



EUROPEAN COMMISSION  
DG Competition

***Case M.10431 - ALI GROUP / WELBILT***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 17/06/2022

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EUROPEAN COMMISSION

Brussels, 17.06.2022  
C(2022) 4294 final

## PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Ali Holding S.r.l.  
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Italy

**Subject: Case M.10431 – ALI GROUP / WELBILT  
Commission decision pursuant to Article 6(1)(b) in conjunction with  
Article 6(2) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the  
Agreement on the European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 28 April 2022, the European Commission (hereinafter ‘Commission’) received notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation by which Ali Holding S.r.l. (‘Ali Group’, Italy or ‘the Notifying Party’), acquires sole control over Welbilt, Inc. (‘Welbilt’, the United States of America), by way of a purchase of shares (‘the Transaction’).<sup>3</sup> In this Decision, Ali Group and Welbilt are referred to as the ‘Parties’.

<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

<sup>3</sup> Publication in the Official Journal of the European Union No C 185, 6.5.2022, p. 66.

## **1. THE PARTIES**

- (2) Ali Group is an Italian corporation that, through its subsidiaries, designs, manufactures, markets and services a broad range of commercial and institutional foodservice equipment, including ice-making machines and ovens, used in major commercial and public venues. It has manufacturing facilities as well as sales and service subsidiaries across the world, including Europe. Ali Group is one of the world's largest groups in this industry and operates about 80 global brands such as Lainox, XpressChef / Menumaster, Mono, Metos, Scotsman, Simag, Icematic and Ice-o-Matic.
- (3) Welbilt was founded in 2016 and is listed on the New York Stock Exchange. It is an American corporation offering equipment capable of storing, cooking, holding, displaying, dispersing and serving food and beverage products. It designs, manufactures and supplies equipment used by commercial and institutional service operators. Welbilt has manufacturing facilities operating throughout the Americas (where the company is mostly active), Europe and Asia. It offers products e.g. under brands Merrychef, Convotherm or Lincoln.

## **2. THE TRANSACTION**

- (4) On 14 July 2021, the Parties announced that they had entered into a definitive agreement under which Ali Group will acquire all of the issued ordinary shares in the capital of Welbilt. Upon completion of the Transaction, Ali Group will acquire sole control over Welbilt.
- (5) Therefore, the Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. UNION DIMENSION**

- (6) The Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation, as it does not meet the thresholds of Article 1(2) or Article 1(3).<sup>4</sup>
- (7) However, on 5 October 2021, the Parties to the proposed transaction informed the Commission, by means of a reasoned submission, that the concentration is capable of being reviewed under the national competition laws of five Member States.<sup>5</sup> On that basis, and under Article 4(5) of the Merger Regulation, the Parties to the proposed transaction requested the Commission to examine the concentration.
- (8) The Commission transmitted this submission to all Member States on 5 October 2021. The Member States competent to examine the concentration did not express their disagreement to the request for referral.

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<sup>4</sup> The thresholds in Article 1(2) of the Merger Regulation are not met since the combined worldwide turnover of the Parties to the proposed transaction in 2020 was EUR [...] and the aggregate Community-wide turnover of Welbilt in 2020 was EUR [...]. The Parties to the proposed transaction also do not meet the turnover thresholds in at least three Member States required by Article 1(3)(c) of the Merger Regulation.

<sup>5</sup> Austria, Germany, Portugal, Slovenia and Spain.

- (9) Therefore, the Transaction is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

#### 4. MARKET DEFINITION

- (10) The commercial foodservice equipment market consists broadly of cooking, storage and handling equipment, food and beverage preparation, and serving equipment used to prepare and preserve various kinds of food items. The Parties' activities overlap in a number of professional kitchen equipment categories in the EEA, specifically speed ovens, combi-ovens, microwave ovens, conveyor ovens, deck ovens, ice-making machines, fryers, grills, ranges, braising pans / tilting skillets, cookers / kettles, holding and warming equipment, and coffee machines. This section focuses on the products where the overlaps lead to possible affected markets,<sup>6</sup> namely ice-making machines, speed ovens, ovens overall, combi-ovens, conveyor ovens and coffee machines.
- (11) Within the EEA, Ali Group is also active in the wholesale distribution of professional kitchen equipment. Therefore, there is also a vertical relationship between the activity of Ali Group consisting of the wholesale distribution of professional kitchen equipment and the activity of Welbilt consisting of the manufacture of various commercial foodservice equipment.

#### 4.1. Ice-making machines

##### 4.1.1. Overview

- (12) Ice-making machines are used to produce ice for different uses, primarily for the foodservice sector (restaurants, hotels, bars, etc.), although certain of these machines may also be used in specific industrial applications, such as cement production. Ice-making machines may be differentiated according to several different parameters, namely (i) the technology used to produce the ice, (ii) the type of ice produced, and (iii) the capacity of the machines.<sup>7</sup> The following ice-making machines can be distinguished:
- (a) **Cubers** produce ice through a spray technology or through a vertical evaporator, or to a lesser extent using finger technology.<sup>8</sup> These different technologies create distinct types of ice.<sup>9</sup> Cubers can further be divided into the following two types:
- **Modular cubers** are ice-making machines that produce ice cubes, normally using vertical technology. They are larger machines which do not have an integrated storage bin. Modular cubers typically produce more than 125kg per day, and they take up more space than self-contained cubers as they cannot be stored horizontally. They usually produce large quantities of ice in grids which break apart into individual cubes. The cubes are dice shaped and less clear than the gourmet cubes. The Parties

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<sup>6</sup> Form\_CO\_-\_Annex\_18\_(2022-05-03) from 04.05.2022.

<sup>7</sup> Form CO, paragraphs 180-181.

<sup>8</sup> Finger technology is used in self-contained machines in hard water areas because the system of moving water in the machine ensures that only the soft water sticks to the ice fingers and the calcium deposits are washed away.

<sup>9</sup> Form CO, paragraph 1063.

also supply ice storage bins of different capacities and dispensing units as accessories to modular cubers.<sup>10</sup>

- **Self-contained cubers** are low capacity machines which make and store ice, normally using spray technology that produce very clear ice cubes,<sup>11</sup> and are relatively small machines that may be easily stored (they are sometimes referred to as “undercounter” cubers), and typically produce less than 150kg ice per day.<sup>12</sup>
- (b) **Nugget ice-making machines** are ice-making machines that produces nugget ice, a small and crunchy pieces of ice with a soft centre which is primarily used as a high-quality ice to cool cocktails or other drinks<sup>13</sup> and compact device that you can use at home, office, or even restaurants.
- (c) **Flake ice-making machines** produce flakes of ice in machines with production capacities ranging from very small (60kg) to very large (over 2000kg). The technology is the same in all machines, namely water passes through a refrigerated cylinder, from which a rotating arm extrudes small crystals of flake ice. Depending on capacity, flake ice-making machines serve various purposes. Smaller flake ice-making machines are usually used by commercial customers for serving with drinks (e.g., with cocktails); in these machines the flakes are sometimes compressed. Other commercial customers require larger machines because they use flakes for chilled displays (e.g., in supermarkets). Very large machines can be put to industrial use, such as transporting cold meat and fish.<sup>14</sup>
- (d) **Scale ice-making machines** are large-sized machines producing large quantities of flakes sold to the meat and fish industries and large supermarkets. The flakes produced by scale ice-making machines can sustain lower temperatures (approximately minus 10-12°C) than those of the flakes produced by flake ice-making machines (approximately minus 1-2°C). Also, in scale ice-making machines, a horizontal rotating freezer freezes the water, which is scraped by a blade to form scale ice.<sup>15</sup>

#### 4.1.2. *Product market*

- (13) The Commission has previously found different product markets for (i) modular cubers, (ii) self-contained cubers, and (iii) flake ice machines.<sup>16</sup>
- (14) The Notifying Party acknowledges that the Commission previously found separate markets for various sub-segments of ice-making machines, but considers that the degree of supply-side and demand-side substitutability could lead to wider markets. From a supply side production lines of ice-making machines are flexible, and many manufacturers supply all types of products and customers. From the customers’ perspective, the Notifying Party considers that they can easily substitute between

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<sup>10</sup> Form CO, paragraph 1067.

<sup>11</sup> A clear, solid, slow melting "gourmet" cube used by commercial users (e.g., nightclubs and cafés) where shape and clarity are of great importance. (Form CO, paragraphs 1064-1066).

<sup>12</sup> Form CO, paragraphs 1065-1066.

<sup>13</sup> Form CO, paragraph 1070.

<sup>14</sup> Form CO, paragraphs 1075-1076.

<sup>15</sup> Form CO, paragraphs 1075 and 1078.

<sup>16</sup> Case M.5180 – *Manitowoc / Enodis*, paragraph 26.

one type of ice machine and another. The Parties submit that it is not necessary to define the relevant markets since the proposed remedy will eliminate all overlaps for ice-making machines.<sup>17</sup>

- (15) The results of the market investigation confirmed the Commission's previous finding that the various types of ice-making machines mentioned in paragraph (12) are part of different product markets. A large majority of customers and the majority of competitors<sup>18</sup> consider that the different types of ice machines are not substitutable for the final customers and their commercial needs, in particular because of size of the ice making machine, characteristics of the ice produced, scope of use etc. More specifically, the majority of customers agree that modular cubers (which may come with accessories such as: storage bins and dispensers), self-contained cubers, flake ice-making machines, and scale ice-making machines constitute separate product markets.<sup>19</sup>
- (16) With regards to nugget ice-making machines, the results of the market investigation are inconclusive because while a large majority of customers consider them as part of a separate product market, the majority of competitors who expressed an opinion do not consider them as part of a distinct product market.<sup>20</sup>
- (17) With regard to sales channels, the market investigation indicates that conditions of competition seem to differ in the direct sales channel compared to the distribution channel, specifically regarding pricing and after sales services.<sup>21</sup> The Parties claim that they cannot reliably determine ice-making machine market shares by sales channel.<sup>22</sup>
- (18) As serious doubts would arise irrespective of the product market definition and considering that the commitments offered by the Notifying Party solve those serious doubts irrespective of the relevant product market considered, the exact product market definition can be left open. For the purpose of this decision, the effects of the concentration will be assessed for the combined direct and indirect sales channels for (i) a possible overall market for ice-making machines; and (ii) possible distinct markets for each ice-making machine type: modular cubers (with and without the accessories), self-contained cubers, flake ice-making machines, scale ice-making machines and nugget ice-making machines.

#### 4.1.3. *Geographic market*

- (19) In its previous decisional practice the Commission had elements to support both national and EEA-wide geographic markets, as the geographic scope is different between sales to key account customers (which are large chain-customers like [...]), distributors and dealers. As regards the EEA market, it is noted that manufacturers of ice machines market their products in the EEA through four

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<sup>17</sup> Form CO, paragraphs 1080-1081.

<sup>18</sup> Questionnaire to competitors of ice-making machines, question A.B.1.

<sup>19</sup> Questionnaire to customers of ice-making machines, question A.B.1.

<sup>20</sup> Questionnaire to customers of ice-making machines, question A.B.1.; Questionnaire to competitors of ice-making machines, question A.B.1.

<sup>21</sup> Non-confidential Minutes of a call with a distributor from 11.02.2022, 13.00-14.00 CET; Non-confidential Minutes of a call with a key account customer from 18.02.2022, 16.00-17.00 CET.

<sup>22</sup> Form CO, paragraph 1130 and pre-notification response to the Request for information no.2, question 27.

different channels: (i) sales to key account customers, (ii) private label sales, (iii) sales to wholesale distributors (which then re-sell the machines to dealers), and (iv) direct sales to dealers. The market investigation did not allow the Commission to clarify a number of national aspects regarding the sale by manufacturers. For example, even though distributors mostly purchase at EEA-level and that price lists are indeed set for EEA-wide level, the market investigation revealed that after-sales services are very important and they are normally provided at national level by dealers and distributors. Given that the remedy offered in the respective case solved the serious doubts that could arise at either national or EEA level, the exact geographic scope of the markets were left open.<sup>23</sup>

- (20) The Notifying Party submit that the relevant geographic market is at least EEA-wide, if not even wider in certain instances (i.e., for global key accounts). At the production level of the value chain, where the Parties are active, competition occurs between manufacturers for supply opportunities (notably key accounts and distributors) across the EEA. Customers at this level of the value chain, in turn, will search for suppliers across the EEA rather than localized at the national level. Products are shipped across the EEA to customers, if not over even wider distances (i.e., Welbilt supplies its ice-making machine to the EEA from [...]) and prices are homogeneous across the EEA. Therefore, in the Parties' view the concentration should be assessed on an EEA-wide basis.
- (21) All competitors and the majority of customers who expressed an opinion on this point consider that the market conditions for the sale of ice-making machines differ between direct sales from the manufacturer (to key account customers, distributors, private label or dealers) and indirect sales through a distributor/dealer, for instance in terms of pricing, volumes of order, format and/or nature of the products, delivery logistics etc.<sup>24</sup>
- (22) The market investigation mostly confirmed Commission previous findings regarding the complex nature of the distribution model to the various types of customers.<sup>25</sup> In this regard, even though producers deliver ice-making machines to customers on an EEA or wider than EEA levels,<sup>26</sup> the geographic scope for customers depends on the quantity, price and the availability of after-sales services<sup>27</sup> on a national basis. Usually, key account customers and large, *de facto* exclusive<sup>28</sup> distributors of ice-making machines purchase on an at least EEA-wide

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<sup>23</sup> Case M.5180 – *Manitowoc / Enodis*, paragraphs 42-52.

<sup>24</sup> Questionnaire to customers of ice-making machines, question A.B.2.; Questionnaire to competitors of ice-making machines, question A.B.2.

<sup>25</sup> Questionnaire to customers of ice-making machines, question A.C.1.

<sup>26</sup> Questionnaire to competitors of ice-making machines, question A.C.1.

<sup>27</sup> Distributors and dealers usually offer after-sales services on a national basis and key account customers, even though they purchase directly from manufacturers, they choose those manufacturers who can provide them, indirectly through dealers or distributors, with after-sales services on a national level. Also, customers (dealers, distributors or key account customers) would choose the direct or indirect sales channel depending on the quantity of products they purchase, with a preference for the indirect channel for small quantities. (Questionnaire to customers of ice-making machines, questions A.C.1 and A.C.1.1; Non-confidential Minutes of a call with a distributor from 14.01.2022, 11.00-12.00 CET).

<sup>28</sup> Non-confidential Minutes of a call with a distributor from 24.01.2022, 10.00 – 11.00 (CET); Non-confidential Minutes of a call with a distributor from 09 March 2022, 11.00 – 12.00 (CET).

basis,<sup>29</sup> as two key customers stated: “[we] would negotiate global EXW pricing and find a supply route into the relevant market” and “We negotiate and approve global prices and equipment worldwide and not by country. The same approved suppliers sell their equipment to our restaurants worldwide”.<sup>30</sup>

- (23) The national dimension to these markets is sustained by the fact that dealers usually buy and sell nationally, after-sales services are provided nationally, usually commercial end customers purchase on a national basis.<sup>31</sup> As two dealers state: “we buy and sell on the Italian market” and “we only operate on a national basis”.<sup>32</sup>
- (24) Given that the remedy offered solves the serious doubts that could arise at either national or EEA level, the exact geographic scope of the markets may be left open. For the purpose of this decision, the effects of the concentration will be assessed at both national and EEA levels for the overall sales as the Parties claim that they cannot reliably determine ice-making machine market shares by customer type.<sup>33</sup>

## 4.2. Speed ovens

### 4.2.1. Overview

- (25) Speed ovens are professional kitchen appliances that are able to cook or heat food much faster than conventional ovens, typically allowing the customer to be served at the counter. They do so by combining several types of technology, which may include convection,<sup>34</sup> impingement,<sup>35</sup> microwave,<sup>36</sup> infrared<sup>37</sup> and conduction<sup>38</sup>. The combination of technologies affects the cooking/heating speed and the finishing effect a speed oven is able to achieve.
- (26) Speed ovens are offered in various dimensions and can be used for accelerated grilling / toasting, baking, and several other cooking options. In practice however, speed ovens are mostly used in front-of-house applications such as cafés, coffee shops and canteens for the fast re-heating and finishing of pre-cooked menu items such as burgers, sandwiches, and panini.

### 4.2.2. Product market

- (27) The Commission has not previously assessed the market for speed ovens.

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<sup>29</sup> Questionnaire to customers of ice-making machines, question A.C.1; Questionnaire to competitors of ice-making machines, question A.C.1.

<sup>30</sup> Questionnaire to customers of ice-making machines, question A.C.1.1.

<sup>31</sup> Questionnaire to customers of ice-making machines, questions A.C.1 and A.C.1.1.

<sup>32</sup> Questionnaire to customers of ice-making machines, question A.C.1.1. (*author’s translation from Italian*)

<sup>33</sup> Form CO, paragraph 1130 and pre-notification response to the Request for information no.2, question 27.

<sup>34</sup> Heating through contact with hot air circulated by a fan.

<sup>35</sup> A variant of convection whereby hot air is forced through holes in a metal plate above or under the food.

<sup>36</sup> Heating “from the inside out” through high frequency radio waves which heat the water molecules in the product.

<sup>37</sup> Heating through radiant waves from a heating element such as a grill, which may be located above or under the food.

<sup>38</sup> Heating through contact with a hot surface, which includes heated bases, presses, etc.



#### 4.2.2.1. The Notifying Party's view

- (28) The Notifying Party considers that the relevant product market might be as wide as 'commercial foodservice equipment,' but should not be narrower than ovens as a whole, including speed ovens, combi-ovens, microwave ovens, conveyor ovens, deck ovens and convection ovens.<sup>39</sup> According to the Notifying Party, any product categorisation within ovens is bound to be imprecise and subjective, both from a supply and from a demand perspective, given the existence of a continuum of products and the blurriness of any delineation between them. All ovens have substantially one and the same purpose - to cook and heat food, even though they may do so using different technologies. The Notifying Party submits that customers choose between different types of ovens, including speed ovens, depending on their preferences and operational needs. Speed ovens could therefore be replaced by other more conventional cooking appliances, such as small deck or convection ovens, conveyor ovens, or toasters.
- (29) Nevertheless, the Notifying Party has provided information on a narrower segment for speed ovens. The Notifying Party submits that the market for speed ovens should include appliances that offer the same primary value propositions, i.e. speed of service, ease of use/automation and ventless operation (allowing them to be used without a hood). It identifies four categories of appliances that meet those requirements, i.e. 'high-speed ovens', 'accelerated ovens', 'fast ovens', and 'accelerated panini presses'. In the Notifying Party's understanding, high-speed ovens use impingement, accelerated ovens combine microwave and convection technology, but do not use impingement, fast ovens feature convection / grill / heated base (conduction), while accelerated panini presses use direct cooking (conduction plates), infrared and microwaves. The Notifying Party submits that those four categories of products compete directly due to their interchangeable functionalities.

#### 4.2.2.2. The Commission's assessment

- (30) The outcome of the Commission's market investigation provides strong indications that speed oven product markets comprise those types of ovens that allow faster cooking times than conventional ovens by combining at least microwave and either convection or impingement technology, regardless of size and sales channel. Under the Notifying Party's terminology, this would include high-speed ovens and accelerated ovens, and exclude fast ovens and accelerated panini presses from the product scope of the relevant market.
- (31) First, with respect to heating technology, the majority of both competitors and customers confirmed that an oven needs to combine at least microwave and either convection or impingement, to effectively compete in the speed oven market.<sup>40</sup> Contrary to the Notifying Party's claims, a majority of customers<sup>41</sup> and

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<sup>39</sup> See Section 4.3.1 for descriptions of combi-ovens and conveyor ovens and an assessment of the Parties' overlapping activities in combi-ovens, conveyor ovens and ovens overall.

<sup>40</sup> Questionnaire to end customers of speed ovens, question B.A.2; Questionnaire to distributors of speed ovens, question B.A.2; Questionnaire to competitors of speed ovens, question B.A.2.

<sup>41</sup> Questionnaire to end customers of speed ovens, questions B.A.6 and B.A.7; Questionnaire to distributors of speed ovens, question and B.A.7.

competitors<sup>42</sup> do not consider fast ovens, i.e. multi-technology ovens without microwave, such as Lincat's CiBO, or accelerated panini presses, i.e. multi-technology panini presses without convection, such as Electrolux's SpeedDelight, to be in competition with speed ovens. A competitor explained: "*For instance Lincat's CiBO does not have microwave technology and could be used to cook a pizza but not to cook a panini.*", and "*while speed ovens are proper cooking appliances; panini grills are mostly used as a heating device.*"<sup>43</sup>

- (32) Furthermore, another competitor explained that "*ovens without microwave and only based on convection+conduction (e.g. Lincat's CiBO ovens) cannot effectively compete against speed ovens. Without the microwave function the oven would need 3-4 mins to cook something whereas with microwave it would only need 1 min.*"<sup>44</sup>The same competitor also explained that "*accelerated panini presses (panini presses with microwave) cannot replace speed ovens. Speed ovens can do what panini presses do but they can additionally warm up food like premade lasagna. A panini press is limited and cannot do that. If someone wants to cook a broad range of food, he would need another speed oven and not a panini press. Although their price range is relatively close and someone could consider them as competitors, they are not in reality because accelerated panini presses are more limited in the range of food they cook.*"<sup>45</sup>
- (33) The requirement for a speed oven to have both microwave and convection or impingement technology seems to be confirmed by industry reports on the speed ovens market such as the Technavio study,<sup>46</sup> which similarly do not include accelerated panini presses or fast ovens in the market definition used for their assessment.
- (34) Second, as regards competition from other appliances, market feedback indicated that speed ovens using at least microwave and convection or impingement technology have particular performance levels, notably in terms of cooking speed, and applications, particularly for quick service restaurants and convenience stores. Hence, they show little demand-side substitutability with other types of equipment. A majority of customers who responded to the market investigation<sup>47</sup> did not consider convection ovens, microwave ovens, combi-ovens, grills or other cooking appliances to be substitutable with speed ovens, in contrast to the Notifying Party's contention that the relevant product should not be narrower than ovens overall.
- (35) Similarly, competitors indicated that speed ovens are not in competition with other appliances.<sup>48</sup> A competitor for instance commented: "*If a customer needs a speed oven, other products may not be viable alternatives. [...] In addition, all speed ovens have ventless technology whereas any other type of oven has to be put under ventilation.*"<sup>49</sup>

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<sup>42</sup> Questionnaire to competitors of speed ovens, questions B.A.7 and B.A.8.

<sup>43</sup> Questionnaire to competitors of speed ovens, questions B.A.7.1 and B.A.6.2.

<sup>44</sup> Non-confidential Minutes of a call with a competitor from 18.03.2022, 16.30-17.30 (CET).

<sup>45</sup> Non-confidential Minutes of a call with a competitor from 18.03.2022, 16.30-17.30 (CET).

<sup>46</sup> Methodology paper: Annex\_WBT\_Confidential\_647.

<sup>47</sup> Questionnaire to end customers of speed ovens, question B.A.5.; Questionnaire to distributors of speed ovens, question B.A.5.

<sup>48</sup> Questionnaire to competitors of speed ovens, question B.A.6.

<sup>49</sup> Questionnaire to competitors of speed ovens, question B.A.6.2.

- (36) Third, as regards size, the market investigation suggests that dimensions of speed ovens are an important factor in customers' purchasing choices. Respondents explain that size matters, especially in front-of-house settings where space is limited but also in terms of heating speed, as smaller models tend to be faster<sup>50</sup>. [Welbilt's internal document].<sup>51</sup>
- (37) However, significant supply-side substitutability seems to exist among speed ovens of different sizes: all competitors who expressed an opinion consider that speed ovens of all sizes can be produced with the same components, know-how, and equipment, and that it is just a matter of adjusting the size of the cavity and frame.<sup>52</sup> A competitor explained: "*The size may differ depending on the type of food (e.g. pizza requires a larger unit), but overall they are all considered speed ovens, irrespective of the size. The Company produces a larger product than its competitors. But if they wanted, they would be able to produce smaller units in the future, since the important element is the technology that they own. Once a supplier has access to the necessary cooking technologies, it can produce speed ovens of all sizes, it's just a matter of adjusting the cavity size and the frame dimensions.*"<sup>53</sup>
- (38) Fourth, with regard to sales channels, the market investigation indicates that conditions of competition seem to differ in the direct sales channel compared to the distribution channel. A majority of customers who expressed an opinion replied that market conditions in the two channels differ to a certain extent or are significantly different, for instance in terms of sales organization, pricing and after sales services.<sup>54</sup> However, responses from competitors were inconclusive, with the same number of respondents stating that conditions of competition are the same as those stating that they are different.<sup>55</sup>
- (39) In conclusion, the Commission considers that, for the purposes of this Decision, it is appropriate to assess speed oven markets based on those types of ovens that allow faster cooking times than conventional ovens by combining at least microwave and either convection or impingement technology, regardless of size and sales channel.

#### 4.2.3. Geographic market

- (40) The Commission has not previously assessed a geographic market for speed ovens.

##### 4.2.3.1. The Notifying Party's view

- (41) The Notifying Party submits that the geographic scope of the market is at least EEA-wide, or even wider in certain instances, e.g. for global key accounts. It claims that manufacturers such as the Parties compete for sales to key accounts and distributors across the EEA, who look for suppliers across the EEA rather than at the national level. Products are shipped across the EEA to customers, if not over

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<sup>50</sup> Questionnaire to end customers of speed ovens, question B.B.1; Questionnaire to distributors of speed ovens, question B.B.1.

<sup>51</sup> [Party internal document].

<sup>52</sup> Questionnaire to competitors of speed ovens, question B.B.1.

<sup>53</sup> Non-confidential Minutes of a call with a competitor from 18.03.2022, 16.30-17.30 (CET).

<sup>54</sup> Questionnaire to end customers of speed ovens, question B.C.1; Questionnaire to distributors of speed ovens, question B.C.1.

<sup>55</sup> Questionnaire to competitors of speed ovens, question B.C.1.

even wider distances, with the bulk of speed ovens being produced outside the EEA, while prices are homogeneous across the EEA. In addition, there is no geographic product differentiation within the EEA, i.e., the same model is sold across the EEA, branding is EEA-wide, if not wider in certain cases, and there are significant intra-EEA trade flows. Therefore, in the Parties' view the concentration should be assessed on an EEA-wide basis.

#### 4.2.3.2. The Commission's assessment

- (42) The outcome of the Commission's market investigation provides some indications that the geographic scope of speed oven markets is at least EEA-wide.
- (43) First, customers state that they can source speed ovens at least at the EEA level. A majority of end customers responded that they can source speed ovens across the EEA and from all over the world.<sup>56</sup> A majority of competitors replied that they can sell speed ovens in all EEA countries and across the world<sup>57</sup>, while a majority of distributors confirmed that they are able to sell across borders within Europe.<sup>58</sup>
- (44) Second, no geographic product differentiation seems to exist within the EEA. As one distributor explained, "*Speed ovens are the same across countries. There are only minor regional variations with regard to power supply (i.e. single-phase power and three-phase power). The Company offers both variations.*"<sup>59</sup> As regards pricing, a majority of both competitors and distributors replied that they apply substantially the same prices in all EEA countries.<sup>60</sup>
- (45) Third, significant cross-border trade in speed ovens takes place within the EEA, resulting for instance in Belgium or Baltic countries having oversized markets.
- (46) Nonetheless, while some indications point at an EEA market, speed oven markets are also characterized by local specificities. In particular, competitors' market positions differs significantly across national markets, which seems to reflect the downstream positions of local distributors rather than the market power of upstream suppliers.
- (47) In addition, for both the direct and indirect sales channel, the support of a well-established local network for aftersales services is absolutely necessary to compete effectively, even though most suppliers rely on external partners to provide those services. As a result, end customers tend not to buy directly from suppliers located outside Europe, but indirectly through a distributor offering reliable aftersales services. As an end customer explained, "*Procuring directly from manufacturers is not a viable alternative for us we need a local distributor who can provide us the maintenance/aftersales network.*"<sup>61</sup>
- (48) In conclusion, the Commission considers that, for the purposes of this Decision, the exact geographic market definition for speed ovens can be left open given that the

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<sup>56</sup> Questionnaire to end customers of speed ovens, question C.1.

<sup>57</sup> Questionnaire to competitors of speed ovens, question C.1.

<sup>58</sup> Questionnaire to distributors of speed ovens, question C.1.

<sup>59</sup> Non-confidential Minutes of a call with a distributor from 06.12.2021, 16.30-17.30 (CET).

<sup>60</sup> Questionnaire to competitors of speed ovens, question C.3; Questionnaire to distributors of speed ovens, question C.3.

<sup>61</sup> Questionnaire to end customers of speed ovens, question C.1.2.

Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition. For the purpose of this decision the Transaction will be assessed at both the EEA and the national level.

### **4.3. Other products**

#### *4.3.1. Ovens*

##### 4.3.1.1. Overview

- (49) Ovens are professional kitchen appliances that are able to cook or heat food; they are produced in several different sizes and shapes, and they vary in the technology used, functionality, price, ease or difficulty of operation, as they may be designed for a variety of food or cooking techniques.<sup>62</sup>
- (50) Depending on the type of the technology used in the cooking process, the activities of the Parties overlap for conveyor ovens and combi-ovens.<sup>63</sup>
- (51) Conveyor ovens move food products through a heated chamber at a constant speed. Conveyor belt speeds and temperatures are adjustable for consistent cooking of a high volume of similar products. These types of ovens are very typical for cooking pizza.
- (52) A combi-oven is a three-in-one oven which allows cooking with steam, hot air (convection) or a combination of both. Both dry heat and steam are used together and an automatic mode ensures the right levels of moisture for the food that is cooking.

##### 4.3.1.2. Product market

- (53) The Commission has not previously assessed the possible market for commercial ovens overall or its sub-segments: conveyor ovens and combi-ovens.
- (54) As set out in paragraph (28) in relation to speed ovens, the Notifying Party submits that from a demand-side substitutability perspective, each of the oven categories is aimed at satisfying the demand for certain cooking requirements. All potential further sub-divisions in a given category are aimed at satisfying materially the same needs. Moreover, as attested by the Commission in its decisional practice regarding domestic appliances, there is significant supply side substitutability. Therefore, the Notifying party is of the view that the definition of the relevant product market should not be narrower than ovens as a whole.<sup>64</sup>
- (55) There seems to be a certain degree of demand side substitutability as the market investigation revealed that usually distributors and dealers aim at having in their portfolios a wide range of products, including various types of ovens to better serve the requirements of their customers.<sup>65</sup> The final choice between different models depends largely on the customer preference, their performance needs and other

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<sup>62</sup> Form CO, paragraphs 146 – 147.

<sup>63</sup> Form CO, paragraph 187.

<sup>64</sup> Form CO, paragraph 418.

<sup>65</sup> Non-confidential Minutes of a call with a distributor from 14.01.2022, 11.00-12.00 (CET); Non-confidential Minutes of a call with a distributor from 09.12.2021, 11.30-12.30 (CET).

circumstances. Independent key account customers and coffee shops' requirements are different from large restaurant chains with very high clients flow.<sup>66</sup> Moreover, supply-side substitutability seems to exist among ovens manufacturers as they are usually able to produce on the same production lines more than one oven type.<sup>67</sup> The market investigation did not provide any indications to support any further segmentation of the product markets for conveyor ovens or combi-ovens respectively.<sup>68</sup>

- (56) In any event, the Commission considers that the exact product market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition. For the purpose of this decision the Transaction will be assessed for (i) conveyor ovens; (ii) combi-ovens; and (iii) ovens overall.

#### 4.3.1.3. Geographic market

- (57) The Commission has not previously assessed a geographic market for ovens overall or its sub-segments: conveyor ovens and combi-ovens.

- (58) As set out in paragraph (41) in relation to speed ovens, the Notifying Party submits that the geographic scope of the market is at least EEA-wide, or even wider in certain instances, e.g. for global key accounts. It claims that manufacturers such as the Parties compete for sales to key accounts and distributors across the EEA, who look for suppliers across the EEA rather than at the national level. Products are shipped across the EEA to customers, if not over even wider distances, with the bulk of speed ovens being produced outside the EEA, while prices are homogeneous across the EEA. In addition, there is no geographic product differentiation within the EEA, i.e., the same model is sold across the EEA, branding is EEA-wide, if not wider in certain cases, and there are significant intra-EEA trade flows. Therefore, in the Parties' view the concentration should be assessed on an EEA-wide basis.<sup>69</sup>

- (59) As previously indicated in Section 4.2 for speed ovens, the Commission considers that while some indications point at an EEA market, the overall ovens markets are also characterized by national specificities. The existence of an EEA-wide market is suggested by the facts that (i) prices are mostly homogeneous across the EEA; and (ii) products are shipped across the EEA to customers (i.e., the production of ovens is typically localised in a few sites that supply internationally).<sup>70</sup> At the same time, the structure of supply differs significantly across national markets, with different national dealers and distributors present on the various national markets besides the big players active in a number of Member States.

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<sup>66</sup> Non-confidential Minutes of a call with a manufacturer from 24.01.2022, 15.00-16.00 (CET).

<sup>67</sup> Non-confidential Minutes of a call with a manufacturer from 25.01.2022, 15.30-16.30 (CET); Parties response to request for information no 13, paragraph 13.

<sup>68</sup> Questionnaire to competitors of ice-making machines, question A.E.3; Questionnaire to customers of ice-making machines, question A.E.3.

<sup>69</sup> Form CO, paragraph 605-621.

<sup>70</sup> Parties response to request for information no 13, paragraph 13.

- (60) In addition, similarly as in speed-ovens or ice-making machines, for both the direct and indirect sales channel, the support of a well-established national network for aftersales services is necessary to compete effectively, even though most suppliers rely on external partners (their distributors and dealers) to provide those services. As a result, end customers tend not to buy directly from suppliers located outside the EEA, but indirectly through a distributor offering reliable aftersales services.<sup>71</sup>
- (61) In any event, the exact geographic market definition with regard to the ovens may be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition. For the purpose of this decision the Transaction will be assessed at both the EEA and the national level.

#### 4.3.2. *Coffee machines*

- (62) A coffee machine is a device used to make coffee. While there are many different types of coffee makers, using several different brewing techniques, in most of them coffee grounds are placed into a paper or metal filter inside a funnel, which is set over a glass or ceramic coffee pot. Cold water is poured into a separate chamber, which is then boiled and directed into the funnel. Coffee machines may be further distinguished (i) depending on the brewing technique between espresso coffee machines, drip filter coffee machines and pad filter coffee machines and (ii) depending on their use between domestic coffee machines and commercial coffee machines.<sup>72</sup>

##### 4.3.2.1. Product market

- (63) In its decisional practice, the Commission previously considered the market for professional food and drink distribution machines, which could be further segmented into the following sub-markets: (i) vending machines, (ii) beverage machines used in hotels, restaurants and cafés and (iii) office coffee machines. However, the precise market definition was left open.<sup>73</sup>
- (64) The Commission has not dealt with the market for commercial coffee machines so far. It has, however, assessed the market for domestic coffee machines.<sup>74</sup>
- (65) The Notifying Party submits that, due to the same demand-side and supply-side substitutability reasons mentioned for ovens (i.e. customers can substitute between different types of coffee machines and producers are able to manufacture various models), the market for commercial coffee machines should not be further segmented.<sup>75</sup>
- (66) The market investigation was inconclusive on whether a possible market would encompass all commercial coffee machines or whether there are possible markets based on a further segmentation by type of coffee machines for (i) fully automated

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<sup>71</sup> Questionnaire to end customers of speed ovens, question C.1.2.

<sup>72</sup> Form CO, paragraphs 197 – 199.

<sup>73</sup> See Case M.7671 – *KKR / FIBA / WMF*, para 20.

<sup>74</sup> See Case M.7292 – *Demb / Mondelez / Charger Opco*, Case M.7671 - *KKR / FIBA / WMF*, Case M.9122 – *TCCC / Costa*, Case M.2621 – *SEB / Moulinex*.

<sup>75</sup> Form CO, paragraphs 203 and 317.

coffee machines / office coffee systems, (ii) filter and instant machines and (iii) espresso machines (further sub-segmented into manual espresso machines and automatic espresso machines). The market investigation did not provide any indications to support any further segmentation of the product markets for the above types of coffee machines.<sup>76</sup>

- (67) In any event, the exact product market definition can be left open since the concentration does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition. Under a conservative approach, the concentration will be assessed for the following segments: (i) all commercial coffee machines; (ii) fully automatic coffee machines / OCS machines, (iii) filter and instant machines, and (iv) espresso machines overall; (v) manual espresso machines; and (vi) automatic espresso machines.

#### 4.3.2.2. Geographic market

- (68) In previous cases, the Commission considered that the relevant geographic market for domestic coffee machines is national in scope, particularly due to different consumer preferences / drinking cultures across the Member States and the importance of national brands. For example, the Commission found that drip filter coffee is drunk more in Northern Europe and espresso coffee in Southern Europe. Furthermore, in German speaking countries customers have a strong preference for machines that can prepare milk added coffees. Consequently, different brands and suppliers are present to a different extent across Member States and the competitive situation between the Member States differs substantially. Furthermore competitors and customers having responded to the market investigation perceive markets as national. Suppliers of coffee makers typically have local or national distribution and logistics structures. They typically provide after sales services nationally and the importance of the different types of distribution channels (e.g. buying groups, chains, hypermarkets, internet sales etc.) vary significantly across Member States.<sup>77</sup>
- (69) In the Notifying Party's view, the relevant geographic market for commercial coffee machines should be defined as EEA-wide in scope, mainly due to the following market characteristics: customers source EEA-wide, there is no geographic product differentiation within the EEA, transport costs do not prevent intra-EEA sales, the Parties compete with the same competitors across the EEA and prices are homogeneous across the EEA.<sup>78</sup>
- (70) Taking into consideration previous findings regarding consumers' different preferences / drinking cultures across the Member States and the importance of national brands, the Commission considers that the geographic markets could be national in scope.
- (71) For the purpose of this Decision, the exact geographic market definition with regard to commercial coffee machines may be left open, as the concentration does

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<sup>76</sup> Questionnaire to competitors of ice-making machines, question A.E.3; Questionnaire to customers of ice-making machines, question A.E.3.

<sup>77</sup> See Case M.5547 – *Koninklijke Philips Electronics / Saeco International Group*, paragraphs 33 and 34.

<sup>78</sup> Form CO, paragraphs 205 – 209.



not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition. Following its previous decisional practice, the Commission will conduct the competitive assessment taking into consideration the narrowest plausible market definition, that is, national markets for commercial coffee machines.

#### 4.3.3. *Wholesale distribution of professional kitchen equipment*

(72) Ali Group is also active in the wholesale distribution of professional kitchen equipment which is downstream from the manufacture of professional kitchen equipment, including speed ovens. As a downstream wholesale distributor, Ali Group sources products from over [...] third-party suppliers that offers customers (mostly end users, i.e., restaurants, canteens etc.) a range of kitchen equipment products including, to a smaller extent, turnkey solutions. These products include a vast range of kitchen equipment and accessories: kitchen appliances and accessories, food distribution and transportation, cold storage and refrigeration, coffee machines, drink bar equipment, dish-washers and furniture, kitchen furniture, self-monitoring, laundry equipment and personal protective equipment for washing.<sup>79</sup>

##### 4.3.3.1. Product market

(73) The Commission has not previously assessed the markets for the downstream wholesale distribution of professional kitchen equipment, but it assessed the domestic counterparts of the professional kitchen equipment<sup>80</sup>, where it considered appliances used for cooking or food preservation to be part of a segment called ‘large domestic appliances’.

(74) In its previous findings in the assessment of the wholesale of electronics for domestic, the Commission distinguished between direct sales by manufacturers and indirect sales through distributors. The market investigation supported the fact that wholesalers sell the whole range of products, but it didn’t exclude narrower product markets.

(75) The Notifying Party considers that the relevant product market should be the overall distribution of commercial foodservice equipment due to supply and demand side considerations. Distributors and dealers in the commercial kitchen equipment typically offer a wide range of commercial kitchen equipment across the entire spectrum of products and brands.<sup>81</sup> The Notifying Party considers that most

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<sup>79</sup> Parties response to the request for information no. 11, paragraphs 1-7.

<sup>80</sup> Case M.10364 - ECI / BONAK / FAST GROUP, paragraphs 23-25. The range of products usually sold by wholesalers are: (i) brown goods (television sets, audio equipment, and similar household appliances), (ii) large domestic appliances (‘LDA’, non-portable or semi-portable machines used for routine housekeeping tasks such as cooking, washing laundry, or food preservation), (iii) small domestic appliances (‘SDA’, portable or semi-portable machines, generally used on table-tops, counter-tops or other platforms, to accomplish a household task, and include i.a. microwave ovens, toasters, humidifiers, food processors and coffeemakers), (iv) IT products (‘IT’), i.e. any computer related software, subscription or information technology hardware including but not limited to PC hardware, PC software, accessories and peripherals, and (v) telecommunication products (‘TC’), i.e. products that are primarily intended to fulfil or enable the function of information processing and communication by electronic means, including transmission and display, including but not limited to mobile phones, tablets, wearables.

<sup>81</sup> Response to the request for information no.13, paragraphs 39-45.

commercial cooking products tend to overlap to a certain extent in their end uses and also customers, usually purchase products across the entire commercial foodservice equipment market.<sup>82</sup>

- (76) The market investigation indicates that distributors usually purchase and supply a range of products (e.g. ovens, fryers, holding and storing equipment, refrigeration products etc.),<sup>83</sup> as customers (i.e. dealers, restaurants, canteens etc.) to source a wide range of products. This finding is mandated by supply-side substitutability considerations, as a wholesale distributor can expand its offering into a new product category (e.g., combi-ovens) if a commercial opportunity arises in that category. The main purpose of downstream wholesale distributors is to provide access to end-customers (whether directly or via dealers) and logistics and after-sales services.<sup>84</sup> The market investigation confirms that distributors typically offer the full range of professional kitchen equipment, as several distributors stated that they sell a full range of products: a distributor described himself as a “*wholesaler of professional kitchen equipment, maintenance and service*”; another distributor mentioned: “*The Company acts as an intermediary (Kitchen Equipment Supplier = KES) in the purchase of kitchen appliances (including ice making machines) by their customers, which are mainly quick service restaurants chains. Its main value added is to consolidate and execute those purchases, but the Company plays no role in relation to the commercial decision to source one product or another. The Company acquires the products indicated by its customers*”.<sup>85</sup>
- (77) For the purpose of this decision, the Transaction will be assessed for the wholesale distribution of professional kitchen equipment overall.

#### 4.3.3.2. Geographic market

- (78) The Commission has not previously assessed the geographic markets for the wholesale distribution of professional kitchen equipment. In previous cases where it assessed the wholesale of domestic electronics<sup>86</sup>, the Commission considered both EEA-wide and national markets.
- (79) The Notifying Party considers that the relevant geographic market is at least EEA-wide because wholesalers compete for customers across the EEA. Also, products are shipped across the EEA and the prices are homogeneous across the EEA.<sup>87</sup>
- (80) Distribution at the wholesale level is typically organised and operated on a national basis, if not wider, in geographic clusters of two or more countries.<sup>88</sup> At the same time pricing policies, product selection, purchasing policies, marketing and business strategies are decided usually at national levels.<sup>89</sup>

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<sup>82</sup> Form CO, paragraph 130.

<sup>83</sup> Questionnaire to competitors of ice-making machines, question A.B.2.1.

<sup>84</sup> Parties response to the request for information no. 13, paragraphs 42-47.

<sup>85</sup> Questionnaire to customers of ice-making machines, question A.A.1.1.

<sup>86</sup> Case M.10364 – *ECI / BONAK / FAST GROUP*, paragraphs 53-54.

<sup>87</sup> Form CO, paragraph 139.

<sup>88</sup> Large wholesale distributors like [...] are organised in this manner. (Form CO, paragraph 609)

<sup>89</sup> Parties response to the request for information no. 13, paragraph 50.

- (81) For the purpose of this Decision, the exact geographic market definition with regard to the wholesale distribution of professional kitchen equipment may be left open, as the concentration does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the precise geographic market definition. The Commission will carry out the competitive analysis taking into consideration the narrowest plausible market definition, that is, the national markets for the wholesale distribution of professional kitchen equipment.

## **5. COMPETITIVE ASSESSMENT**

### **5.1. Legal framework**

- (82) Pursuant to Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. In this respect, a merger can entail horizontal and/or non-horizontal effects.
- (83) As regards the analysis of horizontal overlaps, the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings<sup>90</sup> (hereinafter, the ‘Horizontal Merger Guidelines’) distinguish two main ways in which mergers between actual or potential competitors in the same relevant market may significantly impede effective competition, namely coordinated and non-coordinated effects. Non-coordinated effects can significantly affect competition by removing significant competitive constraints on one or more undertakings, which would then have market power without resorting to coordination of behaviour. In this respect, the Horizontal Merger Guidelines not only consider the direct loss of competition between the merging firms, but also the reduction of the competitive constraint on third party firms active in the same market that may result from the merger.
- (84) The Horizontal Merger Guidelines lists a number of factors that may influence the likelihood of a transaction giving rise to significant non-coordinated effects, such as the high market shares of the merging Parties, the fact that the merging parties are close competitors, limited opportunities for customers to switch suppliers, or the fact that the transaction eliminates an important driver of competition. It is not necessary that all factors considered relevant for the analysis of non-coordinated effects, as described in the Horizontal Merger Guidelines, are present to conclude that significant horizontal effects are likely to arise in a specific case. Furthermore, the list of factors set out in the Horizontal Merger Guidelines should not be considered exhaustive.
- (85) As regards non-horizontal relationships, anti-competitive effects may arise when the parties to a concentration operate on different levels of the supply chain in certain relevant markets (vertical effects) or on closely related markets

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<sup>90</sup> Commission guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, pages 5-18), in particular paragraphs 4 and 22.

(conglomerate effects). The Commission appraises non-horizontal effects in accordance with the guidance set out in the Non-Horizontal Merger Guidelines.<sup>91</sup>

- (86) The Non-Horizontal Merger Guidelines distinguish between two main ways in which mergers between companies operating at different levels of the supply chain may significantly impede effective competition, namely non-coordinated and coordinated effects.
- (87) In non-horizontal mergers, non-coordinated effects may arise, inter alia, when the concentration gives rise to foreclosure. In vertical mergers, foreclosure can take the form of input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input; and/or the form of customer foreclosure, where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.<sup>92</sup>
- (88) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines whether the combined entity would have post-transaction the ability to foreclose access to either inputs or customers, whether the combined entity would have the incentives to do so and whether such foreclosure strategy would have a detrimental effect on competition.<sup>93</sup>
- (89) The main concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related markets may confer on the combined entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices. Companies engage in tying and bundling in order to provide their customers with better products or offerings in cost-effective ways. Nevertheless, in certain circumstances, these practices may lead to a reduction in actual or potential rivals' ability or incentive to compete. This may reduce the competitive pressure on the combined entity allowing it to increase prices. In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers. In practice, these factors are often examined together as they are closely intertwined.<sup>94</sup>
- (90) The present Section assesses whether the concentration is likely to raise horizontal, vertical or conglomerate effects on the markets examined in Section 4 above.

## **5.2. Horizontal effects**

- (91) The Transaction gives rise to horizontally affected markets in (that is to say, markets in which the Parties' combined shares exceed 20%): (i) ice-making machines overall<sup>95</sup> and distinct markets for each ice-making machine type: modular

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<sup>91</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6).

<sup>92</sup> Non-Horizontal Merger Guidelines, para 30.

<sup>93</sup> Non-Horizontal Merger Guidelines, para 30.

<sup>94</sup> Non-horizontal guidelines, paragraphs 93-94.

<sup>95</sup> In the EEA, Austria, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, Norway, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

cupers (with accessories<sup>96</sup> and without accessories<sup>97</sup>), dispensers,<sup>98</sup> storage bins,<sup>99</sup> self-contained cupers,<sup>100</sup> nugget ice-making machines,<sup>101</sup> flake ice-making machines<sup>102</sup> and scale ice-making machines;<sup>103</sup> (ii) speed ovens;<sup>104</sup> and (iii) ovens overall in France, combi-ovens in Bulgaria, conveyor ovens in France and coffee machines in Sweden.

- (92) Horizontal Merger Guidelines state in paragraph 17 that “according to well-established case law, very large market shares — 50 % or more — may in themselves be evidence of the existence of a dominant market position”, but competition concerns may be also raised for combined market shares smaller than 50% in view of other factors such as i.e. the strength and number of competitors, the extent to which the products of the merging parties are close substitutes. Moreover, the Commission is likely to identify horizontal competition concerns even in cases with small increments<sup>105</sup> when one of the merging parties has a pre-merger market share of 50 % or more.<sup>106</sup>

### 5.2.1. *Ice-making machines*

- (93) The Transaction would combine two leading producers globally. More specifically, both Parties are active in self-contained cupers, modular cupers, nugget ice-making machines, flake ice-making machines and scale ice-making machines. Ali Group supplies ice-making machines in the EEA under the Scotsman (Scotsman Industrial Ice), Icematic, Ice-o-Matic, Simag, Technomac, Barline, and Oref brands. Welbilt supplies ice-making machines in the EEA, under the Manitowoc brand.<sup>107</sup>
- (94) As regards the EEA and national markets, it is noted that manufacturers of ice machines market their products through four different channels: (i) sales to key account customers (such as [...]), (ii) private label sales, (iii) sales to wholesale distributors (which then resell the machines to dealers), and (iv) direct sales to dealers. The Parties claim that they cannot reliably determine ice-making machine market shares by customer type.<sup>108</sup> Taking into consideration that the commitments offered would remedy any competition concerns that would arise on any sales

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<sup>96</sup> In the EEA, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

<sup>97</sup> In the EEA, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain and Sweden.

<sup>98</sup> In the EEA, Slovenia and Spain.

<sup>99</sup> In the EEA, Bulgaria, Croatia, Czechia, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Norway, Poland, Portugal, Romania, Spain and Sweden.

<sup>100</sup> In France, Germany, Greece, Italy, Lithuania, Malta, Poland and Sweden.

<sup>101</sup> In the EEA, Austria, Bulgaria, Denmark, Germany, Poland, Spain and Sweden.

<sup>102</sup> In the EEA, Austria, Bulgaria, Estonia, Finland, France, Germany, Italy, the Netherlands, Romania, Spain and Sweden.

<sup>103</sup> In the EEA and France.

<sup>104</sup> In the EEA, Lithuania, Ireland, France, Denmark, Belgium, Estonia, the Netherlands, Poland, Austria, Spain, Finland, Italy, Germany, Hungary, Portugal, Czechia, Norway and Cyprus.

<sup>105</sup> HHI between 1 000 and 2 000 and a delta below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150.

<sup>106</sup> Paragraph 20 of the Horizontal Merger Guidelines.

<sup>107</sup> Form CO, paragraphs 183-184.

<sup>108</sup> Form CO, paragraph 1130 and pre-notification response to the Request for information no.2, question 27.

channel, the Commission will assess by types of ice-making machines for overall sales.

#### 5.2.1.1. Notifying Party's view

- (95) The Notifying Party considers that there are sufficient pro-competitive features on the possible markets of ice-making machines and state that negative competitive effects are not likely to arise in relation to any possible relevant market. In any case, the Notifying Party mentions that the market structure would not change post-transaction due to the divestiture of Welbilt's entire ice-making machines business.<sup>109</sup>
- (96) The pro-competitive features of the market mentioned by the Notifying Party are the following:
- (a) The ice industry features several competing suppliers and brands in the ice-making machines market overall and the possible markets for each ice-making machine type. In addition to Welbilt, around 20-25 ice-making machine manufacturers operate in the EEA. Current suppliers in the EEA include: Hoshizaki/Brema, ITV, Migel, Staff, Polar Refrigeration, Whirlpool, Ziegra, Prodis and Saro Group. There are many other smaller suppliers, including Wessamat, Geneglance, and Maja that produce large scale ice-making machines; Flonasa produces self-contained cubers (which make very large 90g cubes). Moreover, in each possible market for specific ice-making machine type, five to eleven suppliers will remain post-merger. Notably, for modular cubers and flake ice-making machines, the possible markets with the most overlap between Welbilt and Ali Group, nine competitors will remain in the market post-merger. For flake ice-making machines, the only other possible market where Manitowoc has double-digit market shares in just two Member States, eleven competitors will remain in the market post-merger.<sup>110</sup>
  - (b) There is significant pressure on manufacturers to maintain high levels of service quality and competitive price levels. Any degradation of the price/quality offer of one of the Parties' brands post-merger may lead to switching to another brand by the distributor, dealer or end user.<sup>111</sup>
  - (c) There are strong supply-side constraints as ice-making machine manufacturers can easily expand into different machine types. The production of self-contained cubers is relatively simple as it involves purchasing or manufacturing a number of components, fitting them together on a production line, and calibrating the gas and water systems within the machine. It would take only 1 day to modify a line from producing one type of machine (e.g., self-contained cubers) to another (e.g., modular/nugget ice-making machines). As a result, manufacturers can easily and quickly re-allocate production between the different types of machines to optimize profitability.<sup>112</sup>

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<sup>109</sup> Form CO, paragraph 1135.

<sup>110</sup> Form CO, paragraph 1178.

<sup>111</sup> Form CO, paragraph 1136.

<sup>112</sup> Form CO, paragraph 1179.

- (d) Expansion is easy for ice-making machine manufacturers from a production perspective as intellectual property rights are limited in this industry, and the processes to set up production and assembly are also relatively simple. Due to low transportation costs and no need for a local presence, the cost to expand in the industry is also quite low. Manufacturers can easily expand into a new region by developing a relationship with a distributor in the desired geography.
- (e) There is substantial customer buying power. In the EEA, manufacturers sell approximately [...] % of their ice-making machines to distributors and key account customers. Given the large bulk of volume sourced through distributors, they can resist price increases. Moreover, though distributors often work with only one manufacturer, they have the option to work with any manufacturer they choose and may elect to work with a new manufacturer in the event that they are no longer offered favourable terms.<sup>113</sup>

#### 5.2.1.2. Ice-making machines overall

- (97) Based on the market shares estimates provided by the Notifying Party, the Transaction would give rise to horizontally affected markets for overall ice-making machines in most Member States. Table 1 outlines the Parties' and their main competitors market shares in all Member States with affected markets for overall ice-making machines.

**Table 1 - Parties and main competitors 2021 market shares for overall ice-making machines**

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema	ITV
EEA	Ice Making Machines	[5-10]%	[30-40]%	<b>[30-40]%</b>	[5-10]%	[10-20]%	[5-10]%
Austria	Ice Making Machines	[5-10]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[10-20]%	[0-5]%
Bulgaria	Ice Making Machines	[5-10]%	[10-20]%	<b>[20-30]%</b>	[10-20]%	[30-40]%	[5-10]%
Cyprus	Ice Making Machines	[0-5]%	[50-60]%	<b>[50-60]%</b>	[10-20]%	[10-20]%	[0-5]%
Denmark	Ice Making Machines	[10-20]%	[20-30]%	<b>[30-40]%</b>	[20-30]%	[10-20]%	[0-5]%
Estonia	Ice Making Machines	[20-30]%	[10-20]%	<b>[30-40]%</b>	[10-20]%	[20-30]%	[0-5]%
Finland	Ice Making Machines	[5-10]%	[20-30]%	<b>[20-30]%</b>	[5-10]%	[40-50]%	[0-5]%
France	Ice Making Machines	[0-5]%	[30-40]%	<b>[30-40]%</b>	[5-10]%	[10-20]%	[10-20]%
Germany	Ice Making Machines	[10-20]%	[10-20]%	<b>[30-40]%</b>	[5-10]%	[5-10]%	[0-5]%

<sup>113</sup> Form CO, paragraph 1181.

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema	ITV
Greece	Ice Making Machines	[0-5]%	[80-90]%	<b>[80-90]%</b>	[0-5]%	[5-10]%	[0-5]%
Hungary	Ice Making Machines	[5-10]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[20-30]%	[0-5]%
Italy	Ice Making Machines	[0-5]%	[50-60]%	<b>[50-60]%</b>	[0-5]%	[20-30]%	[0-5]%
Lithuania	Ice Making Machines	[0-5]%	[60-70]%	<b>[60-70]%</b>	[5-10]%	[5-10]%	[0-5]%
Malta	Ice Making Machines	[0-5]%	[40-50]%	<b>[40-50]%</b>	[5-10]%	[30-40]%	[0-5]%
Norway	Ice Making Machines	[0-5]%	[30-40]%	<b>[30-40]%</b>	[20-30]%	[10-20]%	[0-5]%
Poland	Ice Making Machines	[5-10]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	[20-30]%	[0-5]%
Portugal	Ice Making Machines	[0-5]%	[20-30]%	<b>[30-40]%</b>	[0-5]%	[10-20]%	[30-40]%
Romania	Ice Making Machines	[0-5]%	[30-40]%	<b>[30-40]%</b>	[10-20]%	[20-30]%	[0-5]%
Slovenia	Ice Making Machines	[0-5]%	[70-80]%	<b>[70-80]%</b>	[5-10]%	[10-20]%	[0-5]%
Spain	Ice Making Machines	[10-20]%	[10-20]%	<b>[20-30]%</b>	[5-10]%	[20-30]%	[30-40]%
Sweden	Ice Making Machines	[5-10]%	[10-20]%	<b>[20-30]%</b>	[20-30]%	[10-20]%	[0-5]%

Source – Answer to RFI 11, Annex Ascend - Annex\_RFI#11\_Q4\_(2022-05-30)

(98) First, for the market for overall ice-making machines, the market investigation indicated that the Transaction would combine two of the biggest players for ice-making machines in the EEA and most Member States,<sup>114</sup> as one competitor stated: “After the merger of Hoshizaki/Brema and now Ali/Welbilt, the four main players in the market have already concentrated to two, so each of them will have a much more powerful market position. The credible alternatives are all only smaller companies. They are renowned and reliable market players, but with a significantly smaller volume and market power. The merger will create a higher pressure on the remaining players”.<sup>115</sup> The Transaction would lead to combined market shares above 50% for overall ice-making machines in Cyprus, Greece, Italy, Lithuania, and Slovenia and would reinforce the leadership position of Ali Group by removing a large competitor, with the share of next largest competitors, Hoshizaki, Brema and ITV, being substantially smaller than that of the combined entity.

(99) Second, currently, there are five leading players in the EEA ice machines sector (Manitowoc, Ali Group, Hoshizaki, Brema and ITV). The proposed concentration

<sup>114</sup> Questionnaire to competitors of ice-making machines, question A.D.3.

<sup>115</sup> Questionnaire to competitors of ice-making machines, question A.D.3.1.



will reduce the number to four players, reinforcing the position of Ali Group, which is the current market leader in almost every product segment and almost every Member State (for at least one or two possible markets for specific ice-making machine type as can be seen in next sections for modular cubers and nugget ice-making machines). While manufacturers compete to reach key account customers and distributors who usually purchase a wide range of commercial foodservice products,<sup>116</sup> and although each of the three main remaining competitors can cover the full range of ice-making machines (modular and self-contained cubers, nugget, flake and scale ice-making machines), after the Transaction their market shares will differ substantially across Member States and product areas. A given competitor may be the strongest competitor to the combined entity for a particular machine in a particular Member State but will be a weaker player for another type of machine in the same Member State or for the same type of machine in another Member State.<sup>117</sup> Accordingly, the combined entity will be consistently strong in every possible product market and Member State whereas other competitors will be weaker ‘across the board’.

- (100) Third, the majority of respondents to the market investigation are not aware of new entrants in the market for ice-making machines overall and do not expect new entries in the next 3 years.<sup>118</sup> Chinese producers are not considered as viable alternatives in the ice-making machines markets due to quality and safety concerns. As one customer stated: *“Only Chinese companies may have entered the market through distribution companies. However, due to quality and general safety concerns, such companies cannot be considered serious competition or being a credible alternative to the above stated companies”*<sup>119</sup>
- (101) Fourth, the results of the market investigation indicate that the majority of responding competitors and customers consider that the Parties’ brands are at a competitive advantage when it comes to the selling of ice-making machines. The market investigation indicates that the Parties’ brands are particularly strong and that the combined entity would have a brands portfolio covering the full range of products from top end to low end ice-making machines.<sup>120</sup>
- (102) Fifth, contrary to the statements of the Notifying Party, the market investigation shows that distributors have limited possibilities of switching suppliers. A significant number of distributors describe the difficulty of switching suppliers, mentioning their customers’ brand loyalty, after-sales services that imply the need to retrain personnel, and changes in the stock of spare parts. As a result, distributors usually carry all the portfolio of ice-making machines of a certain supplier and

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<sup>116</sup> Form CO, paragraph 206.

<sup>117</sup> Form CO, Annex 64\_M.10431 Ali Group\_Welbilt Competitors market data ice-making machines. For example, for modular cubers (without accessories) in Poland the combined entity would be market leader with a market share of [50-60]% and Brema would have a [10-20]% market share; while for self-contained cubers in Poland, Brema is market leader with a market share of [30-40]% and the combined entity has a [20-30]% market share.

<sup>118</sup> Questionnaire to competitors of ice-making machines, question A.D.4; Questionnaire to customers of ice-making machines, question A.D.4. Questionnaire to competitors of ice-making machines, question A.D.5; Questionnaire to customers of ice-making machines, question A.D.5.

<sup>119</sup> Questionnaire to customers of ice-making machines, question A.D.4.1.

<sup>120</sup> Questionnaire to competitors of ice-making machines, question A.D.7; Questionnaire to customers of ice-making machines, question A.D.7.

would be highly unlikely to switch supplier for only one type of ice-making machine.<sup>121</sup>

(103) Lastly, even though the investigation pointed out that the competitive environment is similar across the Member States<sup>122</sup> and thus all the arguments from paragraphs (97) to (102) are valid also at national level, the Commission sets out below the competitive situation in each individual Member State:

- (a) In Austria, the combined entity will hold a moderate market share of [20-30]% with an increment of [5-10] percentage points (Ali Group [20-30]%, Welbilt [5-10]%). Even with a moderate market share the combined entity will still be the market leader, with the other three global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [10-20]%, ITV [0-5]%). Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Austria.
- (b) In Bulgaria, the combined entity will hold a moderate market share of [20-30]% with an increment of [5-10] percentage points (Ali Group [10-20]%, Welbilt [5-10]%). The market shares of the remaining global competitors are: Hoshizaki [10-20]%, Brema [30-40]%, ITV [5-10]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Bulgaria.
- (c) In Cyprus, the combined entity will hold a significant market share of [50-60]% with an increment of [0-5] percentage points (Ali Group [50-60]%, Welbilt [0-5]%). Even with a small increment to the market share the combined entity will still be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [10-20]%, ITV [0-5]%). Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to overall ice-making machines in Cyprus the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

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<sup>121</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>122</sup> Questionnaire to customers of ice-making machines, question A.D.1.2.

- (d) In Denmark, the combined entity will hold a market share of [30-40]% with an increment of [10-20] percentage points (Ali Group [20-30]%, Welbilt [10-20]%). Even with a moderate market share the combined entity will become the market leader, with the other global competitors holding market shares smaller than the combined entity: Hoshizaki [20-30]%, Brema [10-20]% and ITV [0-5]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Denmark.
- (e) In Estonia, the combined entity will hold a market share of [30-40]% with an increment of [10-20] percentage points % (Ali Group [10-20]%, Welbilt [20-30]%). Even with a moderate market share the combined entity will still be the market leader, with the other global competitors holding market shares smaller than the combined entity: Hoshizaki [10-20]%, Brema [20-30]% and ITV [0-5]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Estonia.
- (f) In Finland, the combined entity will hold a moderate market share of [20-30]% with an increment of [5-10] percentage points (Ali Group [20-30]%, Welbilt [5-10]%). The global competitors present on this market are: Hoshizaki [5-10]% and Brema [40-50]%. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Finland.
- (g) In France, the combined entity will hold a moderate market share of [30-40]% with an increment of [0-5] percentage points (Ali Group [30-40]%, Welbilt [0-5]%). Even with a moderate market share the combined entity will still be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [5-10]%, Brema [10-20]%, ITV [10-20]%). The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97)

to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in France.

- (h) In Germany, the combined entity will hold a market share of [30-40]% with an increment of [10-20] percentage points (Ali Group [10-20]%, Welbilt [10-20]%). Even with a moderate market share the combined entity will still be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [5-10]%, Brema [5-10]%, ITV [0-5]%). Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Germany.
- (i) In Greece, the combined entity will hold a very high market share of [80-90]% with an increment of [0-5] percentage points (Ali Group [80-90]%, Welbilt [0-5]%). The combined entity will be the market leader and the other global competitors will hold market shares significantly smaller than the combined entity (Hoshizaki [0-5]% and Brema [5-10]%). Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to overall ice-making machines in Greece the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (j) In Hungary, the combined entity will hold a market share of [20-30]% with an increment of [5-10] percentage points (Ali Group [20-30]%, Welbilt [5-10]%). Even with a moderate market share the combined entity will become the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [20-30]%, ITV [0-5]%). The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Hungary.
- (k) In Italy, the combined entity will hold a significant market share of [50-60]% with an increment of [0-5] percentage points (Ali Group [50-60]%, Welbilt [0-5]%). The other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [0-5]%, Brema [20-30]%, ITV [0-5]%). Also, competitive conditions are similar to the ones discussed

in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to overall ice-making machines in Italy the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

- (l) In Lithuania, the combined entity will hold a high market share of [60-70]% with an increment of [0-5] percentage points (Ali Group [60-70]%, Welbilt [0-5]%). The combined entity will be the market leader and the other global competitors will hold market shares significantly smaller than the combined entity (Hoshizaki [5-10]% and Brema [5-10]%). Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to overall ice-making machines in Lithuania the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (m) In Malta, the combined entity will hold a significant market share of [40-50]% with an increment of [0-5] percentage points (Ali Group [40-50]%, Welbilt [0-5]%). The other global competitors hold market shares smaller than the combined entity: Hoshizaki [5-10]%, Brema [30-40]% and ITV [0-5]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Malta.
- (n) In Norway, the combined entity will hold a market share of [30-40]% with an increment of [0-5] percentage points (Ali Group [30-40]%, Welbilt [0-5]%). The combined entity will be the market leader and the other global competitors will hold market shares smaller than the combined entity (Hoshizaki [20-30]% and Brema [10-20]%). Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Norway.
- (o) In Poland, the combined entity will hold a moderate market share of [30-40]% with an increment of [5-10] percentage points (Ali Group [20-30]%, Welbilt [5-10]%). Even with a moderate market share the combined entity will still be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [20-30]%, ITV [0-5]%). The other market

participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Poland.

- (p) In Portugal, the combined entity will hold a market share of [30-40]% with an increment of [0-5] percentage points (Ali Group [20-30]%, Welbilt [0-5]%). The market shares of the other global competitors are: Hoshizaki [0-5]%, Brema [10-20]%, ITV [30-40]%. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Portugal.
- (q) In Romania, the combined entity will hold a market share of [30-40]% with an increment of [0-5] percentage points (Ali Group [30-40]%, Welbilt [0-5]%). Even with a moderate market share the combined entity will still be market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [20-30]%, ITV [0-5]%). The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Romania.
- (r) In Slovenia, the combined entity will hold a high market share of [70-80]% with an increment of [0-5] percentage points (Ali Group [70-80]%, Welbilt [0-5]%). The other global competitors holding market shares significantly smaller than the combined entity: Hoshizaki [5-10]%, Brema [10-20]% and ITV [0-5]%. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to overall ice-making machines in Slovenia the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (s) In Spain, the combined entity will hold a market share of [20-30]% with an increment of [10-20] percentage points (Ali Group [10-20]%, Welbilt [10-20]%). The market shares of the global competitors present on this

market are: Hoshizaki [5-10]%, Brema [20-30]% and ITV [30-40]%, so the combined entity will become the market leader. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Spain.

- (t) In Sweden, the combined entity will hold a market share of [20-30]% with an increment of [5-10] percentage points (Ali Group [10-20]%, Welbilt [5-10]%). Even with a moderate market share the combined entity will still be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [20-30]%, Brema [10-20]%, ITV [0-5]%). The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (97) to (102) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Sweden.
- (104) Based the considerations in paragraphs (97) to (103) above and in light of the results of the market investigation and of all evidence available to it, the Commission concludes that the Transaction gives rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with respect to the possible relevant market of overall ice-making machines in Cyprus, Greece, Italy, Lithuania and Slovenia. For the rest of the Member States listed in Table 1 and for the EEA the Commission concludes that it is not necessary to conclude whether serious doubts as to its compatibility with the internal market or the functioning of the EEA are raised for the overall ice-making machines as any concerns would be removed by the proposed commitments.

#### 5.2.1.3. Modular cubers (with accessories)

- (105) Modular cubers are larger machines which do not have an integrated storage bin and which are therefore used together with external storage bins and/or dispensers. These three elements are not technically integrated and can be purchased either together or separately from different suppliers. This section assesses modular cubers together with their accessories, namely storage bins and dispensers.
- (106) Based on the market shares estimates provided by the Notifying Party, the Transaction would give rise to horizontally affected markets for modular cubers with accessories in most Member States. Table 2 outlines the Parties' and their main competitors market shares in all Member States with affected markets for modular cubers with accessories.

**Table 2 – Parties and main competitors 2021 market shares for modular cubers with accessories**

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema	ITV
EEA	Modular Cubers	[10-20]%	[40-50]%	<b>[50-60]%</b>	[10-20]%	[5-10]%	[0-5]%
Austria	Modular Cubers	[20-30]%	[10-20]%	<b>[30-40]%</b>	[10-20]%	[5-10]%	[0-5]%
Belgium	Modular Cubers	[20-30]%	[5-10]%	<b>[20-30]%</b>	[30-40]%	[0-5]%	[10-20]%
Bulgaria	Modular Cubers	[10-20]%	[70-80]%	<b>[80-90]%</b>	[0-5]%	[0-5]%	[0-5]%
Croatia	Modular Cubers	[10-20]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	[20-30]%	[0-5]%
Cyprus	Modular Cubers	[5-10]%	[70-80]%	<b>[70-80]%</b>	[10-20]%	[5-10]%	[0-5]%
Czechia	Modular Cubers	[30-40]%	[40-50]%	<b>[80-90]%</b>	[0-5]%	[5-10]%	[0-5]%
Denmark	Modular Cubers	[30-40]%	[20-30]%	<b>[50-60]%</b>	[10-20]%	[5-10]%	[0-5]%
Estonia	Modular Cubers	[60-70]%	[5-10]%	<b>[70-80]%</b>	[5-10]%	[0-5]%	[0-5]%
Finland	Modular Cubers	[20-30]%	[20-30]%	<b>[50-60]%</b>	[10-20]%	[20-30]%	[0-5]%
France	Modular Cubers	[10-20]%	[40-50]%	<b>[50-60]%</b>	[20-30]%	[5-10]%	[0-5]%
Germany	Modular Cubers	[40-50]%	[20-30]%	<b>[70-80]%</b>	[10-20]%	[0-5]%	[0-5]%
Greece	Modular Cubers	[5-10]%	[80-90]%	<b>[90-100]%</b>	[0-5]%	[0-5]%	[0-5]%
Hungary	Modular Cubers	[20-30]%	[40-50]%	<b>[60-70]%</b>	[0-5]%	[0-5]%	[0-5]%
Ireland	Modular Cubers	[0-5]%	[60-70]%	<b>[60-70]%</b>	[20-30]%	[0-5]%	[0-5]%
Italy	Modular Cubers	[5-10]%	[60-70]%	<b>[60-70]%</b>	[5-10]%	[5-10]%	[0-5]%
Netherlands	Modular Cubers	[5-10]%	[10-20]%	<b>[20-30]%</b>	[40-50]%	[5-10]%	[0-5]%
Norway	Modular Cubers	[5-10]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	[10-20]%	[0-5]%
Poland	Modular Cubers	[20-30]%	[20-30]%	<b>[50-60]%</b>	[5-10]%	[10-20]%	[0-5]%



Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema	ITV
Portugal	Modular Cubers	[10-20]%	[30-40]%	<b>[40-50]%</b>	[5-10]%	[0-5]%	[20-30]%
Romania	Modular Cubers	[5-10]%	[50-60]%	<b>[60-70]%</b>	[5-10]%	[10-20]%	[0-5]%
Slovenia	Modular Cubers	[5-10]%	[60-70]%	<b>[70-80]%</b>	[5-10]%	[10-20]%	[0-5]%
Spain	Modular Cubers	[30-40]%	[20-30]%	<b>[50-60]%</b>	[10-20]%	[5-10]%	[10-20]%
Sweden	Modular Cubers	[10-20]%	[10-20]%	<b>[30-40]%</b>	[30-40]%	[10-20]%	[0-5]%

Source – Answer to RFI 11, Annex Ascend - Annex\_RFI#11\_Q4\_(2022-05-30)

- (107) First, as shown in Table 2, the Transaction would lead to high market shares at the EEA-wide level and also in several Member States, with the combined entity holding combined market shares above 50% in Bulgaria, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Romania, Slovenia and Spain.
- (108) Second, contrary to the Notifying Parties’ arguments,<sup>123</sup> the results of the market investigation show that there will not be sufficient credible alternative suppliers post-transaction with Hoshizaki, Brema and partially ITV remaining as global competitors in modular cubers.<sup>124</sup> Although the majority of customers who responded to the market investigation were not concerned as regards viable alternatives post-transaction,<sup>125</sup> they didn’t identify significant players besides Brema, Hoshizaki and ITV (or they identified as alternatives distributors rather than producers of ice-making machines).<sup>126</sup>
- (109) Third, the majority of respondents to the market investigation are not aware of new entrants in ice-making machines and do not expect new entries in the next three years.<sup>127</sup> Chinese producers are not considered as viable alternatives in the ice-making machines markets due to quality and safety concerns. As one customer stated: “*Only Chinese companies may have entered the market through distribution companies. However, due to quality and general safety concerns, such companies cannot be considered serious competition or being a credible alternative to the above stated companies*”.<sup>128</sup>
- (110) Fourth, the results of the market investigation indicate that the majority of responding competitors and customers consider that the Parties’ brands are at a competitive advantage when it comes to the selling of ice-making machines. The

<sup>123</sup> Form CO, paragraph 1161.

<sup>124</sup> Questionnaire to competitors of ice-making machines, question A.D.3; Questionnaire to customers of ice-making machines, question A.D.3.

<sup>125</sup> Questionnaire to customers of ice-making machines, question A.D.3.

<sup>126</sup> Questionnaire to customers of ice-making machines, question A.D.3.1.

<sup>127</sup> Questionnaire to competitors of ice-making machines, question A.D.4; Questionnaire to customers of ice-making machines, question A.D.4. Questionnaire to competitors of ice-making machines, question A.D.5; Questionnaire to customers of ice-making machines, question A.D.5.

<sup>128</sup> Questionnaire to customers of ice-making machines, question A.D.4.1.

market investigation indicates that the Parties' brands are particularly strong and that the combined entity would have a brands portfolio covering the full range of products from top end to low end ice-making machines.<sup>129</sup>

- (111) Fifth, contrary to the statements of the Notifying Party, the market investigation shows that distributors have limited possibilities of switching suppliers. A significant number of distributors describe the difficulty of switching suppliers, mentioning their customers' brand loyalty, after-sales services that imply the need to retrain personnel, and changes in the stock of spare parts. As a result, distributors usually carry all the portfolio of ice-making machines of a certain supplier and would be highly unlikely to switch supplier for only one type of ice-making machine.<sup>130</sup> As one competitor mentions: *"Most manufacturers have standardized equipment dimensions and capacities. Having said that, smaller capacity ice cubers are a commodity, while larger capacity ones are mostly unique and cannot be easily replaced as product line-up varies from brand to brand. All in all, ice making machines, while by definition all making ice, are different in application field, size/capacity, diffusion and price. Welbilt/Manitowoc as an aggregate cover most of the market demand of modular vertical ice cubers, so changing supplier in this market segment would be very difficult"*.<sup>131</sup>
- (112) Lastly, even though the market investigation pointed out that the competitive environment is similar across the Member States<sup>132</sup>, meaning that all the arguments from paragraphs (107) to (111) are valid also at national level, the Commission sets out below the assessments of the competitive situation for modular cubers with accessories in each individual Member State:
- (a) In Austria, the combined entity will hold a market share of [30-40]% with an increment of [10-20] percentage points (Ali Group [10-20]%, Welbilt [20-30]%). Post-Transaction there would not be sufficient credible competitors remaining on the market (Hoshizaki [10-20]%, Brema [5-10]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Austria.
- (b) In Belgium, the combined entity will hold a market share of [20-30]% with an increment of [5-10] percentage points (Ali Group [5-10]%, Welbilt [20-30]%). The market shares of the other global competitor are: Hoshizaki – [30-40]%, Brema – [0-5]% and ITV – [10-20]%. Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious

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<sup>129</sup> Questionnaire to competitors of ice-making machines, question A.D.7; Questionnaire to customers of ice-making machines, question A.D.7.

<sup>130</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>131</sup> Questionnaire to competitors of ice-making machines, question A.D.6.1.

<sup>132</sup> Questionnaire to customers of ice-making machines, question A.D.1.2.

doubts as the proposed commitments would remove any competition concerns also in Belgium.

- (c) In Bulgaria, the combined entity will hold a high market share of [80-90]% with an increment of [10-20] percentage points (Ali Group [60-70]%, Welbilt [10-20]%). The combined entity would be the market leader and other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [0-5]%, Brema [0-5]%). Also, competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Bulgaria the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (d) In Croatia, the combined entity will hold a moderate market share of [30-40]% with an increment of [10-20] percentage points (Ali Group [20-30]%, Welbilt [10-20]%). Even with a moderate market share the combined entity will still be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [20-30]%, ITV [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Croatia.
- (e) In the Cyprus, the combined entity will hold a high market share of [70-80]% with an increment of [5-10] percentage points (Ali Group [70-80]%, Welbilt [5-10]%). The combined entity would be the market leader and the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [10-20]%, Brema [5-10]%). Also, competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Cyprus the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (f) In Czechia, the combined entity will hold a high market share of [80-90]% with an increment of [30-40] percentage points (Ali Group [40-50]%, Welbilt [30-40]%). The combined entity would be the market leader and the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [0-5]%, Brema [5-10]%). Also, competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Czechia the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

- (g) In Denmark, the combined entity will hold a significant market share of [50-60]% with an increment of [20-30] percentage points (Ali Group [20-30]%, Welbilt [30-40]%). The combined entity will be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [5-10]%, ITV [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Denmark the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (h) In Estonia, the combined entity will hold a high market share of [70-80]% with an increment of [5-10] percentage points (Ali Group [5-10]%, Welbilt [60-70]%). The combined entity would be the market leader and the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [5-10]% and Brema [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Estonia the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (i) In Finland, the combined entity will hold a significant market share of [50-60]% with an increment of [20-30] percentage points (Ali Group [20-30]%, Welbilt [20-30]%). The combined entity would be the market leader and the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [10-20]% and Brema [20-30]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Finland the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (j) In France, the combined entity will hold a significant market share of [50-60]% with an increment of [10-20] percentage points (Ali Group [40-50]%, Welbilt [10-20]%). The combined entity will be market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [20-30]%, Brema [5-10]%, ITV [0-5]%). Also, competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in France the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (k) In Germany, the combined entity will hold a high market share of [70-80]% with an increment of [20-30] percentage points (Ali Group [20-30]%, Welbilt

[40-50]%). The combined entity would be the market leader and with the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [10-20]% and Brema [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Germany the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

- (l) In Greece, the combined entity will hold a very high market share of [90-100]% with an increment of [5-10] percentage points (Ali Group [80-90]%, Welbilt [5-10]%). The combined entity would be the market leader and the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [0-5]% and Brema [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Greece the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (m) In Hungary, the combined entity will hold a moderate market share of [60-70]% with an increment of [20-30] percentage points (Ali Group [40-50]%, Welbilt [20-30]%). The combined entity would be the market leader and the other global competitors hold market shares smaller than the combined entity (Hoshizaki [0-5]% and Brema [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Hungary the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (n) In Ireland, the combined entity will hold a significant market share of [60-70]% with an increment of [0-5] percentage points (Ali Group [60-70]%, Welbilt [0-5]%). The Transaction would give rise to a three-to-two situation, with only one global competitor, Hoshizaki, remaining on the market with a [20-30]% market share. Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Ireland the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (o) In Italy, the combined entity will hold a high market share of [60-70]% with an increment of [5-10] percentage points (Ali Group [60-70]%, Welbilt [5-10]%). The combined entity would be the market leader and the other global competitors hold market shares significantly smaller than the

combined entity (Hoshizaki [5-10]% and Brema [5-10]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Italy the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

- (p) In the Netherlands, the combined entity will hold a market share of [20-30]% with an increment of [5-10] percentage points (Ali Group [10-20]%, Welbilt [5-10]%). The market shares of the other global competitor are: Hoshizaki – [40-50]%, Brema – [5-10]% and ITV – [0-5]%. Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Netherlands.
- (q) In Norway, the combined entity will hold a significant market share of [30-40]% with an increment of [5-10] percentage points (Ali Group [20-30]%, Welbilt [5-10]%). The combined entity would be the market leader and the other global competitors hold market shares smaller than the combined entity (Hoshizaki [10-20]% and Brema [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Norway.
- (r) In Poland, the combined entity will hold a significant market share of [50-60]% with an increment of [20-30] percentage points (Ali Group [20-30]%, Welbilt [20-30]%). The combined entity would be market leader and the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [5-10]% and Brema [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Poland the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (s) In Portugal, the combined entity will hold a significant market share of [40-50]%; even if the market share is below 50% and it is not in itself indicative of the existence of a dominant market position, the market share is still high with a significant increment of [10-20] percentage points (Ali Group [30-40]%, Welbilt [10-20]%). The combined entity would be the market leader and the other global competitors hold market shares smaller than the combined entity (Hoshizaki [5-10]% and ITV [20-30]%). Also, the

competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Portugal the transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

- (t) In Romania, the combined entity will hold a high market share of [60-70]% with an increment of [5-10] percentage points (Ali Group [50-60]%, Welbilt [5-10]%). The combined entity would be the market leader and the other global competitors hold market shares significantly smaller than the combined entity (Hoshizaki [5-10]% and Brema [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Romania the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (u) In Slovenia, the combined entity will hold a high market share of [70-80]% with an increment of [5-10] percentage points (Ali Group [60-70]%, Welbilt [5-10]%). The combined entity will be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [5-10]%, Brema [10-20]%, ITV [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Slovenia the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (v) In Spain, the combined entity will hold a significant market share of [50-60]% with an increment of [20-30] percentage points (Ali Group [20-30]%, Welbilt [30-40]%). The combined entity will be the market leader, with the other global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]%, Brema [5-10]%, ITV [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (107) to (111) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to modular cubers with accessories in Spain the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (w) In Sweden, the combined entity will hold a market share of [30-40]% with an increment of [10-20] percentage points (Ali Group [10-20]%, Welbilt [10-20]%). The market shares of the other global competitors are: Hoshizaki [30-40]%, Brema [10-20]%, ITV [0-5]%. Also, the competitive conditions are similar to the ones discussed in paragraphs (97) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain

personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Sweden.

- (113) Based on the considerations in paragraphs (105) to (112) above and in light of the results of the market investigation and of all evidence available to it, the Commission concludes that the Transaction gives rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with respect to the possible relevant market of modular cubers at the EEA-wide level and in Bulgaria, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Portugal, Romania, Slovenia and Spain.<sup>133</sup> For the rest of affected markets listed in Table 2 above, it is not necessary to conclude on serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as any concerns would be removed by the proposed commitments.

#### 5.2.1.4. Modular cubers, (without accessories)

- (114) As shown in Table 3 below, the Transaction would give rise to affected markets for dispensers in Slovenia and Spain; and for modular cubers and storage bins in a number of Member States.

**Table 3 – Parties and main competitors 2021 market shares for modular cubers without accessories, storage bins and dispensers (accessories for modular cubers)**

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema
EEA	Modular Cubers	[20-30]%	[40-50]%	<b>[70-80]%</b>	[10-20]%	[0-5]%
Austria	Modular Cubers	[50-60]%	[10-20]%	<b>[70-80]%</b>	[10-20]%	[0-5]%
Belgium	Modular Cubers	[40-50]%	[10-20]%	<b>[60-70]%</b>	[20-30]%	[0-5]%
Bulgaria	Modular Cubers	[0-5]%	[80-90]%	<b>[90-100]%</b>	[0-5]%	[0-5]%
Croatia	Modular Cubers	[10-20]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	[20-30]%
Cyprus	Modular Cubers	[0-5]%	[80-90]%	<b>[80-90]%</b>	[10-20]%	[0-5]%
Czechia	Modular Cubers	[40-50]%	[40-50]%	<b>[80-90]%</b>	[0-5]%	[10-20]%
Denmark	Modular Cubers	[60-70]%	[30-40]%	<b>[90-100]%</b>	[0-5]%	[0-5]%
Estonia	Modular Cubers	[60-70]%	[0-5]%	<b>[70-80]%</b>	[0-5]%	[0-5]%
Finland	Modular Cubers	[50-60]%	[10-20]%	<b>[70-80]%</b>	[0-5]%	[20-30]%
France	Modular Cubers	[20-30]%	[50-60]%	<b>[70-80]%</b>	[10-20]%	[0-5]%
Germany	Modular Cubers	[60-70]%	[20-30]%	<b>[80-90]%</b>	[10-20]%	[0-5]%
Greece	Modular Cubers	[0-5]%	[90-100]%	<b>[90-100]%</b>	[0-5]%	[0-5]%
Hungary	Modular Cubers	[30-40]%	[40-50]%	<b>[70-80]%</b>	[0-5]%	[0-5]%
Ireland	Modular Cubers	[0-5]%	[60-70]%	<b>[60-70]%</b>	[30-40]%	[0-5]%
Italy	Modular Cubers	[0-5]%	[70-80]%	<b>[70-80]%</b>	[0-5]%	[0-5]%

<sup>133</sup> According to paragraph 17 of the Horizontal Guidelines, “According to well-established case law, very large market shares — 50 % or more — may in themselves be evidence of the existence of a dominant market position”.



Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema
Luxembourg	Modular Cubers	[10-20]%	[10-20]%	<b>[20-30]%</b>	[30-40]%	[20-30]%
Netherlands	Modular Cubers	[10-20]%	[20-30]%	<b>[30-40]%</b>	[50-60]%	[0-5]%
Norway	Modular Cubers	[10-20]%	[20-30]%	<b>[40-50]%</b>	[20-30]%	[20-30]%
Poland	Modular Cubers	[30-40]%	[30-40]%	<b>[60-70]%</b>	[0-5]%	[10-20]%
Portugal	Modular Cubers	[20-30]%	[20-30]%	<b>[40-50]%</b>	[10-20]%	[0-5]%
Romania	Modular Cubers	[0-5]%	[70-80]%	<b>[80-90]%</b>	[0-5]%	[0-5]%
Slovenia	Modular Cubers	[0-5]%	[70-80]%	<b>[70-80]%</b>	[0-5]%	[0-5]%
Spain	Modular Cubers	[40-50]%	[10-20]%	<b>[60-70]%</b>	[20-30]%	[0-5]%
Sweden	Modular Cubers	[20-30]%	[10-20]%	<b>[30-40]%</b>	[30-40]%	[10-20]%
EEA	Dispensers	[0-5]%	[30-40]%	<b>[30-40]%</b>	[30-40]%	[10-20]%
Slovenia	Dispensers	[20-30]%	[0-5]%	<b>[20-30]%</b>	[40-50]%	[30-40]%
Spain	Dispensers	[10-20]%	[70-80]%	<b>[80-90]%</b>	[0-5]%	[0-5]%
EEA	Storage Bins	[0-5]%	[30-40]%	<b>[30-40]%</b>	[10-20]%	[10-20]%
Bulgaria	Storage Bins	[50-60]%	[0-5]%	<b>[60-70]%</b>	[10-20]%	[10-20]%
Croatia	Storage Bins	[70-80]%	[20-30]%	<b>[90-100]%</b>	[0-5]%	[0-5]%
Czechia	Storage Bins	[40-50]%	[40-50]%	<b>[80-90]%</b>	[0-5]%	[0-5]%
Estonia	Storage Bins	[40-50]%	[30-40]%	<b>[70-80]%</b>	[10-20]%	[0-5]%
Finland	Storage Bins	[0-5]%	[50-60]%	<b>[50-60]%</b>	[0-5]%	[40-50]%
France	Storage Bins	[0-5]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[10-20]%
Germany	Storage Bins	[20-30]%	[20-30]%	<b>[50-60]%</b>	[10-20]%	[0-5]%
Greece	Storage Bins	[10-20]%	[80-90]%	<b>[90-100]%</b>	[0-5]%	[0-5]%
Hungary	Storage Bins	[0-5]%	[30-40]%	<b>[40-50]%</b>	[0-5]%	[0-5]%
Ireland	Storage Bins	[0-5]%	[70-80]%	<b>[70-80]%</b>	[0-5]%	[0-5]%
Norway	Storage Bins	[0-5]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[10-20]%
Poland	Storage Bins	[10-20]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	[10-20]%
Portugal	Storage Bins	[0-5]%	[30-40]%	<b>[30-40]%</b>	[0-5]%	[0-5]%
Romania	Storage Bins	[10-20]%	[60-70]%	<b>[80-90]%</b>	[0-5]%	[10-20]%
Spain	Storage Bins	[10-20]%	[10-20]%	<b>[20-30]%</b>	[0-5]%	[20-30]%
Sweden	Storage Bins	[0-5]%	[20-30]%	<b>[20-30]%</b>	[30-40]%	[10-20]%

Source – Answer to RFI 11, Annex Ascend - Annex\_RFI#11\_Q4\_(2022-05-30)

(115) The Parties would have combined market shares above 50% for (i) modular cubers without accessories in the EEA, Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Norway, Poland, Portugal, Romania, Slovenia, and Spain; (ii) dispensers in Spain; and for (iii) storage bins in Bulgaria, Croatia, Czechia, Estonia, Finland, Germany, Greece, Hungary, Ireland, and Romania. For (i) modular cubers without accessories in Norway and Portugal, and (ii) storage bins in Hungary, even if the market share is below 50% and it is not in itself indicative of the existence of a dominant market position, the market share is still high with significant increments of [5-10] or more percentage points. In most of the affected markets the combined

entity would remain market leader, without sufficient strong alternatives. Given the strong position of the Parties in modular cubers with accessories and that dispensers and storage bins are used together with modular cubers, the market conditions discussed in Section 5.2.1.3 are also valid for modular cubers (without accessories) and the accessories: dispensers and storage bins.

- (116) Given the serious doubts on the compatibility of the concentration with the internal market or the functioning of the EEA Agreement that are raised in relation to the supply of modular cubers (with accessories), and in light of the fact that the Parties have submitted an overall remedy, it is not necessary to examine whether the transaction would give rise to such serious doubts in relation to every Member State in relation to the supply of modular cubers (without accessories), bins and dispensers.

#### 5.2.1.5. Self-contained cubers

- (117) Based on the market shares estimates provided by the Notifying Party, the Transaction would give rise to horizontally affected markets for self-contained cubers in a number of Member States, but not at EEA-wide level. Table 4 outlines the Parties' and their main competitors market shares in all Member States which are national affected markets for self-contained cubers.

**Table 4 – Parties and main competitors 2021 market shares for self-contained cubers**

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema	ITV
France	Self-Contained Cubers	[0-5]%	[30-40]%	<b>[30-40]%</b>	[10-20]%	[30-40]%	[10-20]%
Germany	Self-Contained Cubers	[0-5]%	[20-30]%	<b>[20-30]%</b>	[5-10]%	[0-5]%	[0-5]%
Greece	Self-Contained Cubers	[0-5]%	[60-70]%	<b>[60-70]%</b>	[0-5]%	[20-30]%	[0-5]%
Italy	Self-Contained Cubers	[0-5]%	[50-60]%	<b>[50-60]%</b>	[0-5]%	[20-30]%	[0-5]%
Lithuania	Self-Contained Cubers	[5-10]%	[40-50]%	<b>[40-50]%</b>	[10-20]%	[20-30]%	[0-5]%
Malta	Self-Contained Cubers	[0-5]%	[20-30]%	<b>[20-30]%</b>	[5-10]%	[50-60]%	[5-10]%
Poland	Self-Contained Cubers	[0-5]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[30-40]%	[5-10]%
Sweden	Self-Contained Cubers	[10-20]%	[10-20]%	<b>[30-40]%</b>	[20-30]%	[20-30]%	[0-5]%

Source – Answer to RFI 11, Annex Ascend - Annex\_RFI#11\_Q4\_(2022-05-30)

- (118) First, as shown in Table 4 above, the Transaction leads to affected markets in several Member States with market shares above 50% in Greece and Italy, where the combined entity would remain market leader after the merger. The majority of customers who responded to the market investigation consider the possible markets

of self-contained cubers as not being more competitive than other markets of ice-making machines.<sup>134</sup>

- (119) Second, even though there appears to be more competitors on the market for self-contained cubers than for other types of ice-making machines, the distributors usually carry all products of a supplier and manifest concerns on the overall portfolio, as one distributor stated: “*They both [a.n.: the Parties] cover our needs, I can hardly imagine I can find other machines which would fit to our needs*”.<sup>135</sup> As a result, the strong market position that the combined entity has in relation to e.g. modular cubers, would also strengthen its position in self-contained cubers in the relevant countries.
- (120) Third, the statements above in paragraphs (107) to (111) remain also relevant for self-contained cubers. The majority of market participants that responded in the market investigation are not aware of new entrants of ice-making machines, including self-contained cubers, in the last 5 years,<sup>136</sup> or do not expect new entries in the next 3 years.<sup>137</sup> As in modular cubers, Chinese producers are not considered as viable alternatives in the ice-making machines markets due to quality and safety concerns.<sup>138</sup> The market investigation has highlighted the power of branding and brand loyalty in these markets and, in this regard, the combined entity would be the only player having a portfolio of brands covering the top-end to lower-end brands.<sup>139</sup>
- (121) Fourth, a significant number of distributors describe the difficulty of switching suppliers mentioning their customers’ brand loyalty, the after-sales services that imply the need to retrain personnel, change the stock of spare parts, and not having many alternatives. Also, the distributors usually carry all portfolio of ice-making machines of a certain supplier for the above reason and it would be highly unlikely to switch supplier for only one type of ice-making machine.<sup>140</sup> As one key customer stated: “*It is easy to purchase alternative machines but the availability of repair and maintenance contractors and spare parts is important. You usually have a slow transition from one brand to another over time*”.<sup>141</sup>
- (122) Even though the investigation pointed out that the competitive environment is similar across the Member States<sup>142</sup> and all the arguments from paragraphs (117) to (121) are valid also at national level, the Commission sets out below the assessments of the competitive situation in each individual Member States:
- (a) In France, the combined entity will hold a market share of [30-40]% with an increment of [0-5] percentage points (Ali Group [30-40]%, Welbilt [0-5]%). The market shares of the other global competitors are: Hoshizaki [10-20]%,

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<sup>134</sup> Questionnaire to customers of ice-making machines, question A.D.1.

<sup>135</sup> Questionnaire to customers of ice-making machines, question A.D.3.1.

<sup>136</sup> Questionnaire to competitors of ice-making machines, question A.D.4; Questionnaire to customers of ice-making machines, question A.D.4.

<sup>137</sup> Questionnaire to competitors of ice-making machines, question A.D.5; Questionnaire to customers of ice-making machines, question A.D.5.

<sup>138</sup> Questionnaire to customers of ice-making machines, question A.D.4.1.

<sup>139</sup> Questionnaire to competitors of ice-making machines, question A.D.7; Questionnaire to customers of ice-making machines, question A.D.7.

<sup>140</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>141</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>142</sup> Questionnaire to customers of ice-making machines, question A.D.1.2.

Brema [30-40]%, and ITV [10-20]%. Also, competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in France.

- (b) In Germany, the combined entity will hold a market share of [20-30]% with an increment of [0-5] percentage points (Ali Group [10-20]%, Welbilt [0-5]%). The market shares of the other global competitors are: Hoshizaki [5-10]%, Brema [0-5]%, and ITV [0-5]%. Also, competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Germany.
- (c) In Greece, the combined entity will hold a high market share of [60-70]% with an increment of [0-5] percentage points (Ali Group [60-70]%, Welbilt [0-5]%). The combined entity will still be the market leader, with the other global competitors holding market shares significantly smaller than the combined entity (Hoshizaki [0-5]%, Brema [20-30]%, ITV [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to self-contained cubers with accessories in Greece the transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (d) In Italy, the combined entity will hold a market share of [50-60]% with an increment of [0-5] percentage points (Ali Group [50-60]%, Welbilt [0-5]%). The market shares of the other global competitors are: Hoshizaki [0-5]%, Brema [20-30]%, and ITV [0-5]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to self-contained cubers with accessories in Italy the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (e) In Lithuania, the combined entity will hold a significant market share of [40-50]%; even if the market share is below 50% and it is not in itself indicative of the existence of a dominant market position, the market share is still high with a significant increment of [5-10] percentage points (Ali Group [40-50]%, Welbilt [5-10]%). The combined entity will still be the market leader, with the remaining global competitors holding market shares

significantly smaller than the combined entity (Hoshizaki [10-20]% and Brema [20-30]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to self-contained cubers with accessories in Lithuania the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

- (f) In Malta, the combined entity will hold a moderate market share of [20-30]% with an increment of [0-5] percentage points (Ali Group [20-30]%, Welbilt [0-5]%). The market shares of the other global competitors are: Hoshizaki [5-10]%, Brema [50-60]%, and ITV [5-10]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Malta.
- (g) In Poland, the combined entity will hold a market share of [20-30]% with an increment of [0-5] percentage points (Ali Group [20-30]%, Welbilt [0-5]%). The market shares of the other global competitors are: Hoshizaki [10-20]%, Brema [30-40]%, and ITV [5-10]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Poland.
- (h) In Sweden, the combined entity will hold a moderate market share of [30-40]% with an increment of [10-20] percentage points (Ali Group [10-20]%, Welbilt [10-20]%). The combined entity will be the market leader, with the other global competitors having smaller market shares than the combined entity: Hoshizaki [20-30]%, Brema [20-30]%, and ITV [5-10]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, competitive conditions are similar to the ones discussed in paragraphs (117) to (121) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Sweden.

(123) Based on the considerations in paragraphs (117) to (122) above and in light of the results of the market investigation and of all evidence available to it, the Commission concludes that the Transaction gives rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with respect to the possible relevant market for self-contained cubers in Greece, Italy and Lithuania. For the markets for self-contained cubers in France, Germany, Malta, Poland and Sweden, it is not necessary to conclude on serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as any concerns would be removed by the proposed commitments.

#### 5.2.1.6. Nugget ice-making machines

(124) Based on the market shares communicated by the Notifying Party, the Transaction would give rise to horizontally affected markets for nugget ice-making machines at EEA-wide level and in a number of Member States. Table 5 outlines the Parties' and their main competitors market shares at EEA-wide level and in all Member States which are national affected markets for nugget ice-making machines.

(125) The Transaction is likely to raise serious doubts in relation to nugget ice-making machines for the reasons set out below.

**Table 5 – Parties and main competitors 2021 market shares for nugget ice-making machines**

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema
EEA	Nugget ice machines	[5-10]%	[50-60]%	<b>[60-70]%</b>	[10-20]%	[10-20]%
Austria	Nugget ice machines	[30-40]%	[10-20]%	<b>[40-50]%</b>	[30-40]%	[10-20]%
Bulgaria	Nugget ice machines	[10-20]%	[40-50]%	<b>[50-60]%</b>	[20-30]%	[10-20]%
Denmark	Nugget ice machines	[30-40]%	[20-30]%	<b>[60-70]%</b>	[10-20]%	[5-10]%
Germany	Nugget ice machines	[40-50]%	[10-20]%	<b>[60-70]%</b>	[10-20]%	[0-5]%
Poland	Nugget ice machines	[0-5]%	[40-50]%	<b>[40-50]%</b>	[5-10]%	[5-10]%
Spain	Nugget ice machines	[5-10]%	[90-100]%	<b>[90-100]%</b>	[0-5]%	[0-5]%
Sweden	Nugget ice machines	[10-20]%	[40-50]%	<b>[60-70]%</b>	[5-10]%	[0-5]%

Source – Answer to RFI 11, Annex Ascend - Annex\_RFI#11\_Q4\_(2022-05-30)

(126) First, as shown in Table 5 above, the combined entity would hold market shares above 50% at the EEA-wide level and also in Bulgaria, Denmark, Germany, Spain and Sweden. The Transaction would reinforce the leadership position of Ali Group by removing a large competitor across the EEA, with the share of next largest competitors, Hoshizaki and Brema, being substantially smaller than the one of the combined entity.

(127) Second, the statements above in paragraphs (107) to (111) remain valid also for nugget ice-making machines. Only small local players would remain on the market besides the global players Hoshizaki and Brema.<sup>143</sup> As one competitor stated: “Aggregating ALI Ice Group companies and Welbilt/Manitowoc will create a

<sup>143</sup> Questionnaire to competitors of ice-making machines, question A.D.3; Questionnaire to customers of ice-making machines, question A.D.3.

*dominant position player in the EEC market*".<sup>144</sup> Also, the majority of customers and of competitors are not aware of new entrant of ice-making machines, including nugget ice-making machines, in the last 5 years,<sup>145</sup> or do not expect new entries in the next 3 years.<sup>146</sup> The same as in modular cubers, Chinese producers are not considered as viable alternatives in the ice-making machines markets due to quality and safety concerns.<sup>147</sup>

- (128) Third, the statements from modular cubers regarding the competitive advantage of the Parties' brands and the distributors' difficulty to switch suppliers are valid also for nugget ice-making machines.<sup>148</sup> A significant number of distributors describe the difficulty of switching suppliers mentioning their customers' brand loyalty, the after-sales services that imply the need to retrain personnel, change the stock of spare parts; and not having many alternatives. Also, the distributors usually carry all portfolio of ice-making machines of a certain supplier for the above reason and it would be highly unlikely to switch supplier for only one type of ice-making machine;<sup>149</sup> as one distributor stated: "*Very difficult. New materials, new sizes, new technologies, new database, takes a lot of time and efforts to introduce a new item*".<sup>150</sup>
- (129) Lastly, in light of the fact that the market investigation pointed out that the competitive environment is similar across the Member States<sup>151</sup>, all the arguments from paragraphs (124) to (128) are valid also at national level. In any case, the commitments submitted by the Parties would remedy any competitive concern that would arise in relation to nugget ice-making machines. In any event, the Commission sets out below the assessments of the competitive situation in each individual Member States:
- (a) In Austria, the combined entity will hold a significant market share of [40-50]%; even if the market share is below 50% and it is not in itself indicative of the existence of a dominant market position, the combined market share is still high with a significant increment of [10-20] percentage points (Ali Group [30-40]%, Welbilt [10-20]%). The combined entity would be the market leader with the remaining global competitors holding market shares smaller than the combined entity (Hoshizaki [30-40]% and Brema [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (124) to (128) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to nugget ice-making machines with accessories in Austria the Transaction raises serious doubts as

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<sup>144</sup> Questionnaire to competitors of ice-making machines, question A.D.3.1.

<sup>145</sup> Questionnaire to competitors of ice-making machines, question A.D.4; Questionnaire to customers of ice-making machines, question A.D.4.

<sup>146</sup> Questionnaire to competitors of ice-making machines, question A.D.5; Questionnaire to customers of ice-making machines, question A.D.5.

<sup>147</sup> Questionnaire to customers of ice-making machines, question A.D.4.1.

<sup>148</sup> Questionnaire to competitors of ice-making machines, question A.D.7; Questionnaire to customers of ice-making machines, question A.D.7.

<sup>149</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>150</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>151</sup> Questionnaire to customers of ice-making machines, question A.D.1.2.

to its compatibility with the internal market or the functioning of the EEA Agreement.

- (b) In Bulgaria, the combined entity will hold a significant market share of [50-60]% with an increment of [10-20] percentage points (Ali Group [40-50]%, Welbilt [10-20]%). The combined entity would be the market leader with the remaining global competitors holding market shares smaller than the combined entity (Hoshizaki [20-30]% and Brema [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (124) to (128) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to nugget ice-making machines with accessories in Bulgaria the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (c) In Denmark, the combined entity will hold a high market share of [60-70]% with an increment of [20-30] percentage points (Ali Group [20-30]%, Welbilt [30-40]%). The combined entity would be the market leader with the remaining global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]% and Brema [5-10]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (124) to (128) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to nugget ice-making machines with accessories in Denmark the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (d) In Germany, the combined entity will hold a high market share of [60-70]% with an increment of [10-20] percentage points (Ali Group [10-20]%, Welbilt [40-50]%). The Transaction will lead to a three-to-two situation, with only one global competitor, Hoshizaki, remaining on the market with a [10-20]% market share, significantly smaller than the market share of the combined entity. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, the competitive conditions are similar to the ones discussed in paragraphs (124) to (128) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to nugget ice-making machines with accessories in Germany the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (e) In Poland, the combined entity will hold a significant market share of [40-50]% with an increment of [0-5] percentage points (Ali Group [40-50]%, Welbilt [0-5]%). The combined entity would be market leader with the remaining global competitors holding market shares smaller than the combined entity (Hoshizaki [5-10]% and Brema [5-10]%). The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, the competitive conditions are similar to the ones



discussed in paragraphs (124) to (128) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any serious doubts also in Poland.

- (f) In Spain, the combined entity will hold a very high market share of [90-100]% with an increment of [5-10] percentage points (Ali Group [90-100]%, Welbilt [5-10]%). The combined entity will have almost a monopoly position, with the only other global competitor present is Brema with [0-5]% market share. Also, the competitive conditions are similar to the ones discussed in paragraphs (124) to (128) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to nugget ice-making machines with accessories in Spain the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
  - (g) In Sweden, the combined entity will hold a high market share of [60-70]% with an increment of [10-20] percentage points (Ali Group [40-50]%, Welbilt [10-20]%). The combined entity will still be the market leader, with the remaining global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]% and Brema [10-20]%). The Transaction will lead to a three-to-two situation, with only one global competitor, Hoshizaki, remaining on the market with a [5-10]% market share, significantly smaller than the market share of the combined entity. Also, the competitive conditions are similar to the ones discussed in paragraphs (124) to (128) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to nugget ice-making machines with accessories in Sweden the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (130) Based on the considerations in paragraphs (124) to (129) above and in light of the results of the market investigation and of all evidence available, the Commission concludes that the Transaction gives rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with respect to the possible relevant market of nugget ice-making machines at the EEA level and in Austria, Bulgaria, Denmark, Germany, Spain and Sweden. In Poland it is not necessary to conclude on serious doubts as any concerns would be removed by the proposed commitments.

#### 5.2.1.7. Flake ice-making machines

- (131) Based on the market shares communicated by the Notifying Party, the Transaction would give rise to horizontally affected markets for flake ice-making machines in a number of Member States. Table 6 outlines the Parties' and their main competitors market shares in all Member States which are national affected markets for flake ice-making machines.

**Table 6 – Parties and main competitors 2021 market shares for flake ice-making machines**

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema
EEA	Flake ice machines	[5-10]%	[30-40]%	<b>[40-50]%</b>	[10-20]%	[10-20]%
Austria	Flake ice machines	[0-5]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[10-20]%
Bulgaria	Flake ice machines	[20-30]%	[10-20]%	<b>[30-40]%</b>	[30-40]%	[20-30]%
Estonia	Flake ice machines	[5-10]%	[50-60]%	<b>[60-70]%</b>	[5-10]%	[5-10]%
Finland	Flake ice machines	[0-5]%	[40-50]%	<b>[40-50]%</b>	[0-5]%	[40-50]%
France	Flake ice machines	[0-5]%	[40-50]%	<b>[40-50]%</b>	[10-20]%	[10-20]%
Germany	Flake ice machines	[10-20]%	[40-50]%	<b>[60-70]%</b>	[5-10]%	[0-5]%
Italy	Flake ice machines	[0-5]%	[60-70]%	<b>[60-70]%</b>	[5-10]%	[20-30]%
Netherlands	Flake ice machines	[0-5]%	[20-30]%	<b>[20-30]%</b>	[30-40]%	[10-20]%
Romania	Flake ice machines	[0-5]%	[30-40]%	<b>[40-50]%</b>	[10-20]%	[20-30]%
Spain	Flake ice machines	[5-10]%	[20-30]%	<b>[30-40]%</b>	[5-10]%	[10-20]%
Sweden	Flake ice machines	[0-5]%	[30-40]%	<b>[30-40]%</b>	[10-20]%	[20-30]%

Source – Answer to RFI 11, Annex Ascend - \_Annex\_RFI#11\_Q4\_(2022-05-30)

(132) First, the Transaction, as shown in Table 6 above, would lead to market shares above 50% in Estonia and Germany. Even at the EEA-wide level if the market share is below 50% and it is not in itself indicative of the existence of a dominant market position, the market share is still high with a significant increment of [5-10] percentage points. Moreover, the same as in the other types of ice-making machines, the Transaction would reinforce the leadership position of Ali Group by removing a large competitor across the EEA, with the shares of next largest competitors, Hoshizaki and Brema, being smaller than those of the combined entity in most Member States. In the most of the other nationally affected markets the combined entity would still be larger than its competitors and the strong market position that the Parties have in relation to e.g. modular cubers, would also strengthen its position in flake ice-making machines in the relevant countries.

(133) Second, the statements made in paragraphs (108) to (111) above remain valid as only small local players would remain on the market besides the global players

Hoshizaki and Brema.<sup>152</sup> Also, the majority of market participants are not aware of new entrants of ice-making machines, including nugget ice-making machines, in the last 5 years,<sup>153</sup> or do not expect new entries in the next 3 years.<sup>154</sup> The same as in other types of ice-making machines, Chinese producers are not considered as viable alternatives in the ice-making machines markets due to quality and safety concerns.<sup>155</sup> Regarding the competitive advantage of the Parties' brands and the distributors' difficulty to switch suppliers are valid also for flake ice-making machines.<sup>156</sup> A significant number of distributors describe the difficulty of switching suppliers mentioning their customers' brand loyalty, the after-sales services that imply the need to retrain personnel, change the stock of spare parts, and the lack of alternatives. As one distributor mentions: "*Price conditions without history are different. Takes time to organize spare parts stock, training and support.*"<sup>157</sup> Also, as mentioned before, the distributors usually carry all portfolio of ice-making machines of a certain supplier and it would be highly unlikely to switch supplier for only one type of ice-making machine.<sup>158</sup>

(134) Lastly, even though the investigation pointed out that the competitive environment is similar across the Member States<sup>159</sup> and while the arguments set out in paragraphs (131) to (133) are valid also at national level, the Commission sets out below the assessments of the competitive situation in each individual Member State:

- (a) In Austria, the combined entity will hold a moderate market share of [20-30]% with an increment of [0-5] percentage points (Ali Group [20-30]%, Welbilt [0-5]%). The combined entity would be the market leader, with the remaining global competitors holding market shares smaller than the combined entity (Hoshizaki [10-20]% and Brema [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Austria.
- (b) In Bulgaria, the combined entity will hold a moderate market share of [30-40]% with an increment of [10-20] percentage points (Ali Group [10-20]%, Welbilt [20-30]%). The market shares of the other remaining global competitors are: Hoshizaki [30-40]% and Brema [20-30]%. Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors

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<sup>152</sup> Questionnaire to competitors of ice-making machines, question A.D.3; Questionnaire to customers of ice-making machines, question A.D.3.

<sup>153</sup> Questionnaire to competitors of ice-making machines, question A.D.4; Questionnaire to customers of ice-making machines, question A.D.4.

<sup>154</sup> Questionnaire to competitors of ice-making machines, question A.D.5; Questionnaire to customers of ice-making machines, question A.D.5.

<sup>155</sup> Questionnaire to customers of ice-making machines, question A.D.4.1.

<sup>156</sup> Questionnaire to competitors of ice-making machines, question A.D.7; Questionnaire to customers of ice-making machines, question A.D.7.

<sup>157</sup> Questionnaire to customers of ice-making machines, question A.D.6.2.

<sup>158</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>159</sup> Questionnaire to customers of ice-making machines, question A.D.1.2.

and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Bulgaria.

- (c) In Estonia, the combined entity will hold a high market share of [60-70]% with an increment of [5-10] percentage points (Ali Group [50-60]%, Welbilt [5-10]%). The combined entity would be the market leader with the remaining global competitors holding market shares significantly smaller than the combined entity (Hoshizaki [5-10]% and Brema [5-10]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to flake ice-making machines in Estonia the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (d) In Finland, the combined entity will hold a significant market share of [40-50]% with an increment of [0-5] percentage points (Ali Group [40-50]%, Welbilt [0-5]%). The combined entity would be the market leader with the remaining global competitors being Hoshizaki [0-5]% and Brema [40-50]%. Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Finland.
- (e) In France, the combined entity will hold a significant market share of [40-50]% with an increment of [0-5] percentage points (Ali Group [40-50]%, Welbilt [0-5]%). Even if the market share is below 50% and it is not in itself the evidence of the existence of a dominant market position, the market share is still high with an increment of [0-5] percentage points (the post-merger HHI is [2500-3000] and the delta HHI [200-300] which show a presumed increase in market power). The combined entity would be the market leader with the remaining global competitors having smaller market shares than the combined entity (Hoshizaki [10-20]% and Brema [10-20]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to flake ice-making machines in France the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement
- (f) In Germany, the combined entity will hold a high market share of [60-70]% with an increment of [10-20] percentage points (Ali Group [40-50]%, Welbilt [10-20]%). The combined entity would be the market leader with the remaining global competitors holding market shares significantly smaller than the combined entity (Hoshizaki [5-10]% and Brema [0-5]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (131)

to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). On this basis, in relation to nugget ice-making machines with accessories in Germany the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

- (g) In Italy, the combined entity will hold a high market share of [60-70] with an increment of [0-5] percentage points (Ali Group [60-70]%, Welbilt [0-5]%). The combined entity would be the market leader with the remaining global competitors holding market shares significantly smaller than the combined entity (Hoshizaki [5-10]% and Brema [20-30]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Italy.
- (h) In the Netherlands, the combined entity will hold a market share of [20-30]% with an increment of [0-5] percentage points (Ali Group [20-30]%, Welbilt [0-5]%). The market shares of the remaining global are: Hoshizaki [30-40]% and Brema [10-20]%. Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in the Netherlands.
- (i) In Romania, the combined entity will hold a market share of [40-50]% with an increment of [0-5] percentage points (Ali Group [30-40]%, Welbilt [0-5]%). The combined entity would be the market leader with the remaining global competitors having smaller market shares than the combined entity (Hoshizaki [10-20]% and Brema [20-30]%). Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Romania.
- (j) In Spain, the combined entity will hold a market share of [30-40]% with an increment of [5-10] percentage points (Ali Group [20-30]%, Welbilt [5-10]%). The combined entity would be the market leader with the remaining global competitors having smaller market shares than the combined entity (Hoshizaki [5-10]% and Brema [10-20]%). The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the

market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Spain.

- (k) In Sweden, the combined entity will hold a moderate market share of [30-40]% with an increment of [0-5] percentage points (Ali Group [30-40]%, Welbilt [0-5]%). The combined entity would be the market leader with the remaining global competitors being Hoshizaki [10-20]% and Brema [20-30]%. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors. Also, the competitive conditions are similar to the ones discussed in paragraphs (131) to (133) above, with no new entries in the market, difficulty of distributors and other customers to switch due to brand loyalty, after-sales services (that imply the need to retrain personnel, and changes in the stock of spare parts). However, it is not necessary to conclude whether the Transaction gives rise to serious doubts as the proposed commitments would remove any competition concerns also in Sweden.
- (135) Based the considerations in paragraphs (131) to (134) above and in light of the results of the market investigation and of all evidence available to it, the Commission concludes that the Transaction gives rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement with respect to the possible relevant market of flake ice-making in the EEA and also in Estonia, France and Germany. For the rest of the nationally affected markets listed in Table 6 above, it is not necessary to conclude on whether serious doubts exist as any concerns would be removed by the proposed remedy.

#### 5.2.1.8. Scale ice-making machines

- (136) Scale ice-making machines are large-sized machines producing large quantities of flakes sold to the meat and fish industries and large supermarkets.
- (137) Based on the market shares communicated by the Notifying Party, the Transaction would give rise to horizontally affected markets for scale ice-making machines at the EEA level and in France as seen in Table 7.

**Table 7 - Parties and main competitors 2021 market shares for scale ice-making machines**

Country	Product	Welbilt	Ali Group	Combined	Hoshizaki	Brema	ITV
EEA	Scale ice machines	[0-5]%	[10-20]%	<b>[20-30]%</b>	[0-5]%	[10-20]%	[10-20]%
France	Scale ice machines	[0-5]%	[30-40]%	<b>[30-40]%</b>	[0-5]%	[5-10]%	[5-10]%

Source – Answer to RFI 11, Annex Ascend - Annex\_RFI#11\_Q4\_(2022-05-30)

- (138) First for scale ice-making machines in France and at the EEA level (EEA: [20-30]% combined market share, France: [30-40]% combined market share), the combined entity would be the market leader (even with small increments of [0-5]%

in the EEA and [0-5]% in France) with the other global competitors having smaller market shares (Brema: [10-20]% EEA market share and [5-10]% market share in France; ITV: [10-20]% EEA market share and [5-10]% market share in France), with Hoshizaki not being present in scale ice-making machines. The other market participants are smaller, local companies who do not have the volumes and product coverage that they would need to supply key account customers or large distributors.

- (139) Second, the market condition described for ice-making machines overall in paragraph (100) above is valid also for scale ice-making machines, as the majority of market participants are not aware of new entries of suppliers of ice-making machines, including scale ice-making machines, in the last 5 years,<sup>160</sup> or do not expect new entries in the next 3 years.<sup>161</sup> The same as in other types of ice-making machines, Chinese producers are not considered as viable alternatives in the ice-making machines markets due to quality and safety concerns.<sup>162</sup> Also, a significant number of distributors describe the difficulty of switching suppliers mentioning their customers' brand loyalty, the after-sales services that imply the need to retrain personnel, change the stock of spare parts; and not having many alternatives.<sup>163</sup> Also, as mentioned before, the distributors usually carry all portfolio of ice-making machines of a certain supplier and it would be highly unlikely to switch supplier for only one type of ice-making machine.<sup>164</sup>
- (140) In any event, it is not necessary to conclude on the existence of serious doubts on the possible market for scale ice-making machines at the EEA level and in France as any concerns would be removed by the proposed remedy.

#### 5.2.1.9. Conclusion

- (141) For the reasons set out above, the Commission concludes that the proposed concentration raises serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement for (i) overall ice-making machines in Cyprus, Greece, Italy, Lithuania and Slovenia; (ii) modular cubers (with and without accessories) in the EEA and in Bulgaria, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Portugal, Romania, Slovenia and Spain;<sup>165</sup> (iii) dispensers in Spain; and storage bins in Bulgaria, Croatia, Czechia, Estonia, Finland, Germany, Greece, Hungary, Ireland, and Romania; (iv) self-contained cubers in Greece, Italy and Lithuania; (v) nugget ice-making machines in the EEA and in Austria, Bulgaria, Denmark, Germany, Spain and Sweden; and (vi) flake ice-making machines in the EEA, Estonia, France and Germany.

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<sup>160</sup> Questionnaire to competitors of ice-making machines, question A.D.4; Questionnaire to customers of ice-making machines, question A.D.4.

<sup>161</sup> Questionnaire to competitors of ice-making machines, question A.D.5; Questionnaire to customers of ice-making machines, question A.D.5.

<sup>162</sup> Questionnaire to customers of ice-making machines, question A.D.4.1.

<sup>163</sup> Questionnaire to competitors of ice-making machines, question A.D.7; Questionnaire to customers of ice-making machines, question A.D.7.

<sup>164</sup> Questionnaire to customers of ice-making machines, question A.D.6.1.

<sup>165</sup> Modular cubers without accessories in the EEA, Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Norway, Poland, Portugal, Romania, Slovenia, and Spain.

- (142) Whether or not the Transaction raises serious doubts also for (i) overall ice-making machines at EEA or in Austria, Bulgaria, Denmark, Estonia, Finland, France, Germany, Hungary, Malta, Norway, Poland, Portugal, Romania, Spain and Sweden; (ii) modular cubers with accessories in Austria, Belgium, Croatia, the Netherlands, Norway and Sweden;<sup>166</sup> (iii) dispensers in the EEA and Slovenia; and storage bins in the EEA, France, Norway, Poland, Portugal, Spain and Sweden; (iv) self-contained cubers in France, Germany, Malta, Poland and Sweden; (v) nugget ice-making machines in Poland; (vi) flake ice-making machines in Austria, Bulgaria, Finland, Italy, the Netherlands, Romania, Spain and Sweden; or (vii) scale ice-making machines in France and at the EEA level, can be left open as the proposed remedy would remove any concerns in such markets. At any rate, the scope of the remedy would be the same regardless of the exact product or geographic market definition used.

#### 5.2.2. *Speed ovens*

- (143) The EEA market of speed ovens is still at a relatively early stage of development, due to the more limited consumption of quick service food products in continental Europe compared to the United States or the United Kingdom.<sup>167</sup> Nonetheless this market has been growing in recent years, also thanks to the increase in home-delivery sales brought about by the COVID pandemic. This growth trend is expected to continue in coming years, supported by the further development of the quick service food industry throughout Europe. For instance, some market participants explained that waiting times for the recharging of electric cars may increase the demand of quick service food at charging stations, and speed ovens are well-positioned to serve this emerging market segment.<sup>168</sup>
- (144) Welbilt (brand MerryChef) is generally considered to be the leader in this sector, as it was one of the first companies to enter the market and was able to develop its business thanks to its well-established relationships with key accounts. Middleby, AtollSpeed, and Ali Group (brands XpressChef and Lainox Oracle) are generally seen as Welbilt's main contenders in this segment. Other suppliers are also present (such as Panasonic, Unox, and Pratica), but their market positions are considerably smaller.
- (145) The Transaction will therefore result in the combination of two of the major speed ovens suppliers currently active in the EEA. The horizontal effects of this combination – both at the EEA level and, alternatively, at the national level – are assessed below.

##### 5.2.2.1. The Notifying Party's views

- (146) The Notifying Party argued that the Parties rarely compete head-to-head in the market of speed ovens, and Ali Group's sales in this segment are consistently small across the EEA. [Parties' market presence]. A long tail of manufacturers supply speed ovens to the distribution channel in Europe, offering products with similar

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<sup>166</sup> Modular cubers without accessories in Croatia, Luxembourg, the Netherlands, and Sweden.

<sup>167</sup> Non-confidential Minutes of a call with a competitor from 09.12.2021, 10.30 – 11.30 (CET).

<sup>168</sup> Non-confidential Minutes of a call with a customer from 11.02.2022, 13.00 – 14.00 (CET).



specifications. The EEA market of speed ovens also has seen a number of entrants in recent years.<sup>169</sup>

#### 5.2.2.2. The Commission’s assessment (EEA market)

(147) At the EEA level, according to the Notifying Party’s estimates, the Parties will have a combined share of [40-50]% with an increment of [5-10] percentage points compared to the pre-merger scenario.<sup>170</sup> The combined entity’s market position would therefore be twice as large as each of the two next largest suppliers, Atollspeed ([20-30]%) and Middleby ([10-20]%).

**Table 8 – Suppliers’ market shares in the speed oven market – Notifying Party’s estimates (EEA, 2021)**

	Sales (EUR million)	Market share
Welbilt	[...]	[30-40]%
Ali Group	[...]	[5-10]%
<i>Combined</i>	<i>[...]</i>	<i>[40-50]%</i>
Atollspeed	[...]	[20-30]%
Middleby	[...]	[10-20]%
Unox	[...]	[5-10]%
Panasonic	[...]	[0-5]%
Pratica	[...]	[0-5]%
Others	[...]	[5-10]%
Total	[...]	100%

(148) The Commission conducted a market reconstruction exercise to confirm the Notifying Party’s market share estimates. This analysis was based on actual sales data submitted to the Commission by several speed oven suppliers, covering more than 90% of the overall market sales.<sup>171</sup>

(149) The market reconstruction exercise showed that the Parties’ combined share in the EEA market of speed ovens is significantly higher than initially estimated by the Notifying Party, amounting to about [60-70]% in 2021 (with an increment of about [5-10] percentage points compared to the pre-merger scenario).

<sup>169</sup> Form CO, page 97 ff.

<sup>170</sup> Market share estimates for speed ovens shown in this decision do not include accelerated panini presses and fast ovens.

<sup>171</sup> When it was not possible to obtain actual sales data from a given company, the Commission relied on the sales estimates provided by the Notifying Party for that company.

**Table 9 – Suppliers’ market shares in the speed oven market (EEA, 2021)**

	Sales (EUR million)	Market share
Welbilt	[...]	[50-60]%
Ali Group	[...]	[5-10]%
<i>Combined</i>	<i>[...]</i>	<i>[60-70]%</i>
Others	[...]	[30-40]%
Total	[...]	100%

- (150) This analysis is further corroborated by internal documents submitted by the Notifying Party, suggesting combined shares of at least [50-60]<sup>172</sup> for the Parties’ speed ovens sales in the EMEA region.
- (151) According to well-established case law, such very large market shares may in themselves be evidence of the existence of a dominant market position.<sup>173</sup> Nonetheless, in light of the overall outcomes of its investigation, the Commission concluded that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement. This conclusion is based on the following considerations.
- (152) First, the Parties’ combined market shares, as reported in Table 9 above, may not accurately reflect their actual market power in the supply of speed ovens in the EEA. According to market participants, Welbilt’s considerable market shares are at least in part due to a first-mover advantage, and are likely to decrease as the market continues to mature and to attract new competitors in the coming years.<sup>174</sup>
- (153) Moreover, the market of speed ovens is characterized by large and lumpy orders by large distributors and key account customers. In particular, large quick service chains may acquire large volumes of speed ovens in a short period of time to furnish their several outlets, and then make no additional purchases for several years. This means that, as also confirmed during the market reconstruction exercise, suppliers’ market shares are volatile and may vary significantly depending on the purchasing choices of few customers.
- (154) Finally, the market shares reported above do not include products such as accelerated panini presses or fast ovens. While a majority of market respondents indicated that these products are not in competition with speed ovens, a non-negligible share of respondents believe that they are a viable alternative at least for a sub-set of applications and end uses.<sup>175</sup> These products are therefore likely to

<sup>172</sup> Internal documents Doc Id 645-110, page 3; Doc Id 681-30, page 11.

<sup>173</sup> Guidelines on the assessment of horizontal mergers, para. 17, as well as Case T-221/95, Endemol v Commission, [1999] ECR II-1299, paragraph 134, and Case T-102/96, Gencor v Commission, [1999] ECR II-753, paragraph 205.

<sup>174</sup> Non-confidential Minutes of a call with a customer from 11.02.2022, 13.00 – 14.00 (CET).

<sup>175</sup> Questionnaire on speed ovens (distributors), question B.A.7; Questionnaire on speed ovens (end customers), question B.A.7; Questionnaire on speed ovens (competitors), question B.A.8. See also Non-confidential Minutes of a call with a competitor from 25.01.2022, 15.30 – 16.30 (CET).

exert at least some competitive pressure in the market of speed ovens in relation to certain customer segments.

- (155) Second, Welbilt and Ali Group are not the closest competitors. Instead the U.S. company Middleby, who pioneered the development of rapid cooking equipment in the 90s, is seen as Welbilt's main competitor. Ali Group market position is not comparable, due to its relatively recent entry, lower shares, limited distribution network and less aggressive pricing policy.<sup>176</sup> And although Welbilt's and Ali Group's speed ovens portfolios are generally considered to be similar,<sup>177</sup> the Parties are at least in part active in different sales channels. While direct sales to key accounts account for c. [...] % of Welbilt's EEA sales of speed ovens, Ali Group only makes [...] sales in that channel.<sup>178</sup>
- (156) Third, several alternative suppliers of speed ovens have a well-established market position in the EEA. In particular, the European company AtollSpeed has been selling speed ovens manufactured in China for one decade and has won considerable market shares throughout Europe. Panasonic, a large Japanese conglomerate, also supplies speed ovens in the European market. New suppliers have also entered the EEA market for speed ovens from different product segments or geographic areas. For instance, Unox launched its first speed oven in 2020 and since then it was able to achieve a significant increase in sales across Europe.<sup>179</sup> Pratica, a Brazilian supplier of speed ovens, also entered the European market four years ago and expanded its presence in different EEA countries.<sup>180</sup>
- (157) The outcomes of the market investigation confirmed that the market of speed ovens will remain competitive post-Transaction. A large majority of respondents to the market investigation believe that the Parties will continue to face sufficient competition from other credible suppliers of speed ovens. In particular, among the Parties' current customers, a large majority of respondents indicated that they already bought speed ovens from Middleby, AtollSpeed, Unox, Panasonic, Pratica, and Altoshaam in the past, or that they consider these suppliers to be viable alternative for future purchases.<sup>181</sup>
- (158) Fourth, barriers to entry in the market of speed ovens are sufficiently low. The underlying technologies (microwave, convection) are mature and widely available.<sup>182</sup> Trade barriers for imports from outside the EEA are limited,<sup>183</sup> as demonstrated by the fact that most speed ovens sold in the EEA are manufactured outside Europe. The EEA market is still at an early stage of development and the further growth of this sector is expected to provide attractive entry opportunities for

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<sup>176</sup> Non-confidential Minutes of a call with a competitor from 09.12.2021, 10.30 – 11.30 (CET); Non-confidential Minutes of a call with a customer from 14.01.2022, 11.00 – 12.00 (CET).

<sup>177</sup> Questionnaire on speed ovens (distributors), question D.B.1; Questionnaire on speed ovens (end customers), question D.B.1; Questionnaire on speed ovens (competitors), question D.B.1.

<sup>178</sup> Form CO, Annexes 51 and 52.

<sup>179</sup> Non-confidential Minutes of a call with a competitor from 18.03.2022, 16.30 – 17.30 (CET).

<sup>180</sup> Non-confidential Minutes of a call with a competitor from 04.03.2022, 17.00 – 18.00 (CET).

<sup>181</sup> Questionnaire on speed ovens (distributors and end customers), question D.C.1.

<sup>182</sup> Non-confidential Minutes of a call with a customer from 11.02.2022, 13.00 – 14.00 (CET); Non-confidential Minutes of a call with a customer from 14.01.2022, 11.00 – 12.00 (CET).

<sup>183</sup> Non-confidential Minutes of a call with a competitor from 04.03.2022, 17.00 – 18.00 (CET).

new suppliers in the coming years.<sup>184</sup> In particular, Asian companies and suppliers of convection or microwave ovens are mentioned as potential entrants.<sup>185</sup>

- (159) Fifth, customers are generally able to easily switch to alternative suppliers of speed ovens. The large majority of customers having responded to the market investigation (in both sub-groups of end customers and distributors) confirmed that they would be able to switch to a different brand of speed ovens with no or limited costs or other obstacles. Switching costs would mainly be limited to the testing of the new products, the retraining of the customer’s workforce, and the translation and update of marketing and service documentation.<sup>186</sup>

#### 5.2.2.3. The Commission’s assessment (national markets)

- (160) When assessed on the basis of national geographic markets, the Transaction would give rise to 21 affected markets according to the Notifying Party’s estimates.<sup>187</sup>

**Table 10 – Top suppliers’ market shares in the speed oven market – Notifying Party’s estimates (national level, 2021)**

Country	Market size (EUR million)	Welbilt’s share	Ali Group’s share	Combined share	AtollSpeed’s share	Middleby’s share
Austria	[...]	[40-50]%	[0-5]%	<b>[40-50]%</b>	[30-40]%	[5-10]%
Belgium	[...]	[30-40]%	[10-20]%	<b>[50-60]%</b>	[10-20]%	[20-30]%
Cyprus	[...]	[10-20]%	[5-10]%	<b>[20-30]%</b>	[20-30]%	[20-30]%
Czechia	[...]	[20-30]%	[5-10]%	<b>[30-40]%</b>	[20-30]%	[20-30]%
Denmark	[...]	[40-50]%	[5-10]%	<b>[50-60]%</b>	[5-10]%	[10-20]%
Estonia	[...]	[50-60]%	[0-5]%	<b>[50-60]%</b>	[5-10]%	[10-20]%
Finland	[...]	[30-40]%	[10-20]%	<b>[40-50]%</b>	[20-30]%	[10-20]%
France	[...]	[50-60]%	[10-20]%	<b>[60-70]%</b>	[10-20]%	[10-20]%
Germany	[...]	[30-40]%	[0-5]%	<b>[30-40]%</b>	[30-40]%	[10-20]%
Greece	[...]	[0-5]%	[10-20]%	<b>[20-30]%</b>	[30-40]%	[30-40]%
Hungary	[...]	[30-40]%	[0-5]%	<b>[30-40]%</b>	[20-30]%	[20-30]%
Ireland	[...]	[60-70]%	[10-20]%	<b>[80-90]%</b>	[0-5]%	[10-20]%
Italy	[...]	[20-30]%	[10-20]%	<b>[30-40]%</b>	[0-5]%	[0-5]%
Lithuania	[...]	[30-40]%	[40-50]%	<b>[80-90]%</b>	[5-10]%	[0-5]%

<sup>184</sup> Non-confidential Minutes of a call with a customer from 11.02.2022, 13.00 – 14.00 (CET); Non-confidential Minutes of a call with a customer from 01.02.2022, 09.30 – 10.30 (CET).

<sup>185</sup> Non-confidential Minutes of a call with a customer from 11.02.2022, 13.00 – 14.00 (CET); Non-confidential Minutes of a call with a customer from 01.02.2022, 09.30 – 10.30 (CET).

<sup>186</sup> Questionnaire on speed ovens (distributors and end customers), question D.C.2.

<sup>187</sup> The Commission was not able to obtain reliable data on market shares at the national level in the context of the market reconstruction exercise conducted in pre-notification. However, in light of the outcomes of this exercise at the EEA level, the Notifying Party likely underestimated the Parties’ combined shares in a number of countries.

Country	Market size (EUR million)	Welbilt's share	Ali Group's share	Combined share	AtollSpeed's share	Middleby's share
Netherlands	[...]	[40-50]%	[0-5]%	<b>[40-50]%</b>	[10-20]%	[10-20]%
Norway	[...]	[20-30]%	[0-5]%	<b>[30-40]%</b>	[10-20]%	[10-20]%
Poland	[...]	[40-50]%	[0-5]%	<b>[40-50]%</b>	[20-30]%	[20-30]%
Portugal	[...]	[30-40]%	[0-5]%	<b>[30-40]%</b>	[10-20]%	[10-20]%
Spain	[...]	[30-40]%	[0-5]%	<b>[40-50]%</b>	[10-20]%	[30-40]%

- (161) The Parties have considerable combined shares in a number of EEA countries. However the Commission considers that, given the competitive pressure exerted from alternative suppliers active in other countries as well as the customers' ability to switch sizeable sales volumes in favour of those alternative suppliers, the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.
- (162) First, the market investigation confirmed that suppliers of speed ovens can easily sell across borders and expand into new national markets. Suppliers having responded to the market investigation unanimously confirmed that they are able to sell speed ovens in all EEA countries, and that they can easily expand sales from one country to the other.<sup>188</sup> Similarly, distributors across the EEA unanimously confirmed that they can procure speed ovens from suppliers irrespective of their location.<sup>189</sup> Speed ovens have the same technical features across the EEA<sup>190</sup> and suppliers generally apply similar prices in different countries.<sup>191</sup> New entrants explained that they were able to enter and expand in new EEA countries in a short timeframe.<sup>192</sup> And the Commission found evidence of considerable cross-border sales of speed ovens, particularly in small countries.<sup>193</sup> Therefore, even in national markets where the combined entity has high shares, alternative suppliers will still be able to enter the country and expand their presence.
- (163) Second, suppliers' diverging shares at the national level are often explained by the relative market power of their respective local customers. This is because the demand for speed ovens at the national level is often concentrated among few large distributors, who often control large portions of the market even in the largest countries. These customers can easily switch to a different brand of speed ovens, thereby shifting sizeable shares of sales to a different supplier.<sup>194</sup> In fact, a majority

<sup>188</sup> Questionnaire on speed ovens (competitors), questions C.1 and D.D.4.

<sup>189</sup> Questionnaire on speed ovens (competitors), questions C.1 and D.D.4.

<sup>190</sup> Non-confidential Minutes of a call with a customer from 06.12.2022, 16.30 – 17.30 (CET).

<sup>191</sup> Questionnaire on speed ovens (competitors), questions C.2.

<sup>192</sup> Non-confidential Minutes of a call with a competitor from 18.03.2022, 16.30 – 17.30 (CET); Non-confidential Minutes of a call with a competitor from 04.03.2022, 17.00 – 18.00 (CET).

<sup>193</sup> Form CO, Annex 45.

<sup>194</sup> The analysis of market shares at the national level shows that these can be significantly impacted by the purchasing patterns of few or individual customers. For instance, the decrease in Ali Group's market share in Belgium from [40-50]% in 2018 to [20-30]% the following year is largely due to [Party's market presence]. Conversely, the increase in Ali Group's market share in Denmark from [0-5]% in 2019 to [10-20]% the following year was solely due to [Party's market presence]. See Form CO, Annex 45.1.

of end customers having responded to the market investigation (excluding the larger key accounts) indicated that they normally buy the speed ovens offered by their usual distributor or dealer, irrespective of the speed oven brand.<sup>195</sup> And some of the Parties' distributors are confident that they would maintain their customer base if they had to switch to an alternative supplier of speed ovens.<sup>196</sup> Others explained that they would be able to support a new supplier in establishing the necessary local presence in their country, provided that the quality of its products meets the customer's requirements.<sup>197</sup>

- (164) The analysis of each national affected market confirms that the Transaction does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to speed ovens.
- (a) In Belgium, the Parties have a combined market share of [50-60]%. Nonetheless, the combined entity will continue to compete against alternative suppliers with significant market shares in the local market, including Middleby ([20-30]%) and AtollSpeed ([10-20]%). Unox also entered this market a couple of years ago and since then achieved a market share of circa [0-5]%. The availability of sufficient alternative suppliers was also confirmed by the majority of respondents to the market investigation located in Belgium. None of those respondents indicated that the Transaction may have a negative impact on the market of speed ovens.<sup>198</sup>
  - (b) In Cyprus, the Parties have a combined share of [20-30]%, less than the current market leader Middleby ([20-30]%). The combined entity will also continue to compete against other major suppliers having established robust market positions in the country, including AtollSpeed ([20-30]%) and the new entrant Unox ([20-30]%).
  - (c) In Czechia, the Parties have a combined share of [30-40]%. Given Ali Group's limited presence in this country, the Transaction will only result in a limited increment of Welbilt's market share ([5-10] percentage points). The combined entity will continue to compete against other major suppliers having established robust market positions in the country, including AtollSpeed ([20-30]%) and Middleby ([20-30]%). Unox also entered this in 2021 and already achieved a market share of [0-5]%. In particular, one of Welbilt's main customers (accounting for more than 30% of Welbilt's speed oven sales in the country) indicated Middleby and Altoshaam as viable suppliers for future purchases of speed ovens.<sup>199</sup>
  - (d) In Denmark, the Parties have a combined share of [50-60]%. Given Ali Group's limited presence in this country, the Transaction will only result in a small increment of Welbilt's market share ([5-10] percentage points). The combined entity will continue to compete against other major suppliers having established robust market positions in the country, including Middleby ([10-20]%) and AtollSpeed ([5-10]%). The new entrant Unox was also able to achieve a market share of [10-20]% in just two years since its launch on the Danish market. Moreover, one of Welbilt's distributors

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<sup>195</sup> Questionnaire on speed ovens (distributors and end customer), question D.B.2.

<sup>196</sup> Non-confidential Minutes of a call with a customer from 09.03.2022, 11.00 – 12.00 (CET).

<sup>197</sup> Non-confidential Minutes of a call with a customer from 28.02.2022, 11.30 – 12.30 (CET).

<sup>198</sup> Questionnaire on speed ovens (distributors), questions D.B.2 and E.2.

<sup>199</sup> Questionnaire on speed ovens (distributors), questions D.C.1.

(accounting for the [...] of Welbilt's speed ovens sales in the country) explained that the Transaction will not have a negative impact on the Danish market because the availability of several alternative suppliers will ensure competitive prices.<sup>200</sup>

- (e) In Finland, the Parties have a combined share of [40-50]%. The combined entity will continue to compete against other major suppliers having established robust market positions in the country, including AtollSpeed ([20-30]%), Middleby ([10-20]%), and Panasonic ([10-20]%). Pratica and Unox also entered this market a couple of years ago and since then achieved a market share of circa [5-10]% each. Welbilt's main customer in the country (accounting for more than [...] of Welbilt's local sales) does not expect any negative impact from the Transaction. This customer also explained that it would be able to switch to a different supplier of speed ovens (particularly AtollSpeed or Middleby) in case the combined entity increased prices post-Transaction.<sup>201</sup>
- (f) In France, the Parties have a combined market share of [60-70]%. However, this mostly seems to reflect the market position of their downstream customers. In particular, [...] sales of Welbilt speed ovens in France are made to [...].<sup>202</sup> This company is a large and sophisticated distributor dealing with a broad range of kitchen equipment and having established commercial relationships with other suppliers of speed ovens, such as Middleby. During the market investigation, the company indicated that it does not expect the Transaction to have a negative impact on the market of speed ovens and explained that it would be able to switch to an alternative supplier in case of significant increase in prices post-Transaction.<sup>203</sup> Also Ali Group's local customers having responded to the market investigation confirmed that the Parties will face sufficient competition from other credible suppliers of speed ovens post-Transaction.<sup>204</sup> Indeed, other major suppliers have established robust market positions in the country, including AtollSpeed ([10-20]%), Middleby ([10-20]%), and Panasonic ([5-10]%). Also, new entrants Unox and Pratica were both able to successfully enter the French market of speed ovens in recent years.<sup>205</sup>
- (g) In Greece, the Parties have a combined share of [20-30]%, less than the current market leaders Middleby ([30-40]%) and AtollSpeed ([30-40]%). The combined entity will also continue to compete against other major suppliers having established robust market positions in the country, including the new entrant Unox ([5-10]%) and Panasonic ([0-5]%).
- (h) In Ireland, the Parties have a combined share of [80-90]%. However this high share is mainly due to [Party's market presence] in the country in 2021. These additional sales were mostly generated by [market conditions]. (Ali Group instead, as mentioned above, does not compete for sales to [...] in the

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<sup>200</sup> Non-confidential Minutes of a call with a customer from 01.02.2022, 09.30 – 10.30 (CET).

<sup>201</sup> Non-confidential Minutes of a call with a customer from 09.03.2022, 11.00 – 12.00 (CET).

<sup>202</sup> Form CO, Annex 48.

<sup>203</sup> Non-confidential Minutes of a call with a customer from 14.01.2022, 11.00 – 12.00 (CET).

<sup>204</sup> Questionnaires on speed ovens (distributors and end customer), question D.B.2.

<sup>205</sup> Non-confidential Minutes of a call with a competitor from 18.03.2022, 16.30 – 17.30 (CET); Non-confidential Minutes of a call with a competitor from 04.03.2022, 17.00 – 18.00 (CET).

EEA.<sup>206</sup>) This high market shares are unlikely to be permanent because, given the small size of the Irish market (circa [...] in 2021), orders from just one or few customers may shift significant sales volumes to another supplier. Indeed, as recently as 2020, the Parties' combined share was [50-60]%. In Ireland, the combined entity will continue to compete against Middleby, which is Welbilt's historical competitor in the country and used to be the market leader there until a few years ago. Panasonic is also present in the country, supplying speed ovens to large chain customers including Caffè Nero. AtollSpeed is also present while Unox is making efforts to enter this market.<sup>207</sup> During the market investigation, a majority of market respondents located in Ireland indicated that Middleby, AtollSpeed, Unox, Panasonic, Pratica, Techfood, Maestrowave could be viable alternative suppliers for their future purchases of speed ovens. A majority of those local respondents also believe that the Transaction will have no impact (or even a positive impact) on competition in the market of speed ovens.<sup>208</sup>

- (i) In Italy, the Parties have a combined market share of [30-40]%. The combined entity will continue to compete against well-established local suppliers, including TechFood ([20-30]%) and the new entrant Unox ([20-30]%). Given the widespread consumption of paninis in the Italian quick service restaurants, Electrolux's accelerated panini presses – whose sales exceed the total sales of speed ovens in this country – may also be a viable alternative for a significant portion of customers. None of the market respondents located in Italy indicated that the Transaction may have a negative impact on the market of speed ovens, while some noted that it may actually facilitate the introduction of these relatively new products in the European markets.<sup>209</sup>
- (j) In Lithuania, the Parties have a combined market share of [80-90]% in 2021. However this high share is mainly due to [Party's market presence] in the country in 2021, as a result of the [Party's market presence].<sup>210</sup> This high market shares are unlikely to be permanent because, given the very small size of the Lithuanian market (less than [...] in 2021), orders from just one or few customers may shift significant sales volumes to another supplier. Indeed, as recently as 2020, the Parties' combined share in Lithuania was just [20-30]%. In this national market, the combined entity will continue to compete against other major suppliers having an established track record in the country, such as Middleby and AtollSpeed (both having achieved market shares of [20-30]% each in 2020). Pratica and Unox are also reported to have entered the market in recent years. Given absence of meaningful cross border sales, the Lithuanian market is also accessible to local distributors active in neighbouring countries.<sup>211</sup> Moreover, Welbilt's main customer in the country (accounting for half of Welbilt's local sales) does not expect any negative impact from the Transaction. This customer also explained that it would be able to switch to a different supplier of speed ovens (particularly AtollSpeed

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<sup>206</sup> Parties response to RFI 12.

<sup>207</sup> Non-confidential Minutes of a call with a customer from 16.02.2022, 12.30 – 13.30 (CET).

<sup>208</sup> Questionnaires on speed ovens (distributors and end customer), question E.2.

<sup>209</sup> Questionnaire on speed ovens (distributors), questions D.B.2 and E.2.

<sup>210</sup> Parties' response to RFI 12.

<sup>211</sup> Non-confidential Minutes of a call with a customer from 09.03.2022, 11.00 – 12.00 (CET).



or Middleby) in case the combined entity increased prices post-Transaction.<sup>212</sup>

- (k) In Spain, the Parties have a combined share of [40-50]%. Given Ali Group's limited presence in this country, the Transaction will only result in a small increment of Welbilt's market share ([0-5] percentage points). The combined entity will continue to compete against other major suppliers having established robust market positions in the country, including Middleby ([30-40]%) and AtollSpeed ([10-20]%). Unox also entered this market a couple of years ago and since then achieved a market share of circa [5-10]%. Market respondents located in Spain unanimously confirmed that the combined entity will continue to face sufficient competition post-Transaction. None of those respondents indicated that the Transaction may have a negative impact on the market of speed ovens.<sup>213</sup>
- (l) In Austria, Estonia, Germany, Hungary, the Netherlands, Norway, Poland and Portugal, Ali Group only makes very limited sales of speed ovens (not exceeding [0-5]% of total sales in 2021). Given the minimal overlap between the Parties' activities, the Transaction will not have an appreciable impact on competition in these countries.

#### 5.2.2.4. Conclusion

- (165) For the reasons set out above, the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement in relation to the markets for speed ovens.

#### 5.2.3. *Other products*

- (166) The market for ovens overall in France has an increment of the HHI resulting from the concentration below 150 ([50-150]) and the Parties have a combined market share below 50% ([20-30]%). Therefore, the market for ovens in France satisfies the conditions set out in point 6 of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (the 'Simplified Notice'). For the reasons set out in the Simplified Notice, the Transaction is unlikely to raise competition concerns in relation to this market, which will therefore not be assessed further.
- (167) The market for coffee machines in Sweden has an increment of the HHI resulting from the concentration below 150 ([0-50]) and the Parties have a combined market share below 50% ([20-30]%). Therefore, the markets for coffee machines in Sweden satisfies the conditions set out in point 6 of the Simplified Notice. For the reasons set out in the Simplified Notice, the Transaction is unlikely to raise competition concerns in relation to this market, which will therefore not be assessed further.
- (168) For the possible market of combi-ovens in Bulgaria, the combined entity would have a low market share of [20-30]% in 2021, with Ali Group having a [10-20]% market share and Welbilt a [5-10]% market share. A healthy number of viable

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<sup>212</sup> Non-confidential Minutes of a call with a customer from 09.03.2022, 11.00 – 12.00 (CET).

<sup>213</sup> Questionnaire on speed ovens (distributors), questions D.B.2 and E.2.

competitors would remain to supply combi-ovens in Bulgaria: Rational ([40-50]%), Unox ([10-20]%), Retigo ([5-10]%), Electrolux ([5-10]%), ITW ([0-5]%), Middleby ([0-5]%).<sup>214</sup> Moreover, the majority of market participants do not expect any negative impact of the Transaction regarding also combi-ovens with respect to price, quality or other factors.<sup>215</sup> In conclusion, on the basis of the results of the market investigation and the information provided by the Notifying Party, the Commission considers that the operation does not raise serious doubts as to its compatibility with the internal market as regards the market for the supply of combi-ovens in Bulgaria.

- (169) For the possible market of conveyor ovens in France, the combined entity would have a low market share of [20-30]% in 2021, with Ali Group having a [5-10]% market share and Welbilt a [10-20]% market share. A healthy number of viable competitors would remain to supply combi-ovens in Bulgaria: Middleby ([50-60]%), Moretti ([5-10]%), Zanolli ([5-10]%), XLT ([5-10]%) and other like Italforni, Prismafood, Tornati, Pizzagroup, each with a market share of [0-5]%.<sup>216</sup> Moreover, the majority of market participants do not expect any negative impact of the Transaction regarding also combi-ovens with respect to price, quality or other factors.<sup>217</sup> In conclusion, on the basis of the results of the market investigation and the information provided by the Notifying Party, the Commission considers that the operation does not raise serious doubts as to its compatibility with the internal market as regards the market for the supply of conveyor ovens in France.
- (170) For the reasons set out above, the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the internal market in relation to the possible markets for ovens overall in France, coffee machines in Sweden, combi-ovens in Bulgaria and conveyor ovens in France.

### 5.3. Vertical effects

- (171) Based on the market shares communicated by the Notifying Party, the Transaction would give rise to a vertical relationship between the upstream activities of the Parties in the manufacture and wholesale supply of speed ovens and Ali Group's downstream activity in the distribution of professional kitchen equipment products.

#### 5.3.1. *The Notifying Party's view*

- (172) The Notifying Party submits that no vertical concerns could arise from the Transaction as the Parties would have no ability or incentive to foreclose upstream or downstream competitors. First, Ali Group was already vertically integrated prior to the Transaction and [Party's commercial strategy]. Ali Group would not have the ability or incentive to discontinue the current products due to small market share it has in most countries (with the exception of Finland) and to the fact that they would risk losing their customers by trying to force on them products that they are

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<sup>214</sup> Form CO – Annex \_17\_(2022-05-04).

<sup>215</sup> Questionnaire to competitors of ice-making machines, question A.E.3; Questionnaire to customers of ice-making machines, question A.E.3.

<sup>216</sup> Form CO – Annex \_17\_(2022-05-04).

<sup>217</sup> Questionnaire to competitors of ice-making machines, question A.E.3; Questionnaire to customers of ice-making machines, question A.E.3.

not familiar with or that they don't request. Also, the Parties face strong competition in the professional kitchen equipment supply and the manufacturers have many choices to access the customers.<sup>218</sup>

5.3.2. *Affected markets due to the Parties upstream activities in speed ovens*

(173) As per Table 11 below, the Parties' activities give rise to vertically affected markets in between the Parties' upstream manufacturing and wholesale supply of speed ovens and Ali Group's downstream activity in the distribution of professional kitchen equipment at the EEA level and in a number of Member States.

**Table 11 – Vertically affected markets due to the upstream market shares in speed ovens in 2021**

<b>Country</b>	<b>Upstream Speed ovens Combined market share %</b>	<b>Downstream Distribution of professional kitchen equipment, market share %</b>
<b>EEA</b>	[60-70]%	[0-5]%
<b>Norway</b>	[30-40]%	[5-10]%
<b>Lithuania</b>	[80-90]%	[10-20]%
<b>Estonia</b>	[50-60]%	[10-20]%
<b>France</b>	[60-70]%	[0-5]%
<b>Belgium</b>	[50-60]%	[0-5]%
<b>Netherlands</b>	[40-50]%	[0-5]%
<b>Italy</b>	[30-40]%	[0-5]%
<b>Austria</b>	[40-50]%	[0-5]%
<b>Cyprus</b>	[20-30]%	[0-5]%
<b>Czechia</b>	[30-40]%	[0-5]%
<b>Denmark</b>	[50-60]%	[0-5]%
<b>Germany</b>	[30-40]%	[0-5]%
<b>Hungary</b>	[30-40]%	[0-5]%
<b>Poland</b>	[40-50]%	[0-5]%

Source: Form CO; and Response to RFI 11, Ascend - Annex\_RFI#11\_Q3\_(2022-05-30)

<sup>218</sup> Form CO, paragraphs 267-281.

### 5.3.2.1. Input foreclosure

(174) The Transaction is not likely to lead to input foreclosure as, post-Transaction, the Parties would likely have neither the ability nor the incentive to foreclose the combined entity's downstream competitors for the following reasons.

#### 5.3.2.1.1. Ability

(175) First, speed ovens are not an important input for distributors of professional kitchen equipment. These are relatively new products that are only sold in small volumes in continental Europe. They generally account for a very small fraction, if any, of all sales made by distributors.<sup>219</sup> Therefore, access to speed ovens is not critical to effectively compete in the distribution market.

(176) Second, as explained above, several alternative suppliers (like Middleby, Atollspeed, Unox, Panasonic, Pratica and Techfood) are active in the upstream market of speed ovens. Even in the countries where the combined entity's combined market share is high in the upstream market of speed ovens, there would not be input foreclosure concerns because the market investigation indicate that competitors are able to sell speed ovens in all EEA countries, and that they can easily expand sales from one country to the other.<sup>220</sup> Similarly, distributors across the EEA unanimously confirmed that they can procure speed ovens from suppliers irrespective of their location.<sup>221</sup> And the Commission found evidence of considerable cross-border sales of speed ovens, particularly in small countries.<sup>222</sup> Therefore, even in Member States where the combined entity has high shares in the upstream market for speed ovens, alternative suppliers will still be able to enter the country and expand their presence. As presented above in the Section 5.2.2.3, enough competitors remain in each of the national markets from Table 11.

#### 5.3.2.1.2. Incentive

(177) As regards the incentive, the very limited presence of the combined entity on the downstream markets would make it unlikely that it could profitably recoup lost sales from a foreclosing conduct on the upstream markets.

#### 5.3.2.1.3. Impact

(178) A hypothetical foreclosure conduct would not be able to have any negative effect on the market as competitors would easily be able to start supplying neighbouring markets if needed. In any event, an input foreclosure strategy would not have a significant impact on effective competition. Market participants contacted in the market investigation indicated that there would be no negative impact of the Transaction for their business or markets.<sup>223</sup>

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<sup>219</sup> Non-confidential Minutes of the call with a distributor from 11.02.2022, 13.00-14.00 (CET); and the Non-confidential Minutes of the call with a competitor from 01.02.2022, 09.30-10.30 (CET).

<sup>220</sup> Questionnaires on speed ovens (competitors), questions C.1 and D.D.4.

<sup>221</sup> Questionnaires on speed ovens (competitors), questions C.1 and D.D.4.

<sup>222</sup> Form CO, Annex 45.

<sup>223</sup> Questionnaire to competitors of ice-making machines, question A.E.3; Questionnaire to customers of ice-making machines, question A.E.3.

#### 5.3.2.1.4. Conclusion

(179) In light of the above, the Commission considers that the Combined entity would have neither the ability nor the incentive to engage in an input foreclosure strategy against its downstream competitors in the supply and wholesale of speed ovens in the Member States listed in Table 11.

(180) In light of the above, the Commission considers that the new entity would have neither the ability nor the incentive to engage in an input foreclosure strategy against its downstream competitors in the supply and wholesale of speed ovens in the countries from Table 11.

#### 5.3.2.2. Customer foreclosure

(181) The Transaction is not likely to lead to customer foreclosure as, post-Transaction, the Parties would likely have neither the ability nor the incentive to foreclose the combined entity's downstream competitors for the following reasons.

##### 5.3.2.2.1. Ability

(182) Considering the Parties' low market shares for the distribution of professional kitchen equipment in all countries from Table 11, there will remain a sufficiently large customer base in the downstream market for the upstream competitors on speed ovens to distribute their products post-Transaction.

##### 5.3.2.2.2. Incentive

(183) As regards the incentive, the very limited presence of the combined entity on the downstream market would make it unlikely that it could profitably recoup lost sales from a foreclosing conduct on the downstream markets.

##### 5.3.2.2.3. Effects

(184) Even a hypothetical foreclosure conduct would not be able to have any negative effect on the market as competitors would easily find alternative customers due to the small market shares of the combined entity on the downstream markets. In any event, a customer foreclosure strategy would not have a significant impact on effective competition, as also indicated by the market participants contacted in the market investigation as they stated that there would be no negative impact of the Transaction for their business or markets.<sup>224</sup>

##### 5.3.2.2.4. Conclusion

(185) In conclusion, in light of the above, the Commission considers that the combined entity would have neither the ability nor the incentive to engage in a customer foreclosure strategy against its upstream competitors and that such a customer foreclosure strategy would have in any event no negative effect in the markets for the production and supply of speed ovens in the countries listed in Table 11.

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<sup>224</sup> Questionnaire to competitors of ice-making machines, question A.E.3; Questionnaire to customers of ice-making machines, question A.E.3.

(186) Based on the considerations above, and in light of the results of the market investigation and of the evidence available to it, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement because of vertical non-coordinated effects in the upstream markets of the manufacturing and wholesale supply of speed ovens and in the downstream market of the distribution of professional kitchen equipment at the EEA level and in the Member States listed in Table 11.

#### **5.4. Conglomerate effects**

(187) In the present case, the possibility of conglomerate effects arises from the complementarity of the Parties' product portfolios, their significant market position in certain product segments, and the fact that already today at least one of the Parties cross-sells and offers commercial bundles.<sup>225</sup>

##### *5.4.1. The Notifying Party's view*

(188) The Notifying Party submits that no conglomerate concerns could arise from the Transaction as the Parties would have no ability or incentive to foreclose competitors.

##### *5.4.1.1. Ability to foreclose*

(189) With regard to ability to foreclose, according to the Notifying Party the Parties do not have an individual or combined market share in any closely related market in excess of 30%.

(190) As regards Welbilt, the Notifying Party submits that [...] cases the proportion of customers buying a combination of two different products is less than [...]% of the total number of customers buying either product. The most frequent segment combination is between [...], where [...]% of Welbilt's customers that bought either [...] bought products from both segments in 2020. The Notifying Party further submits that the analysis does not change if it is narrowed down to the subsegment of speed ovens, with the most frequent combination being between ovens other than speed ovens and speed ovens ([...]% of customers buying both products). Speed ovens and ice-making machines (and their sub-segments) are not closely related as these products are not strictly complementary and not generally purchased by the same set of customers for the same end use.

(191) The Notifying Party submits that Welbilt may have [commercial strategy].

(192) As regards Ali Group, the Notifying Party claims that it operates in a decentralised manner and [commercial strategy]. In any case, Ali Group's sales data show that [commercial strategy].

(193) The Notifying Party therefore concludes that the [...] of customers tend not to buy a combination of products from the Parties. In particular, in the segments where the Parties have a stronger position, i.e. speed ovens and ice-making machines, there is

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<sup>225</sup> One ice machine competitor commented that Welbilt/Manitowoc uses ice makers as an add-on item in product bundles; See Questionnaire to competitors of ice machines, question Q A.D.6.2.

[...] customer demand to purchase a combination of these two products. There is therefore not a sufficient customer base in respect of which a foreclosure strategy could be implemented.

- (194) Further, the Parties face fierce competition in the supply of commercial foodservice equipment. Post-transaction, customers will continue to have sufficient alternative suppliers from which the respective products can be purchased.
- (195) In terms of potential portfolio effects, the Notifying Party submits that several competitors have product offerings similar to the Parties' combined product range, while other competitors also have a product offering spanning multiple product categories. In addition, some competitors offer product categories that are not supplied by the Parties. The combined entity will therefore not have a material advantage compared to its competitors, in terms of the breadth of its offering.

#### 5.4.1.2. Incentive to foreclose

- (196) The Notifying Party submits that given their lack of ability, the Parties do not have any incentive to foreclose competitors. If, post-transaction, the Parties were to decide to bundle, this strategy would not be profitable, [market conditions].
- (197) Further, Ali Group's subsidiaries typically compete as separate companies with different marketing and sales teams. [Party's commercial strategy].
- (198) Even if the Parties had an ability to foreclose, no incentive would arise as the customers obtain supplies from the provider that best suits their needs, and switching suppliers is easy.

#### 5.4.2. *The Commission's assessment*

- (199) Based on the outcome of the Commission's market investigation and on the information gathered, it is unlikely that post-Transaction the combined entity will be able or have the incentive to engage in anticompetitive foreclosure of rivals by offering technical or commercial bundles or integrated solutions, for the following reasons.

##### 5.4.2.1. Ability to foreclose

- (200) The Commission considers that it is unlikely that post-Transaction the combined entity will be able to engage in anticompetitive foreclosure of rivals through technical or commercial tying or mixed bundling.
- (201) First, the Parties' combined positions in markets other than ice machines and speed ovens remain under 30% and there are no indications that their market power would exceed what their market shares suggest.
- (202) Second, any potential tying or bundling using ice-making machines is addressed by the ice-making machine remedy which removes Welbilt's entire overlap.
- (203) Third, as regards speed ovens, the increment brought by the Transaction is limited, with Ali Group's EEA market share at [5-10]% EEA ([5-10]% according to the Notifying Party), and therefore the increase in the combined entity's hypothetical leveraging power from its position in speed ovens would also be limited.

- (204) Fourth, a large majority of customers<sup>226</sup> and competitors<sup>227</sup> confirm that sales/purchases of speed ovens are not typically combined with other products. Respondents state that commercial conditions for speed ovens are negotiated separately from any other products offered by the same supplier.
- (205) Fifth, technical tying of speed ovens and other appliances does not seem to be possible, a majority of customers<sup>228</sup> and competitors<sup>229</sup> state that speed ovens cannot even be interconnected with other kitchen appliances or equipment.

#### 5.4.2.2. Incentive to foreclose

- (206) The Commission considers that it is unlikely that post-Transaction the combined entity will have the incentive to engage in anticompetitive foreclosure of rivals through technical or commercial tying or mixed bundling.
- (207) First, the market investigation provided strong indications that Ali Group's subsidiaries typically compete as separate companies with different marketing and sales teams. As a competitor explained, *“The impact will basically depend on their strategies about how to manage the companies that manufacture speed-ovens. As I know from Aligroup, they tend to leave the companies independent from each other, not “forcing” any kind of synergy or integration”*.<sup>230</sup>
- (208) Second, as for Welbilt, [Party’s commercial strategy]<sup>231</sup> the Commission has not received market feedback or any other indications suggesting that it currently engages in bundling practices involving speed ovens. A distributor for instance explained that while *“Within Welbilt products, Convotherm [Combi-ovens] and Merrychef are very complementary, since the user screen is the same, [...] Convotherm and Merrychef work independently, there is no bundling of products. Buying higher or lower volume of one brand does not affect the price of the other.”*<sup>232</sup>
- (209) This is borne out by the fact that Welbilt is a leading supplier of speed ovens in the EEA ([30-40]% market share) but a minor supplier in relation to other product segments.
- (210) Third, in terms of future plans, [Party’s commercial strategy].
- (211) Fourth, customers would not be locked in by the combined entity bundle offers, as they would be able to switch suppliers. Post-Transaction there will remain several alternative sources of supply for any products offered by the Parties, in particular speed ovens. The Combined entity would therefore lose sales of speed ovens if it tried to influence their customers’ choice of supplier through tying or bundling.

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<sup>226</sup> Questionnaire to distributors of speed ovens, question D.F.1; Questionnaire to end customers of speed ovens, question D.E.1.

<sup>227</sup> Questionnaire to competitors of speed ovens, question D.E.1.

<sup>228</sup> Questionnaire to distributors of speed ovens, question D.F.2; Questionnaire to end customers of speed ovens, question D.E.2.

<sup>229</sup> Questionnaire to competitors of speed ovens, question D.E.2.

<sup>230</sup> Questionnaire to competitors of speed ovens, question E.4.

<sup>231</sup> See Welbilt internal documents Annex\_WBT\_Confidential\_001.PDF p.16; Annex\_WBT\_Confidential\_589.PPTX p. 23.

<sup>232</sup> Non-confidential Minutes of the call with a distributor from 16.02.2022, 12.30-13.30 (CET).



- (212) Fifth, competitors could respond by implementing counter-strategies, including proposing similar ties or bundles on their own or through partnerships with other suppliers.

#### 5.4.2.3. Overall effects of mixed bundling and tying strategies

- (213) According to the Non-Horizontal Merger Guidelines, bundling or tying strategies may result in a significant reduction of sales prospects faced by single-component rivals in the market, which may allow the merged entity to subsequently acquire or maintain market power.<sup>233</sup>
- (214) On the basis of its investigation, the Commission considers that a potential bundling or tying strategy concerning certain product segments, in particular speed ovens, on the one hand and any other product segment on the other hand is unlikely to lead to foreclosure of rival manufacturers to the requisite standard of the Non-Horizontal Merger Guidelines.
- (215) First, only a limited number of customers seem to buy more than one product segment from the Parties, in particular for speed ovens. Therefore, even if a bundling strategy was successful, competitors' loss of sales would be limited.
- (216) Second, in any case, customers would not be locked in by the combined entity bundle offers, as Post-Transaction there will remain several alternative sources of supply for any products offered by the Parties, in particular speed ovens. This means that it is unlikely that any attempt at bundling strategies could be successful and that competitors could be foreclosed as a result.
- (217) In conclusion, in view of the results of the market investigation and market feedback, the Commission considers on balance that the combined entity is unlikely to have the ability or incentive to implement foreclosure strategies by means of tying, bundling or other exclusionary practices. The Commission therefore concludes that the possibility of conglomerate effects arising from the Transaction does not result in serious doubts as to its compatibility with the internal market.

## 6. COMMITMENTS

### 6.1. Framework for the assessment of the Commitments

- (218) The following principles, as referred to in the Commission Regulation (EC) No 802/2004 and in the Commission Notice on remedies acceptable under the Merger Regulation (the 'Remedies Notice')<sup>234</sup> apply where parties to a concentration choose to offer commitments in order to restore effective competition following serious doubts identified by the Commission with a view to having the transaction approved in Phase 1.
- (219) In Phase 1, commitments offered by the parties can only be accepted where the competition problem is readily identifiable and can easily be remedied. The

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<sup>233</sup> Non-Horizontal Merger Guidelines, paragraph 111.

<sup>234</sup> Commission's Notice on Remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1.

competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation. Where the assessment confirms that the proposed commitments remove the grounds for serious doubts on this basis, the Commission clears the merger in Phase 1.

- (220) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including, inter alia, the type, scale and scope of the proposed commitments, assessed by reference to the structure and particular characteristics of the market(s) in which competition concerns arise, including the position of the parties and other participants on the market. As set out in the Remedies Notice, the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view. The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market or the functioning of the EEA Agreement in that they will prevent the significant impediment to effective competition in all relevant markets where competition concerns were identified.
- (221) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. The Commission must determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market.
- (222) Divestiture commitments are often the most effective way to eliminate competition concerns. The intended effects of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market.
- (223) To that end, the divested activities must consist of a viable business (or viable businesses) that, if operated by a suitable purchaser, can compete effectively with the combined entity on a lasting basis and that is divested as a going concern.<sup>235</sup> The business has to include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which is currently employed or which is necessary to ensure the business' viability and competitiveness. Normally, a viable business is a business that can operate on a stand-alone basis, which means independently of the merging Parties as regards the supply of input materials or other forms of cooperation other than during a transitory period.
- (224) Even though the divestiture of an existing viable stand-alone business is normally required, the Commission, taking into account the principle of proportionality, may also consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the Parties and therefore need to be 'carved out'.<sup>236</sup> The Commission will only be able to accept commitments which require the carve-out of a business if it can be certain that, at least at the time when

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<sup>235</sup> Remedies Notice, paragraph 23.

<sup>236</sup> Remedies Notice, paragraph 35.

the business is transferred to the Purchaser, a viable business on a stand-alone basis will be divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum.<sup>237</sup>

## 6.2. Commitments submitted by the Notifying Party

- (225) In order to render the concentration compatible with the internal market and the functioning of the EEA Agreement, on 28 April 2022 the Notifying Party submitted commitments (the ‘Initial Commitments’) pursuant to Article 6(2) of the Merger Regulation, alongside their notification of the transaction.
- (226) The Commission market tested the Initial Commitments, seeking the views of competitors and customers on the suitability of the commitments and the proposed purchaser. The Commission informed the Notifying Party of the results of the market test on 20 May 2022. Following the Commission’s feedback on the market test and the assessment of the Initial Commitments, the Notifying Party submitted a revised set of commitments on 31 May 2022 (the ‘Final Commitments’).

### 6.2.1. Description of the Initial Commitments

- (227) The Parties offered as a remedy, the divestiture of Welbilt’s global ice making machines business (the ‘Divestment Business’), in order to completely remove the overlap and thus remedy any competitive concerns that could arise in ice-making machines markets. On 3 March 2022, Welbilt announced that it reached an agreement with the US industrial company Pentair for the sale of the Divestment Business.
- (228) The Divestment Business comprises:
- (a) Welbilt’s global Manitowoc ice machine business. This business operates under the Manitowoc and Koolaire brands, in addition to minor private label sales (‘Divested Brands’);
  - (b) Welbilt’s manufacturing plants where the Divested Brands are produced, namely the Manitowoc Facility, the Monterrey Facility, and the Hangzhou Facility (including the Design, Performance and Training Center of Excellence), which will be offered as part of the divestiture package (‘Divested Plants’);
  - (c) Welbilt’s products (including private label products) and services developed, licensed, sold, provided or offered by the Divestment Business and those discontinued, predecessor and legacy products and services of the Divestment Business to the extent such products were discontinued in the three years prior to the Purchase Agreement with Welbilt, dated 2 March 2022 (‘PA’)<sup>238</sup> (‘Discontinued Products’), and those additional products and services of the Divestment Business under development (collectively, the ‘Products’), in each case including those Products described in Schedule A-(i)(a) of the Disclosure Letter;<sup>239</sup>

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<sup>237</sup> Remedies Notice, paragraph 36.

<sup>238</sup> Annex\_RM\_1\_M.10432\_Ali\_Group\_Welbilt\_Purchase\_Agreement\_Confidential.

<sup>239</sup> Disclosure Letter to Purchase Agreement by and between Welbilt. Inc and Pentair Commercial Ice LLC, dated as of 2 March 2022.

- (d) All tangible personal property, equipment, machinery and tools primarily relating to the Divestment Business or described in Schedule A-1(i)(b) of the Disclosure Letter ('Tangible Assets');
- (e) Welbilt's sales offices in Manitowoc, Wisconsin, USA and Monterrey, Mexico, where most of the back-office functions take place, including various sales, finance and administrative functions, along with other sales and aftermarket services that will transfer with the Divestment Business;
- (f) The Intellectual property rights relating to the Divestment Business or the Products on a global basis that are described in Schedule A-(vi) of the Disclosure Letter, including all the trademarks and patents listed in Schedule 4.7 (a) of the Disclosure Letter, as well as the Evaporator Plating Technology;
- (g) Inventory, including raw materials, work-in-process, finished goods, goods in transit, spare parts, and packaging materials owned by Welbilt or its subsidiaries relating to any of the Products or relating to the Divestment Business that exist at the date of completion of the sale of the Divestment Business to the purchaser ('Inventory');
- (h) To the extent transferable under law, all licences, permits and authorisations issued by any governmental organisation related to the ownership and operation of the Divestment Business at the Divested Plants or that are for the exclusive benefit of the Divestment Business;
- (i) All customer contracts, supply contracts, commitments and customer orders of the Divestment Business listed in Schedule 4.5(a) of the Disclosure Letter to the extent such contracts relate to the Divestment Business ('Assigned Contracts'), notably [type of customers];
- (j) The leases, subleases or executive suite agreements relating to the leased real property set forth in Schedule A-(iv) of the Disclosure Letter and the real property owned by Welbilt and relating to the Divestment Business as set forth in Schedule A-(v) of the Disclosure Letter;
- (k) Any files, documents, data, books and records relating to the Divestment Business;
- (l) All personnel wholly or mainly engaged in the viability and competitiveness of the Divestment Business, subject to the application of the Acquired Rights Directive; and
- (m) Any claims, actions, or other rights relating to the Divestment Business, as well as any advertising and promotional materials, all business cash and all bank accounts held by the relevant entities, all third-party insurance policies, and any other assets listed in Appendix A of the Disclosure Letter.

### 6.2.2. *Market test*

- (229) The Commission market tested the Initial Commitments to assess whether they were sufficient and suitable to remedy the serious doubts identified in Section 5.2.1 of this decision, and whether they were sufficient to ensure the viability and competitiveness of the Divestment Business.

- (230) Overall, most respondents indicated that the Divestment Business, as defined under the Initial Commitments, is a viable and competitive standalone business.<sup>240</sup> In particular, the majority of the respondents who expressed their views in the market investigation consider that (i) the transferred the tangible and intangible assets are enough to run the Divestment Business as a standalone, viable and competitive business,<sup>241</sup> and (ii) the reverse carve-out of the non-ice machines related products from the Hangzhou manufacturing facility<sup>242</sup> or the reliance on third party logistic providers for distribution in Europe,<sup>243</sup> will not have a negative impact on the viability of the Divestment Business.<sup>244</sup>
- (231) The majority of the respondents do not see any implementation difficulties or risks associated with the transfer of the suppliers or customer agreements to the purchaser<sup>245</sup>, as one customer states: *“I don't see any issue with the transfer of suppliers and customers agreements. I'm happy that the agreements will be transferred and we do not need to start all negotiations with Pentair on day one”*.<sup>246</sup> Moreover, the majority of respondents who expressed a view also do not see any risks linked to the transitory supply or service agreements with the Purchaser.<sup>247</sup> Also the majority of competitors do not foresee any specific difficulties or risks associated with the transfer of permits, licenses and authorisations to the Purchaser.<sup>248</sup>
- (232) The majority of the respondents also consider that the Initial Commitments would solve potential competition concerns arising from the Transaction with respect to the supply of ice-making machines.<sup>249</sup>
- (233) Some respondents raised concerns in relation to the insufficient duration of the transitional service agreement for distribution services.<sup>250</sup>

### 6.2.3. *The Commission's assessment of the Initial Commitments*

- (234) Firstly, the Commission notes that the Initial Commitments remove the full overlap in the ice-making machines markets where the Transaction would potentially have raised serious doubts as to its compatibility with the internal market.

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<sup>240</sup> Questionnaire to competitors of ice-making machines, question B.2; Questionnaire to customers of ice-making machines, question B.2.

<sup>241</sup> Questionnaire to competitors of ice-making machines, question B.6; Questionnaire to customers of ice-making machines, question B.6.

<sup>242</sup> Questionnaire to competitors of ice-making machines, question B.4; Questionnaire to customers of ice-making machines, question B.4.

<sup>243</sup> Questionnaire to competitors of ice-making machines, question B.5; Questionnaire to customers of ice-making machines, question B.5.

<sup>244</sup> Questionnaire to customers of ice-making machines, question B.5.1.

<sup>245</sup> Questionnaire to competitors of ice-making machines, question B.A.1; Questionnaire to customers of ice-making machines, question B.A.1.

<sup>246</sup> Questionnaire to customers of ice-making machines, question B.A.1.1.

<sup>247</sup> Questionnaire to competitors of ice-making machines, question B.A.3; Questionnaire to customers of ice-making machines, question B.A.2.

<sup>248</sup> Questionnaire to competitors of ice-making machines, question B.A.2.

<sup>249</sup> Questionnaire to competitors of ice-making machines, question B.1; Questionnaire to customers of ice-making machines, question B.1.

<sup>250</sup> Questionnaire to customers of ice-making machines, question B.5.1.

- (235) Second, the Initial Commitments only comprise assets from Welbilt and therefore do not include any mix-and-match elements, which allows the Purchaser to realise certain efficiencies.
- (236) Third, the Commission considers that the scope of the Initial Commitments appears to be sufficient to run the Divestment Business as a standalone, viable and competitive business as it includes all necessary tangible and intangible assets, as also sustained by the results of the market investigation described in Section 6.2.2. Moreover, the reverse carve-out of the non-ice machines related products from the Hangzhou manufacturing facility will not have a negative impact on the viability of the Divestment Business as the products were a minor part of the production and the essential personnel and production lines remain in the Hangzhou manufacturing facility.
- (237) Fourth, the Commission observes that the majority of market participants considers that there would be no problem relating to the continuation of the distribution agreements post-Transaction.<sup>251</sup>
- (238) Fifth, even though the transitory service agreements are adequate, the Commission considers that their duration is not sufficient for the buyer to successfully establish its own distribution network, which would affect the viability of the Divestment Business. Moreover, the commitments do not specify that the buyer would receive the services part of the transitional agreement at cost, which also could negatively affect the viability of the Divestment Business.

#### 6.2.4. *Description of the Final Commitments*

- (239) Taking into account the results of the market test, the Parties submitted revised commitments on 31 May 2022 (the ‘Final Commitments’).
- (240) The Final Commitments essentially follow the structure of the Initial Commitments. The Parties however made improvements to address the concern raised. The Final Commitments clarify that (i) the transitional services will be rendered at cost; and (ii) the possibility to extend the transitional service agreement for distribution services by 6 months upon reasoned opinion of the Monitoring Trustee.

#### 6.2.5. *The Commission’s assessment of the Final Commitments*

- (241) The Commission considers that the Final Commitments, by (i) increasing the potential duration of the transitional service agreement for distribution services, and (ii) confirming such agreement (as well as other transitional supply agreements) are provided at cost, effectively address the identified shortcomings of the Initial Commitments.
- (242) For this reason, and those outlined in Section 6.2.3 above, the Final Commitments made by the Notifying Party are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation, such as those identified in

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<sup>251</sup> Questionnaire to competitors of ice-making machines, question B.A.3; Questionnaire to customers of ice-making machines, question B.A.2.

Section 5, as to the compatibility of the Transaction with the internal market and the functioning of the EEA Agreement.

## **7. CONDITIONS AND OBLIGATIONS**

- (243) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (244) The fulfilment of the measures that gives rise to the structural change of the market is a condition, whereas the implementing steps that are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (245) The commitments in section B of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.
- (246) The Commission takes note of the fact that on 2 March 2022, Welbilt entered into a binding Purchase Agreement with Pentair plc for the sale of the Divestment Business, but this transaction will be the subject of a separate Purchaser Approval decision in order to properly assess the viability of the proposed purchaser.

## **8. CONCLUSION**

- (247) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Executive Vice-President*

**Case M.10431 – Ali Group / Welbilt****COMMITMENTS TO THE EUROPEAN COMMISSION****FIX-IT-FIRST REMEDY**

Pursuant to Article 6(2), of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Ali Holding S.r.l., Italy (“**Ali Group**”) together with Welbilt, Inc., USA (“**Welbilt**”) (Ali Group and Welbilt are collectively referred to as the “**Parties**”) hereby provide the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the acquisition of Welbilt (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

**Section A. Definitions**

1. For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).

**Assets:** the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b), (c) and (d) and described more in detail in the Schedule.

**Closing:** the transfer of the legal title to the Divestment Business to the Purchaser.

**Closing Period:** the period of 3 months from the approval of the Purchaser by the Commission.<sup>1</sup>

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<sup>1</sup> This is the i) Effective Date (if the Purchaser is approved in the Decision) or ii) the date of adoption of a subsequent purchaser approval decision (if the Purchaser is approved in a subsequent purchaser approval decision).



**Completion:** completion of the acquisition of Welbilt by Ali Group.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest:** any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

**Disclosure Letter:** the disclosure letter to the Sale and Purchase Agreement, dated March 2, 2022.

**Divestment Business:** the business or businesses as defined in Section B and in in the Schedule which Ali Group commits to divest.

**Effective Date:** the date of adoption of the Decision.

**Hold Separate Manager:** the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor Ali Group's and Welbilt's compliance with the conditions and obligations attached to the Decision.

**Parties:** Ali Group and Welbilt.

**Personnel:** all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D. The Parties have proposed Pentair Plc, an Irish public limited company, registered under company number 536025 to the Commission as the Purchaser.

**Purchaser Criteria:** the criteria laid down in paragraph 13 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

**Schedule:** the schedule to these Commitments describing in more detail the Divestment Business.

**Trustee(s):** the Monitoring Trustee.

**Section B. The commitment to divest and the Divestment Business**

Commitment to divest

- 2. In order to maintain effective competition, Ali Group commits to divest, or procure the divestiture of the Divestment Business as a going concern to the Purchaser on terms of sale approved by the Commission. To carry out the divestiture, Welbilt, as the seller, and Pentair Plc, as the purchaser, through its subsidiary, Pentair Commercial Ice LLC, a Delaware limited liability company, entered in a Purchase Agreement dated March 2, 2022 ("**Purchase Agreement**" or "**PA**").
- 3. The proposed concentration shall not be implemented before the Commission has approved the Purchaser and the terms of sale in the Decision or, thereafter, in accordance with paragraph 14.
- 4. Ali Group shall be deemed to have complied with this commitment if
  - a. the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments; and
  - b. the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
- 5. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from Ali Group showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 35 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

- 6. The Divestment Business consists of the global ice machine business which forms part of Welbilt, and operates primarily under the Manitowoc and Koolaire brands, in addition to some minor private label sales. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute exclusively or predominantly to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
  - (a) all tangible and intangible assets (including intellectual property rights);
  - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
  - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
  - (d) the Personnel.

7. The Divestment Business includes a global transitional service agreement for a maximum period of 12 months to provide the Purchaser with information technology services, HR services, distribution and warehousing services, and finance and accounting services, on terms and conditions detailed in the Schedule. In addition to the transitional services agreement, Welbilt has also agreed to enter into a reverse transition service agreement with the Purchaser in order to facilitate the move of the non-ice related business out of its China facility in Hangzhou, on terms and conditions detailed in the Schedule.

## **Section C. Related commitments**

### Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Parties undertake:
  - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
  - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
  - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

### Hold-separate obligations

9. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the business the Parties are retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by the Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.

10. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which Ali Group is retaining. Immediately after the adoption of the Decision. The Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

#### Ring-fencing

11. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis-à-vis the Parties' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible (unless otherwise foreseen in the transitional service agreement on terms and conditions detailed in the Schedule), without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Parties is required by law.

#### Non-solicitation clause

12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of three years after Closing.

### **Section D. The Purchaser**

13. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

- (a) The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
- (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
- (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

14. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

## **Section E. Trustee**

### **I. Appointment procedure**

15. Ali Group and Welbilt shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.

16. The Trustee shall:

- (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
- (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
- (iii) neither have nor become exposed to a Conflict of Interest.

17. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate.

### *Proposal by the Parties*

18. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 16 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

### *Approval or rejection by the Commission*

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by the Parties*

20. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 15 and 19 of these Commitments.

*Trustee nominated by the Commission*

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

23. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;
  - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;
  - (c) with respect to Confidential Information:
    - determine all necessary measures to ensure that the Parties do not after Completion obtain any Confidential Information relating to the Divestment Business,

- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
  - make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before Completion is eliminated and will not be used by Ali Group and
  - decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;
- (iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) if not yet approved by the Commission in the Decision, submit within two weeks after the Effective Date to the Commission, sending to the Parties a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (v) act as a contact point for any requests by third parties-in relation to the Commitments;
- (vi) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments;
- (vii) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;
- (viii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

### III. Duties and obligations of the Parties

24. The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Business'

books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

25. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level.
26. The Parties shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
27. At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 26 of these Commitments shall apply *mutatis mutandis*.
28. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
29. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.
30. For a period of 10 years from the Effective Date, the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

#### IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
  - (a) the Commission may, after hearing the Trustee and the Parties, require the Parties to replace the Trustee; or



(b) The Parties may, with the prior approval of the Commission, replace the Trustee.

32. If the Trustee is removed according to paragraph 31 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place, to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15-21 of these Commitments.

33. Unless removed according to paragraph 31 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **Section F. The review clause**

34. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

35. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

36. The Commission may, upon reasoned opinion of the Monitoring Trustee and in line with paragraph 23 (iii), extend the time periods foreseen in the transitional service agreement and reverse transitional services agreement described in paragraph 7 of these Commitments and in more detail in the Schedule, by 6 months. If necessary for the competitiveness and viability of the Divestment Business, the Commission may upon reasoned opinion of the Monitoring Trustee and in line with paragraph 23 (iii), extend the transitional services agreements for distribution services in relation to the [...] for an additional maximum of [...].

#### **Section G. Entry into force**

37. The Commitments shall take effect upon the date of adoption of the Decision.

<b>Place and date:</b>	Brussels, 31 May 2022	Brussels, 31 May 2022
<b>Signatures:</b>	[signed]	[signed]
<b>Name/s and positions:</b>	[...]	[...]
<b>Duly authorised for and on behalf of:</b>	Ali Group	Welbilt

## SCHEDULE

### 1. Description of the Divestment Business

- (1) The Divestment Business consists of the global ice machine business which forms part of Welbilt, and operates primarily under the Manitowoc and Koolaire brands, in addition to some minor private label sales.<sup>2</sup> The Divested Business includes in particular tangible (e.g., the primary manufacturing facilities, including the Manitowoc, Wisconsin, USA and Monterrey, Mexico facilities, as well as the design centre, manufacturing lines, assembly and warehousing activities of the Hangzhou, China, facility) and intangible assets (e.g., intellectual property rights), which contribute exclusively to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business.
- (2) The global Manitowoc ice business operates in four dedicated legal entities and several other entities shared with Welbilt. The divestment will be implemented through a combination of asset and stock sale (in accordance with the Purchase Agreement) attached as **Annex RM 1**, and the Disclosure Letter to Purchase Agreement by and between Welbilt, Inc and Pentair Commercial Ice LLC, dated as of March 2, 2022 (the "**Disclosure Letter**") attached as **Annex RM 2**).
- (3) The following entities will transfer to the Purchaser in the form of a stock sale ("**Purchased Entities**"):
  - a. Manitowoc Foodservice (Luxembourg) S.a.r.l.;
  - b. Manitowoc FSG Holding, LLC;
  - c. Manitowoc FSG Manufactura Mexico, S. de R.L. de C.V.; and
  - d. Welbilt (China) Foodservice Co., Ltd.<sup>3</sup>
- (4) These entities, together with Welbilt and other Welbilt subsidiaries that will sell assets related to the Divestment Business, hold the tangible and intangible property needed to continue to operate the business, including:
  - a. All tangible and intangible property listed in Appendix A of the PA and Schedule A of the Disclosure Letter.
  - b. Real property:
    - Leased property: Rancho el Refugio, Guadalupe, Lot 5, Monterrey, Nuevo Leon, Mexico (the Monterrey Facility)
    - Owned property:
      - i. 2110 South 26th Street, Manitowoc, WI 54220 (the Manitowoc Facility)
      - ii. Hangzhou, China facility (the Hangzhou Facility)

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<sup>2</sup> In the EEA, Welbilt supplies ice-machines under the Manitowoc brand.

<sup>3</sup> Welbilt's non-ice assets and employees at the Hangzhou facility (namely [...]) will not be transferred to Pentair.

- (5) Welbilt will also provide the Purchaser with transition services for certain back-office functions that will not form part of the Divestment Business. These transition services and their short duration are described in the Transition Services Agreement ("**TSA**"). A copy of the TSA in its agreed form can be found in Exhibit A of the PA, together with the TSA Exhibit A setting out the timing and costs for the transitional arrangements.
- (6) Welbilt will also enter into a Reverse Transition Service Agreement ("**Reverse TSA**") with Pentair in order to facilitate the move of the non-ice related business out of Welbilt's manufacturing facility in Hangzhou, China, as described in Exhibit F of the PA.
- (7) For a simplified chart of the Divestment Business, please refer to **Annex RM 5**.

**2. In accordance with paragraph 6 and 7 of these Commitments, the Divestment Business includes, but is not limited to:**

**(a) the following main tangible assets:**

- (i) Welbilt's manufacturing facilities, which house various sales, finance and administrative functions, and which are necessary to, and will transfer with, the Divestment Business, namely:
  - Monterrey, Rancho el Refugio, Guadalupe, Lot 5, Nuevo Leon, Mexico (Leased - Schedule A-(iv) of the Disclosure Letter): Assembly of [...] that accompanies the manufacturing facility ("**Monterrey Facility**");
  - Manitowoc, 2110 South 26th Street, 54220 Wisconsin, USA (Owned - Schedule A-(v) of the Disclosure Letter): Manufacturing, fabrication and assembly of all [...] for global production along with a [...] that accompanies the manufacturing facility ("**Manitowoc Facility**");
  - Hangzhou, No. 151 Jianye Road, China (Owned- Schedule A-(v) of the Disclosure Letter): Assembly [...], as well as the design centre ("**Hangzhou Facility**");
- (ii) Welbilt's products (including private label products) and services developed, licensed, sold, provided or offered by the Divestment Business and those discontinued, predecessor and legacy products and services of the Divestment Business to the extent such products were discontinued in the three years<sup>4</sup> prior to the PA (the "**Discontinued Products**"), and those additional products and services of the Divestment Business under development (collectively, the "**Products**"), in each case including those Products described in Schedule A-(i)(a) of the Disclosure Letter:
  - Modular Cuber Machines.
  - Undercounter Cuber Machines.
  - ICE Machines for Beverage dispensers.
  - Counter Top Nugget Machines (with and without water dispense).
  - Flaker Machines.

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<sup>4</sup> This replicates the definition of the purchased assets in the Purchase Agreement with Pentair. [...].

- Nugget Machines.
- Ice Machines with remote condensers and compressors.
- Hotel Dispenser Machines.
- Gourmet / Spray Cuber machines (Sub-Zero, SM50 and CrystalCraft Cube Machine).
- Undercounter Residential Cuber machines (Sub-Zero).
- CrystalCraft Cuber Machines.
- Storage Bins.
- Parts and accessories related to the items listed above.

(iii) All of the tangible personal property, equipment, machinery and tools that are primarily related to the Divestment Business, including those located at the Manitowoc Facility, the Monterrey Facility and the Hangzhou Facility (Schedule A(i)(b) of the Disclosure Letter);

(iv) All inventory wherever located, including raw materials, work-in-process, finished goods, goods in transit, spare parts, and packaging materials owned by Welbilt or any of its subsidiaries relating to any of the Products or relating to the Divestment Business (Appendix A (iii) PA);

(v) A complete overview of all tangible property is listed in Appendix A of the PA and Schedule A of the Disclosure Letter.

**(b) the following main intangible assets:**

(i) The Manitowoc and Koolaire brand names (the "Divested Brands"), including intellectual property rights relating to the Divested Brands on a global basis (Schedule A-(vi) of the Disclosure Letter), including all the trademarks and patents (Schedule 4.7 (a) of the Disclosure Letter), as well as the Evaporator Plating Technology;

(ii) All intangible property is listed in Appendix A of the PA and Schedule A of the Disclosure Letter.

**(c) the following main licences, permits and authorisations:**

To the extent transferable under law, those permits related to the ownership and operation of the Divestment Business at the real property and the leased real property and those other permits that are exclusively related to the conduct of the Divestment Business or the ownership, possession or operation of the purchased assets (Appendix A (vii) of the PA and Schedule 4.10(d) of the Disclosure Letter).

**(d) the following main contracts, agreements, leases, commitments and understandings;**

(i) The leases, subleases or executive suite agreements relating to the leased real property (Schedule A-(iv) of the Disclosure Letter);

(ii) All customer contracts, supply contracts, commitments and customer orders of the Divestment Business to the extent such contracts relate to the Divestment Business (“**Assigned Contracts**”), notably the benefit of any existing contracts with [customer types] of the Divested Brands in the EEA where such contracts [...];

(iii) any claims, actions, or other rights relating to the Divestment Business, as well as any advertising and promotional materials, all business cash and all bank accounts held by the relevant entities, all third-party insurance policies, and any other assets listed in Appendix A of the Disclosure Letter.

**(e) the following customer, credit and other records:**

Copies of all files, documents, data, books and records that are in the possession or control of Welbilt or its Subsidiaries, including customer and supplier lists, invoices and purchase orders, production data, cost records, sales and pricing data, supplier records, product data, manuals and literature, technical information, drawings, specifications and other engineering data, correspondence, merchandising, promotional materials, sales materials, creative materials, studies, reports, and other business records that, in each case, to the extent related to, or to the extent used in, the operation of the Business (collectively, the “**Business Records**”) (Appendix A (viii) of the PA);

**(f) the following Personnel:**

The table below sets out the Welbilt personnel who work in the Divestment Business:

**Table 1 | Welbilt Personnel in the Divestment Business**

[...]

**(g) the following Key Personnel:**

Key personnel associated with the Divestment Business comprise:

- [...].

For a more detailed organisation chart of all the relevant ice personnel that will be transferred with the Divestment Business, please refer to **Annex RM 7**.

**(h) Transitional Services Agreements:**

(i) **Information Technology (“IT”) & Enterprise Resource Planning Systems (“ERP”).** IT and ERP systems will need to be separated out. A Transition Services Agreement (“TSA”) will be entered into between Welbilt and Pentair as part of the divestiture package to allow for the separation of IT and any other back-office functions. A copy of the TSA in its agreed form can be found in

Exhibit A of the PA, together with the TSA Exhibit A setting out the timing and costs for the transitional arrangements.

- (ii) **Distribution Facilities.** With regards to distribution, the Divestment Business will include the warehousing facilities in Manitowoc, Wisconsin, USA and Monterrey, Mexico and Hangzhou, China. Those are large distribution and warehousing facilities that are primarily used for the Divestiture Business. The proposed Divestment Business would not include a few of the common distribution facilities that Welbilt utilizes for all of Welbilt's products (i.e., that are not limited to ice).<sup>5</sup> The Parties respectfully submit that there is no need to transfer these distribution facilities because they are not required for the operation of the ice business and can be replicated and/or replaced within a reasonable transition period by using the transferred assets or using facilities that are already available to Pentair.

There are four distribution centres that currently serve Welbilt's various brands, including the Manitowoc ice business, namely: (1) German distribution facility; (2) Hangzhou warehousing facility; (3) Jeffersonville, Indiana facility; and (4) Covington, Tennessee warehousing facilities. While the Hangzhou warehousing facility will be transferred with the Divestment Business, each of the other facilities [...]. In any case, Ali Group will enter any TSAs required by Pentair, in order to accommodate the efficient transfer of the Divestment Business. The services will be rendered at cost. Manitowoc's management has already created a plan for transitioning the need for distribution space, which includes the following:

- a. **Jeffersonville.** Manitowoc's management plans to [...] form part of the Divestment Business, to the Manitowoc facility.
- b. **Covington.** The Parties will provide Pentair with a TSA until the [...]. Alternatively, Manitowoc's management believes that [...] should not take longer than 6 months.
- c. **Germany.** The Parties propose that the German distribution facility should not be included in the divestiture package, as non-ice goods take up approximately [...] % of the total warehousing capacity of Welbilt's distribution hub located in [...].

Welbilt confirms that none of the distribution facilities excluded from the Divestment Business are used exclusively or primarily for ice products. As explained, none of the facilities are required for the operation of the ice business and each can be replicated and/or replaced within a reasonable transition period by using the transferred assets or using facilities that are already available to Pentair.

Ice products account for a minority share of the sales associated with the excluded distribution facilities, as set out below:

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<sup>5</sup> The Parties are gathering data on [...].

**Table 2 | Shares per Facility**

Facility	Share of total sales 2019	Share of total sales 2020	Share of total sales 2021
Jeffersonville	[...]	[...]	[...]
Germany	[...]	[...]	[...]

The Covington facility is a [...] warehousing facility, with [...] to which revenues can be attributed. [...] is dedicated to the storage of ice products.<sup>6</sup>

The Parties agree to accommodate Pentair on a transitional basis, until it is able to use its own distribution facility. Manitowoc’s management estimates that the switch to a distribution facility should be achievable [...], given that Pentair has a distribution and logistics infrastructure in the EMEA. Pentair has a mature global distribution network which in Europe is mainly served by a distribution center located in [...]. While Pentair’s existing distribution center in [...], is expected to carry out [...]. Transition will be managed through the TSA provided as Exhibit A of the PA while a move to a third-party logistics (“3PL”) is executed to support demand to Europe. [...]. Given most sales occur [...], customers would not face any issues related to the internal switch to a different distribution facility, which should be accomplished quickly.

**Table 3 | Transitional Arrangements<sup>7</sup>**

[...]

- (iii) In addition, there are some limited areas where transitional services will be required by Ali Group.
- (iv) **Hangzhou Facility.** The current non-ice inventory equipment manufacturing lines will be moved from Hangzhou to another facility. As such, the Parties will enter into a Reverse TSA in order to facilitate the provision of support by Pentair to Welbilt during the move of the Non-Divested Chinese Assets out of the Hangzhou Facility. The Reverse TSA includes provisions on service standards, the term of the agreement and other obligations owed between Pentair and the Parties. The transitional arrangements forming part of the Reverse TSA will be entered into for a period not exceeding 12 months and will include Information Technology services, licences, systems and subscriptions, HR services, and a 12-month lease for part of the Hangzhou Facility to be granted by Pentair to the Parties in relation to the non-ice business. For further information on the agreed form of the Reverse TSA and the relevant arrangements, please refer to Exhibit F of the PA and Exhibit A of the Reverse TSA.

<sup>6</sup> Response to Q8 of PN RFI 6.

<sup>7</sup> Please refer to the TSA Exhibit A for a more detailed description of the transitional arrangements and the time and cost estimates. The services are to be provided at cost.

- (v) As can be seen from the above, the Parties estimate that the transitional arrangements will be in place for no longer than 12 months, depending on the nature of the activity to be transferred, and subject to any regulatory approvals or administrative permissions required for the transfer. Once this period expires, the links between the Parties and Pentair will be severed (unless the period is extended pursuant to para 36 of the Commitments).

**3. The Divestment Business shall not include:**

- (a) Excluded assets (in more detail in Appendix D of the PA / Schedule D of the Disclosure Letter):
  - (i) The [...] assembly equipment being relocated to another Seller facility, in connection with the Manitowoc Ice Relocation and any remaining [...] inventory.
  - (ii) [...] portal, source code and other related Intellectual Property, except for the Intellectual Property related to the specific controller used by the Business.
  - (iii) All intercompany accounts receivable, other than [...] account receivables solely between or among the Purchased Entities.
  - (iv) [...].
  - (v) [...], associated with the production of all of Seller's other products that are unrelated to the Divestment Business.

A complete list of excluded assets is included in Appendix D of the PA / Schedule D of the Disclosure Letter.

- (b) Excluded liabilities (pursuant to Appendix E of the PA)<sup>8</sup>:
  - (i) all liabilities that are expressly contemplated by the SPA or any other transaction document as liabilities to be retained by Welbilt and its affiliates (other than the purchased entities), and all agreements, obligations and other Liabilities of Welbilt and its Affiliates (other than the Purchased Entities) under this Agreement or any of the other Transaction Documents;
  - (ii) all Liabilities (including workers' compensation claims with respect to facts or circumstances that occurred prior to Closing) related to each current or former employee of Welbilt and its Affiliates, including any former employee of Welbilt or its Affiliates (or any dependent or beneficiary of any such employee), other than the Assumed Employee Liabilities;

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<sup>8</sup> Each capitalized term used in this clause (b) but not defined in the Commitments has the meaning ascribed to that term in the PA.



- (iii) all Liabilities related to each Seller Benefit Plan (other than an Assumed Benefit Plan) or related to any other arrangement that would be a Seller Benefit Plan if it covered a Business Employee (or dependent, spouse or beneficiary of a Business Employee), including any Liability associated with any defined benefit pension plan and any obligations under a retiree medical plan;
- (iv) the Excluded Tax Liabilities;
- (v) subject to Section 6.26 of the PA, all Liabilities under or relating to any Environmental Law to the extent related to, arising or resulting from the ownership or operation of the Purchased Assets or the Divestment Business prior to Closing, including any Liability for (i) any release of or exposure to any Hazardous Materials at or from any Owned Real Property or Leased Real Property or in connection with the operation of the Divestment Business or the Purchased Assets to the extent such release or exposure initially occurred prior to the Closing, (ii) any violation of Environmental Law prior to the Closing in connection with the operation of the Divestment Business or the Purchased Assets or (iii) any offsite transportation and disposal of Hazardous Materials prior to the Closing in connection with the operation of the Business or the Purchased Assets (collectively, the “Excluded Environmental Liabilities”);
- (vi) all Liabilities for or with respect to Taxes for which Seller bears responsibility pursuant to Section 6.8 of the PA (without duplication of the Excluded Tax Liabilities);
- (vii) Business Indebtedness that is not included in Closing Business Indebtedness;
- (viii) all Liabilities to the extent arising out of, relating to or otherwise in respect of any real property owned or leased by any Seller Party that is not a Purchased Asset;
- (ix) all Liabilities to the extent arising out of, relating to or otherwise in respect of any ceased or discontinued operations of any Seller Party, other than any such operations formerly arising out of, relating to or otherwise in respect of the Divestment Business;
- (x) all Liabilities related to or arising out of any criminal violations of any Law relating to the Divestment Business that occurred prior to the Closing and Proceedings or other claims related to asbestos or as set forth on Schedule C-(ii) of the Disclosure Letter;
- (xi) all Liabilities to the extent arising out of, relating to or otherwise in respect of any violations of export-control, trade and economic sanctions Laws (including the U.S. Commerce Department’s Export Administration Regulations and sanctions Laws maintained by the U.S. Treasury Department’s Office of Foreign Assets Control, as well as all applicable export-control and sanctions Laws maintained by other jurisdictions); import Laws enforced by U.S. Customs and Border Protection as well as all applicable import Laws maintained and enforced by other jurisdictions; or similar Laws by any Seller Party that occurred prior to the Closing;
- (xii) all Liabilities of the Chinese Subsidiary or otherwise related to the Hangzhou Facility, to the extent such Liabilities are not related to the Divestment Business;
- (xiii) all Liabilities to the extent arising out of, relating to, or otherwise in respect of any violations of any Laws of the People’s Republic of China or any Governmental Authority with jurisdiction over the Chinese Subsidiary or Hangzhou Facility that occurred prior to the Closing;

- (xiv) all Liabilities arising out of, relating to or otherwise in respect of any breach of the Organizational Documents of the Chinese Subsidiary or failure by the Chinese Subsidiary, its equityholders or Representatives to comply with any corporate or similar formalities applicable to the Chinese Subsidiary that occurred prior to the Closing;
- (xv) all Liabilities arising out of, relating to or otherwise in respect of the ownership or operations of Welbilt (Shanghai) Foodservice Co., Ltd. or any other Subsidiary of the Chinese Subsidiary;
- (xvi) all costs and Liabilities arising out of, relating to or otherwise in respect of Welbilt's actions to separate any business of the Chinese Subsidiary that is not related to the Business; and
- (xvii) all Liabilities to the extent related to or arising out of any Excluded Assets.

4. **If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to the Purchaser.<sup>9</sup>**

## ANNEXES

[...]

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<sup>9</sup> The Parties note that all of the personnel necessary for the competitiveness and viability of the Divestment Business will be transferred. For the avoidance of doubt, the operational, manufacturing personnel within the Hangzhou facility are cross-trained on the various assembly lines. In other words, they are equally able to operate in the production / assembly of ice machines, coffee machines and fryers in the Hangzhou facility. [...].