RESPONSE OF

LINDAB INTERNATIONAL AB

AND

HAS-VENT HOLDINGS LIMITED

TO THE

CMA'S NOTICE OF POSSIBLE REMEDIES DATED 22 AUGUST 2024

5 SEPTEMBER 2024

1. INTRODUCTION

1.1 Lindab Limited (“**Lindab**”), Lindab International AB, and HAS-Vent Holding Limited (“**HAS-Vent**”) (together the "**Parties**") welcome the opportunity to set out their views on the CMA's Notice of Possible Remedies dated 22 August 2024 (the "**Remedies Notice**"). For the avoidance of doubt, any response to the CMA's Provisional Findings Report dated 22 August 2024 (the "**PFs**") will be made separately, and this response is made without prejudice to any submissions on the merits or substance of the PFs that the Parties may make.

1.2 The CMA has provisionally found that Lindab's acquisition of HAS-Vent may be expected to result in a substantial lessening of competition ("**SLC**") in the supply of circular ducts and fittings in the local areas around Stoke-on-Trent and Nottingham (the "**Local Areas**").

1.3 In light of these provisional findings, the Remedies Notice proposes two remedies that the CMA is considering in order to remedy the SLC findings. Namely the divestiture of an overlapping site in each of the SLC areas or, in the event that such a remedy is not effective, the divestiture of the entire HAS-Vent business.

2. EXECUTIVE SUMMARY

2.1 Whilst the Parties have addressed each of the specific points raised by the CMA's Remedies Notice in this response, the Parties have also summarised, for the benefit of the CMA, their responses by reference to the three broad criteria which the CMA uses to assess any divestiture remedies:

a) **Scope of the divestiture package.** Against the backdrop of the CMA provisionally finding SLCs in two local areas, it would be disproportionate for the CMA to require the divestiture of the entire HAS-Vent business. To the extent that remedies are required by the CMA, the divestiture of the overlapping Lindab / HAS-Vent branches in each local area would clearly be the far more proportionate remedy. Whether the branches which form part of the divestiture package should be Lindab or HAS-Vent (or a combination of both), should be at the Parties' discretion.

In terms of the specific composition of the divestiture package itself, the inclusion of manufacturing assets should be at the discretion of the purchaser, reflecting the CMA's provisional findings that manufacturing is not a pre-requisite to competing effectively in the market for circular ducts and fittings. Furthermore, the largely self-functioning nature of local branches minimises the need for any non-branch assets or personnel to be included within the divestment package, particularly as these are unlikely to be required by a purchaser.

b) **Identity of suitable purchasers.** The CMA itself has recognised in the PFs that there are a wide range of credible competitive constraints in the market, comprising players of all sizes and including pure distributors as well as manufacturers. There is therefore, *prima facie*, a wide pool of third party competitors who would be suitable purchasers of the divestiture assets. This is not to mention parties who are not active in circular ducts and fittings specifically, but who operate more broadly in the wider ventilation sector, and would also represent an additional pool of suitable purchasers. Lindab is also anticipating a good level interest in the divestiture assets from a range of purchasers, [redacted].

c) **Divestiture process.** There are no unusual features of this case which would warrant the imposition of additional safeguards during the divestiture process. In fact, the sale of two overlapping Lindab / HAS-Vent branches represents an easily executable remedy proposal, which could be completed within a short overall time frame.

3. SCOPE OF THE DIVESTITURE PACKAGE

Divestiture of the entire HAS-Vent business would be disproportionate in remedying the provisional SLCs identified

3.1 The Parties agree with the CMA's initial view[1] that the divesture of an overlapping site (whether HAS-Vent or Lindab) in each of Stoke-on-Trent and Nottingham would comprehensively and effectively address the SLCs provisionally identified by the CMA.

3.2 The Parties note that the CMA has also sought views on the divestiture of the entire HAS-Vent business. As set out in the CMA's Remedies Guidance, "*the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its*

[1] Para 28(a), Remedies Notice.

adverse effects"[2]. The Parties are of the view that a full divestiture of the HAS-Vent business would evidently be disproportionate for the reasons that:

- The CMA has provisionally identified only two local area SLCs, in circumstances where HAS-Vent operates from 10 local area branches.

- HAS-Vent supplies a wide range of ventilation products[3], with circular ducts and fittings only comprising [redacted] of the revenue generated by the entire HAS-Vent business. By way of example, in 2023, circular ducts and fittings accounted for [redacted]% of HAS-Vent's total sales in England and Wales.[4]

- Sales of circular ducts and fittings in 2023 by the HAS-Vent branches in Stoke and Nottingham only amounted to approximately [redacted]% of the total revenue generated by the entire HAS-Vent business in that same year[5].

3.3 Taking these points into account, to the extent that the CMA were to require the divestment of the entire HAS-Vent business, this would far exceed the geographic and product scope of the SLCs provisionally found by the CMA.

3.4 Whilst the Parties do not dispute that the divestment of the entire HAS-Vent business would remedy the provisional SLCs (albeit in an excessive and disproportionate manner), the CMA is under an obligation to select the remedy which imposes the least cost and/or restriction on the Parties[6]. It is obvious that, when weighing up the two remedy options proposed by the CMA, the CMA must choose the divestiture of the overlapping sites, given that this option more than sufficiently remedies the SLCs (bearing in mind the Lindab / HAS-Vent branches supply far more than circular ducts and fittings), and it is evidently the less costly / restrictive option.

3.5 As an additional point, the sale of the two overlapping sites will very likely attract a larger number of suitable purchasers than would be the case if the entire HAS-Vent business were to be sold. This is on the basis that a significantly larger divestment package would exclude those third-party purchasers who do not have the requisite financial capacity needed to make an acquisition of such a kind. Furthermore, the

[2] Para 3.4, Remedies Guidance.

[3] Para 5.3, PFs.

[4] Question 1(a), HAS-Vent response to Phase 2 s.109(1).

[5] Sales of circular ducts and fittings by each of the HAS-Vent branches in Stoke and Nottingham in 2023 amounted to approximately £[redacted] and £[redacted] respectively, with the overall HAS-Vent business revenue totalling £[redacted]m in that same year.

[6] Para 3.6, Remedies Guidance.

divestment of the entire HAS-Vent business would also likely increase the risk of additional competition concerns arising in each of the local areas in which HAS-Vent currently operates.

Lindab should retain the discretion to agree mix-and-match divestitures with the purchaser

3.6 Lindab is of the view that it should have the discretion to determine which HAS-Vent / Lindab sites should be divested in each of the Local Areas. As the CMA will be aware, such an approach is envisaged in "appropriate cases"[7], and there are a number of previous merger cases (including in the construction sector) where the CMA has allowed the merger parties to select the sites for divestiture, as long as the divestiture of those sites would remedy the relevant SLCs[8].

3.7 As is set out in the Remedies Guidance, insofar as the Parties can demonstrate to the CMA's satisfaction that there is no significant increase in composition risk caused by a mix-and-match divestiture proposal, then the CMA should not have any in principle objections to the divestment of a Lindab branch in one of the Local Areas and a HAS-Vent branch in the other Local Area[9].

3.8 In this particular case, there will not be any composition risks caused by a mix-and-match divestiture. The divestiture package is inherently limited in nature and, at most, it would include a single Lindab branch and a single HAS-Vent branch. Furthermore, the branches are distinct [redacted][10]. The prospect of the two branches not functioning effectively post-divestment is therefore not a realistic concern in this case.

3.9 Furthermore, by retaining the possibility of a mix-and-match approach, this will likely increase the number of interested suitable purchasers, as there may potentially be some purchasers which are only interested in a combination of Lindab and HAS-Vent branches. This is particularly as the Lindab site at Nottingham has manufacturing capability and, as the CMA notes, certain purchasers may not be interested in acquiring manufacturing assets, in particular where they already have

[7] Para 5.6, Remedies Guidance.

[8] See, for example, the CMA's decision in *Euro Car Parts / Andrew Page* (2017), *Cygnet Health Care / Cambian adult services division* (2017), *Ladbrokes / Coral* (2016), *Original Bowling / Bowlplex* (2015) and *Breedon Aggregates / Aggregate Industries UK* (2014).

[9] Para 5.16, Remedies Guidance.

[10] See, for example, paras 5.17 to 5.19 and 6.12(b) of the PFs, which demonstrate the autonomy exercised by local branches in relation to pricing, discounting and stock levels.

their own sufficient manufacturing capability or they adopt a pure distribution business model.

<u>There should be no requirement for the divestiture package to include manufacturing assets</u>

3.10 There should be no requirement for manufacturing assets to form part of the divestiture package. Such an approach would be inconsistent with the PFs, in which the CMA provisionally finds that pure distributors are equally as effective competitors as manufacturers[11]. Rather, the Parties consider that manufacturing assets should only be included in the divestiture package at the discretion of the purchaser.

3.11 If the CMA were to prescribe that manufacturing assets should form part of the divestiture package, this would have the effect of reducing the pool of suitable purchasers. As acknowledged in the PFs[12], there are a number of competitors who successfully operate in the market without manufacturing assets (e.g. [redacted]), and, so far as the Parties are aware, would be unlikely to be interested in departing from their pure distribution business models.

3.12 As regards the HAS-Vent manufacturing site at Wombourne in particular, this should not be required to be included as an option in any divestiture package. As mentioned above, the CMA has acknowledged in the PFs that manufacturing capacity is not a pre-requisite to compete in the market for circular ducts and fittings, and therefore manufacturing capability should not be a prescribed element of the divestiture package.

3.13 Furthermore, the divestment of Wombourne would be disproportionate in remedying the local area SLCs. Wombourne is the site of HAS-Vent's head office and is the manufacturing hub for the entire HAS-Vent business (not only the HAS-Vent sites in the Local Areas) and only approximately [redacted]% of the production capacity at Wombourne relates to circular ducts and fittings production[13].

[11] Para 5.25, PFs.
[12] Para 5.25, PFs.
[13] Out of a total of [redacted] production hours in 2023, only [redacted] hours were related to the manufacture of circular ducts and fittings.

There is no reason to require the divestiture assets to be sold to a single purchaser

3.14 Lindab agrees with the CMA that the sale of the divestiture assets to separate purchasers may result in a larger pool of purchasers, and therefore reduce any purchaser risks associated with the divestiture.

3.15 While not ruling out a sale to a single purchaser, the sale of the divestiture sites to different purchasers would also not introduce material execution risk, given that each sales process would only involve the sale of one single branch, and therefore would be very straightforward to execute. Given this, Lindab should be afforded the flexibility to decide whether the divestiture assets should be sold to one or two purchasers.

Transfer of branch staff and additional staff requirements

3.16 The Parties are of the view that any divestiture package should ensure that sufficient personnel transfer in order to enable the effective operation of the local branch. The Parties aim [redacted].

3.17 The Parties agree with the CMA's provisional view that divestment of staff with national responsibilities at HAS-Vent and/or Lindab would not be required, for the reasons which are addressed by the CMA in the Remedies Notice[14]. Moreover, the Parties consider that staff with regional responsibilities should also not be included in any divestiture package given that such staff are not essential for the local branch operations, with the CMA acknowledging in the Remedies Notice that the day-to-day running of the branches and the majority of commercial decisions are carried out by the local branch managers[15].

Back-office functions and transitional services

3.18 The Parties agree with the CMA's provisional view that back-office functions are unlikely to be required by a purchaser and could, in any event, be quickly and easily established by the purchaser. Such functions should therefore not form part of any divestiture package. However, [redacted]

[14] Para 28(e), Remedies Notice.
[15] Para 28(e), Remedies Notice.

[redacted].

3.19 Moreover, the Parties would be prepared to agree, in principle, to a customary transitional services agreement [redacted] to the extent that such services were required by the purchaser. The scope and duration of the transitional services would necessarily depend on the requirements of the purchaser.

3.20 In addition, and subject to agreeing reasonable terms and conditions with the purchaser, the Parties would [redacted].

4. IDENTITY OF SUITABLE PURCHASERS

4.1 The CMA has sought views on whether there are any specific factors to which the CMA should pay particular regard in assessing purchaser suitability in this case. These specific factors have been addressed below by the Parties.

Lindab anticipates that there will be a wide range of suitable purchasers who will be interested in the divestiture assets

4.1 Lindab expects that the divestiture assets will attract interest from a wide range of suitable purchasers. [redacted].

4.2 In terms of purchaser suitability, as the CMA has recognised in the PFs (and as noted above), there are a number of different types of credible competitive constraints in this market, ranging from single site to multi-site suppliers[16], as well as manufacturers and pure distributors[17]. Given all of these types of businesses have been recognised by the CMA as comprising credible competitive constraints, there is no reason that they should not be taken into account by the CMA as suitable purchasers.

[16] Para 8.57, PFs.

[17] Para 5.25, PFs.

4.3 In addition to this, the relatively limited nature of the proposed divestment package (i.e. two local branches), will help to ensure that a wide range of third parties may be interested in the package, given that the assets will be relatively affordable, even to smaller scale operators.

There is no need for the purchaser to have experience of supplying circular ducts and fittings

4.4 The Parties do not consider that a purchaser needs to be active in the supply of circular ducts and fittings in order to be considered a suitable candidate for the divestiture assets. The CMA itself identifies multiple examples in the PFs of third parties newly entering into the circular ducts and fittings market from other adjacent markets[18]. In any event, the Parties expect that interested purchasers would likely already have a background in the supply of circular ducts and fittings and/or ventilation products more broadly.

4.5 As regards whether there are any particular purchasers that might fail to meet the CMA's purchaser suitability criteria, this will need to be assessed by the CMA on a purchaser-by-purchaser basis. That being said, the Parties do not consider there are any particular categories of purchasers which should be discounted by the CMA, particularly bearing in mind that the CMA has provisionally found that a wide range of competitors (including single-site operators, multi-site operators, as well as manufacturers and pure distributors) are all credible competitive constraints[19] and therefore, by extension, should be considered suitable purchasers by the CMA.

There is no risk of the divestiture assets being sold to a weak or otherwise inappropriate purchaser

4.6 Lindab does not have an incentive to sell the divestment assets to a weak or otherwise inappropriate purchaser. The divestment assets only comprise two branches out of a total of 31 Lindab[20] and HAS-Vent branches in England and Wales, and therefore represent only a small minority of the overall combined business. Given this, Lindab's priority is to complete the sales process as quickly as possible, rather than seek to sell the assets to a weak purchaser. Furthermore, even if the CMA did have concerns that Lindab were to divest to such a purchaser, the purchaser must nonetheless satisfy the CMA's suitability criteria, which is aimed

[18] Para 8.57, PFs.
[19] See, for example, paras 5.25 and 8.57, PFs.
[20] Including the two Ductmann sites.

at ensuring that purchasers have the necessary capabilities to run the branches effectively and competitively.

5. EFFECTIVE DIVESTITURE PROCESS

5.1 The CMA has sought views from interested parties on topics relating to the divestiture process. The Parties have provided their responses below to these topics.

The CMA should not depart from its usual divestiture timescales

5.2 The Parties consider that the CMA should not impose a prescribed timetable for the divestiture process. The imposition of an unnecessarily expedited timeframe by the CMA for conclusion of the divestiture process may only serve to reduce the number of potential suitable purchasers.

5.3 There is also no reason that the Parties will not be able to complete the sales process in an expeditious manner. Not only does Lindab have extensive M&A experience, but the divestment assets are relatively low value and non-complex in nature. [redacted].

5.4 The Parties are also incentivised to complete the divestiture process as soon as possible. Doing so will allow Lindab to proceed with the integration of the HAS-Vent business and realise the synergies promised by the merger, even taking into account the possibility of the current Initial Enforcement Order ("**IEO**") being replaced with a more proportionate arrangement and/or substantially revised IEO, which specifically ringfences the divestiture assets.

5.5 Even if the divestiture assets were to be sold to multiple purchasers, this would not necessarily extend the overall divestiture timescale, given that each sales process would involve the sale of one single branch to each purchaser, which would be very straightforward to execute.

5.6 In addition, as there is already a Monitoring Trustee in place, the risk of the divestment assets being run down or neglected during the course of the sales process is negligible.

There are no additional procedural safeguards required

5.7 For the abovementioned reasons, the Parties do not consider there are any particular features of this case which would warrant the imposition of any additional safeguards. In any event, the presence of the Monitoring Trustee should assuage any concerns which the CMA may have in relation to divestment risks.

5.8 As regards the role of the Monitoring Trustee itself, the Parties do not consider there are any features of this case which require its functions to be amended in light of any required divestitures.

<u>There is no need for the CMA to appoint a divestiture trustee</u>

5.9 It is noted in the Remedies Guidance that divestiture trustees will only be appointed at the outset of the divestiture process in *"unusual cases"*[21]. For the reasons addressed earlier in this response, there are no unusual features which would indicate that Lindab cannot procure the sale of the divestiture assets to a suitable purchaser within the initial divestiture period. There is therefore no need for a divestiture trustee to be appointed.

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[21] Para 5.44, Remedies Guidance.