

Anticipated combination of Pure Gym Limited and The Gym Limited

The CMA's decision on reference under section 33(1) given on 26 June 2014. Full text of the decision published on 11 September 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. The parties notified the anticipated merger to the Office of Fair Trading (OFT) on 18 February 2014. The merger was investigated under the OFT's administrative timetable¹ by the Competition and Markets Authority (CMA) from 1 April.²
2. Pure Gym Limited (Pure Gym) and The Gym Limited (The Gym) (together, the Parties) both provide low cost or 'budget' gyms.
3. The CMA considered the appropriate product frame of reference. Gyms are differentiated in a number of dimensions, including price and contract terms, quality, scope of services and facilities, as well as whether they are part of a larger network. Whilst suggesting that the strongest constraint was felt from other budget gyms, the evidence was mixed on the extent of the constraint from other types of gyms (for example, mid-market gyms, small gyms, or specialist facilities). For the purposes of its investigation the CMA did not find it necessary to reach a conclusion on the exact boundaries of the relevant product market, other than this being no wider than gyms.
4. As regards geographic scope, the CMA assessed the merger on both a national and local basis. For its local analysis outside London the CMA focused on the area surrounding the gym at both a 40 minute walk time and a 20 minute

¹ Regarding the applicability of the OFT's administrative timetable, please refer to paragraphs 6(1) to 6(3) of the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014.

² The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the OFT's functions were transferred to the CMA on 1 April 2014.

drive time. In London, the CMA used 20 and 40 minute walk times with an additional 20 minute drive time sensitivity check.

5. The CMA first examined the loss of current competition on a national basis, and the effect this may have on the supply side of the market and specifically on nationally determined parameters of competition. It found that at least some significant parameters of competition between the parties may be determined nationally. Each of the parties is significantly larger than any of the other budget gym chains and after the merger the next largest budget gym operator will be less than 20% of the size of the merged firm measured by the number of gyms. The merger will result in a reduction in the number of national low-cost gym operators with more than 20 sites from four to three.
6. The CMA therefore found that it may be the case that the merger may be expected to result in a substantial lessening of competition (SLC) at a national (network) level, which may result in a worsening of some parameters of competition that are determined nationally.
7. Second, the CMA examined the loss of potential competition between the parties and the effect this may have on future expansion. The CMA did so on the basis that an assessment of the merger's impact on competition in the local areas where the parties currently overlap, does not fully capture the loss of competition that the merger may result in given the significant expansion plans of both parties. The parties are the two leading budget gym players and are each significantly larger than the current third and fourth largest players. Their expansion plans are also materially more significant than those of other budget gym players, and mean that they will open a large number of new gyms in the near future.
8. The CMA found that there is a realistic prospect of an SLC in respect of four local areas where one party operates and the other party has firm plans to enter in the short-term (Sheffield, Manchester East, Wolverhampton and Cardiff). In light of the closeness of competition between the parties at a national and local level, the past conduct on entry, the dynamic character of competition in the budget gyms sector and the parties' significant expansion plans, the CMA considers (but has not concluded) that the test may also be met in respect of a number of further areas set out in the parties' expansion plans, which it is not possible to exhaustively identify in the context of a phase 1 investigation.
9. Third, the CMA examined the loss of current competition in overlapping local areas. It found, that, of the 17 areas where the parties are current competitors, there is a realistic prospect of an SLC in respect of ten local areas. These areas

are: Bournemouth, Reading, Edinburgh, Leeds, Glasgow, Milton Keynes, Southampton, Bristol, Luton and Dunstable and London South.

10. The CMA examined if any countervailing factors exist which would prevent the realistic prospect of an SLC. It found that although significant entry and expansion has taken place in the recent past, and continues to take place, for gyms generally as well as for budget gyms, the CMA considers that some barriers to entry and expansion exist, in particular for gym sites that are capable of forming a significant constraint on the parties in terms of size and equipment and in terms of location quality. The CMA further found that, although some expansion will take place among competing gyms, the expansion taking place in the budget gym sector is being driven, to a significant extent, by the parties. Evidence also suggests that significant repositioning for gym chains is both difficult and unlikely as a short-term competitive reaction.
11. The CMA therefore found that it does not have sufficient evidence at this stage that entry, expansion and/or repositioning will be sufficiently timely, likely and sufficient to prevent a realistic prospect of an SLC resulting from the merger.
12. The parties offered undertakings in lieu. After examination of the proposed remedies, the CMA considers that they are not capable of clearly addressing the competition concerns identified as arising from the merger. Accordingly, the CMA has decided not to exercise its discretion under section 73(2) of the Act to consider whether to accept undertakings in lieu of a reference.
13. This merger will therefore **be referred** under section 33(1) of the Act.

Parties

14. Pure Gym is owned by CCMP Capital (CCMP), a global private equity firm. Pure Gym operates over 50 gyms across the UK and at the time of notification had around [REDACTED]. In the year ended 28 February 2013, Pure Gym generated a UK turnover of £ [REDACTED].
15. The Gym is owned by Phoenix Equity Partners (Phoenix), a private equity firm. The Gym operates over 35 gyms across the UK and at the time of notification had just under [REDACTED] members. The Gym's 2012 UK turnover was [REDACTED].

Transaction

16. The parties' businesses will be combined into an (as yet unnamed) joint venture (JV) between CCMP and Phoenix. The JV will acquire all the outstanding issued shares of The Gym and Pure Gym. CCMP and Phoenix will together hold the majority of the JV's ordinary share capital.

17. The parties formally notified the OFT by providing a satisfactory submission on 18 February 2014. The administrative timetable was suspended during the course of the investigation. The merger was investigated under the OFT's administrative timetable by the CMA from 1 April.³ The administrative timetable expired on 18 June 2014.

Jurisdiction

18. The CMA considers that as a result of the proposed transaction Pure Gym and The Gym will cease to be distinct. The parties overlap in the supply of budget gyms in Great Britain and will have a combined share of supply of around 46%,⁴ as well as a combined share of supply in excess of 25% in the supply of budget gyms in a number of local areas that individually form a substantial part of the UK.⁵ The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met.
19. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Background and rationale for the transaction

20. The fitness industry in the UK today is large and growing. It was worth £4.2 billion in 2012⁶ and, despite difficult economic and trading conditions during the economic downturn, has continued to grow. According to the 2012 report published by the Leisure Database Company (LDC), there are around 6,000 private fitness clubs and public sports centres with gym facilities across the UK.
21. Within this large market, both public and private gym operators vary in size and business models, ranging from large national chains operating multiple sites to smaller independent players with one or a small number of locations. In recent years, operators providing a budget or low-cost offering have seen substantial growth. This has impacted the existing mid-market operators, who have often struggled to respond to the competition posed by this new segment.⁷ Low-cost

³ Paragraphs 6(1) to 6(3) of the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014.

⁴ This has been corroborated by third parties and independent market reports. See, for example, Mintel report *Health and Fitness Clubs – UK*, June 2013, page 39 (giving the parties 46% of the number of budget gyms operated by leading UK budget gym operators in June 2013) (Annex 9 of the parties' Informal Submission).

⁵ This applies in any case in Bournemouth and Reading. According to the 2011 census these boroughs have a population of more than 184,000 and 155,000 respectively and the CMA therefore considers that they each constitute a substantial part of the UK for the purposes of the share of supply test (see also [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2, January 2014\)](#), paragraphs 4.61-62).

⁶ Mintel GMN Snapshot 2013.

⁷ See for example [British gym sector returns to fitness](#), *Financial Times*, October 4 2013

operators have been characterised by their heavy technology and web use, a gym only proposition, minimal staffing, scope to operate 24 hours a day and a low price.⁸

22. FitSpace was the first low-cost operator, opening in 2006, followed by The Gym in 2008 and Pure Gym in 2009. As at the end of 2009, there were around 19 budget gyms open and trading. As of September 2012, there were around 129 budget gyms open. As of June 2014, The Gym and Pure Gym between them have over 100 existing and planned clubs, and are the largest operators in the segment, with ongoing plans to continue their expansion. Xercise4less has 19 gyms open and 5 in pre-opening, with plans to open more. Fit4less (energie fitness) operates a franchise model in 32 gyms.
23. While Pure Gym and The Gym, and to a lesser extent Xercise4less and Fit4less, have managed to grow quickly, other operators' growth has been at a slower pace. Fitspace has been in the market since 2006 and has nine gyms. There is a relatively long tail of other budget gym operators with fewer than 15 gyms, including Fitness4less, Active4less, easygym, Gym4all, truGym and Klick Fitness, with only limited plans for growth relative to the parties. There have also been some failed attempts at entry, such as Nuyuu Fitness which previously operated five clubs and went into liquidation in November 2010⁹.
24. Over the last six years, Pure Gym and The Gym have successfully expanded and pulled away from the other operators to become the leading budget gym operators in the sector, with publicly stated plans to open another [90 to 120] gyms across the United Kingdom between them over the course of the next three years.¹⁰ They both also have substantial financial backing and increasing covenant strength, which only increases the scope for their further growth.
25. The parties submit that the rationale for the merger is to allow them to build a credible national alternative to the established gym chains, attract an increased number of gym members to their new sites more quickly, and retain more members at their current sites. They stated that the merged firm would offer both individual and multi-site memberships and provide UK gym users with access to a wide national gym network, providing users with greater choice in terms of location and membership options than is currently available. The parties also anticipate that the combination of their respective UK gym operations will result in purchasing efficiencies (eg, in relation to equipment), which will allow them to reduce costs. Finally, the parties anticipate instituting a

⁸ 2012 *UK Low Cost Gym Sector Report: A Strategic Investigation into a Disruptive New Segment*, Oxygen Consulting UK

⁹ See for example [Bannatyne gym venture sees off Dragons' Den rival's club](#), November 2010

¹⁰ See footnote 35

scheme whereby members would be offered discounts at national fitness product and outdoor activities vendors.

Frame of reference

26. The parties overlap in the provision of gyms. Specifically, both parties provide gyms that are significantly cheaper than the majority of other existing gym operator chains,¹¹ have limited staffing, are accessible 24 hours a day and seven days a week, and offer membership on a non-contractual basis.¹² The CMA, and its predecessor the OFT, has not previously considered a merger involving a provider of budget gyms but has considered other mergers in the health and fitness sector.¹³ The European Commission has also considered mergers in the health and fitness sector.¹⁴
27. The CMA considers an analysis of the product and geographic scopes serves only to provide a framework in which the competitive effects of the merger can be assessed. The boundaries of any market do not determine the outcome of the CMA's analysis of the competitive effects of a merger in any mechanistic way.¹⁵

Product scope

28. The CMA considers market definition to begin with the overlapping products of the parties in the narrowest plausible candidate product market and then assesses if this should be widened on the basis of demand-side substitution.¹⁶
29. The parties explained to the CMA that each of the parties has a very similar business model and that they seek to differentiate themselves from other competitors through the following elements:¹⁷

¹¹ The parties told the OFT they aim for their opening price point on entry (although this increases subsequently as new members join) to be [£]. The parties' gym prices generally vary between £12 and £20 (outside London).

¹² Customers can join the parties' gyms on a month-by-month basis rather than having to sign up for a minimum term of, for example, a year.

¹³ For example, OFT decisions in *Anticipated acquisition by Virgin Active Holdings Limited of Esporta Racquets and Non-Racquets Holdings*, OFT, 2011 (*Virgin/Esporta*) and *Anticipated acquisition by Virgin Active Group Limited of Holmes Place Health Clubs Limited*, OFT, 2006 (*Virgin Active/Holmes Place*).

¹⁴ European Commission decision in *Bridgepoint/Capital/Permira/Holmes Place* (2003).

¹⁵ See the [Merger Assessment Guidelines](#) (joint OFT and Competition Commission publication of September 2010, adopted by the CMA as set out in *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D), paragraph 5.2.2.

¹⁶ This approach is in line with the CMA's [Merger Assessment Guidelines](#), paragraphs 5.26ff.

¹⁷ Essentially these are the factors used to categorise a 'budget gym' above, in addition to multiple sites.

- a. price
 - b. absence of long-term contractual commitments
 - c. extended opening hours (24 hours a day, seven days a week)
 - d. large venues (typically between 10,000 to 20,000 square feet), a large number of pieces of training equipment (typically over 150 pieces of equipment and often over 200),¹⁸ and the provision of classes
 - e. multiple sites.¹⁹
30. Accordingly the CMA considers that the narrowest plausible candidate market is that of multi-site budget gyms.

Other types of gyms

31. Gyms are differentiated in a number of dimensions, including price and contract terms, quality, scope of services and facilities, as well as whether they are part of a larger network. The CMA has broadly grouped these into:²⁰
- **Budget gyms:** differentiate themselves for offering access to gym facilities for a lower price, generally below (sometimes well below) £30. To contain costs, these gyms generally do not offer access to ‘wet facilities’ (eg, saunas, steam room, pools), operate large venues (generally above 10,000 square feet, although there are exceptions) and can generally be joined online. Also, they generally transparently advertise their price online and offer monthly rolling contracts as an option.
 - **Mid-range gyms:** are more expensive than budget gyms but may offer access to better facilities (eg, wet facilities or a higher quality environment), although this is not always the case (eg, in some cases they do not offer wet facilities and their equipment is older). Mid-range gyms can vary considerably in size, from very small facilities to very large ones. Some mid-range gyms offer monthly rolling contracts and advertise their prices transparently online; others, however, mostly only offer longer-term contracts (eg, minimum six months or one year) and sometimes require customers to access the gym to obtain a quote.

¹⁸ [Pure Gym](#) and [The Gym](#) advertise on their website that their gyms have over 220 and 170 pieces of equipment respectively.

¹⁹ The parties offer the option of purchasing access to their entire network of gyms for a price equal to the price of the most expensive gym in their network (ie circa £21 for The Gym and circa £26 for Pure Gym).

²⁰ These terms are widely used in the industry and their use has been supported by internal business documents provided by the parties, third party market testing, and independent market reports. See, for example, Mintel, *Health and Fitness Clubs – UK*, June 2013.

- **Premium gyms:** are considerably more expensive than budget gyms but offer access to better facilities and ambience, and often include wet facilities in their offering. Premium gyms can vary considerably in size and generally offer a multiplicity of contracts whose prices are generally not advertised online.
 - **Public gyms:** are owned and/or operated by, or on behalf of a local authority. The quality of the facilities offered by public gyms can vary considerably. In many instances, public gyms also offer access to wet facilities, including a pool. Their pricing policy also varies considerably. Some business models in the operation of public gyms are akin to, for example, a budget or mid-range gym and so gyms in this category overlap with the categories above.
 - **Specialised gyms:** some operators target particular customers. For example, some operators offer access to their facilities predominantly for or only to women or to students from a certain university; other operators particularly focus on heavy weights and have a limited offering of other facilities.
32. Several operators also price discriminate across customer groups, for example by charging lower prices for student memberships or couple or family memberships.
 33. The parties submitted that they are constrained in their pricing by all these differentiated types of gym. They submitted that the competitive constraint is shown, for example, by exit surveys demonstrating that some members leave to go to gyms which provide wet facilities (pool and/or sauna), and that convenience is the primary factor driving consumer choice such that product differentiation falls second to location.
 34. Third party responses revealed mixed views on the degree of competitive constraint exercised by other types of gyms, with answers varying across different locations and according to the relative prices of budget and mid-range gyms in the local area. For example, while some competitors suggested that mid-range gyms would benefit from price rises at budget gyms if the budget gyms' prices were already relatively close to those of the mid-range, most that responded to the CMA submitted that prices at budget gyms were typically substantially lower and a price rise would not therefore result in substantial switching away from budget gyms to mid-range. Third parties did not suggest that budget gym members would move to premium gyms.
 35. The CMA is mindful that in this case, much of the evidence put forward by the parties and the analysis undertaken by the CMA as part of its investigation

relates to the competitive constraint from specific identified gym alternatives in specific local areas. Given the highly differentiated nature of gyms the CMA considers that the constraint that any gym exerts on another gym, including the parties', will depend on the specific offer of individual gyms, irrespective of the exact product scope.

36. As a result, the CMA does not consider it necessary to reach a conclusion on the exact boundaries of the relevant product market and, for the purposes of this decision, considers the constraint from these alternatives into account as part of the competitive assessment. Such an inclusive approach allows the CMA to consider all of the competitive constraints on the parties and the relative strength of these constraints in each of the local areas in which they overlap.

Non-gym activities

37. The parties also submitted that gym members have the option not to use a gym at all and that this is particularly important as a constraint on the parties, since around [X] of their members are new to gym membership and a further [X] are former members (re-joiners). The parties submitted that increasing the price of budget gyms risks driving these consumers not to join (or re-join) and instead to choose alternatives outside the gym segment (the parties point to non-gym activities such as running, cycling and other sports and leisure activities).
38. While the CMA acknowledges that there may be constraints on gyms from other forms of sports and leisure activities, the CMA has insufficient evidence to support this 'non-gym' option as a material constraint on gyms or to suggest that other alternative options for gym customers are sufficient to prevent gyms from raising prices profitably.²¹ Only one third party that responded to the market investigation indicated that some customers of gyms (budget gyms in particular) might switch to non-gym activities in the event of a small price rise.
39. The CMA therefore considers the product scope to be no wider than gyms, and has taken account of the competitive constraints from other gyms where appropriate in the competitive assessment below. The factors the CMA has considered in this assessment are also addressed below.

²¹ In determining the relevant market, the CMA assesses the extent to which a hypothetical monopolist could profitably raise the price of products or services in the candidate market (here, gyms) by a small but significant amount over a non-transitory period of time. If customers would respond to the price rise by switching to other products or services (non-gym sport or other activities) to such an extent that the price rise would be unprofitable, the candidate market should be widened to include these other activities. See [Merger Assessment Guidelines](#), paragraph 5.2.9ff.

Geographic scope

40. The parties submitted that there is both a national and a local aspect to competition within the gyms sector. The merger would result in a reduction of large national gym operators and a reduction of gym operators in a number of local areas within the UK. The CMA has therefore considered the impact of the merger at both the national and local levels.

National competition

41. At the national level, the parties submitted that there are a number of operators that provide gym facilities on a national basis with national brands. Although multi-club operators only account for a relatively small proportion of total clubs, they account for a considerably larger share of members and revenues, according to the parties.
42. The parties submitted that, although competition is primarily local, it also occurs at a national level. The parties' internal business documents²² also identify a number of parameters of the parties' commercial offering that are not flexed across local areas to adapt to the local conditions of demand and competition. These parameters include:
- a. **Pricing:** both of the parties offer a 'price for life' policy (whereby existing customers do not face a price rise as long as they remain members), and a price 'freeze' policy (whereby membership can be retained while not using the facilities). While subject to limited flex at local level in terms of the monthly price that is actually charged, both parties apply a uniform and set pricing formula across their sites that dictates the opening price at which the parties enter and the price schedule for additional members. For example, The Gym applies the following nationally determined, network-wide 'pricing formula':
- monthly rate of £[redacted] (£[redacted] inside the M25) for the first [redacted] members pre-opening, [redacted] joining fee;
 - monthly rate of £[redacted] (£[redacted]) for additional members pre-opening, £[redacted] joining fee;
 - monthly rate of £[redacted] (£[redacted]) following opening, £[redacted] joining fee.²³

²² See, for example [redacted] November 2013.

²³ The parties noted that Pure Gym has a similarly nationally determined uniform pricing formula and structure across its network.

- b. **Aspects of their service offering:** both of the parties offer a number of policies and services across all of their sites, including a no-contract proposition and 24/7 opening.
 - c. **Facilities:** the parties operate large gyms fitting a number of pieces of equipment to attract large footfall and offer free classes. The parties have specific size requirements for the sites they consider, which do not vary nationwide.
 - d. **Multi-site network and site density:** as described further from paragraph 72, entry and site selection are determined at a national level.
 - e. **Branding (and multi-site presence):** the parties determine overall brand strategy and positioning at national level. The importance of national brand awareness and the impact of multiple sites was emphasised by the parties in their submissions to the CMA.²⁴ Other internal documents provided by the parties also show that they consider brand awareness and site density to be important factors in relation to national competition.²⁵
43. There was mixed evidence from the CMA's market investigation on the extent to which parameters were determined locally or nationally. Some third parties in this case have indicated that these parameters can vary locally and provided examples of other operators who do vary some of these parameters locally. However, multiple third party operators stated that the following were wholly or partly determined nationally by multi-site operators: branding and marketing, multi-site access and site density, pricing structure (including price bands, maximum discounts and reasons for awarding discounts), service levels, size of facility, and range of equipment. The CMA also notes that both parties advertise many of these aspects of their offering on their home page, which covers all of their sites.²⁶
44. The evidence available to the CMA therefore indicates that several important parameters of competition may be subject to national (or network) competition. In particular, even if national decisions are driven to a degree by local conditions, they may also be driven by a national (or network) response to the actions of competitors.²⁷ The CMA therefore believes it appropriate to assess

²⁴ [REDACTED] November 2013, page 9.

²⁵ See, for example [REDACTED] dated 17 December 2013.

²⁶ See [Pure Gym](#) and [The Gym Group](#).

²⁷ The CMA's [Commentary on retail mergers](#) notes that local competition may take place where commercial strategies are set at a national level. This does not, however, preclude the existence of national competition; competition can, and often does, take place at national and local level ([Commentary on retail mergers](#), (joint OFT and Competition Commission publication of March 2011, OFT1305/CC2 com2, adopted by the CMA as set out in [Mergers: Guidance on the CMA's jurisdiction and procedure](#), Annex D), paragraph 3.1).

the current transaction using a national frame of reference to determine whether it may result in a loss of competition at national level.

Local competition

45. The parties submitted that, while there is national competition, competition between gym operators occurs primarily at the local level, with consumers choosing from the range of gyms that are available close to their home and/or work.²⁸ The parties submitted that they flex their pricing across different areas based on a number of parameters, including local competitive conditions.
46. When assessing mergers involving multiple local areas, catchment areas within which most of an operator's customers are located can provide a pragmatic starting point for delineating the scope of local competition and identifying competitive overlaps.²⁹ The CMA has therefore considered the extent of the appropriate local catchment areas in this case.
47. The catchment area will depend on many factors, including drive-times and public transport availability. In this case the CMA approximated catchment areas using 'isochrones' to identify overlaps between the parties, to filter out non-problematic sites and as a starting point for the competitive assessment.
48. The OFT has in previous cases generally defined this catchment area to include the area over which the large majority of customers (generally 80%) are located (often their place of residence).³⁰
49. However, the CMA notes that in this case, as stated by the parties, customers will not always visit the gym local to their home address, but may choose to visit a gym near to where they work. Therefore, an average 80% catchment area based on customers' home addresses may be too wide, given that some of the gym's customers may not choose between gyms near their homes but between those near their workplace (for example, the parties' feasibility reports for new sites assess the number of major employers close to the proposed site). Further, the parties' feasibility reports assess the extent of competition within a far narrower scope than the area defined by the 80% catchment rule. Third parties suggested members would travel (whether walking or driving) around 10 minutes to access a gym. Hence, the catchment area based on customers' home addresses may overestimate the true catchment area for those sites where many customers visit a gym from work and the distances that customers

²⁸ According to the parties' Informal Submission, paragraph 7.12: 'The Parties submit that there is both a national and a local aspect to competition within the gyms market. At the national level, there are a number of operators that provide gym facilities on a national basis with national brands.'

²⁹ See [Merger Assessment Guidelines](#), paragraph 5.2.25 and [Commentary on retail mergers](#), paragraph 2.14.

³⁰ See [OFT/CC Commentary on Retail Mergers](#), paragraph 2.14.

appear to travel to the gym from their home address may overestimate the area within which a gym competes.

50. In previous cases involving the health and fitness sector,³¹ the OFT and the EC approximated catchment areas based on isochrones of multiple sizes, namely 15 and 20 minute walking times and 15 and 20 minute drive times.
51. In this case, the parties have provided catchment areas around each of the parties' sites based on where 80% of their members have their home address, which is, on average, between [X] minutes (Pure Gym) and [X] minutes (The Gym) drive-time from the gym sites. The parties submitted that the data therefore indicates the greatest weight should be given to a 15 to 20 minute drive time and, in particular, to a 15 minute drive-time isochrone.³²
52. The parties also submitted that it is appropriate to match the catchment area considered for the competitive analysis with data on whether the majority of members at any particular site walk or drive to the site. They stated that, specifically, gyms where the majority of members drive to the gym (drive sites) should be analysed on a 15 minute drive-time basis given the 80% catchment area analysis based on home postcodes. They further stated that, while this approach would also apply to all other gyms (non-drive sites) if the 80% catchment area based on home postcodes is considered, a conservative approach for such gyms suggests that it may be appropriate to analyse them on a 30 minute walk-time basis given the 80% catchment area analysis based on work postcodes.
53. The parties further submitted that in London, a separate, larger one hour walk-time catchment area should apply based on this catchment area analysis due to public transport usage. The parties noted that while this approach captures commuter behaviour, it understates competition because members can also use a gym near their home or at any point on their way to or from work.³³

³¹ See footnotes 13 and 14 above.

³² The parties also calculated catchment areas based on work postcodes. However, the CMA considers that the methodology adopted by the parties in these calculations may not accurately estimate the catchment area. In particular, the parties have excluded postcodes where the member's work address was farther from the gym than the member's home address. The CMA considers it would have been more probative to have calculated a reasonably conservative 80% catchment area using the smaller of the distances between the gym and a member's home address and work address. The approach adopted by the parties, instead, discards a member's home and work address whenever the home address is closer to the gym than the work address. The CMA was unable to replicate the parties' analysis, given that the underlying data was not provided to it.

³³ The parties' work postcode catchment areas suggest a wider catchment area in London (one hour's walking) than outside London. The parties referred to the widespread use of public transport as the underlying reason for this. However, in addition to the methodological issues identified above, the CMA notes that such a wide catchment area is at odds with the parties' own approach in their feasibility reports, where the parties generally assess competition in London within a radial that in fact is only around half the size of the radials used outside London. The CMA therefore considers, on a cautious basis, that it is not appropriate to use the wider (one hour walk time) catchment area in London that is suggested by the parties.

54. The parties' submissions in this respect, based on average catchment areas, cover significant variation between catchment areas across local areas. While the means of transport used by customers to travel to their gym and the location of gyms (for example, on the edge of town or in the city centre) may give an indication of the proportion of customers using the gym close to their workplace and their home address, the CMA considers that the evidence is too mixed to support the use of the 80% catchment area alone as the geographic frame of reference in this case for the local overlap assessment. The parties' internal feasibility reports typically assess competitors within a much narrower radius (typically less than [30] outside London and less than [15] in London) than the 80% catchment area would suggest, implying that the parties see the key constraints on them as those that are geographically closest. The majority of third parties also said members would travel (whether walking or driving) no more than 10 minutes to the gym. The parties themselves, supported by third parties, have emphasised the importance of location and convenience as one of the most, if not the single most, critical factors in determining the competitive strength of any gym operator.

Conclusion on local competition

55. For the reasons set out above, and taking a cautious approach, to identify the areas where the parties' gyms overlap the CMA has considered a primary isochrone of 20 minutes' drive time. To take account of the competitors that they face in these overlap areas, the CMA has assessed local areas within a 40 minute walk time (equivalent to between four and 10 minutes' drive, depending on the area). As this is wider than the 30 minute walk time identified by the parties, this allowed the CMA to assess the strength of the competitive constraint of a wider set of gyms. The CMA has also considered competitors within a wider 20 minute drive time to ensure no additional competitive constraints may be missed from its assessment. The 20 minute drive time represents a proxy for the 80% catchment areas based on home postcodes.³⁴ This is an inclusive approach to ensure the key competitive constraints on the parties are captured as part of the assessment.
56. In London the CMA has considered a narrower geographic scope than outside London and has assessed local areas within 20 minutes walking from each of the parties' sites. However, by way of sensitivity check, the CMA has also considered competitors within 40 minutes walking, and applied an additional check for competitors with an offering closest to the parties' offering within a 20 minute drive time, as for out-of-London locations.

³⁴ Across the majority of local areas, a 20 minute drive-time isochrone is actually larger than the 80% catchment area based on home addresses ([30] minutes on average).

Conclusion on the frame of reference

57. For the reasons set out above, the CMA has used the following frame of reference as a starting point for the competitive assessment of the merger:

- the provision of gyms
- at both a national level and a local level. Outside London the CMA has focused on the area surrounding the gym at both a 40 minute walk time and a 20 minute drive time. In London, the CMA has used 20 and 40 minute walk times with an additional 20 minute drive time sensitivity check.

Competitive assessment

58. Below the CMA has examined the extent to which the merger may give rise to three broad theories of harm:

- (i) the loss of current competition between two nationally present growing competing budget gym chains and the effect this may have on nationally determined parameters of competition;
- (ii) the loss of potential competition in overlapping local areas, and the effect this may have on expansion;
- (iii) the loss of current competition in overlapping local areas.

National issues

Loss of current national competition

59. The CMA has examined the extent to which the merger may give rise to a loss of competition at a national level sufficient to raise competition concerns. This may be the case if parameters of competition between the parties are determined, at least to a material extent, at a national (or network-wide) level. In that case the merger may result in a loss of national (or network-on-network) competition and adversely affect those parameters of competition that are determined nationally, even where competition between the parties' gyms is also determined by local factors³⁵.

60. In local retail mergers, the CMA generally considers that competition occurs at a local level. As outlined above (see the geographic scope of the frame of

³⁵ The CMA's [Commentary on retail mergers](#) notes that local competition may take place where commercial strategies are set at a national level. This does not, however, preclude the existence of national competition;

reference), the evidence on features of the market indicate that several important parameters of competition may be influenced by or subject to national (or network) competition. This includes elements of pricing (eg 'price for life' policy, the standard entry price and the broad pricing structures which the parties apply), service offering (eg no-contract offering, 24/7 opening), decisions on where to locate new sites, and facilities (eg range and type of equipment). None of these elements vary in response to differing conditions of demand or competition in a single or in a few local areas. Instead, these parameters are determined at network level or national level.³⁶ If competition over these parameters were exclusively local, the CMA may expect to observe variation in response to local competitive conditions (absent compelling efficiency arguments). Third parties in this case have indicated that these parameters can vary locally and provided examples of other operators who do vary some of these parameters locally. Mindful of its role in a phase 1 merger review, the CMA considers that the fact these parameters have not changed or change infrequently does not preclude the prospect that those parameters may change, and are constrained by pre-merger competition.

61. The budget gyms segment is a specialised part of the overall gyms market and within this segment, the evidence indicates that the parties are close competitors. They are the largest national budget gym operators, with over 100 sites combined. There are only two other budget gym operators with over 20 sites nationally, with a long tail of operators with less than 20 sites. The evidence received by the CMA suggests that the parties face limited constraint from mid-range and premium gyms due to differences in price and facilities and customer preferences³⁷. The CMA therefore considers that it is possible that a decision by a large, nationally active budget gym operator to change some network-wide parameters of competition may influence other gym operators' decisions on these parameters. For example, in the absence of one of the parties, the other (or other national operators) may not have the same incentive to maintain policies such as a uniform network-wide price-for-life policy or 24/7 opening.
62. The CMA also notes that national competition can arise through the decision of one gym operator to enter against the other, and can also drive the location of sites in any local area in which one or both of the Parties enters.

competition can, and often does, take place at national and local level (*Commentary on retail mergers*, (joint OFT and Competition Commission publication of March 2011, OFT1305/CC2 com2, adopted by the CMA as set out in [Mergers: Guidance on the CMA's jurisdiction and procedure](#), Annex D), paragraph 3.1).

³⁶ The CMA considers that these parameters are set at network level. However, given that these parameters would be likely to apply to any new opened site and given the very significant expansion plans of each party, the CMA considers that these parameters may also be seen as set nationally. The CMA therefore uses the term 'national' and 'network' almost interchangeably in this context.

³⁷ See further in this regard paragraphs 33 to 36 and 96 to 108.

63. Accordingly, the CMA considers that national competition may form part of the competitive constraint on the parameters noted above at paragraph 60 and that the merger of two large national low-cost operators may therefore result in a deterioration of some or all of them. The CMA is mindful that there are currently only four national low-cost operators with more than 20 sites (the parties, Xercise4less and Fit4less); the merger will therefore result in a reduction in these large national low-cost operators from four to three, with a tail of smaller operators who all currently have fewer than 20 sites.

Impact of the merger on nationally determined parameters of competition

64. To determine whether there is a realistic prospect of a substantial lessening of national competition, the CMA examined, first, the size of any loss of competition between the parties by examining the extent of the constraint posed by the parties on each other where they overlap and the number of areas where they overlap. The CMA then examined the extent of any residual national constraints by considering closeness of competition, the parties' expansion plans and the extent of overlaps with other gym operators.

Closeness of competition and extent of network overlap

65. The parties submitted that the main feature of competition is local and that, provided there is no substantial lessening of competition at a local level, no national concerns should arise³⁸. The CMA has found a realistic prospect in the majority (14) of the 21 local areas where the parties overlap for which it has carried out a detailed assessment. They overlap in some 64% (Pure Gym) and 68% (The Gym) of their existing estates. The CMA notes that the degree to which the merging parties have an incentive to worsen their offer nationally will be influenced by the degree to which they overlap pre-merger³⁹.
66. The CMA considers that the evidence available to it indicates that the parties are each other's closest competitors in the majority of local areas where they overlap, that diversion between them would be high, and this indicates, given the size of their respective networks, and the extent of their overlaps, that they may compete nationally also.

Residual national constraints

67. The CMA considers that the constraints preventing one party from worsening parameters which may be set nationally are mainly provided by gym operators with a competing network. It is also clear that there are few, if any, budget gym

³⁸ Parties' response to the Issues Paper, section E, para 78

³⁹ [Commentary on retail mergers](#), paragraph 3.25

operators of equivalent size to the parties operating nationwide, and the parties also have the largest expansion plans in the sector. Overlaps with other gym operators are therefore necessarily limited across the network and residual national constraints appear weak.

68. The loss of the rivalry between the parties and the consequent loss of national competition could lead to a change in the parties' incentives with regard to some of the competitive parameters which may be set nationally. For example, in the face of weak residual national constraints they could adjust their price schedules to increase the opening price they enter at and/or the level of the prices that will apply as a gym's membership matures; remove the price-for-life or price freeze policy; and/or deteriorate the quality of the facilities they provide across the network.
69. The parties submitted that some of these competitive parameters cannot be worsened post-merger. For example, they submit that they have made a public commitment to retain the price for life policy. However, the CMA notes that a removal or adjustment of this pricing policy would be possible by virtue of an internal commercial decision entirely at the discretion of the merged entity. Such a decision may be commercially desirable or advantageous in the absence of sufficient competitive constraints, and could lead to material price rises for members across the entirety of the network. As such the CMA cannot rely on such public statements to assuage its competition concerns at national (network) level. Similarly, statements that national service level policies (covering equipment and facilities) would not be worsened post-merger because it would be commercially irrational to do so cannot be relied on in isolation to assuage the CMA's concerns in this regard.

Conclusion on national competition

70. Each of the parties is significantly larger than any of the other budget gym chains and after the merger the next largest budget gym operator will be less than 20% of the size of the merged firm measured by the number of gyms.
71. Based on the evidence discussed above, the CMA considers that it may be the case that the merger may be expected to result in a substantial lessening of competition at a national (network) level, which may result in a worsening of some parameters of competition that are determined nationally. It may also exacerbate the concerns the CMA has found regarding the loss of current and potential competition in local areas.

Potential competition issues

Loss of potential competition and impact on expansion

72. The CMA assessed whether the merger would give rise to a loss of potential competition. This is because the merging parties have substantial pre-merger expansion plans and the budget gyms segment is growing. Loss of potential competition could occur because (a) either of the parties would enter into an area where the other is currently present, or (b) both parties would enter into an area where neither are currently present. To the extent that the merger may prevent this entry by one or both parties, the merger may prevent a more competitive outcome arising in any such areas and raise competition concerns.
73. The parties submitted that their pipelines and expansion plans are too uncertain to give rise to concerns. The parties stated that they track and monitor long lists of possible sites, the majority of which will fall away (for example because of lack of site suitability, planning issues or failure to agree terms with the landlord).⁴⁰ They submit that until the landlord hands the site to the tenant for fit-out, there can be no certainty that the site will be opened.
74. The CMA understands from the parties' submissions that the parties identify areas of interest based on, for example, the demographic criteria outlined below (large population size and high population density). The parties have specifically sought sites in major towns and cities where they do not currently have representation.⁴¹ The CMA recognises the fluidity of the property pipeline and the uncertain process through which properties are obtained but does not consider the fact that some sites may fall away as an indication that the parties are not likely to enter or expand in areas where they have indicated an intent to do so.
75. The CMA has, on a cautious basis, carried out a detailed analysis of the overlap for four local areas where the parties expect to open additional sites, discussed at paragraphs 289-321. This is to demonstrate that, in line with the CMA's published guidance, that there are instances of actual potential competition which result from the merger. However, it is important to note that the parties plan in the relatively near future (by the end of 2015) to enter where the other is present in a number of further sites. The CMA considers that this requires further detailed assessment which cannot be undertaken in the context

⁴⁰ The parties provided internal documents for both parties that show they are working on entry in many possible sites (for example showing landlord negotiations and planning applications) but may not decide to proceed with the specific site if, for example, premises are not suitable or available. See, for example, Pure Gym's [redacted] and The Gym's [redacted] (which were provided to the CMA on 8 May 2014 at a late stage of its investigation but were partly reflected in submissions made by the parties earlier in the investigation).

⁴¹ The parties provided examples of extended property searches in [redacted] (Pure Gym) and [redacted] (The Gym). [redacted], 8/4/14, paragraphs 16 and 17.

of a first stage review. The following examples are illustrative of the extent of further areas where potential competition concerns may arise upon further detailed examination, for example:

- a. The six overlapping local areas⁴² discussed in the parties' submission of 8 April 2014 as future pipeline sites (for which no leases have yet been signed but for which the parties are in active negotiation);
- b. Other potential pipeline sites mentioned in the parties' internal documents provided on 8 May 2014, such as those currently being developed in [redacted] and [redacted]⁴³, for which some have had heads of terms agreed or are described as being in advanced negotiations.

Likelihood of entry

76. In considering the parties' expansion against each other, the CMA has assessed, first, the likelihood of entry (in absolute terms) and, second, the extent to which either party could be said to be best positioned, or the most likely, to enter against the other (that is, how much more likely it is that the other party enters than any other operator). The CMA has considered:

- each of the parties' and competitors' expansion plans to the extent they are known
- previous entry against each of the parties
- third party views on likelihood of entry
- further plans by the parties to enter specific areas. The parties submitted that only those sites for which a final lease has been signed should be considered in the substantive assessment as there is an insufficient likelihood that they will in fact open any other pipeline sites. However, the CMA considers that both parties have in their pipelines a significant number of additional sites which are at advanced stages of planning.

77. The CMA has evidence that the parties' pre-existing plans show multiple sites where they are likely to enter into competition with each other; either one party

⁴² These overlapping sites are: [redacted], [redacted], [redacted], [redacted], [redacted], [redacted].

⁴³ The parties identified one pipeline site (The Gym, at [redacted]) in [redacted] and [redacted] in their submission of 8 April. The documents provided on 8 May 2014 in response to the CMA's section 109 request identify three further pipeline sites which are in advanced negotiations or for which heads of terms have been agreed: [redacted] (The Gym) [redacted] (Pure Gym), and [redacted] (Pure Gym). ([redacted]– 24 February 2014). The Pure Gym sites are mentioned again in a document dated 1 May 2014 ([redacted]). The CMA notes that these sites, if taken forward, would create, in particular, an overlap in the north of [redacted] area (in its assessment of current competition the CMA has focused on the interaction between the [redacted] and [redacted] sites).

entering into an area where the other is already present, or both entering into entirely new areas. The evidence is potentially incomplete given the difficulties encountered by the CMA in obtaining evidence from the parties on entry and expansion and carrying out the detailed assessment required during the course of its phase 1 investigation. However, the CMA is aware of four sites where one of the parties is entering imminently against the other (examined in detail at paragraphs 289-321). Further, in their submission of 8 April 2014, the parties identified [redacted] additional pipeline sites⁴⁴ which they considered to be too speculative to include in the substantive analysis. Of these, almost half [redacted] overlap with at least one site of the other party on a 20 minute drive time basis.

78. More generally, the CMA considers that the parties have the strongest expansion plans in the sector and the evidence indicates they are likely to continue to enter where the other is present in the future. The parties submitted that, according to pre-merger plans from April/May 2013, The Gym is planning to open [10 to 20] gyms in each of 2014, 2015 and 2016, while Pure Gym is planning to open [10 to 20] gyms in 2014 and [10 to 20] gyms in each of 2015 and 2016.⁴⁵ Public documents produced by the parties suggest that they intend to open a still larger number of gyms, 20 to 30 sites a year for The Gym and 35 new gyms in 2014 for Pure Gym⁴⁶. The CMA considers that, whichever figure is used, the parties' pre-merger expansion plans are significant.
79. Further, the current overlap between the parties' operations is significant, with 45 of Pure Gym's 66 current sites (68%) overlapping with 28 of The Gym's 44 current sites (60%). This has resulted from significant head-to-head competition through network expansion across the UK in competition with one another. The evidence shows that the Parties have frequently entered where the other is present and have been the budget gym operators that have been entering most

⁴⁴ The parties submitted that these are sites for which they are in 'active negotiation' but no lease has yet been signed. However, the CMA considers that these sites are not a full list of the parties' current pipeline sites; the documents concerning expansion submitted in response to the CMA's Section 109 notice mention additional sites.

⁴⁵ [redacted]

⁴⁶ As regards The Gym, [published a press release on 1 October 2013](#), reporting that The Gym intends to roll out 20 to 30 sites a year, having secured £50 million financial investment to expand its business in June 2013. The CMA also notes that the parties have provided a leaflet produced by The Gym aimed at landlords advertising its intention to expand in certain areas, which suggests that The Gym had significant expansion plans. The Gym's leaflet identifies 148 'priority locations' and states that it 'urgently require[s] more sites throughout the UK' including 'all central London locations'. Pure Gym also has similar expansion plans for 2014. A leaflet similar to the one provided by the parties for The Gym indicates Pure Gym's intention to roll out 35 new gyms in 2014. The date of this leaflet is not clear, but the CMA considers it is a recent document given that it refers to Pure Gym's intention for 2014 but not 2013. This compares with only [10 to 20] gyms in the pre-merger plans referred to by the parties, which are likely to pre-date the leaflet. The leaflet does not provide an indication of the areas of interest or priority for Pure Gym. Instead, it indicates that 'all locations [are] sought throughout the UK. Locations should be within a radius of 100,000 people within a 10 minute drive or 30,000 people within a 5 minute drive.' At the time of the CMA's investigation this leaflet was on the [Pure Gym website](#), but as at the date of this decision it seems no longer to appear on Pure Gym's site. The website does contain [another property leaflet](#), which seems to be of a somewhat earlier date but shows an only somewhat lower number of new gyms (30) that Pure Gym intends to open in 2013 and 2014.

often against each other in the last five years by a considerable margin. They have often opened in close proximity to one another.

80. This is consistent with third party comments and the parties' internal documents on expansion, which indicate that the parties have very similar site preferences. In some cases this leads to the parties competing for specific sites⁴⁷. Both Pure Gym and The Gym seek sites with a minimum of 100,000 people within 10 minutes' drive and 30,000 people within 5 minutes' drive, of an optimum size of 14,000 to 25,000 square feet, in highly visible and easily accessible locations, with potential for 24 hour opening.
81. Third parties indicated that the parties tend to target similar areas so will generally be in close proximity to each other and therefore compete strongly, whereas other operators, such as Xercise4Less and Fit4less, tend to focus on less central areas. For example, Xercise4Less seeks sites which are substantially larger than the parties' preference (20 to 40,000 square feet) in roadside locations with generous parking provision. Third parties also indicated that they would expect the parties to further expand into each other's areas absent the merger. One third party indicated that in its view the rationale for the merger is to avoid future head-to-head competition in local areas.
82. The largest budget gym operator after the parties, Xercise4Less, currently operates only 19 gyms across the UK (with five in the pre-opening stage). Xercise4Less has entered against Pure Gym and/or The Gym five times, respectively. Based on evidence received during its investigation, the CMA considers that Xercise4less is more likely to enter in out-of-town locations.⁴⁸ The CMA considers that the parties do not currently face budget gym competitors with similarly strong or large networks and none of the alternative budget gym operators have similarly ambitious expansion plans. It is also notable that alternative budget gym operators face greater barriers to expansion relative to the parties, considered further from paragraph 322 below.
83. The CMA considers that this historical pattern of entry into each other's existing areas and the lack of strong constraint from other operators provides a clear indication that given the parties' expansion plans, absent the merger they are likely to continue to enter into competition with each other over at least the course of the next two years.
84. In light of the evidence available regarding specific local areas, the (relative) propensity of the parties to enter into areas where the other is present, their

⁴⁷ Section 109 response: Pure Gym mentions competition with The Gym for specific sites [X] times and competition with Xercise4less [X] times. No other gym operator is mentioned as competing with the parties for locations.

⁴⁸ The parties' property leaflets.

significant expansion plans and ability to expand (relative to other operators), and third party views – the CMA considers that the parties are the likeliest entrants against each other in the local areas discussed at paragraphs 289-321. The CMA also considers it likely, but has not found it necessary to conclude, that the parties will enter where the other is present in further local areas in the next two years.

Effect of entry on competition

85. The CMA has examined whether the effect of entry would be likely to have an impact on competition. It considers that the evidence available to it suggests that where either party is a potential entrant into the local area in which the other is already active, there is a significant likelihood that such entry would result in an overlap such that the parties would be in competition with each other in the local area. The CMA found a realistic prospect of an SLC in all four locations where the parties are actual potential competitors in specific local areas, assessed in detail at paragraphs 289-321.
86. As noted below (see from paragraph 326), the evidence indicates the relative attractiveness of covenants that each of the parties can offer to prospective landlords. The evidence suggests that other budget gym operators have less ability to obtain similarly prominent locations. The CMA also notes that the parties are likely to compete strongly against each other given that, as set out above, the parties' offerings are very similar on several parameters (eg price, facilities and opening hours).
87. The parties submitted that, even if one party were more likely than any other individual gym operator to enter against the other party, there would nevertheless be a large number of potential entrants whose collective impact would be substantial. They noted that areas that are attractive to the parties to enter are also attractive for a large number of competitors to enter. However, as set out below (see from paragraph 322), the CMA considers that the expansion plans by other budget gym chains are more limited. Further, the CMA notes that, as set out below in the section on the loss of current competition, in only a limited proportion (around 40%) of the 17 current local overlap areas the number of effective competitors was currently sufficient, either individually or in aggregate, to prevent a realistic prospect of an SLC.
88. The parties further submitted that the merger will not result in a reduction in the number of new site openings. However, the CMA considers that the merger will result in changed incentives to open new sites, which in turn may lead to a loss of planned or future competition at a national level including site selection and entry alongside residual national constraints across price, quality, range or service. From a site location and entry perspective, it has not been necessary,

within the context of a phase 1 investigation, to identify the number of areas where sites may not be opened. On the basis of the evidence available, the CMA considers that the merger is likely to materially alter the incentives to expand their network of the two largest competing national budget gym operators at a time of significant expansion.

Conclusion regarding effect on loss of potential competition

89. For the reasons set out above, the CMA is concerned that an assessment of the merger's impact on competition in the local areas where the parties currently overlap, does not fully capture the loss of competition that the merger may result in given the significant expansion plans of both parties. The parties are the two leading budget gym players and are each significantly larger than the current third and fourth largest players (Xercise4Less and Fit4less). Their expansion plans are also materially more significant than those of other budget gym players, and mean that they will open a large number of new gyms in the near future.
90. Taking a cautious approach, the CMA has identified and assessed four areas where the parties are actual potential competitors, that is, they are the most likely to enter against each other with the result that harm may be occasioned (see paragraphs 289-321 below). The CMA considers that it is sufficiently likely that entry by one or both of the parties would occur into these four specific local areas such that the test for reference is met in relation to a loss of potential competition as a result of the merger. The CMA also has concerns, at this stage, relating to the further evidence provided at a late stage in its investigation which points strongly to the possibility of further concerns arising from loss of potential competition. However, the CMA has not found it necessary to conclude on the test for reference, in respect of these further concerns.

Loss of competition in local areas

91. Gyms compete on a number of dimensions, including price, quality, range and service (PQRS) at a local level. The CMA has examined the extent to which the merger may give rise to competition concerns and may lead to a deterioration in one or more of these dimensions. For example, a loss of competition may result in price increases or reduced service levels relative to those that would have prevailed absent the merger.

92. In this case the merger may give rise to higher membership fees⁴⁹ and/or joining fees and lower service quality than those that would prevail absent the merger. The CMA notes that this applies as much to the incentives to attract new customers as it does to retaining existing customers. This is particularly so in this case, given the parties' business model as regards existing customers and the high level of customer turnover (The Gym's annual membership attrition rate in 2012 was [X]%) and the parties estimate that Pure Gym's rate also exceeds [X]%).

Analytical framework used to determining effective competitor set

93. The parties submitted that all gyms present in a catchment area should be taken into account, irrespective of their specific offering (such as price, facilities, opening hours or size), as this most accurately demonstrates the wide range of gym options available to their heterogeneous membership base and the importance of the combined constraint of a large number of competing gyms.
94. The CMA has therefore considered below, based on the evidence available to it, the factors which may determine the extent to which gyms are good alternatives to one another and therefore how closely they compete. This informs the analytical framework for identifying overlaps between the parties and our assessment of the competitive effects of the merger in those overlap areas. The geographic area within which the CMA has considered competition is set out from paragraph 45 above.

Location

95. The parties noted the importance of convenience of location for their members.⁵⁰ The CMA considers that geographical proximity is a key determinant of the strength of any competitor; other things being equal gyms that are closer to one another will be closer competitors than those that are located further apart.

⁴⁹ The parties submitted that due to their 'price for life' policy (which means a member's fee will remain unchanged for the duration of membership), they cannot increase prices to existing members. However, the CMA notes that even if this policy were retained in the new business (which is an internal commercial decision and therefore cannot be guaranteed), joining fees and membership prices charged to new members could rise (and at the schedule and timing of price rises for new members may vary). In any event, the CMA considers the parties could also change other competitive parameters such as the quality of their offering or service, which would affect both new and existing members.

⁵⁰ When asked what attracted members to a new gym, convenience of location was indicated most often ([X] of respondents) ([X]).

Price

Parties' submissions

96. The parties submitted that mid-range (and premium⁵¹) gym operators provide a significant constraint on them and should be considered as part of any competitive assessment. They submitted that the primary driver of consumer choice is convenience, but members also consider factors such as access to a swimming pool and the cost of parking, as well as availability of staff, classes and social areas, and that they are willing to pay a higher price for such services and facilities.
97. The parties submitted that survey evidence⁵² demonstrates that, of the small minority of their members who leave the parties' gyms for another gym, [redacted]% 'traded up' to gyms with a higher price and quality or range of services. The CMA notes that some members⁵³ did cite in the survey (amongst other reasons) lack of sauna and swimming pool as reasons for leaving their current gym. The parties submitted that this demonstrates gyms which charge higher prices (above £25/£30) do provide a constraint on them.
98. Further, the parties submitted that mid-range and premium gyms can easily drop their prices on a short or long-term basis to target price-conscious consumers. They noted that some major mid-range gyms have introduced substantial price reductions and that a number of mid-range gyms offer regular promotions below £25, flex their contract offers and offer discounted rates for students, off-peak usage, and gym-only access packages. The parties further submitted that mid-range gyms also regularly reduce or eliminate their joining fees.
99. The parties provided a study prepared by The Parthenon Group (Parthenon) aimed 'to determine the drivers of differential site performance across the site portfolio'.⁵⁴ The study shows that 'areas with substantial competition from gyms with prices of under [redacted] per month see significantly poorer site performance. Competition in the bands of [redacted] also negatively affects site performance but to a lesser extent; gyms with prices above this rate have no impact on site

⁵¹ Premium gyms are considered to be those that charge a membership fee of £60 or more per month and generally also a wider range or better facilities than budget gyms. Generally, premium gyms are open more restricted hours than 24 hours per day/seven days per week, and have minimum contract terms.

⁵² Exit surveys conducted with past members. These surveys were not conducted for the purposes of the CMA's merger assessment.

⁵³ Up to [redacted] of those which left to join another gym. However, the CMA notes that the overall proportion of members who left to join another gym was, at only [redacted]% of all leavers, a small minority. The majority of members ([redacted]) left altogether or became temporarily 'lapsed' members.

⁵⁴ [redacted] 5 April 2013, page 2.

performance'.⁵⁵ In particular, '[a] doubling of [redacted] competition will decrease membership by [redacted]', whereas '[a] doubling of [redacted] competition will decrease membership by [redacted]'.⁵⁶

Other evidence and CMA's assessment

100. The CMA considers the evidence provided by the parties does not compellingly point to a significant constraint from mid-range and premium gyms on budget gyms. Instead, the CMA considers that the evidence suggests that budget gyms are one another's closest competitors and that mid-range gyms impose a weaker competitive constraint and premium gyms even weaker.
101. In particular, the CMA has significant reservations about the value of the parties' empirical evidence set out above. The CMA notes that the exit surveys submitted by the parties relate to the outflow (or retention of existing customers), whereas any price effects and loss of choice may be more likely to affect the inflow (new members). While the exit surveys may therefore carry some weight as regards the views of the small number of members who left to join another gym, this means the relevance of the exit survey results to competition for new members is limited. The CMA also has reservations about the results of the study by The Parthenon Group, which means that it can attach little weight to this study.⁵⁷
102. If mid-range gyms responded to competition in a local area from budget gyms by lowering their price, the CMA would expect them (all else equal) to be a closer substitute to budget gyms. However, the CMA considers that the parties' anecdotal evidence on some mid-range gyms lowering their prices is not sufficient, as it does not indicate with sufficient certainty that other mid-range gyms will in fact lower their prices in local areas which may present competition concerns.
103. The majority of the evidence received by the CMA during the course of its investigation points towards budget gyms being each other's closest competitors and not facing significant competition from mid-range and premium gyms.
104. First, the CMA notes that the parties' internal documents pay particular attention to the presence of budget gyms or the prospect of their entry. For example, [one party's] SWOT analysis in its [redacted] consistently identifies the 'entrance of another low cost operator' as a threat and sometimes the lack of

⁵⁵ *Ibid.*

⁵⁶ *Ibid*, page 11.

⁵⁷ [redacted]

'other low cost operators in the area' as a strength.⁵⁸ These reports do not identify entry by mid-range or premium operators as a risk.

105. [One party's] documents contain statements such as '[The other party] are the only other low cost gym operators in the city similar to [ourselves]⁵⁹ and in many documents [one party] groups competitors into budget (Bud), mid-range (Mid) and high-end (High). The presence of mid-range and high-end gyms appears to have no impact on the 'competition score' [this party] gives prospective areas, whereas the presence of other budget operators decreases the competition score. Also, gym operators such as [X] (a mid-range competitor) are sometimes seen as opportunities to win members from rather than as a competitive threat.
106. Third party responses to the CMA's market investigation generally indicated that budget gyms exert the strongest competitive constraint on other budget gyms and that mid-range and premium gyms may provide a constraint only to the extent that the price increase is sufficiently strong to shift a budget gym operator towards mid-range prices. Budget operators explained to the CMA that they generally tend to target the price-sensitive part of the population, which is less likely to switch to a more expensive – though, in some instances, higher value – proposition. As noted in the competitive assessment of local areas below, the CMA's discussions with third parties pointed to several instances of more expensive gyms that did not offer any additional services or quality. Third party budget operators also highlighted this and suggested that customers switching to or choosing more expensive alternatives would be minimal where there are no or limited additional services, which is regularly the case.
107. Finally, and consistent with other evidence the CMA notes that independent market reports describe the evolution of the health and fitness sector as characterised by asymmetric competitive pressure from budget gyms on mid-range and (to a lesser extent) premium gyms.⁶⁰
108. The CMA recognises that there may be a constraint from gyms that are more expensive than budget gyms where they offer additional services or quality relative to the parties. However, evidence available to the CMA on the extent to

⁵⁸ The SWOT analysis is the analysis of Strengths, Weaknesses, Opportunities and Threats of a business.

⁵⁹ [One party]'s reports for the opening of its [X] branch. A similar statement is also contained in other reports, such as the [X] branch.

⁶⁰ Mintel, *Health and Fitness Clubs – UK*, June 2013.

which customers would switch or choose such an alternative, especially where the extent of the additional quality is unclear, is limited.⁶¹

109. Accordingly, on a cautious basis in this phase 1 investigation, the CMA has not included gyms charging more than £25 a month in membership fees (or £30 a month in membership fees in London)⁶² in the effective competitor set unless it has received evidence to the contrary for a specific gym in a local area. However, the CMA has considered the total number of gyms differentiated on price in each local area which, although of similar size to the parties, charge a monthly fee of between £25 and £40 outside London and between £30 and £40 inside London, in order to take account of the constraint from these gyms (hereafter differentiated gyms).⁶³ This only applies to gyms that offer additional services or quality relative to the parties' gyms (such as a swimming pool). Where gyms are priced higher than £25 (or £30 in London) and offer no such additional services or quality, the CMA has not considered them as a material competitive constraint.
110. Based on the evidence available to it, the CMA has not considered gyms that charge more than £40 a month in membership fee, ie, at least double the parties' monthly fees in almost all areas, as imposing a material competitive constraint on the ability of the parties to sustain profitably a small increase in prices.

Facilities

111. The parties submitted that significantly smaller gyms (by square footage or membership) with fewer pieces of equipment and which do not offer free classes also constrain the parties, because, although they are not a viable alternative for all members, they are an option for some members. They stated that the consequent cumulative constraint of such gyms on the parties is large.
112. The CMA notes that one of the parties' selling points is the large size of their gyms and the fact that they offer access to a large number of pieces of gym equipment in their premises, as well as free classes. This is clearly advertised on the parties' websites.⁶⁴

⁶¹ The parties submitted that customer surveys, which could have provided evidence on switching to these gyms, were unlikely to be suitable for the gyms sector due to methodological problems. Instead, they provided entry analysis for six local areas to the CMA, which is discussed below (from paragraph 146).

⁶² These price points represent a maximum price that exceeds the price charged by virtually all of parties' gyms by at least 25%.

⁶³ The price point of £40 represents such a significant increase on the parties' prices (ie double or more) that the CMA considers that, on a cautious basis, it is appropriate not to take account of gyms charging a higher price.

⁶⁴ As noted above, [Pure Gym](#) and [The Gym](#) advertise on their website that their gyms have over 220 and 170 pieces of equipment respectively. Also, Pure Gym notes that customers 'won't be crowded in' and that its gyms 'will be amongst the largest in the UK', while The Gym promises customers 'Plenty of space and room to breathe'. Both also offer several free classes.

113. Further, in the competition assessment of several of their internal feasibility reports the parties appear to consider gym operators as weaker competitors where they operate materially smaller gyms.
114. Third parties also indicated that smaller gyms that have fewer pieces of equipment and/or do not offer free classes do not act as a material constraint on the parties. One competitor, for example, stated that it did not consider gyms with less than 2,000 members and/or less than 50 pieces of equipment as competitors. The reasoning for this noted by one third party operator was that if a gym with fewer than 50 pieces of equipment offered a price similar to that of the parties, it would be so overcrowded that no-one would be able to use the limited equipment available.
115. The CMA considers that gyms with fewer pieces of equipment are likely to be less attractive for some members and face a limit to the number of members that they can win from the parties, thus limiting the competitive constraint that these gyms pose. Very small gyms cannot be said to offer comparable facilities to the parties.
116. Accordingly, the CMA has adopted a cautious approach and considered that gyms with the following attributes are individually unlikely to pose a material constraint on the parties and so not considered individually as effective competitors:
- a. gyms with substantially fewer pieces of equipment than the parties (ie fewer than 50 pieces of equipment)
 - b. gyms that do not offer free classes.
117. In relation to membership numbers, the CMA notes that these may not be an effective means of distinguishing competing gyms, as some gyms may offer competitive daily or one-time access rates (for example, leisure centres) rather than membership. As a result, the CMA has not used membership numbers separately but considered each gym on a case-by-case basis, although as a starting point the CMA has considered that a membership of less than 500 (ie [X] of the parties' memberships) suggests that the gym in question may not be a significant constraint.
118. Excluding these gyms as effective competitors in their own right has enabled the CMA to focus on those gyms that, while differing from the offering of the parties and potentially competing less closely, may still pose some constraint on the parties if they are taken in aggregate. The CMA has therefore considered the number of smaller gyms within each local overlap area that,

although pricing at a level similar to the parties,⁶⁵ are substantially smaller⁶⁶ in order to assess the aggregate constraint from these gyms (hereafter 'small low-cost gyms').

Opening hours

119. The parties are the only gyms amongst the 'leading UK budget health club operators'⁶⁷ to open 24 hours, 7 days per week (24/7). Other budget operators instead operate gyms within a narrower window of opening hours, especially during the weekend. For example, Xercise4Less clubs typically open from 6am to 10pm Monday to Friday and from 8am to 8pm on Saturday and Sunday.⁶⁸ Also, for some gym operators, opening times vary across clubs.
120. The parties told the CMA that their 24-hour opening proposition is attractive to their members, especially members who work late shifts (eg hospital workers). The parties' feasibility reports, amongst other elements, identified the presence of large businesses with numerous late-shift workers, such as hospitals, as a favourable feature of the location. Also, the parties' 24-hour opening is clearly advertised on their websites as one of the parties' main selling points.⁶⁹
121. The parties told the CMA that only a minor part of their membership actually uses their facilities between midnight and 4am, but the CMA notes that this does not imply that the proportion of the parties' customers who **value** the 24-hour opening proposition would be equally small, especially considering the large difference in opening hours during the weekend between the parties and many other gyms.
122. The CMA received mixed evidence as to the degree of competitive constraint exercised by gyms that are not open 24/7. Some third parties recognised the importance of 24-hour opening times as a competitive variable, particularly in major cities. However, when asked about the features of a gym offering that they expected their own or the parties' customers to be attracted by, the majority of third parties did not mention opening times. Also, third parties operating gyms that are not open 24 hours per day submitted that they pose a degree of a constraint on the parties.

⁶⁵ That is, gyms charging less than £25 membership fees per month (or less than £30 in London).

⁶⁶ That is, gyms with fewer than 50 pieces of equipment and/or, potentially, with a membership below 500.

⁶⁷ The list of 'leading UK budget health club operators' is from Figure 25 at page 39 of Mintel's report *Health and Fitness Clubs – UK*, June 2013. The CMA is aware of Kiss Gyms being another budget operator with 24/7 opening across all its sites. However, Kiss Gyms only has three sites currently open. Also, the CMA is aware that Anytime Fitness offers 24/7 access in all its sites. However, Anytime Fitness is not a budget operator.

⁶⁸ See [individual club's opening times](#).

⁶⁹ This is advertised as one of the top three selling points in a box inviting joining on the home pages of [Pure Gym](#) and [The Gym](#).

123. Further, the parties' reports for new club openings, although tracking competitors' opening hours, do not appear to distinguish between 24-hour gyms and other budget gyms. In particular, they contain references to competition from budget competitors that are not open 24 hours per day.
124. For the reasons set out above, on balance the CMA has given equal weight to gyms which, while meeting the other criteria set out above, do not offer 24/7 opening.

Constraint from public gyms

125. The parties submitted that public gyms have a core gym offering, and often have a wider range of facilities than those of the parties. The parties submitted that most (if not all) public clubs provide a core gym offering at an average monthly membership rate of £28, which includes access to wet facilities (such as a swimming pool and sauna).
126. Further, the parties noted that public gyms are increasingly privately-managed and there has been a growth of public gym chains.⁷⁰ They noted that this convergence is reflected in the membership and charging practices of public gyms, with an offering that is converging with that of private gyms by, for example, frequently offering a range of flexible membership options.
127. The parties submitted that as public gyms often offer a wider range of facilities than those of the parties, they constrain the parties given that consumers will consider their requirements for additional facilities in light of any applicable increment in price. The parties also submitted that public gyms provide a credible option for all gym users and in particular those who are cost conscious, and so compete directly for the same members as the parties.
128. The closeness of competition between public and private clubs is reflected, according to the parties, in the proportion of new members that were previously members of public gyms. In a survey of new members who transferred from another gym, [X]% and [X]% transferred from a public gym to Pure Gym and The Gym respectively.
129. The CMA considers that the nature of the ownership, *per se*, is unlikely to constrain the ability of a gym operator to compete. The CMA considers that in some cases public facilities are operated as budget gyms, in others as mid-range gyms. To the extent that public gyms are operated as budget gyms, the

⁷⁰ Informal Submission, paragraph 7.5.

CMA has no evidence leading it to believe that they would not provide a similar constraint as other budget gyms.

130. The CMA therefore includes public gyms meeting the price and facilities criteria set out above as *prima facie* effective competitors in its competitive assessment of local areas.

Gyms for a sub-set of the population

131. The parties submitted that students form a significant part of their membership, and that to attract this important segment, the parties compete with university gyms that typically operate large sites with a diverse range of facilities, including swimming pools, and offer significant student discounts as well as access to non-students. The parties submitted that, as they have no ability to price-discriminate in favour of students, the constraint imposed by university gyms is therefore relevant to all members and not only to students.
132. The CMA notes that students are generally a minority of the parties' customers, so any constraint from gyms charging higher prices than £25 to the general public but lower prices than £25 to students would be weakened by the fact that only students would pay a budget gym price. Although some student facilities provide access to the general public, the CMA was provided with no evidence to suggest that gyms at student facilities would be particularly attractive to them.
133. On this basis, the CMA has only included student gyms as *prima facie* effective competitors where they meet the price and facilities criteria set out above. Where there is significant evidence in a specific local area that a student gym should be considered a constraint (eg, because high numbers of the parties' members are students), the CMA has assessed this on a case-by-case approach. The CMA has taken the same approach for gyms that offer access only to women.

Single-site operators

134. The CMA notes that there are some references in Pure Gym's internal reports to a competitive advantage that Pure Gym would gain by operating multiple gyms in the same city or area by virtue of a network or clustering effect.⁷¹ However, third parties indicated that where there is an existing independent single-site operator, they would be able to offer just as strong a constraint as a

⁷¹ For example, [X] states that opening of the new site [X].

multi-site operator, should they offer all other aspects that are equivalent (eg price, facilities, etc).⁷²

135. The parties submitted that independent operators comprise the majority of private clubs (52%) and 28% of all fitness clubs, and are not at a disadvantage in competing for members. The parties submitted this is the case because approximately [X]% of The Gym's members use just one gym in its network and [X]% of Pure Gym's members use a single gym in its network.
136. Based on the evidence, the CMA considers that competitors with only one site within an area are unlikely to be at such a competitive disadvantage not to be able to provide a substantial constraint on multiple-site operators, other things being equal.
137. On this basis the CMA has included single-site operators meeting the price and facilities criteria set out above as *prima facie* effective competitors in its competitive assessment of local areas.

Conclusion on effective competitor set for local area assessment

138. In summary, the effective competitor set for the CMA's local assessment excluded:
- a. Gyms charging more than £25 per month and £30 per month inside London;
 - b. Gyms with substantially fewer pieces of equipment (fewer than 50);
 - c. Gyms with a membership of less than 500.
139. Where gyms did not meet these criteria, the CMA has considered any evidence specific to the local areas in question indicating the constraint they present, and has also assessed the aggregate constraint that they and other such facilities in the local area may pose on the parties.

Types of evidence used in local area assessment

140. In addition to the factors outlined above used to determine the competitive strength of competing gym operators, the CMA has had regard to a variety of evidence in each local area in assessing the extent of competition between the Parties and from competitors on the parties:

⁷² Third parties did point to single-site operators being much less able to obtain favourable property locations and so would be unlikely to represent a competitive constraint as an entrant. However, the CMA does not consider that this should preclude existing single-site operators from being taken into account, subject to an assessment of its competitive offering (as with a multi-site operator active in any area).

- a. The parties provided entry analysis and data on their membership numbers, pricing and joining fees in respect of a number of the areas. The CMA notes high-level points relating to this entry analysis below, before considering its relevance in the local areas where applicable.
- b. The parties provided scatterplots showing the location of members (based on home postcode data) and information indicating how members travel to the gym (provided by members when they joined). The CMA has had regard to this data in determining whether the parties compete for the same pool of members or not, and in determining the size of the area in which to consider competition (as noted from paragraph 45 above). The parties also provided the location of their own gyms and other gyms in each area.
- c. The parties provided information on the price and facilities of most other gyms in each area. This information was mostly contained in a database maintained by the Leisure Database Company (LDC). The CMA has taken account of the price of other gyms calculated on the same basis as the price of the parties' gyms, ie, without a contract.⁷³
- d. The parties provided internal documents (feasibility reports for new or planned sites) which assessed the extent of competition in an area.
- e. In a number of local areas, the parties submitted that their gyms are at or close to capacity and thus are not competing strongly for new members. The CMA notes high-level points relating to the parties' submission on capacity below, before considering its relevance in any local area where applicable.
- f. Finally, the CMA has taken account of comments from third parties (where available) in its assessment.

Capacity

141. In their analysis of competition in local areas (carried out as part of their submission of 2 April 2014), the parties submitted for several areas that they are operating at, or near, capacity and are not seeking to increase active membership numbers.⁷⁴ According to the parties, the fact that they operate at or close to capacity indicates that they are not providing a significant

⁷³ The CMA notes that the monthly price of, for example, a 12-month membership is typically lower than the price without such membership, but this membership ties consumers into the gym for a significant period of time. Both of the parties advertise their lack of membership contracts on their home page, which suggests that consumers attach importance to this absence of contract. To ensure an equivalent comparison of prices, the CMA has therefore focussed on other gyms' prices without contract.

⁷⁴ This submission was made for the following areas: [redacted]. For [redacted], [redacted] and [redacted] city centre the parties submitted that one of their gyms is operating at capacity and is not seeking to increase active member numbers.

competitive constraint on each other, as neither of them is seeking to win new customers.

142. The CMA acknowledges that generally, in some circumstances, capacity constraints may affect the extent to which firms compete and, in particular, firms operating at capacity may provide a reduced competitive constraint on other firms as they are unable to supply the additional demand arising from customers seeking to switch supplier.⁷⁵ However, in the present case, the CMA considers that lack of spare capacity does not, in any material way, limit the parties' ability to compete with each other (or with any other gyms).
143. The parties submitted that they face [X] customer 'churn' rates⁷⁶ of over [X]% on a yearly basis, as set out above (paragraph 91). This means that a [X] proportion of the parties' members change every year. In this context, even if a site were to reach capacity at one point in time, it would still need to compete to retain existing members and for new members to replace those that have left, even if the parties cannot expand the site's overall customer numbers. The alternative scenario, put forward by the parties, would mean that the parties do not compete for new customers to replace the [X] proportion (and number) of customers that leave every year meaning that over time overall customer numbers would decline [X].
144. The CMA has also been unable to verify the parties' capacity estimates or the methodology used to estimate the capacity limits indicated by the parties.
145. Therefore, given the [X] churn rates experienced by the parties and in the absence of any reliable evidence on capacity, the CMA considers that it cannot give weight to the lack of spare capacity as an argument for clearance in relation to any of the theories of harm considered or in any local area.

Entry analysis

146. The parties provided the CMA with an analysis of the impact of one party's entry on the other party's membership fees, joining fees and membership numbers. The parties carried out this analysis for six local areas, comprising the impact of two entries in South London, as well as entry in Leeds, Edinburgh, Glasgow, Reading and Bournemouth. The analysis consisted of the display and interpretation of monthly data on membership numbers, joining fees and membership fees over time.

⁷⁵ See [Merger Assessment Guidelines](#), paragraph 5.4.11.

⁷⁶ Churn reflects the turnover in the stock of customers through the inflow (new members joining) and the outflow (members leaving). Minimum contract lengths, for example, may seek to limit this 'churn'.

147. The CMA considers this evidence where relevant in the assessment of competition in each of these local areas. However, as a preliminary note, the CMA highlights in this section some methodological limitations of this analysis that would apply to each of the local areas where the entry analysis was performed.
148. Generally, the CMA considers that it cannot put considerable weight on the impact of competitive entry on membership fees. The parties operate a no-contract policy, so a reduction in membership fees would be available to all members. However, the parties also operate a 'price for life' policy, whereby customers do not face an increase in membership fees for as long as they remain members of the parties' gyms. Therefore, an increase in membership fees would only apply to new customers.⁷⁷ In effect, the analysis (as it relates to membership fees) merely describes the parties' business model rather than reflect competition or address the theories of harm (which relate primarily to the flow or to new members). The CMA therefore considers, on a cautionary basis, that only the finding that entry did trigger a response in terms of lower membership fees can be reliably used as evidence.
149. The parties submitted, however, that there are instances in which the incumbent gym increased its membership fees shortly after entry. According to the parties, this would be incompatible with competition between the incumbent and the entrant. The CMA notes that only in one case, in Edinburgh, the incumbent, Pure Gym, raised prices by £[redacted] shortly (two months) after entry. In all other cases, instead, any price rise occurred after at least six months from entry. In Edinburgh the CMA notes that by the time of entry The Gym had already gained a sufficient number of customers to enter charging £[redacted] plus a £[redacted] joining fee. Pure Gym then increased its membership fees by £[redacted] from £[redacted] to £[redacted] but also progressively reduced its joining fees. Although this evidence may indicate limited constraint from The Gym on Pure Gym, the CMA also considers that, since its entry in November 2012, The Gym has been charging the same price to date. The CMA considers that this suggests that its membership has not been significantly increasing and that it may face competition from Pure Gym. It is therefore not possible for the CMA to attach significant weight to this analysis.
150. The CMA is also concerned about the reliability of any estimate of the baseline level of membership fees, joining fees and membership numbers, which is implicit in the analysis. To reliably determine the impact of one party's entry on

⁷⁷ This means the parties would have a stronger incentive to increase membership fees in response to a lessening of competition (what the CMA seeks to determine) than to decrease fees in response to an increase in competition (what the entry analysis aims to measure), as an increase in membership fees would apply only to new members, whereas a decrease in membership fees would apply to all members.

any of those variables, the CMA would need to reliably estimate what would have happened absent entry. In particular, the CMA would need to determine the number of members the incumbent would have attracted and the membership and joining fees it would have charged. The CMA considers that it cannot reliably estimate these numbers for a number of reasons.

151. First, the parties' analysis does not control for a number of demand and supply factors. A robust econometric analysis, such as a difference in differences approach, would have permitted the parties to control for these.
152. Second, the parties' analysis provides a very partial view of the market. In some cases, for example, other gyms operated by the parties were present in the areas but their presence was not taken into account. In one case, the presence of the other party at the time in which the incumbent had entered the market had determined a very slow initial performance of this gym, which would be consistent with competition between the parties.
153. Similarly, the effect of the incumbent on the entrant was not considered. In one case, for example, the entrant appeared to be charging the entry price even after over one year following the opening date. In the absence of this element the merger might have appeared not to have any effect on the parties.
154. Finally, as outlined above, the CMA does not have any visibility over the amount of spare capacity, or the full development of the number of members and expected membership growth. In the absence of these estimates it is not possible to interpret the shape of the line illustrating membership numbers over time.
155. In summary, while the CMA has considered the entry analysis as it applies to each area below – and identifies additional location specific difficulties in placing weight on the analysis – at a general level, it considers that only limited weight can be attached to this analysis.

Local area analysis

Current competition

156. The CMA has assessed the impact of this merger on competition in each of the 18 local areas where the parties currently⁷⁸ overlap. These are the following:

⁷⁸ Where additional sites are being added to existing overlaps, for clarity the CMA has grouped this in the assessment of current competition.

1. Bournemouth
2. Reading
3. Edinburgh
4. Leeds
5. Glasgow
6. Milton Keynes
7. Southampton
8. Bristol
9. Luton and Dunstable
10. London South
11. London West
12. Manchester City Centre
13. Leicester
14. Birmingham
15. Newcastle/Gateshead
16. Camberley/Farnborough
17. Nottingham.

1. Bournemouth

The parties' sites

157. The parties both operate in Bournemouth city centre, less than 13 minutes' walk time from each other. The parties submitted that the transport profile of the sites is similar, reflecting their central locations and access to strong transport networks. The CMA considers that the scatterplots of member home postcodes suggest similar geographic catchments for both sites.
158. Entry analysis carried out by the parties, albeit not given significant weight for the reasons outlined above (from paragraph 146), identifies a stark reduction in Pure Gym's members and membership fees as a result of The Gym's entry. The rate of price growth at The Gym has further been minimal as it is still charging very low membership fees (£12.99) despite entry having occurred in May 2012. The CMA found reference in some internal documents where [X].

Effective competitors

159. The CMA considered the number of effective competitors around each of the parties' gyms based on both a 40 minute walk time and a 20 minute drive time. Within 40 minutes' walk from both gyms, the CMA considers that there is only one other operator present with a competitive offering similar to that of the parties, FitSpace, and, even then, this operator is significantly further away from the parties than they are from each other (more than double in the case of Pure Gym). The parties are clearly the geographically closest competitors and,

taking account of FitSpace, the merger will result in a reduction in effective competitors around both gyms from three to two.

Competition from other operators

160. Within 20 minutes' drive from both gyms, there is also a Bournemouth University gym at 8 minutes' drive from The Gym and 10 minutes' drive from Pure Gym. This gym meets both the price and facilities criteria outlined above. However, given it is a substantial distance away and on a university campus, given many of the parties' members walk to their gym (around or just over [X]% for both gyms) and given it is a facility targeted at students, the CMA does not consider it is likely to present a substantial constraint on the parties.
161. The parties submitted that both sites face competition from a number of additional operators at similar price points in the city centre, and also that they face competition from mid-range gyms. As a further sensitivity check the CMA considered the numbers of small low-cost and differentiated gyms within the two isochrones. It found that within both 40 minutes' walk and 20 minutes' drive of both gyms there are only two small gyms pricing below £25, which, while located relatively close to the parties, together have very few pieces of equipment (52 in total). There is only one differentiated gym within 40 minutes' walk of both gyms. Within 20 minutes' drive of The Gym there are six further differentiated gyms and within 20 minutes' drive of Pure Gym there are eight, but these are located a significant distance away from the parties and much further away than the parties are to each other. Given the limited equipment provided by the two small low-cost gyms and the fact that all but one of the differentiated gyms are located far away from the parties, based on the evidence available to it the CMA does not consider that they are likely to pose a strong constraint on the parties, either individually or in aggregate.

Entry and expansion

162. Finally, the parties submitted that there will be entry in the area from Kiss Gyms.⁷⁹ The CMA was not able to verify this entry and thus cannot rely on this to offset the unilateral effects concerns in this local area.⁸⁰
163. Therefore, on the basis of evidence indicating strong competition between the parties and limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of a substantial lessening of competition (SLC) in the supply of gyms in Bournemouth.

⁷⁹ [Kiss Gyms website](#) states that it is 'working on' opening in Bournemouth, without giving any further details.

⁸⁰ See [Merger Assessment Guidelines](#), paragraph 5.8.3.

2. Reading

The parties' gyms

164. The parties currently operate two sites located 14 minutes' walk from each other. [X]
165. The parties submitted that they do not compete for the majority of their members due to the different transportation behaviour of customers at each site ([X]% of Pure Gym's customers arrive by car, while [X]% of The Gym's customers arrive on foot). The parties also noted that Pure Gym is located on the outskirts of town, while The Gym is located in the city centre. However, the CMA considers that the short distance between the parties (and the fact that Pure Gym is in fact located on the edge of the city centre) – the parties are geographically the closest gyms categorised as effective competitors in Reading – this is likely to imply that the parties' sites are good alternatives both for members driving to their sites and for members walking to their sites. Supporting this, the CMA considers that the scatterplots of member postcodes suggest similar geographic catchments for the Pure Gym's and The Gym's sites.⁸¹
166. The parties submitted that the entry analysis indicates that there is no evidence of a price response to TG's entry in Reading. The CMA notes that the analysis was based on monthly observations and that the parties opened their sites in quick succession, so that it is difficult to derive a reliable baseline from the trend in customer growth to determine the impact of The Gym's entry on Pure Gym's membership numbers. Further, the CMA has not given significant weight to the entry analysis for the reasons outlined above (from paragraph 146).

Effective competitors

167. Within a 40 minute walk, there is one competing operator which the CMA considers to be an effective competitor, Buzz Gym, which has a competitive offering very similar to that of the parties and is located close to the parties (15 minutes' walk from The Gym and 20 minutes' walk from Pure Gym). Within 20 minutes' drive, there is a further effective competitor, Simply Gym, located at 10 minutes' drive from The Gym and nine minutes' drive from Pure Gym.

⁸¹ The parties themselves submitted that The Gym faces competition 'from other town centre location which are walkable', which presumptively would include Pure Gym, given the short walking distance between them.

Competition from other operators

168. The parties submitted that they face competition from a number of additional operators. The CMA considered the number of small low-cost and differentiated gyms within the two isochrones. It found that within 40 minutes' walk of both gyms there are two small gyms pricing below £25. They are both over 25 minutes' walk away and together offer 43 pieces of equipment. Within 20 minutes' drive, there are five in total with a combined total of only 113 pieces of equipment.
169. As regards differentiated gyms, within 40 minutes' walk of both gyms there are two, Better.org and Anytime Fitness. Of these, Anytime Fitness is relatively close to the parties (around nine and 12 minutes' walk from The Gym and Pure Gym respectively), but has only 50 pieces of equipment and a price (£38) significantly above the parties' price (£10.99 The Gym and £15.99 Pure Gym). Better.org is somewhat further away and also has only a small number of pieces of equipment (85) at a significantly higher price (£39.50 including access to wet facilities or, according to the parties, £28.50 for gym-only membership). Within 20 minutes' drive there is one further differentiated gym.
170. Given the very limited equipment provided by both the small low-cost gyms and the differentiated gyms, and the significantly higher price of the two differentiated gyms relatively close to the parties, the CMA does not consider that they are likely to pose a material competitive constraint on the parties, either individually or in aggregate.
171. This view was confirmed by a third party operator in the area, which believed that there are only three effective budget gym competitors in Reading, The Gym, Pure Gym and Buzz Gym, dismissing other operators as not providing a constraint on the parties. For example, the operator explained that Anytime Fitness is too expensive and too small.

Entry and expansion

172. The parties submitted that there will be entry in the area from Kiss Gyms.⁸² The CMA was not able to verify this entry and thus cannot rely on this to offset unilateral concerns in this area.⁸³
173. The CMA is also aware that another operator ([REDACTED]) has plans to open approximately eight minutes' drive from Pure Gym and five minutes' drive from The Gym. However, the CMA is mindful that the majority of members access

⁸² [Kiss Gyms website](#) states that it is 'working on' opening in Reading, without giving any further details.

⁸³ See [Merger Assessment Guidelines](#), paragraph 5.8.3.

The Gym's site by walking and Pure Gym's site is also located close to the city centre. The CMA therefore considers that a gym located out-of-town, while changing the fascia reduction to five to four in the 20 minute drive time isochrone, is insufficiently likely to present a material competitive constraint and prevent the realistic prospect of an SLC in this local area.

174. On the basis of evidence indicating strong competition between the parties and limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Reading.

3. Edinburgh

The parties' sites

175. Pure Gym currently operates four sites in Edinburgh, and will open a fifth site (Exchange Crescent) in summer 2014. The parties submitted that the Pure Gym Edinburgh West, Ocean Terminal and Granton sites are all drive sites (around [%] of members arrive by car). The CMA could not exclude the possibility that those sites might exert some competitive constraint on The Gym's site in Edinburgh city centre. However, for the sake of simplicity in this phase 1 investigation, the CMA will closely consider only the parties' gyms located in the city centre, to which a majority of members walk.
176. In the city centre, The Gym operates one site, which is located 23 minutes' walk from Pure Gym's City Centre site. Scatterplots of the home postcodes of the parties' members shows that they draw members from broadly similar pools, although the CMA notes that The Gym has a higher proportion of membership from the northeast of the city centre and the sites' accessibility may be limited by local topography. The Gym is also 26 minutes' walk from Pure Gym's Exchange Crescent site, which will open in summer 2014 (Pure Gym's website already allows members to join this gym).
177. The parties submitted that there is evidence of no competitive response in their entry analysis. In addition to the concerns with the entry analysis identified above (from paragraph 146), the CMA considers that, on a cautionary basis, the analysis for Edinburgh does not show the impact of The Gym's entry on Pure Gym sufficiently clearly to reach a conclusion that they do not compete in this area (see paragraph 149 above).

Effective competitors

178. The parties identified a number of gyms within walk and drive distances from The Gym's and Pure Gym's city centre sites. However, within the 40 minute walk isochrone from the parties' sites the CMA did not identify any other

effective competitors. On a 40 minute walk basis, the merger would therefore reduce the number of effective competitors from two to one.

Competition from other operators

179. Within 20 minutes' drive time from both gyms, there is a gym at Heriot-Watt University at approximately 15 minutes' drive from the Pure Gym sites and 16 minutes' drive from The Gym. This gym meets both the price and facilities criteria outlined above (although the CMA notes it has only 60 pieces of equipment). However, given it is a very substantial distance from the parties' sites and located on a university campus, given the majority of members of the city centre site walk to their gym and given it is a facility targeted at students, the CMA does not consider it is likely to present a material competitive constraint on the parties.
180. The parties submitted that they face competition from a number of additional operators. The CMA considered the number of small low-cost and differentiated gyms within the two isochrones. Within 40 minutes' walk there are no small low-cost gyms. Within 20 minutes' drive of all three sites there are five small low-cost gyms, which together have 140 pieces of equipment. However, all but one of these is more than 10 minutes' drive away. Within 40 minutes' walk of all gyms there are no differentiated gyms and only one within 20 minutes' drive (at the margin, 19 minutes' drive away). Given the small gyms are all located relatively far away from the parties, do not cumulatively provide a large range of equipment, and given there is only one differentiated gym at the very margin of the catchment area, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a material competitive constraint on the parties, either individually or in the aggregate. All the gyms which are closer to the parties charge substantially more and/or have considerably fewer pieces of equipment.
181. As regards gyms which offer student discounts to bring prices below £25, the parties identified the Edinburgh University Centre for Sport and Exercise, which is located 15 minutes walking from Pure Gym City Centre. Monthly rolling contracts are not available and the shortest contract is a semester contract for £69 (covering the period from 2 December 2013 to 23 May 2014). The CMA considers that the proportion of affected members would in any case be relatively small, between [X] % (The Gym) and [X] % (Pure Gym) of the parties' members in their city centre sites.

Entry

182. The parties also indicated that Xercise4Less is planning to open a new site in Edinburgh.⁸⁴ However, the CMA currently considers that, even if this were to represent a constraint on the parties, the new site is not located in the city centre. The present merger would still reduce the number of effective competitors from two to one within a 40 minute walk time and from four to three within the 20 minute drive time and, taking account of the additional Pure Gym sites, is not likely to materially affect the parties' combined position post-merger.
183. On the basis of evidence indicating strong competition between the parties and limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Edinburgh.

4. Leeds

The parties' gyms

184. Pure Gym operates two gyms in Leeds City Centre (and is going to open a third gym in the south of Leeds). These sites are a nine and 11 minute walk from The Gym's site in Leeds City Centre. Scatterplots of member home postcodes suggest similar geographic catchment areas for Pure Gym's and The Gym's sites.
185. The parties' feasibility reports indicate that the parties perceive each other as competitors. For example, [one party's internal document] states that '[The other party] are the only other low cost Gym operators in the city similar to [ourselves].' Further, [One party's internal document] for its [✂] site includes [the other party] first in the list of competitors, despite it not being the closest geographically, and contains an assessment of [the other party] in the following page (no other competitor is discussed in similar detail).⁸⁵
186. The parties submitted that the entry analysis does not show any evidence of price response. In addition to the concerns with the entry analysis identified above (from paragraph 146), the CMA considers that the analysis at the time in which Pure Gym entered Leeds is difficult to interpret, as it shows [✂].

⁸⁴ Xercise4less

⁸⁵ [✂]

Effective competitors

187. Within the 40 minute walk isochrone, the merger will give rise to a reduction in effective competitors from two to one, as there are no other operators that represent effective competitors.
188. The parties submitted that they face competition from a range of other competitors, and in particular Xercise4Less and TruGym. These are considered to be effective competitors within the 20 minute drive time and are located along an arterial road. Within a 20 minute drive time, there is also a university facility which meets the price and facilities criteria. This would result in a five to four reduction within a 20 minute drive time. However, the CMA notes that most of the parties' members walk to the gym (nearly [X] % for Pure Gym's sites and around [X] % for The Gym) and the parties noted that their gyms attract customers from surrounding workplaces. Therefore, the CMA considers that the extent to which these gyms will constrain the parties, or the extent to which a 20 minute drive time is appropriate in this area, may be limited.

Competition from other operators

189. The CMA further considered the numbers of small low-cost and differentiated gyms within the two isochrones. Within 40 minutes' walk there is only one small low-cost gym, with 25 pieces of equipment. Within 20 minutes' drive of The Gym there are five small gyms, which together have 134 pieces of equipment, and within 20 minutes of Pure Gym there are seven, with 250 pieces of equipment. However, only three of these are within 10 minutes' drive.
190. Within 40 minutes' walk of all of the parties' gyms there are no differentiated gyms. Within 20 minutes' drive of PG there are 11, and within 20 minutes' drive of TG there are 13. However, all but two of these are more than 10 minutes' drive away and all of them charge close to £40 a month (more than double the price of the parties).
191. Given the small low-cost gyms are all located relatively far away from the parties, and given there is unlikely to be a strong constraint from the differentiated gyms due to their price and location, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a strong constraint on the parties, either individually or in aggregate.

Entry

192. The parties submitted that JDSports is entering in Leeds, and that Xercise4Less is opening two new sites. The CMA was unable to verify the entry of JDSports and therefore cannot rely on the timeliness, likelihood and

sufficiency of this to offset unilateral effects concerns.⁸⁶ The CMA considers that the two Exercise4Less sites are both located well outside the city centre and would therefore not be expected to exert a material competitive constraint on the parties.

193. On the basis of evidence indicating strong competition between the parties and limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Leeds.

5. Glasgow

The parties' sites

194. The parties operate two sites in the city centre, located 15 minutes' walk from each other. The Gym also operates an additional site in the south of Glasgow. The parties submitted that their sites in the city centre are 'walk sites' (although they also submitted that they draw their members from a large area). The scatterplots of the parties' members' home postcodes suggest that they draw their members from a similar pool, although there are some differences.

195. [One party's] internal feasibility report identifies [the other party] as one of the closest three of the [X] operators identified (geographically) and states that [the other party] is the 'only other low cost Gym operator in the city similar to [ourselves]'.

Effective competitors

196. Within the 40 minute walk time isochrone, the merger will give rise to a reduction in effective competitors from three to two. The other competitor, Arc Gym, while meeting the price and facilities criteria, is at the margin of being considered an effective competitor as it only has 60 pieces of equipment and a membership of 2800 (both the parties' membership being well over [X]).
197. Within the 20 minute drive time isochrone of The Gym, there is a further effective competitor, Fit4Less. However, at 18 minutes' drive away it is at the edge of the catchment area. Given that the majority of the parties' members reach their gyms by foot or bus, this gym is unlikely to represent a material constraint.

Competition from other operators

198. The parties submitted that they face competition from a much wider range of gyms in the area. The CMA considered the number of small low-cost and

⁸⁶ See [Merger Assessment Guidelines](#), paragraph 5.8.3.

differentiated gyms within the two isochrones. Within 40 minutes' walk of both gyms there are no small low-cost gyms. Within 20 minutes' drive of both gyms there is only one small low-cost gym at approximately seven minutes' drive away with 28 pieces of equipment.

199. Within 40 minutes' walk there are two differentiated gyms. One of these, LA Fitness, is located relatively close to the parties (five minutes' walk from The Gym and 15 minutes' walk from Pure Gym) and offers a swimming pool for a price of £29. The CMA considers that this gym may therefore form some constraint on the parties. Within 20 minutes' drive there are 17 differentiated gyms. However, all but five of these are more than 10 minutes' away. Of these five, all charge in excess of £30 per month, which is significantly more than the parties.
200. Given the lack of small low cost gyms in the area, and given there is only likely to be a weak constraint from the differentiated gyms which are close to the parties, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a material competitive constraint on the parties, either individually or in aggregate.
201. The parties also submitted that all gyms offer lower rates to students and therefore pose a significant constraint on the parties, given that between [X] and [X]% of their members are students. However, the CMA considers that the proportion of affected members would in any case be relatively small given these proportions, thus considerably reducing the effectiveness of these gyms as competitors of the parties.

Entry

202. Finally, the parties submitted that two Xercise4Less sites as well as an Eva Fit Braehead are opening soon. However, the CMA considers that the two Xercise4less sites will be located too far away to pose a material competitive constraint, with one at 29 minutes' drive from the parties' sites and the other at 15 minutes' drive.
203. No information is available on Eva Fit Braehead opening in Renfrewshire, outside Glasgow. However, the CMA considers that, even if it were to be a significant competitor, it would be the only one in the local area and located far from the parties' city centre locations. The merger would therefore reduce the number of effective competitors in the 20 minute drive time from five to four.
204. On the basis of evidence indicating strong competition between the parties and limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Glasgow.

6. Milton Keynes

The parties' sites

205. The parties' gyms are located 24 minutes' walk and five minutes' drive from each other. The vast majority (around [X]%) of Pure Gym's members drive to its gym, while the majority of The Gym's members arriving by car is smaller (around [X]%), which the parties noted reflects The Gym's close proximity to the train station.
206. The CMA notes that the parties are the closest gym operators (geographically) charging £25 or less a month (according to the LDC database). No reliable information on catchment areas can be drawn from the scatterplots based on members' home postcodes, as The Gym's site opened only very recently (March 2014).

Effective competitors

207. The parties submitted that they face competition from a large number of gym operators in the area, including a number of higher priced operators offering significant discounts. Within both a 40 minute walk and a 20 minute drive, the CMA found only one effective competitor, Kiss Gyms, located approximately 30 minutes' walk and seven minutes' drive from the parties. However, the parties submitted that Fit4less, located very close to the parties, is temporarily closed for refurbishment and will be re-opening as a large low-cost operator. Taking this into account, there would be a reduction from four to three in effective competitors on both the 40 minute walk and 20 minute drive isochrones.
208. The parties also submitted that LA Fitness has discounted its price from £37 to £25. However, the CMA was unable to verify that such a discount still applies, nor did it find any evidence that the price was £37.50 for a monthly rolling contract. LA Fitness' website indicates it charges £50 on a monthly rolling basis.⁸⁷

Competition from other operators

209. The CMA considered the number of small low-cost and differentiated gyms within the isochrones. Within 40 minutes' walk there is one small low-cost gym with 40 pieces of equipment. Within 20 minutes' drive there are five, offering 115 pieces of equipment in total.
210. As regards differentiated gyms, within 40 minutes' walk there are two (Snap Fitness and Fusion Lifestyle). Snap Fitness is relatively close to the parties but

⁸⁷ [LA fitness Milton Keynes](#)

charges significantly more at £30 (compared with £18.99 for Pure Gym and currently £12.99 for The Gym, although the parties noted that this will increase as this new gym gains members). Fusion Lifestyle also charges substantially more at £37, and has fewer pieces of equipment and fewer members than Snap Fitness (80 pieces of equipment) and the parties (around 200 pieces of equipment)

211. Within 20 minutes' drive there are eight differentiated gyms, and four of these price between £25 and £30 per month. However, they are all relatively distant from the parties. Given the lack of small low-cost gyms in the area, and given there is only likely to be a weak constraint from the differentiated gyms which are close to the parties, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a strong constraint on the parties, either individually or in aggregate.
212. On the basis of evidence indicating strong competition between the parties and limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Milton Keynes.

7. Southampton

The parties' sites

213. The Gym operates one site in Southampton. Pure Gym currently operates a site close to The Gym (19 minutes' walk) and one site located more than nine minutes' drive from The Gym's site, in Bitterne.
214. The parties submitted that the Pure Gym Southampton site is a drive site ([redacted]% of members arrive by car), although the CMA notes that a significant share of its members walk to this gym (nearly [redacted]%), whereas The Gym's site is a walk site ([redacted]% of members walk to the gym). The parties are located at walking distance from each other and scatterplots of customers confirm that there is considerable overlap between the parties' members' location, which indicates that the parties are likely to draw their members from the same area.

Effective competitors

215. The parties submitted that they face competition from a variety of different gym operators. The CMA found that within 40 minutes' walk of Pure Gym the merger would result in a four to three reduction in effective competitors (easyGym and Active Nation's The Quays) and a three to two reduction for The Gym (only Active Nation's The Quays). On a 20 minute drive time basis the merger would result in a four to three reduction for both sites. The CMA notes that the easyGym site, while just meeting the price and facilities criteria, is substantially smaller than the parties.

Competition from other operators

216. The CMA considered the number of small low-cost and differentiated gyms within the isochrones. Within 40 minutes' walk there are five (Pure Gym) or four (The Gym) small low-cost gyms with only 130 or 98 pieces of equipment in total. Within 20 minutes' drive there is a much larger number, 13, offering around 330 pieces of equipment total.
217. As regards differentiated gyms, within 40 minutes' walk there are two and within 20 minutes' drive there are six. Only two of these price between £25 and £30 per month, and all but two are more than 10 minutes' drive from the parties. The CMA is mindful that the parties' sites are both located in the city centre with a significant proportion of their members arriving on foot, which may be particularly convenient for members travelling to the centre for work or leisure purposes, and the constraint from gyms which are at driving distance outside the city centre may be consequently weaker. Given the lack of small low cost gyms and differentiated gyms close to the parties, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a strong constraint on the parties, either individually or in aggregate.

Entry

218. The parties submitted that Xercise4less is likely to enter in Southampton. However, the timing and location of this entry is not known and appears to be a loose intention which is contingent on the availability of a suitable site. There is no guarantee that any site would be a close competitor to the parties. Given this uncertainty the CMA considers that the entry is not sufficiently timely or likely.
219. On balance, on the basis of evidence indicating competition between the parties and a potentially limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Southampton.

8. Bristol

The parties' sites

220. The parties both operate in the city centre circa 25 minutes' walk from each other and six minutes' drive. [REDACTED]. The CMA has focused its analysis on competition in the city centre. Scatterplots of the parties' members' home postcodes show considerable overlap, which indicates that the parties draw their members from a similar area.

221. [One party's] feasibility report for its [X] site [X] identifies [the other party] as a competitor. [The other party's] report (compiled before [X]'s entry) considered competition within a [X] radius, which would have captured [the other party's] [X] site if present. This is consistent with the fact that both parties' gyms are walk sites with a majority arriving by foot and only around [X]% by car.

Effective competitors

222. The parties submitted that they face competition from several competitors, and mention in particular Fitness4Less and Anytime Fitness. The CMA examined competition in the area. The CMA found that within 40 minutes' walk of the parties' sites the merger would result in a three to two reduction in effective competitors. The other effective competitor, Fitness4less, is located in between the parties' sites and is likely to provide a strong constraint. The CMA considers that Anytime Fitness, although located within the 40 minute walk time isochrones, does not fall within this category, since it charges a price above £25 (the parties submitted this is £28.95 monthly with an annual contract) and is significantly smaller than the parties' gyms.

223. Within the 20 minute drive isochrone the merger would result in a four to three reduction in effective competitors, but the relevance of this isochrone appears limited given the parties' feasibility reports and membership transport patterns.

Competition from other operators

224. The CMA considered the number of small low-cost and differentiated gyms within the isochrones. Within 40 minutes' walk there are two or three (depending on whether The Gym or Pure Gym is considered) small low-cost gyms with 90 or 120 pieces of equipment total. Within 20 minutes' drive there are nine small low-cost gyms with around 250 pieces of equipment.

225. As regards differentiated gyms, within 40 minutes' walk there is one. Within 20 minutes' drive there are seven. However, all but two are more than ten minutes' drive from the parties and only three charge less than £30 per month.

226. Given the site is a city centre site to which more than [X]% of the parties' members walk, and given the lack of small low-cost gyms and differentiated gyms situated particularly close to the parties, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a strong constraint on the parties, either individually or in aggregate.

227. The parties further submitted that, given that around [X]% of The Gym's members (but only [X]% of Pure Gym's members) are students and the parties do not price discriminate across their members, gyms offering a discounted price to students below £25 for a monthly rolling contract provide a significant

constraint. In particular, the parties identify the University of Bristol Gym as a competitor.

228. However, the CMA considers that the University of Bristol Gym does not offer monthly rolling contracts to students and the shortest term contract available is for two terms at £170⁸⁸ but in order to pay in instalments, students would need to sign up for a one year contract at £265 (around £22 per month). Given the relatively small proportion of The Gym's membership, and the very small proportion of Pure Gym's membership, that is affected and the considerably less flexible nature of the contract, the CMA considers that this gym is unlikely to pose a significant constraint on the parties.

Entry

229. The parties also submitted that Xercise4Less, easyGym and Kiss Gyms are expected to open new sites in Bristol. The CMA considers that [X] is entering in Bristol but that, given its location, it is primarily likely to constrain The Gym. The merger would still reduce the number of effective competitors in the Bristol area from four to three within 40 minute walk time of The Gym, and five to four within the (less relevant) 20 minute drive time.
230. As regards easyGym and Kiss Gyms, the timing and location of this entry is not known.⁸⁹ The CMA was not able to verify this entry and it is not clear that any site would be a close competitor to the parties. The CMA can therefore not rely on the timeliness, likelihood and sufficiency of this to offset unilateral effects concerns.⁹⁰
231. On balance, on the basis of evidence indicating strong competition between the parties and potentially limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Bristol.

9. Luton/Dunstable

The parties' sites

232. The Gym has a gym in Luton town centre and Pure Gym has a gym in a large retail park in Dunstable, although located close to Luton and advertised on its website as 'Pure Gym Luton and Dunstable'. The parties are located 8 minutes' drive from each other. They submitted that they do not compete for the majority

⁸⁸ See [Bristol University](#)

⁸⁹ [Kiss Gyms' website](#) states that it is 'working on' opening in Bristol, without giving any further details. The easyGym website does not refer to Bristol. The parties stated that easyGym would enter in Union Gate, close to the parties, but the CMA could not verify this.

⁹⁰ See [Merger Assessment Guidelines](#), paragraph 5.8.3.

of their members, as they serve fundamentally different customer preferences. In particular, the parties submitted that Pure Gym operates a drive site ([redacted]% of members arrive by car), whereas The Gym operates a walk site ([redacted]% of members arrive on foot). Scatterplots of the parties' members' home postcodes show some differences, but also show that both parties draw a significant proportion of their members from both Luton and Dunstable. In particular, the scatterplots suggest that while Pure Gym may provide a limited constraint on The Gym, The Gym may constrain Pure Gym as it draws members from a similar catchment area.

233. The CMA also considers that The Gym is the geographically closest gym operator to Pure Gym charging £25 or less (according to LDC), as well as the most similar in other aspects of its offering. Therefore, The Gym is likely to represent a close alternative to Pure Gym from the perspective of Pure Gym's customers.

Effective competitors

234. The parties submitted that they face competition from several gym operators and focus on [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]. The CMA looked at competition in the area. The parties do not overlap on a 40 minute walk basis. On a 20 minute drive time basis there is a four to three reduction in effective competitors, with the remaining effective competitors being Stevenage Leisure (which is at the margin of being considered an effective competitor, as it has 55 pieces of equipment and 1000 members compared to the parties' 170+ pieces of equipment and more than [redacted] members) and Active4less. Active4Less's site is located relatively far from the parties on the other side of Luton from Dunstable, nine minutes driving from The Gym and 16 minutes driving from Pure Gym, and is primarily likely to constrain The Gym. The parties submitted that Houghton Regis Leisure Centre should also be considered in this category as it has more members than indicated in the LDC database, but the CMA could not verify this and has taken it into account as a small low-cost gym.

Competition from other operators

235. The CMA considered the number of small low-cost and differentiated gyms within the isochrone. Within 20 minutes' drive there are four small low-cost gyms, with only 58 pieces of equipment. As regards differentiated gyms, within 20 minutes' drive there are nine, however, only one of these charges below £30 a month. The Gym faces two differentiated operators relatively close by, TruGym and Gym 1, but priced at around £30 and relatively small and with TruGym as a women-only gym, while Pure Gym faces DW, Dunstable Leisure Centre and Dimension Fitness with prices above £30 although with wet

facilities. The Bannatynes gym referred to by the parties is considerably more expensive at £50.

236. While the differentiated gyms may in aggregate provide some constraint on Pure Gym, this may be limited given the significant price difference (Pure Gym charges £18.99 per month). Given further the low numbers of and low total equipment operated by the small low-cost gyms, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a sufficiently strong constraint on the parties, either individually or in aggregate.
237. There are some questions about the strength of the constraint the parties exert on each other in Luton and Dunstable, given their locations. However, the CMA is mindful of the overlap between the parties' membership catchments, and the relatively limited alternatives available to members, in terms of effective competitors, small low-cost gyms and differentiated gyms with a price relatively close to the parties' gyms' price.
238. On balance, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Luton and Dunstable.

10. London South

The parties' sites

239. The parties operate six sites in South London, four operated by The Gym and two by Pure Gym. The Gym's Stockwell and Vauxhall sites are very close to the Pure Gym Oval and Pure Gym Lambeth sites, thus potentially representing the strongest constraint on Pure Gym. The Gym's Walworth Road and Waterloo sites also overlap on a drive time basis. However, given its considerations of London catchment areas (see paragraph 53), the CMA has focused on competition between the Stockwell, Oval, Vauxhall and Lambeth sites.
240. [One party's] feasibility report for its [X] site identifies both [the other party's site] and [another of the other party's sites] as competitors, together with the [X] (the closest one geographically) which is considerably more expensive than the parties (£45 plus £40 joining fees). No other competitor is mentioned.
241. [The other party's] feasibility report for its [X] site was compiled in March 2011, before the opening of any of [the other party's] sites. Another [X] feasibility report (undated) for a site located near [X] identifies [two of the parties' sites] as the only budget gyms within [X] (ie the distance from the furthest gym considered).
242. In addition to the concerns with the entry analysis identified above (from paragraph 146), the CMA notes that the parties' analysis for this area only

provides a partial view of the reaction of The Gym to Pure Gym's entry, as it shows the impact of such entry on one site's performance only. The CMA notes that The Gym [X] appeared to grow membership numbers slowly, and that a Pure Gym site was opened a few months prior to The Gym [X] opening.

Effective competitors

243. The parties submitted that they compete with a number of other local operators. However, the CMA found that none of the operators within 20 or 40 minutes walking from any of the parties' sites is an effective competitor (which in London includes gyms with a monthly price of up to £30), based on price and size. On a 20 minute drive time basis, the merger would reduce the number of effective competitors from six to five or five to four (depending on which of the parties' gyms is considered), but the parties are geographically significantly closer to each other than to any of these gyms and, as noted above, in London the relevance of this very wide isochrone is limited.⁹¹

Competition from other operators

244. The CMA also considered constraints from small and from differentiated gyms within a 20 minutes' walk and, as a sensitivity check, within a 40 minutes' walk. The CMA did not identify any small or differentiated gym operator within 20 minutes' walk. The CMA identified only two small low-cost competitors within 40 minutes' walk: Pimlico Academy, which operates a small gym with 13 pieces of equipment, does not provide access to a pool and is located 35 minutes walking from the parties; and Better.org, which operates two sites, one more expensive and located at 27 minutes' walk from the closest of the parties' gyms (this site was not flagged by the parties as a competitor), and the other (Black Prince) cheaper but smaller with 64 pieces of equipment (but only 200 members), located at a 24 minute walk time from the closest of the parties' gyms.

245. Given the lack of small low cost gyms and differentiated gyms situated close to the parties, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a material competitive constraint on the parties, individually or in aggregate. The CMA has not considered small low-cost and differentiated gyms on a 20 minute drive time basis, given that, as noted above, in London the relevance of this very wide isochrone is limited.

246. The CMA further considers that the parties operate multiple sites in South London and are therefore likely to enjoy a competitive advantage over their

⁹¹ The CMA also notes that the parties have not referred to these gyms as constraints in their response to the CMA's Issues Paper.

competitors as a result, which is likely to exacerbate the competitive impact of the merger in this area. Therefore, any competition to the parties would need to be particularly substantial in this area to countervail the significant loss of competition between the parties.

Entry

247. Finally, the parties submitted that new entrants are expected to increase competition in the market and mention Elephant & Castle Leisure Centre, Anytime Fitness Brixton and easyGym Wandsworth as relevant entrants. However, the CMA considers that there is no clear time frame for the opening of the Elephant & Castle Leisure Centre. Also, no specific information is available on the exact location of the Anytime Fitness site⁹² and, in any event, even if located closely to the parties, Anytime Fitness may be unlikely to pose a significant constraint, as it is generally considerably more expensive than the parties and in many instances it does not offer monthly rolling contracts. Finally, easyGym Wandsworth is going to be located over one hour walk time from the closest of the parties' gyms.
248. Therefore, on the basis of evidence indicating significant competition between the parties and very limited constraint from other operators located geographically close to the parties, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in London South.

11. London West

The parties' sites

249. The parties operate multiple sites in West London. Pure Gym Park Royal and The Gym Alperton are located six minutes' drive from each other. Pure Gym Acton and The Gym Ealing are located eight minutes' drive from each other. The Gym Wembley is located 10 minutes' drive from Pure Gym Park Royal.
250. The feasibility report for [one Party's site] (composed in June 2013, before the opening of [the other party's] sites) considers gyms located within a [X] radius from its site, which would have identified both [X] (within both the [X] and [X]) and [X] (only captured by the wider radius). [The other party's] feasibility report for its [X] site (composed in March 2013, before the opening of [X]) considers competition within [X], which would not have captured, although only by a small margin, [the other party's site] given that this is located just beyond [X] from [the party in question].

⁹² See [Anytime Fitness](#)

Effective competitors

251. The CMA notes that the parties do not overlap either within a 20 or a 40 minute walk distance. They do overlap within a 20 minute drive distance, but they face competition in this isochrone from five or six (depending on which of the parties' gyms is considered) effective competitors for each overlapping site. Further, for some of the parties' gyms, two of these competitors are located more closely to these gyms than the other party.
252. Therefore, on the basis of evidence indicating limited competition between the parties and some constraint from other operators located geographically close to the parties, the CMA does not consider that there is a realistic prospect of an SLC in the supply of gyms in London West.

12. Manchester city centre

The parties' sites

253. Pure Gym operates two sites in Manchester city centre. The Gym has one site located between the two, approximately 14 minutes' walk from Pure Gym Spinningfields and 17 minutes' walk from Pure Gym Urban Exchange. The CMA considers that the scatterplots of these gyms, based on their members' home addresses, indicate that they draw from a similar pool of customers. The Gym's site and Pure Gym's Spinningfields site are 'walk' sites, while travel to Pure Gym's Urban Exchange site is mixed with around [30%] of members travelling by car and [70%] by foot or bus.
254. [One party's] feasibility report shows that [this party] expected [the other party] to be its closest competitor, although it also anticipated that it might draw members from different parts of Manchester. Also, the feasibility report for [the other party's site] assesses the presence of [the first party] in particular detail (no other competitor was assessed in similar detail), suggesting the parties are close competitors.

Effective competitors

255. The CMA first considered the number of effective competitors around the parties' gyms based on a 40 minute walk time basis. Within this isochrone, the CMA considers that there are four effective competitors. These are Lifestyle Fitness, which is geographically close (around six and 15 minutes' walk from Pure Gym and The Gym respectively), charges £24.99 without contract in this area and is a sizeable gym; LA Fitness, which is also geographically close (around five and 10 minutes' walk from The Gym and Pure Gym respectively) and has reduced its monthly no-contract price to below £25 with wet facilities; Soho Gyms, which is around 15 minutes' walk from both parties and has also

reduced monthly no-contract prices to below £25, and Ben Dunne, which is around 15 minutes from The Gym and 20 minutes from Pure Gym. The merger will therefore result in a reduction in effective competitors from five to four within the 40 minute walk isochrone.

256. Given that the parties face significant competition from effective competitors located close to their gyms and within 40 minutes' walk, it was not necessary for the CMA to consider competitors in other categories (small low-cost gyms and differentiated gyms) or competitors located further away.

257. The CMA therefore considers that the merger does not result in a realistic prospect of an SLC in the supply of gyms in Manchester city centre.

13. Leicester

The parties' sites

258. The parties each operate a site in Leicester city centre located 29 minutes' walk from each other. Scatterplots of the parties' members' home postcodes show considerable overlap, suggesting that they draw their members from a similar pool. Also, the difference in transport patterns of the parties' gyms is limited, although a somewhat greater proportion of Pure Gym's members travel by car than The Gym's members.

259. Pure Gym's feasibility report identifies The Gym amongst its competitors but also assesses the position of the new site from the position of The Gym (no other competitor is assessed in such detail).

Effective competitors

260. The CMA first considered the number of effective competitors around each of the parties' gyms based on a 40 minute walk time basis. Within this isochrone, the CMA considers that there are two remaining effective competitors. Klick Fitness is geographically closer to Pure Gym (10 minutes' walk) than The Gym, although it is relatively distant from The Gym (37 minutes' walk). DW Fitness is geographically closer to The Gym (eight minutes' walk) than Pure Gym and is not more distant from Pure Gym (28 minutes' walk) than The Gym. Both gyms are similar in price to the parties, although somewhat smaller.

261. On a 20 minute drive time, the parties' gyms do not face other effective competitors. The CMA therefore considers that the merger results in a reduction of four to three in Leicester on both a 40 minute walk time and a 20 minute drive time basis.

Competition from other operators

262. The CMA further considered the numbers of small low-cost and differentiated gyms within the two isochrones. It found that within 40 minutes' walk of both gyms there is only one small gym pricing below £25 (Simply Women), which has 41 pieces of equipment but forms a limited constraint as a women-only gym. Within 20 minutes' drive, there are nine in total with a combined total of 300 pieces of equipment.
263. As to differentiated gyms, Abbey Sports is located within 40 minutes' walk of both parties. It is significantly more expensive than both gyms (£30) and is relatively far away from Pure Gym (37 minutes' walk), but is relatively close to The Gym (16 minutes' walk) and offers wet facilities. Further, Ayleston Leisure Centre is around 33 minutes' walk from Pure Gym but more than 40 minutes' walk from The Gym. It is significantly more expensive (£31) but offers wet facilities. Queen Elizabeth II Sports Centre (De Montfort University) is relatively close to both parties (around 15 minutes' walk) and forms some constraint for the parties' student members, which represent nearly [X] of their membership. There are four differentiated gyms within a 20 minute drive time.
264. The CMA considers that the aggregate constraint from small low-cost gyms is limited given that there is only one within 40 minutes' walk and these gyms in 20 minutes' drive may not be competitors to the parties' city centre sites, given also their internal documents. However, the CMA considers that there is likely to be some degree of aggregate constraint on the parties from the differentiated gyms in particular within a 40 minute walk time.

Entry

265. The CMA considers that [X] is entering the Leicester area in the next year and will be very close to both parties on a walk time basis. The CMA further considers that based on the evidence it has received the [X] site is likely to represent an effective competitor, as it operates an established model of large, multi-site low-cost gyms. The CMA considers that it will represent a material constraint on the parties and the consequent fascia reduction within the 40 minute and 20 minute drive times will be five to four taking account of this entry.
266. Finally, the parties submitted that there will be entry in the area from Kiss Gyms.⁹³ However, the CMA was not able to verify this entry and thus cannot

⁹³ [Kiss Gyms website](#) states that it is 'working on' opening in Sheffield, without giving any further details.

rely on the timeliness, likelihood and sufficiency of it to prevent the realistic prospect of an SLC.⁹⁴

267. The CMA considers that the parties, with the current gyms in combination with the entry by [X], will face significant competition. On balance, the CMA therefore considers that the merger does not result in a realistic prospect of an SLC in the supply of gyms in Leicester.

14. Newcastle/Gateshead

The parties' sites

268. The parties operate six minutes' drive from each other. The Gym is located in Newcastle East, while Pure Gym is in Gateshead.

269. The parties submitted that their sites are both 'drive sites' and that the appropriate catchment area is wide, which in itself suggests that the parties compete against each other. However, the parties further submitted that they operate in different cities, separated by the River Tyne acting as a strong physical and psychological barrier between the two areas. According to the parties, this results in their membership scatterplots (drawn by home address) identifying non-overlapping areas from which the parties draw their members.

270. The CMA considers that, although the scatterplots show that The Gym's members are almost entirely located north of the river, a considerable proportion of Pure Gym's members are also located north of the river. The CMA also notes that both parties' gyms are drive sites so that one party's customers can reach the other party's gym. The CMA therefore cannot exclude that the parties pose a constraint on each other in Newcastle.

Effective competitors

271. The CMA first considered the number of effective competitors around each of the parties' gyms. Body Zone is an effective competitor located in central Newcastle and therefore geographically closer to each party's gym (23 minutes' walk from Pure Gym and five minutes' drive from The Gym) than the other party. The CMA also assessed competitors within a 20 minute drive time, which the CMA considers is an appropriate isochrone to take fully into account given that the parties' gyms are six minutes' drive away from each other (and more than one hour's walk) and are drive sites. In this isochrone, both gyms face a further two effective competitors: SpringsLite, although for The Gym it is on the edge of this isochrone (almost 20 minutes away) while for Pure Gym it is 16

⁹⁴ See [Merger Assessment Guidelines](#), paragraph 5.8.3.

minutes away, and Fit4Less (12 to 13 minutes' drive away from both gyms), although this is a relatively small gym with 50 pieces of equipment. The CMA therefore considers that the merger results in a reduction of three to two in Newcastle/Gateshead on a 40 minute walk time basis and five to four on a 20 minute drive time basis.

272. The CMA notes that The Gym further faces competition from Xercise4Less, which has just opened and is considerably larger than the parties' gym ('over 35,000 square feet and holding over 400 pieces of state of the art equipment') and priced at a similar price point to the parties.⁹⁵ This gym is located eight minutes driving of The Gym's site, but in the other direction compared to Pure Gym, from which it is a 23 minutes' drive away. The CMA therefore considers that Xercise4Less is likely to pose a significant constraint on The Gym but not on Pure Gym.

Competition from other operators

273. The CMA further considered the numbers of small low-cost and differentiated gyms within the two isochrones. It found that within 40 minutes' walk Pure Gym faces two small low-cost gyms (Team Northumbria and Benfield) with a combined 57 pieces of equipment, while The Gym faces three small low-cost gyms (Le Petit Spa, NCL College and a public gym) with a combined 41 pieces of equipment. Within 20 minutes' drive, there are several small low-cost gyms from both parties. The parties also face competition from several differentiated gyms (Gateshead Leisure Centre, Gateshead International Stadium, Life Health & Fitness, Anytime Fitness and DW) within around 10 minutes' drive from both gyms.

274. The CMA considers that, although the parties will face limited competition within 40 minutes' walk, the more appropriate isochrone in this local area is the 20 minutes' drive time given the parties' relatively different locations and member transport patterns. Within a 20 minute drive time the parties face competition from three effective competitors, and also face some competition from small low-cost gyms and differentiated gyms within 20 minutes' drive. The CMA also notes that competition between the parties may be limited. On balance, the CMA therefore considers that the merger does not result in a realistic prospect of an SLC in the supply of gyms in Newcastle/Gateshead.

⁹⁵ [Xercise4less](#)

15. Birmingham city centre

The parties' sites

275. The parties operate two sites in the city centre, located 27 minutes' walking or 4 minutes' drive from each other. Pure Gym also operates two other sites, one located 10 minutes driving away (Pure Gym Birmingham West) and the other 13 minutes driving away (Pure Gym Birmingham Beaufort) from The Gym.
276. The parties submitted that they do not compete for the majority of their members, as they both operate 'walk sites' located in areas that are difficult to access from one site to the other. However, the CMA notes that a significant proportion of [redacted] members reach their gym by car and further considers that scatterplots of the parties' members' home postcodes show considerable overlap, which indicates that they draw their members from a similar pool. In addition, [one party's] feasibility report (compiled before [the other party's] entry) assessed competition within [redacted], so it would have captured [the other party], if present. Also, the report highlighted the lack of 'other low cost Gym operators in the city similar to [ourselves]', so [the other party] would have been likely to be regarded as a significant competitor. The CMA therefore considers that the parties are likely to form at least some competitive constraint on each other.

Effective competitors

277. The CMA first considered the number of effective competitors around each of the parties' gyms based on a 40 minute walk time basis. Within this isochrone, the CMA considers that there are two effective competitors, Fitness4Less and LA Fitness, that are geographically closer to the parties than they are to each other, although the CMA notes that the constraint from LA Fitness may be limited because it is more expensive than the parties (£25 without contract) and has a relatively few pieces of equipment (62). Within a 40 minute walk, there is one further effective competitor, Flex Fitness, which is a relatively large gym although its price is relatively high (£25) and it is relatively far away from Pure Gym (39 minutes' walk). In total the parties face three effective competitors in the 40 minute walk isochrone.
278. On a 20 minute drive time, the parties' gyms face three other effective competitors, of which Twenty4Seven Fitness is relatively close to the parties (five minutes' drive from Pure Gym and eight minutes' drive from The Gym) and has a similar offering to the parties. The other competitors are easyGym Birmingham Kings Heath and Fit For Free. The CMA therefore considers that the merger results in a reduction of five to four in Birmingham on a 40 minute walk time basis and eight to seven on a 20 minute drive time basis. The CMA

also found evidence that easyGym will be opening a second site close to Birmingham New Street station in summer 2014, which will be located close to the parties and will fall within the 40 minute walk isochrone. Easygym operates an established model of large low-cost sites and is likely to represent a material constraint on the parties. The merger will therefore result in a reduction of six to five on a 40 minute walk time basis and nine to eight on a 20 minute drive time basis.

279. On the basis of this evidence, the CMA therefore considers that the merger does not result in a realistic prospect of an SLC in the supply of gyms in Birmingham.

16. Camberley/Farnborough

The parties' sites

280. Pure Gym operates a gym in Camberley, which is 12 minutes' drive from The Gym's site in Farnborough.
281. The parties submitted that their sites are both 'drive sites' and that the appropriate catchment area is wide, which in itself suggests that the parties compete against each other. However, the parties further submitted that they operate in different towns, separated by the M3 motorway acting as a travel time barrier for many potential members. According to the parties, this results in their membership scatterplots (drawn by home address) identifying non-overlapping areas from which the parties draw their members.
282. The CMA considers that the scatterplots show that, although limited, there is nevertheless some overlap in members. The CMA also notes that as both parties' gyms are drive sites (between [X] and [X]% of members arrive by car), the other party's gym may be an alternative to some members. That said, the CMA notes that an internal report for [one Party's] opening in [X] considered only gyms located within a [X] radius, which did not cover [the other party]. On balance, the CMA therefore cannot exclude that the parties pose some constraint on each other in this area and has therefore on a cautious basis considered the competitors faced by the parties.

Effective competitors

283. The CMA considers that, given the distance between the parties' gyms and the fact that they are both drive sites, the 20 minute drive time is a more appropriate isochrone than the 40 minute walk time. The parties face two effective competitors within this isochrone: Arena Leisure Centre, which is closer to each party than they are to each other, and Fitness First (Camberley), which is a nine and 16 minute drive away from Pure Gym and The Gym

respectively. The parties further face three small low-cost gyms (Wavell Campus Leisure, Fit4Less (Farnborough) and Blackwater Leisure Centre) with a combined 71 pieces of equipment, although the CMA notes that one of these (Blackwater) also offers wet facilities. The parties also face two differentiated gyms (Aldershot Garrison Sports Centre and Park Club Fleet), both with wet facilities although the price of Park Club Fleet at £39 is significantly higher than the parties' price.

284. The CMA considers that the parties will face two effective competitors, combined with a limited constraint from small low-cost gyms and differentiated gyms. Taking into account that competition between the parties is likely to be limited, on balance, the CMA therefore considers that the merger does not result in a realistic prospect of an SLC in the supply of gyms in Camberley/Farnborough.

17. Nottingham

The parties' sites

285. Pure Gym operates a gym in the north of Nottingham, while The Gym's site is in the city centre. The distance between their sites is 36 minutes' walk and five minutes' drive.
286. The parties stated that their sites are used by consumers using different modes of transport, given that most of Pure Gym's members ([X]%) arrive by car while almost all of The Gym's members arrive on foot ([X]%). They submitted that this means that their gyms do not compete closely. However, the CMA considers that the scatterplots based on each gym's members' home addresses show a significant overlap in customer base between the parties' gyms. [One party's] feasibility report provides mixed evidence, because although it highlights the absence of competitors within a [X] radius, it also identifies four budget competitors in the city centre, including [the other party]. The CMA therefore considers that the parties may exert at least some competitive constraint on each other.

Effective competitors

287. The CMA therefore assessed the number of effective competitors around each of the parties' gyms. This shows that The Gym faces competition from five effective competitors in Nottingham city centre, which are all closer than Pure Gym: Gym4All, Fitspace, Xercise4Less, Formula One and H2 Fitness.
288. On the basis of this evidence, the CMA therefore considers that the merger does not result in a realistic prospect of an SLC in the supply of gyms in Nottingham.

Actual potential competition

289. The CMA has assessed the impact of this merger on competition in each of the four local areas where the CMA currently has evidence to indicate the parties are actual potential competitors⁹⁶. These are the following:

1. Sheffield
2. Manchester East
3. Wolverhampton
4. Cardiff

18. Sheffield

The parties' sites

290. The Gym does not currently have a gym in Sheffield but is planning to open a site in August 2014 located 23 minutes' walk from Pure Gym Sheffield North and 35 minutes' walk from Pure Gym Sheffield. The site is in pre-sale. Pure Gym also operates another site in Sheffield Millhouses, which is located at around 10 minutes' drive from The Gym. The CMA therefore considers the parties are actual potential competitors in the area. The CMA has focused its analysis on the extent of competition that can be expected between The Gym's new site and Pure Gym's Sheffield and Sheffield North sites. The parties submitted that Pure Gym Sheffield North is a 'drive site' and that this is also expected to apply to The Gym based on location and parking facilities provided.

291. The parties submitted that whereas the Pure Gym membership is predominantly concentrated on the north side of the River Don, The Gym's site is likely to have a broad catchment area concentrated to the south and west of the river. The CMA notes that The Gym's site and Pure Gym's Sheffield sites are on opposite sides of the city centre and are a relatively long walk apart (much shorter on a drive basis). However, the CMA examined [one party's] feasibility report for the opening of its [redacted] site⁹⁷ and found that [it] identified [the other party as a competitor]. There are references to a 'high level of budget competition in the city centre' in the document, but the only gyms listed [redacted] as budget competitors are [the parties], and Fitspace (which is not in the city centre).

⁹⁶ Where additional sites are being added to existing overlaps, for clarity the CMA has grouped this in the assessment of current competition.

⁹⁷ [redacted]

Effective competitors

292. The parties submitted that there are 16 sites priced below £25 within a 15 minute drive time of the new The Gym site and refer specifically to FitSpace, Club Hallam and the Hillsborough Leisure Centre, including three public facilities within an eight minute drive from the parties' sites. The CMA found that within 40 minutes' walk there are no other effective competitors, resulting in a two to one reduction on this basis. On a 20 minute drive basis there are three (The Gym) or four (Pure Gym).
293. The CMA is mindful that none of these are located near the city centre. Nevertheless, given that FitSpace (located around 6 and 11 minutes' away from The Gym and Pure Gym respectively) is relatively close to the parties in its offering and is specifically mentioned in The Gym's feasibility report, the CMA has taken account of this gym as a material constraint.

Competition from other operators

294. The CMA considered the number of small low-cost and differentiated gyms within the isochrones. Within 40 minutes' walk there are two (Pure Gym) or three (The Gym) small low-cost gyms with 46 or 68 pieces of equipment total. Within 20 minutes' drive there are a much larger number - 14, offering around 400 pieces of equipment total.
295. As regards differentiated gyms, within 40 minutes' walk there are two and within 20 minutes' drive there are eleven. All but two of these price at £30 or below per month, however, all but five are more than 10 minutes' drive from the parties.
296. The CMA recognises there is likely to be some degree of aggregate constraint on the parties from small low-cost and differentiated gyms, considering the large number of them within the 20 minute drive time isochrone. However, the parties' internal documents suggest that, FitSpace excepted, the key constraints come from other sites in the city centre, of which the number is much more limited.
297. The parties finally submitted that, given that circa [X]% of Pure Gym's members are students and the parties do not price discriminate across their members, even more expensive gyms offering a discounted price to students below £25 for a monthly rolling contract provide a significant constraint. However, given that a minority of the parties' membership is affected, and the low number of differentiated gyms close to the parties, the CMA considers that this is unlikely to result in a significant constraint on them.

Entry

298. Finally, the parties submitted that there will be entry in the area from Kiss Gyms.⁹⁸ The CMA was not able to verify this entry and thus cannot rely on the timeliness, likelihood and sufficiency of it to prevent the realistic prospect of an SLC.⁹⁹
299. On balance, on the basis of evidence indicating that, absent the merger, there would be strong competition between the parties and a potentially limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Sheffield.

19. Manchester East

The parties' sites

300. The parties will overlap with two sites in East Manchester, located at 29 minutes' walk and seven minutes' drive from each other. Pure Gym's site (Debdale Park) opened in October 2013; The Gym's site (Openshaw) is due to open in [redacted]. The site is in pre-sale¹⁰⁰.
301. [One party's] feasibility report pre-dates [the other party's] entry (the report is dated March 2013). At the time, [the party] identified only one budget gym in the area, Klick Fitness, which is the only gym whose competitive strength is marked three (on a scale from one to five). It appears that the Klick Fitness site was then purchased by [the other party]. The site is listed first in the table of key competitors.

Competition from other operators

302. The CMA found that within 40 minutes' walk of The Gym the merger would result in a reduction of effective competitors from two to one and three to two within 40 minutes' walk of Pure Gym, which faces competition within this distance from Life Leisure gym (Houldsworth Village).
303. Within 20 minutes' drive time, which captures sites in Manchester city centre, there is a seven to six reduction for The Gym and a nine to eight reduction for Pure Gym. However, the CMA considers that The Gym's feasibility report indicates that competition does not operate within such a wide area. The CMA also notes that it is not clear that gyms in Manchester city centre pose a

⁹⁸ [Kiss Gyms website](#) states that it is 'working on' opening in Sheffield, without giving any further details.

⁹⁹ See [Merger Assessment Guidelines](#), paragraph 5.8.3.

¹⁰⁰ [The Gym Group](#)

significant constraint on the parties' gyms in Manchester East. This is because these gyms, given their location, are likely to be drive sites (the parties did not provide transport data for the Manchester East gyms) while gyms in the city centre are likely not to be drive sites, as indicated by the evidence that only a small proportion of the parties' members in the city centre travel to their gyms by car (less than [X]%).

304. The parties submitted that both gyms further face competition from three other gyms that are located within around 10 minutes' drive. They referred first to the SportCity gym (Etihad stadium), around 10 minutes' drive from both parties' gyms (around 45 minutes' walk from The Gym but further away from Pure Gym), although the CMA notes that this is a relatively small gym (86 pieces of equipment) that is significantly more expensive (£24.99) than the existing Pure Gym site (£16.99) and is therefore likely to pose only a limited constraint. The parties further referred to the Manchester Aquatic Centre, around nine minutes' drive away from both parties' gyms. However, the CMA notes that this gym is more appropriately considered as a differentiated gym because, although its price is below £25 on a contractual basis and it offers a swimming pool, its price is higher than a budget gym price at £35 on the no-contract basis equivalent to the parties' prices. The parties also referred to the Sugden Sports Centre, around 9-10 minutes' drive, but this is also better considered as a differentiated gym given that it does not offer monthly membership and the equivalent monthly contract price is £29.16. Its student rates are below £25, but Pure Gym's student membership is only [X]%.
305. The CMA considered the number of small low-cost and differentiated gyms within the isochrones. Within 40 minutes' walk there are two small low-cost gyms with 48 pieces of equipment total. Within 20 minutes' drive there are a very large number – around 30, with more than 660 total pieces of equipment.
306. As regards differentiated gyms, within 40 minutes' walk there are none. Within 20 minutes' drive there are 22. Seven of these differentiated price below £30 per month. However, as noted above, the CMA considers that only some of the gyms in this isochrone may form a constraint to the parties. The CMA has already discussed Manchester Aquatic Centre and Sugden Sports Centre above.
307. Therefore, Pure Gym faces a constraint from Life Leisure gym within 40 minutes' walk and The Gym faces some constraint from SportCity just outside 40 minutes' walk. The CMA recognises there is also likely to be some degree of aggregate constraint on the parties from small low-cost and differentiated gyms, considering the differentiated gyms specifically discussed above and the small low-cost gyms. The CMA also notes that there is a significant number of small low-cost and differentiated gyms within the 20 minute drive isochrones, but as

noted above it is not clear to what extent these gyms form a constraint, either individually or in aggregate. Accordingly the CMA considers that a reduction of two to one within 40 minutes' walk (The Gym) is still capable of giving rise to concerns.

308. On balance, on the basis of evidence indicating that, absent the merger, there would be strong competition between the parties and a potentially limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Manchester East.

20. Wolverhampton

The parties' sites

309. The Gym will open a new site in Wolverhampton that will be located a 27 minute walk from Pure Gym's Wolverhampton South site. Most (around [X]%) of Pure Gym's members arrive by car and the parties expect a similar transport profile for The Gym. In its feasibility report, [one party] tracks competition within a [X] radius, which would have comfortably captured [the other party]. [The other party's] feasibility report identifies Fitness First as 'the closest established club within [X]', which was closed at the time of the report allowing [that party] 'to establish with little or no competition.'

Competition from other operators

310. The CMA found that within 40 minutes' walk of the parties' sites the merger would result in a three to two reduction in effective competitors. The other effective competitor, TruGym,¹⁰¹ is located close to the parties' sites and is likely to provide a strong constraint. Within the 20 minute drive isochrone the merger would result in a nine to eight reduction (Pure Gym) or five to four (The Gym). However, of the effective competitors around Pure Gym, five are located more than fifteen minutes' drive away, and of the effective competitors around The Gym, while one is close (Trugym), the others are ten minutes' or greater drive away. This is significantly farther than the driving distance between the parties, which they have estimated at three minutes.
311. The CMA considered the number of small low-cost and differentiated gyms within the isochrone. Within 40 minutes' walk there are two small low-cost gyms with 40 pieces of equipment in total. Within 20 minutes' drive they are relatively numerous, at 16 gyms with 210 pieces of equipment in total.

¹⁰¹ Other than the TruGym site in Luton, the TruGym site in Wolverhampton is not a women-only gym.

312. There are no differentiated gyms within a 40 minute walk. Within 20 minutes' drive there are five (Pure Gym) or six (The Gym) but only one is less than ten minutes' drive away and at £34 a month it charges considerably more than the parties.
313. Given the lack of small low-cost gyms and differentiated gyms situated particularly close to the parties, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a material competitive constraint on the parties, individually or in aggregate.
314. On the basis of evidence indicating that, absent the merger, there would be competition between the parties and limited constraint from other operators in the area, the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Wolverhampton.

21. Cardiff

The parties' sites

315. The Gym operates one site in Cardiff located seven minutes and nine minutes driving from two Pure Gym Sites, one in the city centre and one in the north (Pure Gym [REDACTED], due to open in 2015¹⁰²).
316. The parties submitted that their sites do not compete for the majority of their members as they serve fundamentally different customer preferences. The parties submitted that The Gym's site is, and Pure Gym [REDACTED] is likely to be, a drive site, whereas Pure Gym's city centre site is a walk site. The parties stated that [REDACTED]% of The Gym's members drive to the gym, whereas in Cardiff City Centre [REDACTED]% of customers walk to the gym (less than [REDACTED]% drive there).
317. Nonetheless, the scatterplots of the parties' members' home postcodes show significant overlaps between The Gym's and Pure Gym's city centre site's members. Further, [one party's] feasibility report identified [the other party's] site [REDACTED] as a competitor (and also considers gyms located further away from [its site] than [the other party]). Also, the fact that both The Gym and Pure Gym [REDACTED] are drive sites indicates that they are likely to be regarded as substitutes by customers.

Effective competitors

318. The parties submitted that they face competition from several competitors and mention [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The parties do not overlap within the 40 minute walk isochrone. The CMA found that within a 20 minute

¹⁰² [REDACTED] The CMA therefore considers the entry likely.

drive isochrone around The Gym the merger would result in a four to three reduction in effective competitors; around Pure Gym Cardiff a six to five reduction, and around Pure Gym [redacted] a four to three reduction in effective competitors. The CMA is mindful that the two Pure Gym sites only face one effective competitor close to them; the The Gym site only faces one effective competitor which is less than 10 minutes' drive away. The CMA has focused in particular on Pure Gym [redacted].

Competition from other operators

319. Within 40 minutes' walk of Pure Gym [redacted] there are no small low-cost gyms and no differentiated operators. Within 20 minutes' drive there are six, however, all but two are more than 10 minutes' drive away. Within 40 minutes of Pure Gym Cardiff there are two, with 65 pieces of equipment and within 40 minutes of The Gym there is one, with 30 pieces of equipment. As regards differentiated gyms, there is one within 40 minutes' walk of Pure Gym [redacted], none within 40 minutes of Pure Gym Cardiff and one within 40 minutes of The Gym. Within 20 minutes' drive of Pure Gym [redacted] there are seven, for Pure Gym Cardiff there are seven and for The Gym there are six.
320. Given the lack of small low cost gyms and differentiated gyms situated particularly close to the parties, based on the evidence available to it the CMA does not consider that these gyms are likely to pose a strong aggregate constraint on the parties, either individually or in aggregate.
321. On the basis of evidence indicating that, absent the merger, there would be competition between the parties and limited constraint from other operators in the area around Pure Gym [redacted], the CMA considers that there is a realistic prospect of an SLC in the supply of gyms in Cardiff.

Countervailing factors – entry and expansion

322. The parties submitted that they face a wide range of competitors with significant expansion plans. The competing gyms identified by the parties with the largest expansion plans are Anytime Fitness (49 planned openings), Fit4Less (30 planned openings), Xercise4Less (20 planned openings), Lifestyle Fitness (10 planned openings), Ben Dunne (10 planned openings), JD Gyms (seven planned openings) and easyGym (four planned openings). The parties state that, in aggregate, this level of new entry will constrain the merged entity even if one firm would not do so individually.
323. The CMA notes that the amount of entry in aggregate planned by other low-cost firms is less than the merged parties' combined expansion plans. This demonstrates the extensive advantage the merged entity will have over other

firms in terms of growth in budget gyms, even if this expansion is considered across the board. In addition, the CMA has, based on the evidence available to it, concerns as to the materiality of the constraint of a number of the firms with expansion plans. For example, the largest of these, Anytime Fitness with 38% of the planned openings across competing budget gyms, is unlikely to form a significant constraint on the parties, given that, as indicated in the local area assessment above, it generally operates considerably smaller gyms, often does not offer monthly rolling contracts and generally charges considerably higher prices than the parties (it is not a low-cost operator). Lifestyle Fitness has acted as a constraint on the parties in hardly any of the local areas examined above despite having more than 40 sites across the UK, so it is not clear that this chain is a significant constraint on the parties. Further, the CMA notes that the sites sought by Fit4Less are significantly smaller than the parties' gyms (4,000 to 8,000 square feet, while the parties' sites are typically 10,000 to 20,000 square feet).

324. In addition, some of the gym chains referred to by the parties are currently very small in the UK and it is therefore not clear whether they will be able to realise their planned expansion. For example, Ben Dunne has only three gyms and JD Gyms currently has only one.
325. Therefore, the only budget gyms chains with expansion plans that are similar to the parties' are Xercise4Less and Lifestyle Fitness who represent around 38 per cent of total identified expansion plans. The CMA notes that there are currently only limited plans among other budget gym operators to expand significantly or that the operators in question may not form a material constraint on the parties. The CMA has also consulted with third parties and has not been presented with the necessary evidence to confirm that entry will be widespread. Several third parties stated that the parties have the largest expansion plans.
326. The CMA therefore considers that the expansion taking place in the budget gym sector is being driven, to a significant extent, by the parties. Although some expansion will take place among competing gyms, it is unclear that this will be sufficient to prevent an SLC arising as a result of the merger.

Mid-range gym repositioning

327. The parties suggest that there are two ways in which mid-range gym operators would be repositioning their offering, first by creating new low cost brands, and second by offering discounts or promotions or even permanently lowering their fees. The parties also referred to the recent purchase by Sports Direct of 33 sites of LA Fitness. While the CMA was not presented with any information on how these gyms will be operated in response to its enquiries, it notes that the

sites covered by the purchase are, in general, not sites in areas of overlap between the parties.

328. Where mid-range operators have reduced prices to a similar level to the parties or have created new low-cost brands, these have already been accounted for as part of the local competition assessment. The CMA notes that this had occurred in only a limited number of the 21 local areas.
329. The CMA considers that it does not have sufficient evidence at this stage to place significant weight on the prospect of mid-range gym operators repositioning their offering. Although the CMA received indications from third parties that there was a general tendency of mid-range operators to try to reposition themselves, this was considered difficult and there was no clear indication of specific gym operators with plans to reposition their offering sufficiently close to the parties' offering to represent a materially stronger constraint.
330. The parties provided some examples of mid-range operators repositioning their offering. However, these are mostly anecdotal examples of local offers and in many cases, even the lower price offered is considerably higher than the parties' price.
331. The CMA also considers that mid-range operators may not have the ability and/or the incentive to reposition their offering to compete more closely with budget gym operators. First, the parties' business model is centred on the operation of large facilities, with a number of pieces of equipment and long opening hours aimed at maximising footfall and offer cheap prices. Many mid-range gym operators operate smaller gyms and offer access to limited facilities, so they are unlikely to be able to lower prices to such an extent to become competitive with the parties, or have the infrastructure at existing sites to enable them to increase their equipment.
332. For example, one mid-range operator indicated that it would not be willing to reposition its commercial offering, as it currently attracts a different type of membership than the parties and enjoys higher loyalty than budget gyms, as its members tend to know each other and that is part of the reason they choose that gym. Repositioning would be likely to make the offering less attractive to these customers.

Conclusion on barriers to entry and expansion

333. For the reasons set out above, although significant entry and expansion has taken place in the recent past, and continues to take place, for gyms generally as well as for budget gyms, the CMA considers that some barriers to entry and

expansion exist, in particular for gym sites that are capable of forming a significant constraint on the parties in terms of size and equipment and in terms of location quality. The CMA further considers that, although some expansion will take place among competing gyms, the expansion taking place in the budget gym sector is being driven, to a significant extent, by the parties. Evidence also suggests that significant repositioning is both difficult and unlikely.

334. The CMA therefore considers that it does not have sufficient evidence that entry, expansion and/or repositioning will be sufficiently timely, likely and sufficient to prevent a realistic prospect of an SLC resulting from the merger.

Undertakings in lieu

335. Where the duty to make a reference under section 33(1) of the Act applies, pursuant to section 73(2) of the Act the CMA may, instead of making such a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings from the parties as it considers appropriate.¹⁰³

336. The CMA notes that undertakings in lieu of reference (UILs) are appropriate only where it is confident that all the potential competition concerns that have been identified in its investigation would be resolved by means of the undertakings in lieu without the need for further investigation. The CMA has an obligation under the Act in the phase 1 stage of its review to have regard, when accepting UILs, to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it (section 73(3) of the Act). This means that the remedies proposed must be clear cut and capable of ready implementation.¹⁰⁴

Behavioural undertakings

337. In lieu of a reference to a phase 2 investigation, the parties first offered behavioural undertakings. For a period of two years from the date on which the final undertakings would be accepted, the parties offered to commit to the following: [✂]

¹⁰³ The procedure for consideration of undertakings set out in section 73A of the Act does not apply in the present case, because a satisfactory submission was received before 1 April 2014 (paragraph 6 of the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order (2014/416)).

¹⁰⁴ *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122, December 2010, adopted by the CMA as set out in *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D), at paragraphs 5.6-7.

338. The parties also proposed [REDACTED].

339. However, the CMA considers that these behavioural undertakings (a) are not sufficiently clear-cut, and (b) are not capable of fully addressing the competition concerns. As noted in the Exceptions Guidance, the CMA is unlikely to consider, at phase 1, that behavioural undertakings will be sufficiently clear-cut to address the identified competition concerns. This is because behavioural remedies bring a number of risks which can reduce their effectiveness or create competition concerns elsewhere. These concerns relate to monitoring, enforceability and competition concerns.¹⁰⁵

340. In addition to this general policy, the CMA has considered the behavioural undertakings' ability to offer a clear-cut solution to the identified SLC including loss of national, current local and actual potential local competition. As regards the local areas where the CMA found a realistic prospect of an SLC, in respect of [REDACTED],¹⁰⁶ and the proposed undertakings would therefore [REDACTED]. Further, the proposed undertakings are not capable of addressing [REDACTED]. Also, the proposed undertakings cover only [REDACTED].

341. The CMA therefore considers that the behavioural undertakings offered by the parties are not capable of clearly addressing the competition concerns identified as arising from the merger.

Structural undertakings

342. The parties also offered, in the event the CMA considered that their offer of behavioural undertakings was insufficient to address its competition concerns, to divest up to [REDACTED] to one or more buyers approved by the CMA. The parties identified the site(s) that they would be willing to divest should the CMA find concerns in a given local area.

343. The CMA has found concerns in respect of national competition and 14 local areas, including areas of both current and actual potential competition. Following the submission of further evidence in April and May 2014, the CMA also considers that the case may raise more areas of concern on potential competition grounds, but that further detailed investigation is required to decide with confidence whether there are SLC concerns in additional local areas.

344. As explained in the CMA's guidance, undertakings in lieu of reference are appropriate only where the remedies proposed to address any competition concerns raised by the merger are clear cut and where they are capable of

¹⁰⁵ [Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 5.39-41.

¹⁰⁶ This happened, for example, in [REDACTED].

ready implementation. In order to accept undertakings in lieu of reference, the CMA must be confident that all the potential competition concerns that have been identified in its investigation would be resolved by means of the undertakings in lieu without the need for further investigation¹⁰⁷. The need for confidence reflects the fact that, once undertakings in lieu have been accepted, this is final in terms of the CMA's ability to refer, as section 74(1) of the Act precludes a reference after that point.

345. The CMA considers that the proposed structural undertakings do not resolve its competition concerns at a national level in a clear-cut manner. While the [X] gyms could be sold to a single national operator, it is not clear that this operator would then be able to impose a strong constraint on the parties such that it would restore competition to the level that would prevail absent the merger. The combined entity would retain at least [X] sites, with more planned and in pre-opening. The CMA is extremely cautious before accepting a purely mitigatory remedy and will not do so where the phase 2 investigation is better placed to achieve a remedy, bearing in mind its order making powers, ability actually to prohibit a merger and increased time available in the context of a second phase inquiry to consider more detailed remedies¹⁰⁸.
346. The CMA also notes that the parties' proposed divestment of [X] gyms is insufficient for a divestment in all local areas in which the CMA found a realistic prospect of an SLC (a divestment in the 14 SLC areas of the problematic increment resulting from the merger would result in 15 divestments in view of London South). The parties requested that in such a situation they be given the opportunity to reconsider their remedies offer, in view of the fact that the present case is among the last under the UIL process for merger reviews starting before 1 April 2014 and that for merger reviews starting after this date the parties would have visibility of the SLC decision before deciding on their undertakings offer.¹⁰⁹ In this case, given the inability to solve the national competition issues identified in a clear cut manner, the CMA did not consider it appropriate to seek modifications from the parties [X].
347. The CMA therefore considers that the structural undertakings offered by the parties are not capable of clearly addressing the competition concerns identified as arising from the merger.

¹⁰⁷ Paragraph 5.8, *Exceptions to the duty to refer and undertakings in lieu of reference* guidance

¹⁰⁸ Paragraph 5.21, *Exceptions to the duty to refer and undertakings in lieu of reference* guidance

¹⁰⁹ This is under the amendments to the Act introduced by the Enterprise and Regulatory Reform Act 2013.

Conclusion on undertakings in lieu

348. For the reasons set out above, the CMA has decided not to exercise its discretion under section 73(2) of the Act to consider whether to accept undertakings in lieu of a reference.

Decision

349. This merger will therefore **be referred** under section 33(1) of the Act.

Andrea Coscelli

Executive Director – Markets and Mergers

26 June 2014