also examined the Parties' own internal documents, including evidence on the financial performance of Air Liquide, the strategic options considered by the business and its future business plans. These internal documents were also helpful in understanding how the Parties run their business and how they view their rivals in the ordinary course of business.

10. The CMA spoke to and gathered evidence from customers and competitors of the Parties to understand better the competitive landscape, and to get their views on the impact of the Merger.

What did the evidence tell the CMA…

…about what would have happened had the Merger not taken place?

11. In order to determine the impact that the Merger could have on competition, the CMA has considered what would have happened had the Merger not taken place. This is known as the counterfactual.

12. Based on considerations relating to profitability, Air Liquide considered various options for the UK business at the same time as they decided to pursue a possible sale of the ALUK HOS Business. The CMA considers that the appropriate counterfactual in this case is the prevailing conditions of competition (namely, that

Air Liquide would have continued to compete in the supply of home oxygen services in the UK as an independent competitor).

…about the effects on competition of the Merger?

13. The CMA looked at whether the Merger would lead to an SLC in the supply of home oxygen services in the UK.

14. The evidence shows that the supply of home oxygen services in the UK is a concentrated market, with just four suppliers. The Merged Entity would be the second largest supplier, with only two alternative suppliers, one of which exerts a relatively weak constraint. The CMA considers that Vivisol is acquiring one of the few alternative suppliers of home oxygen services in the UK and the Merged Entity would face limited competitive constraints. Accordingly, the CMA considers that the Merger would give rise to competition concerns as a result of horizontal unilateral effects in the supply of home oxygen services in the UK.

…about any entry or expansion?

15. The CMA found that it is difficult to enter and/or expand in the supply of home oxygen services in the UK. No material new entry has been observed in the UK for a number of years and the CMA has not received any evidence to indicate that there would be any entry or expansion in response to the Merger that would be timely, likely and sufficient to prevent the SLC from arising.

What happens next?

16. As a result of these concerns, the CMA believes the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of home oxygen services in the UK. The Parties have until 26 November 2026 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 any 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.