

Anticipated acquisition by Pearson plc of Educational Development International plc

**ME/4809/10**

The OFT's decision on reference under section 33(1) given on 10 June 2011. Full text of decision published 29 June 2011.

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

**PARTIES**

1. **Pearson plc (Pearson)** has businesses in publishing and education. Its three principal divisions, Pearson Education, Financial Times and Penguin Books, had a worldwide turnover of £5.7 billion, with £800 million generated in the UK in 2010. Pearson Education supplies academic<sup>1</sup> and vocational<sup>2</sup> qualifications (through its subsidiary, **Edexcel**) and testing and related support services to learning providers in the UK and internationally. **Edexcel** generated revenues of around £200 million in 2010 in the UK.
2. **Education Development International plc (EDI)** supplies a wide range of vocational qualifications and related support services to learning providers<sup>3</sup> in the UK and internationally. EDI's worldwide turnover for the financial year ending September 2009 was around £29.5million, with around £21.7 million generated in the UK.

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<sup>1</sup> Academic qualifications (also called General Qualifications) have traditionally included, among others, GCSE, AS and A Levels.

<sup>2</sup> Vocational qualifications include, amongst others, National Vocational Qualifications (NVQs) and Vocational Related Qualifications (VRQs). Pearson's BTEC 'brand' of vocational qualifications is associated with many vocational courses due to its historical presence. BTEC stands for Business and Technology Education Council.

<sup>3</sup> The provision of vocational qualifications by learning providers around employment.

EDI's principal areas of activity are: (i) supply of UK vocational qualifications and related services<sup>4</sup>; (ii) international qualifications services through its LCCI<sup>5</sup> division); and, (iii) other support services, such as computer based testing platforms (i-assess for vocational qualifications and GOAL, for schools).

## **TRANSACTION**

3. Pearson proposes to acquire the entire share capital of EDI. The OFT accepted Pearson's voluntary informal submission as satisfactory on 15 March 2011, thus the OFT administrative timetable to decide this case expired on 3 June 2011.

## **JURISDICTION**

4. As a result of the proposed transaction, Pearson and EDI would cease to be distinct. As stated above, the turnover test under the Act is not satisfied since EDI generates revenues of less than £70 million in the UK. However, the OFT believes that the share of supply test is satisfied since the parties' overlap in the supply of a number of accredited vocational qualifications of the same skill sector in excess of 25 per cent in the UK.
5. The Office of Qualifications and Examination Regulation (Ofqual) collates qualifications data segmented by 15 broad Sector Subject Area Classifications (SSAC). The OFT considers that these Ofqual classifications are a reasonable description or categorisation of goods and services supplied in the UK. On this basis, the parties would together account for in excess of 25 per cent of qualifications in Tier 1 of 'Business, Administration and Law' (SSAC 15), 'Information Communications and Technology' (SSAC 6) and 'Leisure, Travel and Tourism' (SSAC 8). In addition, the parties provide in excess of 25 per cent of qualifications in a number of Tier 2 subject areas including 'Public Services' (SSAC 1.4), 'Administration' (SSAC 15.2), 'Business Management' (SSAC 15.3), 'Retail and wholesaling' (SSAC 7.1), 'Warehousing and distribution' (SSAC 7.1). The OFT therefore believes

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<sup>4</sup> For example, ePortfolio (a learner administration platform).

<sup>5</sup> London Chamber of Commerce International.

that it may be the case that the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met.

6. The OFT 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**

7. Qualifications award learners' knowledge or competence in an academic or professional (vocational) subject or task. The main roles of awarding organisations are to develop such syllabus and the assessment process to test the learners.
8. The market for the supply of qualifications is estimated to be worth over £900 million in 2010; there were 161 accredited awarding organisations in the UK.<sup>6</sup> Vocational qualifications account for about 60 per (about £600 million) of the total market in value in 2010. This involves nearly 10,000 different qualifications across 15 skill sectors<sup>7</sup> offered to a broad customer base. The size and scope of the awarding organisations vary significantly, from large organisations offering qualifications across almost all skills sectors<sup>8</sup> to more niche specialised providers<sup>9</sup>. Awarding organisations supply qualifications to a diverse customer base which can be divided into four main groupings: schools, colleges, private training providers (PTP) and employers.
9. The supply of qualifications is governed by certain regulations and is funded, to a certain extent, by the public. In the past few years, due to public investment in vocational training, the supply of vocational qualifications has expanded in some specific sectors with double-digit growth (in volume terms) year-on-year. The total number of vocational

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<sup>6</sup> According to Annual Qualifications Market Report, May 2011, Ofqual/11/4854, the number of awarding organisations has risen steadily in the last few years from 98 in 2002 to 161 in 2010. The growth is due to an increase in the number of awarding organisations focused on 'other' qualifications. Also since September 2007 employers have been able to apply to the regulators for recognition as awarding organisations.

<sup>7</sup> As described by Ofqual in its Glossary of qualifications and sector segmentation. See Ofqual-Statistical Publications, November 2011 (Ofqual Glossary), pages 2-4.

<sup>8</sup> The four largest are City & Guilds, Edexcel, EDI and OCR.

<sup>9</sup> Such as CACHE which specialises in Hair and Beauty treatments or EAL, which is an engineering specialist awarding organisation.

achievement has grown from 4.22 million in 2005/06 to 6.79 million achievements in 2009/10<sup>10</sup>.

10. There are a number of regulatory agencies with responsibility for the supervision of the supply and award of educational qualifications. In England, the main regulator is Ofqual<sup>11</sup>- a non-ministerial government department reporting directly to Parliament and the Northern Ireland Assembly. There are partner regulators in Wales (DCELLS), Northern Ireland (CCEA) and Scotland, the Scottish Qualifications Authority (SQA). The role of these regulators is the independent regulation of qualifications, examinations and assessments. Other agencies relevant to the assessment include the Sector Skills Councils,<sup>12</sup> and the Funding Skills Agency<sup>13</sup>. There has been some recent legislation and policy developments which is also relevant including the recent introduction of the Qualifications and Credit Framework (QCF) in 2010 and the review of the sector commissioned by the Department of Education and carried out by Professor Alison Wolf in 2010/11.

### **Qualifications and Credit Framework (QCF)**

11. The QCF is an important backdrop to the OFT's assessment of the proposed transaction. The QCF is a system for recognising skills and qualifications in England, Wales and Northern Ireland. The QCF is a unit-based award framework. Under the QCF, units of achievement are the building blocks of an overall qualification. The QCF provides a structure within which a learner can achieve a qualification through the award of credits through building units. The QCF is to support learners with a flexible structure in which they can accumulate and transfer credits among different awarding organisations when working towards the achievement of a qualification. All units and qualifications in the QCF

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<sup>10</sup> See: Annual Qualifications Market Report, May 2011, Ofqual/11/4854, Chart 3, page 20.

<sup>11</sup> Ofqual came into existence on 1 April 2010 pursuant to the Apprenticeships, Skills, Children and Learning Act 2009.

<sup>12</sup> There are 25 different skill councils in the UK. They are formed by the relevant trade associations of different sectors for the purpose of working together with awarding organisations to develop the necessary qualifications to meet the knowhow needs of a given sector. For example, a retailer may contact Skillsmart Retail, the Sector Skills Council for Retail and identify a need for environmental training focused in this sector. They will engage with different awarding organisations to develop the best possible syllabus or to certify that a syllabus developed by an awarding organisation (together with a retailer or training provider) meet its requirements.

have a credit value. The addition of the necessary credits would entitle the learners to achieve qualifications between Entry level and Level 9 (representing a certain number of hours showing how much time and effort it takes to complete the desired qualification).

12. In the context, awarding organisation accredit units with the regulatory agencies, such as Ofqual, and supply these (or a combination of units forming qualifications) to centres who, in turn, make these available to learners. They are then responsible for carrying out or facilitating assessments of units and making awards of unit credits and overall qualifications. Awarding organisations use agreed rules (published by Ofqual and its partner agencies in Wales and Northern Ireland) to combine units and develop assessment arrangements for qualifications (the Rules of engagement).
13. It also facilitates access to the contents of units developed by each awarding organisation to others, since any awarding organisation can draw down and use any unit from Ofqual register.<sup>14</sup> Awarding organisations do not own the intellectual property rights of those accredited units that they have registered with the regulators in return for the public funding that learners would obtain when completing such units/qualifications. As a result, other awarding organisations which have not created such units in the first place can draw down and use any unit for their own programmes.

### **Department of Education proposals for reform**

14. In addition to the QCF, there are further proposals for reform which have a bearing on the market for the supply of vocational qualifications. In May 2011, the Department of Education accepted all the recommendations Professor Wolf had made to overhaul the current vocational qualifications system.<sup>15</sup> It envisages further interaction

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<sup>13</sup> Dependent of the Business Innovation and Skills (BIS) department, it is responsible for skills knowledge and related funding.

<sup>14</sup> This was implemented pursuant to the Regulatory arrangements for the Qualifications and Credit Framework. See further at:

[http://www.ofqual.gov.uk/files/Regulatory\\_arrangements\\_QCF\\_August08.pdf](http://www.ofqual.gov.uk/files/Regulatory_arrangements_QCF_August08.pdf)

<sup>15</sup> *Review of Vocational Education- The Wolf Report*, Alison Wolf, March 2011 (The Wolf Report). Such reform touches on important drivers of the sector such as funding, quality of vocational qualifications and the future of Apprenticeships. See at <https://www.education.gov.uk/publications/eOrderingDownload/The%20Wolf%20Report.pdf>

between schools and other learning providers so that key subjects such as English and Maths become an essential part of the vocational qualifications curriculum; as well as easing the opportunity to offer some vocational qualifications at schools.

### **The qualifications supply chain**

15. A report commissioned by Ofqual from Frontier Economics<sup>16</sup> to undertake an initial study to define the relevant markets in the qualification sector concluded that, '[t]he structure of the [qualifications] industry is complex, the role of government and its various agencies is central, and the number of stakeholders involved is substantial.'<sup>17</sup> It did not reach a conclusion on the appropriate market definition but noted a number of features of the sector. These include: that [the] 'qualifications markets have a number of salient features that should be kept in mind when undertaking the [market definition] exercise'.<sup>18</sup> These are: (i) derived demand; (ii) specialised demand; (iii) portfolios of offerings; (iv) information problems; (v) reputation; (vi) bundling of complementary of services; (vii) switching costs.
  
16. The overall qualifications supply chain in which the awarding organisations operate is represented below.

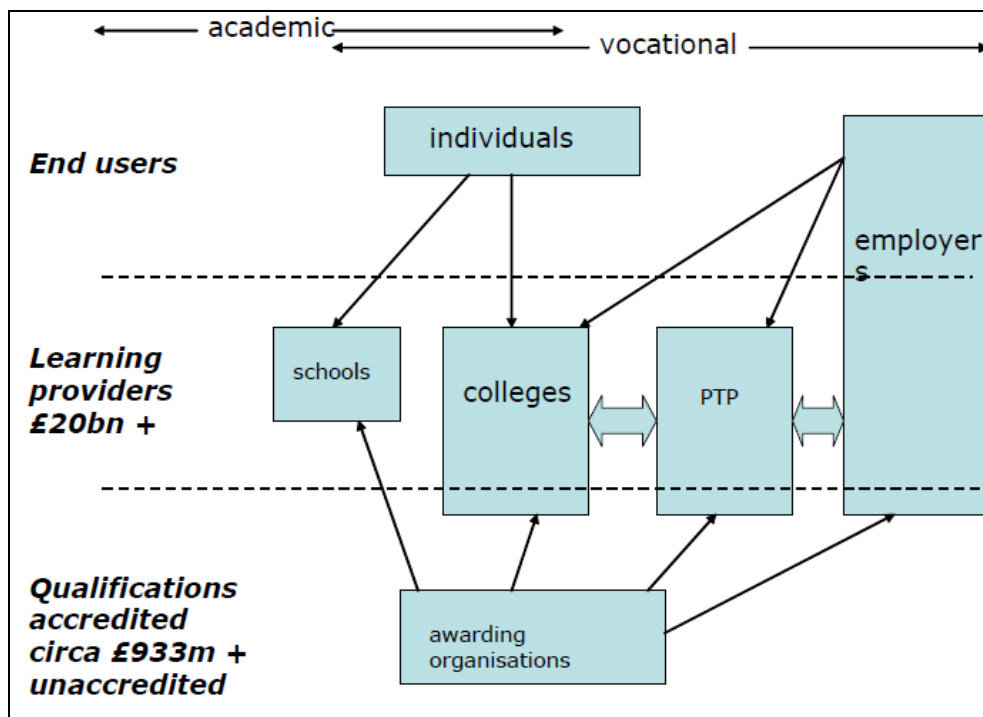
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<sup>16</sup> Ofqual came into existence on 1 April 2010 pursuant to the Apprenticeships, Skills, Children and Learning Act 2009.

<sup>17</sup> *The markets for regulated qualifications in England, Wales and Northern Ireland*; A Frontier Economics' report commissioned by the Office of Qualifications and Examinations Regulations (Ofqual) July 2010 (Ofqual/10/4760) (Frontier Report), page 1.

<sup>18</sup> Frontier Report, section 2.4, page 14.

Figure 1: The supply of qualifications is at the end of the value chain



Source: Pearson/Edexcel

17. The arrows between colleges, private training providers (PTP) and employers indicate the different ways in which vocational qualifications are supplied to the workforce: either directly by the employer itself, outsourcing to a private training provider or, more and more often, liaising with colleges which offer vocational training to local businesses. Individuals will obtain their qualifications, more frequently, from colleges or schools.
18. The product chain related to the qualifications (a detailed analysis of the bottom line from Figure 1 above) is represented in the diagram below. It often comprises four distinct stages.

Figure 2: The qualifications 'product chain'



Source: Frontier Economics. Frontier Report, page 16.

## FRAME OF REFERENCE

19. As set out in the OFT/CC Joint Substantive Assessment Guidelines<sup>19</sup>, the purpose of market definition is to provide a framework for the Authorities' analysis of the competitive effects of the merger. Specifically, market definition is a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgment. The boundaries of the market do not determine the outcome of the Authorities' analysis of the competitive effects of the merger in any mechanistic way. As the OFT/CC Merger Assessment Guidelines state '[i]n assessing whether a merger may give rise to a substantial lessening of competition, the Authorities may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.'<sup>20</sup>
20. The parties overlap in the supply of qualifications to learning providers (those are schools and colleges, PTP and employers) in the UK and abroad. The OFT has not previously considered the supply of qualifications but has given due consideration to the findings of the Frontier Report.<sup>21</sup>

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<sup>19</sup> Merger Assessment Guidelines, a joint publication of the Competition Commission and the Office of Fair Trading, September 2010. (OFT1254) (OFT/CC Merger Assessment Guidelines), paragraphs 5.2.1 and 5.2.2.

<sup>20</sup>OFT / CC Merger Assessment Guidelines, paragraph 5.2.2.

<sup>21</sup> See paragraph 15 above.



## SUPPLY OF QUALIFICATIONS

21. Pearson has submitted that the appropriate framework of analysis is the supply of accredited qualifications overall. It considers that segmentation of the supply of qualifications is not appropriate due, primarily, to the high degree of supply side substitution since any awarding organisation can supply any type of qualification.
22. The OFT has considered whether it is appropriate to assess this transaction by reference to a narrower frame of reference than the overall supply of qualifications. The following plausible segmentations have been considered in this case: academic and vocational; accredited or unaccredited; by type of qualification, for example, National Vocational Qualifications (NVQs) and/or Vocational Related Qualifications (VRQs);<sup>22</sup> differentiated by Ofqual SSAC sector to which they belong, that is, by subject matter;<sup>23</sup> segmented by levels of achievement (Levels) and/or age target groups;<sup>24</sup> and by customer group (schools, colleges, PTPs and employers).

### Academic and vocational qualifications

23. Pearson submits that there is no distinction between the supply of academic and vocational qualifications. The OFT notes that academic and vocational qualification, in a broad sense, serve a different purpose. In particular, academic<sup>25</sup> qualifications include studies such as GCSEs and GCE A Levels, undergraduate and postgraduate university degrees. In general, vocational qualifications prepare learners with the skills and competence to work in specific occupations. The OFT accepts that this distinction may often be (or become) blurred (not least because of the introduction of a vocational-oriented 'Diploma' or the expected implementation of the recommendations of the Wolf Report<sup>26</sup>).
24. However, the OFT's investigation indicates that there are certain features of supply and demand that indicate that academic and vocational qualifications are distinct. In broad terms, this relates to the fact that

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<sup>22</sup> See paragraph 29 below.

<sup>23</sup> See paragraph 8 and footnote 7 above.

<sup>24</sup> Depending on the length of the training required to achieve a qualification, the qualifications are assigned a level – from entry level to PhD (in level 9).

<sup>25</sup> Also called General Qualifications.

they each underpin a largely distinct educational pathway. Academic qualifications tend to be used by schools and colleges to support the educational achievement of children and young adults (ages 14 – 19) and university students (ages 18 +). Vocational qualifications tend to be used by colleges, private training providers and employers to support work-based learning, skills learning and educational achievement of school leavers (age 16 +), young adults (age 19 – 24) and adults (25+). Vocational qualifications also have a specific role not generally played by academic qualifications in supporting work-based learning (see paragraph 27 below). Other aspects which indicate a distinction between the two include separate classification systems by Ofqual, the fact that accredited vocational qualifications are supplied under the auspices of the QCF and the very different system of assessment and achievement which applies to them.

25. As stated in the OFT/CC Merger Assessment Guidelines, the boundaries of the relevant market are generally determined by reference to demand-side factors alone. The OFT may aggregate narrower frames of reference into one broader one on the basis of considerations about the response of suppliers to changes in prices, for example, where firms have the ability and incentive to quickly shift capacity between different products depending on demand for each; and the same firms compete to supply these different products under the same conditions of competition. In this case, aggregating academic and vocational qualifications as a broad market has not been considered appropriate. The conditions of competition in the supply of vocational qualifications are different as is shown by the different players that participate in this area and the different regulatory environment pertaining to this area. The OFT also notes that there is no overlap between the parties in academic qualifications. The OFT has taken supply side responses into account in its competitive assessment however.
26. For the purpose of this assessment, the OFT has taken a cautious approach and considered that academic and vocational qualifications form separate frames of reference. The OFT notes that Pearson agreed that this distinction could be a reasonable way to narrow down the candidate frames of reference.

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<sup>26</sup> See paragraph 29 below.

## **Accredited and unaccredited qualifications**

27. To be eligible for public funding, a qualification must obtain accreditation. The OFT notes that both merging parties are active in the supply of accredited qualifications. This is similar to their main competitors: City & Guilds and OCR<sup>27</sup>. There are some organisations supplying very large volumes of unaccredited qualifications (such as ACCA<sup>28</sup>). The appropriate frame of reference for analysis of this merger therefore is considered to be the supply of 'accredited' qualifications.

## **Segmentation by type of vocational qualification and/or by publicly funded work-based learning programmes**

### NVQs and VRQs

28. The merging parties and their main competitors supply both NVQs and VRQs.
29. NVQs are work-related, competence based qualifications that cover a broad range of industry sectors and occupations. Ordinarily, NVQs are delivered in a workplace setting. NVQs are made up of units taken from the National Occupational Standards (NOS), which defines the knowledge, understanding and competence required to perform a particular job-related role. VRQs are also work-related, competence based qualifications designed to provide learners with the skills and knowledge needed to do a job. They do not necessarily require a work placement and are not purely based on the NOS.
30. The OFT's investigation has not indicated any major distinction between these two types of vocational qualifications. It considers that it may be possible to aggregate these types of qualifications into one overall frame of reference based around vocational qualifications. Ultimately however it has not been necessary for the OFT to conclude on this issue since the OFT's analysis indicates that the merger will lead to similar effects on competition whether it is looked at through NVQs and VRQs separately or together.

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<sup>27</sup> Oxford Cambridge and RSA Examinations.

<sup>28</sup> Association of Chartered Certified Accountants.

## Work-based learning programmes

31. The OFT has also considered whether a separate frame of reference exists in relation to the supply of 'work-based learning programmes' or specific types of work-based learning programmes, such as, Apprenticeships. This is because the demand and supply conditions relating to these types of offerings, in which the parties overlap significantly, may be different than those of vocational qualifications (or NVQs or VRQs) overall. Pearson does not consider that such a segmentation is necessary, in fact, it views work-based learning programmes as broadly synonymous with vocational qualifications – there may be some support for this view, as is discussed below.
  
32. Public funding is allocated to several work-based learning programmes administered by the Skills Funding Agency, a significant example are the Apprenticeships frameworks<sup>29</sup>. Apprenticeships are an alternative route for education of those aged over 16 and may lead to the award of a recognised vocational qualification such as NVQ Level 2 or higher (depending on the level of the apprenticeship; Intermediate or Advanced). Apprenticeships are designed with employers to offer a structured 'on the job' training programme. Apprentices are employees in a firm and training takes place on the job and can be supported by learning delivered by a college or private training provider. All Apprenticeship programmes eligible for recognition and public funding must comprise four elements that are certified separately and which include: (i) a competence-based element, a relevant work-based qualification such as NVQ at either level 2 or 3; (ii) a knowledge based element, that is a technical qualification such as a BTEC or a City & Guilds qualification (relevant to that specific Apprenticeship) that provides further knowledge or understanding of the relevant job; (iii) some transferrable or 'key skills' including communication, application of numbers, information and communications

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<sup>29</sup> From the Single Adult Skills Budget. These frameworks include: (i) accredited qualifications delivered to learners in full-time and/or part time further education and include accredited vocational and non vocational qualifications (such as Skills for Life and Functional Skills); (ii) accredited qualifications delivered to employed learners (this is primarily NVQs, but may also include Skills for Life); (iii) Apprenticeships frameworks; (iv) qualifications for those on active benefits - mainly vocational qualifications and units; (v) other schemes or frameworks (such as offender learning and skills and learners with learning difficulties and disabilities).

technology, team working, and problem solving; and (iv) a module on employment rights and responsibilities.

33. To a certain extent, Pearson is correct to say that Apprenticeships share similar characteristics with the ultimate purpose of the award of vocational qualifications, the teaching and achievement of practical, skills based learning. It is clear from the criteria applied by the Skills Funding Agency that Apprenticeships are intended to lead to the apprentice achieving a recognised vocational qualification. However, set against this, it is also apparent that the award of a qualification is only one element of an Apprenticeships or other publicly funded training programme (see paragraph 32 above). There are other specific elements than merely the award of a qualification. Employers and private training providers seek to work closely with awarding organisations in order to design Apprenticeship programmes and, in this sense, the supply of an Apprenticeship qualification may require different products and services being supplied than say the supply of vocational qualifications to a college. In addition, in terms of funding, there is separate and specific public funding and certain conditions attaching to the award of such funding, from the Skills Funding Agency. Taking into account, the different demand and supply characteristics involved in publicly funded training programmes especially Apprenticeships, the OFT has taken a cautious approach and assessed the transaction by reference to each of the supply of vocational qualifications overall (including those achieved through work-based learning and publicly funded training programmes); publicly funded training programmes and Apprenticeships separately.

## Supply of package versus individual units / qualifications

34. Pearson submits that the market should not be narrowed to an individual subject (skill sector) or qualification level. It considers that customers can switch to alternative awarding organisations in response to a 5 per cent price increase in an individual qualification making such a price increase unprofitable and awarding organisations can easily switch to supply qualifications. They indicated that buyers of vocational qualifications can switch at short notice and there are very few formal written contracts in place with schools or colleges for the supply of either academic or vocational qualifications. In addition, Pearson also considers that from a supply-side perspective, all (or most) suppliers can switch easily to supply qualifications in a new skill sector, thus also constraining any price increases by the merged entity at an individual skill sector or qualification level.
35. The responses to the OFT's investigation on the issue of whether the relevant product market should consist of the supply of a package of qualifications or the supply of individual units/qualifications (even if aggregated at a subject level) have been mixed.
36. From a demand-side perspective, most customers told the OFT that, when possible, they prefer to contract with organisations able to offer a broad range of qualifications so that contractual cost is minimised. Customers indicated that competition might take place 'for the market' rather than (or in addition to) 'competition in the market'. The contention is that once a customer has chosen an awarding organisation, it will try to procure all its qualifications from that single provider, if possible. This may drive expansion or innovation by the awarding organisation into the creation of new qualifications in skill sectors where it may not be present but for which there is some customer demand. The OFT believes, based on its investigation, that these requirements (for a single supplier supplying a range of qualifications) are especially demanded by private training providers and employers. In addition, colleges also indicated that there was an increasing trend (supported by regulators and agencies) to contract with awarding organisations that are able to offer a broad range of qualifications in order to minimise contractual, back office and other administrative costs that arise from dealing with several awarding organisations at the same time. Several colleges also indicated that they

are entering into consortia in order to consolidate their requirements and obtain better terms/discounts.

37. From a supply-side perspective, the OFT observed that a number of awarding organisations supply across most Ofqual sector classifications for vocational qualifications. In addition, some awarding organisations have been expanding their business models to supply into new sectors/qualifications.
38. However, there is also evidence which supports a narrower approach to the relevant product market based more closely on the supply of individual qualifications (aggregated into distinct sector classifications). For ease of reference, since it is not feasible to analyse each and every qualification or unit, it has been necessary to look at the Ofqual Glossary which groups qualifications in similar or the same subject areas together.
39. From a demand-side, some colleges, whilst accepting the efficiency advantages of procuring from a single provider, said that they must procure from a large number of awarding organisations of varied sizes to offer a wide portfolio of courses to students/learners. These colleges estimated that they can procure from up to 20 or 30 awarding organisations – the OFT was told that different departments within a college may make their own supplier choices. This would indicate that it may be appropriate, at least, for colleges to view the market by reference to the supply of individual qualifications.
40. From a supply-side perspective, there is also some evidence that supports a narrower approach to the relevant product market. The OFT has undertaken a simple correlation between the skill sectors in which each smaller relevant awarding organisation has registered qualifications and/or units (within the QCF scheme) and the revenues generated by those organisations. This tends to indicate that while smaller awarding organisations might have registered qualifications (and/or units) across many skill sectors, their revenues come from a limited number of sectors, especially those in which they have recognised expertise. Thus, it is also plausible that smaller awarding organisations or those with a more limited range impose a lesser constraint to large awarding organisations able to respond to those customers who require a wide portfolio (or package) of

qualifications (but they may impose a stronger constraint in areas where they have expertise or a strong presence).

41. The OFT also notes that a number of third party respondents considered that the merger should be assessed by reference to individual units/qualifications. In seeking a manageable and reasonable approach to assess competitive effects in an area characterised by thousands of individual units of achievement and qualifications, the OFT has relied upon the Ofqual sector classification in order to undertake this analysis. This was supported by some third parties. However, it has not been necessary to conclude in this case whether these classifications constitute economic markets and whether they are adequate reference points for narrowing the assessment to a reasonable level of aggregation. The Ofqual Glossary of sector classification is tiered. Tier 1 comprises 15 broad subject areas. Tier 2 splits these 15 broad subject areas into narrower subject areas/units/qualifications, and so on. Third parties put forward that Tier 2 was an appropriate level of aggregation for assessing this merger. Taking a cautious approach, the OFT has therefore assessed the merger by reference to Tiers 1 and Tiers 2 of the Ofqual sector classification in seeking to ascertain whether it will lead to anti-competitive effects in the supply of individual units / qualifications by subject area.
  
42. In summary, the OFT has assessed the merger by reference to the supply of vocational qualifications as a package / overall and by reference to the supply of individual qualifications / units (by reference to Tiers 1 and 2 of the Ofqual Glossary of sector classifications).



### **Segmentation by level and /or age target groups**

43. Qualifications are assigned different Levels depending on the amount of units (and consequently length of time) that the student will require to complete their qualification. These cover from Entry to Level 9 (assigned for PhD studies). NVQs are often assigned from Entry to Level 5. A third party submitted that the OFT assessment should look at this granular level. It noted, in particular, that public funding for certain Apprenticeships did not apply to Level 3 NVQs qualifications.
44. The parties submitted that if the customer decided to switch to purchasing from a different AO, it would be likely to do so for all levels of the same qualification and from the supply-side perspective, when an AO introduces a new qualification, it will tend to develop a whole suite of qualifications at a range of levels (e.g. NVQ Levels 1 to 3).
45. The OFT notes that the competitive set of suppliers do not significantly vary depending on levels and also note that Apprenticeships generally include NVQs at either Level 2 or 3 which does not seem to confirm the above third party's contention.
46. On differentiating by target age groups, the OFT notes that public funding may differ depending on the relevant funding policy programme which may target different age groups. However, the OFT also believes that the competitive issues are similar to all age groups and therefore it has not differentiated by target age group.
47. In light of the above, this assessment has not considered it necessary or appropriate to segment by level or age group.

## Segmentation by customer groups

48. As stated in the OFT/CC's Merger Assessment Guidelines, the OFT may define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis. There are many different facts which may be considered when assessing the breadth of relevant markets defined by customer groups. In this case, the OFT considers that there may be scope for customer segmentation due to the relatively simple fact that the investigation has revealed different customer preferences (as opposed to any specific evidence of price discrimination)<sup>30</sup>.
49. As noted above, there are four main groups of customers of awarding qualification services: schools, colleges (or Further Education centres), PTP and employers. A number of these have different preferences, for example, schools tend to have a preference for academic qualifications where the parties do not overlap. Colleges tend to have a preference for obtaining a range of qualifications or awards either from single or multiple suppliers (sometimes overlapping awards given the presence of certain 'must-have' brands/awards offered by some of the major suppliers).
50. Private training providers often act as intermediaries between an awarding organisation and a private employer or as a learning provider in their own right. Therefore, they may have a tendency to require a different set of products and related services to a college or a school. Likewise, employers may wish to work with a single awarding organisation or obtain a suite of qualifications or awards from a single awarding organisation which best suits their training and learning needs for their employees (this is especially so in relation to work-based learning programmes). In view of the varied customer requirements observed within the market, the OFT considers that it is important to take into account in the competitive assessment whether the impact of the merger may differ when viewed through the lens of different customer channels.

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<sup>30</sup> Merger Assessment Guidelines, paragraph 5.2.30.

## **Geographic scope**

51. The parties are active throughout most of the United Kingdom. Pearson submits that its activities in Scotland are very limited with EDI having no customers in Scotland. The OFT also notes that the provision of educational services in Scotland is different to the rest of the UK and comes under the auspices of the Scottish Parliament.
52. The relevant geographic scope may, therefore, exclude Scotland and be limited to England, Wales and Northern Ireland. There are some differences in the conditions of competition and supply between England and Northern Ireland and Wales given that the provision of educational services in Wales is governed by the Welsh Assembly. However, the market investigation appears to indicate, overall, that demand and supply conditions are similar across England, Wales and Northern Ireland.

## **SUPPLY OF COMPUTER BASED TESTING PLATFORMS**

### **Product scope**

53. Awarding organisations often supply a 'bundle' (or 'package) of goods and services supplied to learning providers comprising in addition to the development and awarding of the qualifications, for example, registration, external quality assurance and certification of in-house training and computer based testing to assess the students. Among these, the OFT has received specific representations on alleged high concentration levels with regard to the supply of computer based testing (CBT) platforms.
54. Both parties overlap, to some extent, in the supply of computer based testing and assessments. This consists of the software platforms for on-screen testing of the learners' capabilities and progress. Pearson argues that both parties' products are differentiated and compete at different parts of the spectrum of the candidate market, depending on the level of sophistication and capabilities required by the learning providers which procure these products.
55. The OFT has not concluded on the scope of this market definition either with regard to Pearson's statement that paper-based testing would form part of the same candidate market representing the parties' computer base testing products' main competitive constraint.

## **Geographic scope**

56. Third parties have indicated that the supplier of CBT requires a UK physical presence. Pearson has contended that the geographic candidate market is worldwide by indicating a series of alternative suppliers from abroad. This decision does not need to conclude on this geographic scope. This assessment takes a cautious approach and considers the geographic frame of reference to be the UK only.

## **SUMMARY OF FRAME OF REFERENCE**

57. In summary, whilst it is not possible for the OFT to conclude, within the timeframe of this assessment, on the precise market definition, it has taken a cautious approach and considered that the product scope or framework of assessment for the analysis of this merger is as follows:
- 57.1. The supply of vocational qualifications to learning providers;
  - 57.2. The supply of vocational qualifications by awarding organisations providing a significant portfolio or range of qualifications and related services;
  - 57.3. The supply of vocational qualifications in specific SSAC sectors as segmented at Ofqual's Tier 1 and Tier 2;
  - 57.4. The supply of work-based learning programmes and Apprenticeships; and
  - 57.5. The supply of computer based testing platforms (i.e. the supply of computer based testing and assessment services).
58. In relation to the first four frames of reference, the OFT has also considered whether specific customer groups may be more impacted by the merger than others.

## **SUBSTANTIVE ANALYSIS**

59. As stated in the Merger Assessment Guidelines, '[t]heories of harm are drawn by the Authorities to provide the framework for assessing the effects of a merger and whether it would lead to a substantial lessening of competition. They describe possible changes arising from the merger, any impact on rivalry and expected harm to customers as compared with the situation likely to arise without the merger'.<sup>31</sup>
  
60. This merger raised unilateral non-coordinated horizontal concerns (the loss of actual and potential competition) in the supply of vocational qualifications. Three third parties also raised conglomerate concerns.

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<sup>31</sup> OFT / CC Mergers Assessment Guidelines, paragraph 4.2.

## **HORIZONTAL ISSUES**

61. There are two main theories of harm under this heading.

61.1. Unilateral effects in the supply of vocational qualifications:

- 61.1.1. loss of competition between suppliers with an established reputation and capability across a range of vocational qualifications including the loss of a firm with strong innovation and expansion possibilities;
- 61.1.2. loss of competition between suppliers in respect of individual qualifications or categories of qualification;
- 61.1.3. loss of competition between suppliers in respect of the provision of work-based training programmes, in particular, Apprenticeships and other publicly funded training programmes.

This decision addresses each of these in turn paying particular attention to the impact on PTP and employers- which represent the merging parties' main overlaps.

61.2. Unilateral effects in the supply of computer based testing platforms (i.e. in the supply of computer-based testing and assessment services).

### **Supply of vocational qualifications**

62. The estimated shares of supply in the overall supply of accredited qualifications by awarding organisations (including academic and vocational) are as follows: Edexcel's 18.9 per cent and EDI 1.5 per cent.<sup>32</sup>

63. The estimated shares of supply in the overall supply of accredited vocational qualifications by awarding organisations are as follows: Edexcel 15.4 per cent and EDI 3 per cent. The merger would lead to a combined market share of approximately 18.4 per cent<sup>33</sup>. These shares

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<sup>32</sup> Based on achievements.

<sup>33</sup> Based on achievements.

of supply are expected to be broadly similar if calculated by reference to revenues.

64. The OFT considers that these estimated combined shares of supply (and the increment to Edexcel's pre-merger share) are low. As such, in the context of the overall supply of qualifications, such shares of supply would not ordinarily give the OFT grounds for concern absent other evidence indicating that they do not represent accurately the actual competitive weight of the merging parties in the relevant frames of reference. However, given concerns raised by a few third parties, it has been appropriate to consider further whether these shares of supply mask close competitive interaction between the parties or whether this merger may lead to other anti-competitive harm.

#### **Unilateral effects in the supply of vocational qualifications by suppliers with an established reputation and capability across most of the skill sectors**

##### Shares of supply and reduction in the number of effective competitors

65. As stated above (paragraphs 35 to 42), a key question in this case has been the extent to which larger awarding organisations are constrained by the activities of smaller awarding organisations. The OFT accepts that there is a plethora of awarding organisations – over 160 have units registered under the QCF. However, for reasons explained in paragraphs 38 to 41, the OFT does not consider that all these awarding organisations will pose a constraint on the merged entity, especially in respect of customers who require suppliers who can supply a broad range of qualifications. This requires, to some extent, an analysis of the competitive interaction and closeness of competition between the merging parties, and also between them and their main competitors and other awarding organisations.
66. Before discussing closeness of competition, there are a few salient features of the current competitive dynamics in the supply of vocational qualifications indicated by the investigation. Specifically, there are a number of large awarding organisations (in revenue terms and the scope and breadth of qualifications/units sold and/or offered) which may be set apart from others. In this sense, the OFT considers that the three largest suppliers are City & Guilds, Edexcel and OCR. A key question has been

whether EDI is a 'close' fourth player to this 'leading pack' of suppliers or whether EDI is one of a number of smaller awarding organisations which offers a more limited range of awards. The evidence in relation to this question has, to some extent, been mixed.

67. The parties submit that EDI is not the fourth player in the supply of vocational qualifications and that it, in essence, is closer in terms of ranking to a middle set of suppliers which includes NCFE, ABC, EAL and NOCN.
68. The OFT notes however that, if included, as one of the largest four suppliers of vocational qualifications, these firms (Edexcel, C&G and OCR) would account for around 50 per cent of the overall market (by value) for the supply of vocational qualifications. (Also, this percentage increases to almost 75 per cent if looking at some public funded programmes (Apprenticeship frameworks) procuring large volumes of qualifications across most skill sectors).
69. Set against this, even if EDI is considered as part of the top four awarding organisations in the overall supply of vocational qualifications, of these four, EDI is very small (compared to the other three). It would supply only 6 per cent of the top four's overall supplies of vocational qualifications (by value). This is small compared to the top three suppliers: Edexcel (40 per cent), City and Guilds (37 per cent) and OCR (17 per cent).

#### Closeness of competition

70. The above estimated market shares may misrepresent the actual competitive weight of the merging parties if these are close competitors. In order to assess whether unilateral effects arise with regard to the supply of vocational qualifications by the four largest awarding organisations, the OFT has considered evidence provided by the parties (and third parties) on the relative closeness of competition between the merging parties and also the constraint they face from other organisations, most notably, from City and Guilds and OCR. This varies by sale channels and the OFT has carefully considered this distinction.



71. A number of third parties indicated that they viewed Edexcel and EDI as close competitors in the supply of vocational qualifications, either as broad based suppliers able to supply a range (or, as set out below, in relation to specific subject areas). This led the OFT to consider further the extent of rivalry between the merging parties. Since limited switching data was available, the OFT assessed evidence on growth and innovation levels which had occurred over time. In part, this was due to the fact that third parties had noted that EDI had expanded significantly in terms of its product offering and its revenues. Both points were supported by revenue evidence supplied by EDI which showed that its revenues grew from £6 million in 2007 to £16 million in September 2010 and certain Ofqual data showing the rate of innovation (in terms of the specification of new units and qualifications in certain Ofqual skills sector).<sup>34</sup> In relation to the rate of innovation, Ofqual data indicated, to some degree, that EDI had expanded into a number of new skills sectors and grown units and qualifications in sectors where it was already present – this had corresponded to a period in which revenues had increased.
72. The OFT put to the parties that this may indicate that the shares of supply understated the rivalry that EDI posed to Edexcel (and the other two major suppliers).
73. Edexcel submitted in response that Edexcel and EDI are not particularly close competitors and the OFT should not focus exclusively on the four largest awarding organisations but many others (out of the pool of over 166 awarding organisations). In support of its contention, that is supply side substitution and fast growth of other smaller awarding organisations would prevent Edexcel from increasing prices or reducing quality, Pearson also put forward a range of evidence that the OFT has considered in its unilateral effects assessment:
- 73.1. EDI's rapid growth has come as a result of general growth in the sector, Edexcel and other awarding organisations have grown at similar pace;
- 73.2. the merging parties have substantially different customer bases; and,
- 73.3. the merging parties' product propositions are substantially different.

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<sup>34</sup> This may not refer exclusively to organic growth since EDI has made several acquisitions in the last five years.

74. Edexcel has submitted data indicating that several other awarding organisations (outside the four largest) have also significantly grown in the last three years. This growth, in Edexcel's view, comes from two sources: third parties' core (or existing) skill sectors and entry into new skill sectors. The figures show that these organisations have increased the total number of vocational qualifications (by achievements) to represent between 20 and 75 per cent of EDI 2010 volume. These organisations include: ABC Awards, Ascentis, ASET, EMTA Awards Limited, FDQ Limited Total, Elmfield, Awarding Body, IMI Awards Total, National Open College Network and VTCT.
75. The OFT notes that the total increase (adding all these awarding organisation) is 153 per cent. This absolute growth comes from 50 skill sectors against volume losses in 48 skill sectors in total. These mixed views are consistent with the analysis of revenues from six awarding (outside the top four): ABC Awards, EAL, NCFE, NOCN, Ascentis and Trinity College suggested that the creation and/or the registration of new qualifications or units in new sector areas by these awarding organisations is not necessarily consistent with the amount of revenues gained from the new sectors. While the overall figure is positive, a granular analysis indicates that most revenues (and growth) come from a limited number of skill sectors in each case. Those in which these awarding organisations focus. In the rest, the figures are neutral or negative. Qualitative responses from other competitors corroborate the view that while smaller awarding organisations represent significant constraints in their fields of expertise, their competitive strengths do not extend outside the areas of their core activities.
76. The correlation between revenues from new sectors in which some awarding organisations have registered new qualifications between 2003 and 2009 has also proved negative. In other words, awarding organisations mostly expand in the skill sectors in which they already have a notable presence. The OFT also notes that entry into new skill sectors by many awarding organisations has not proved hugely successful to date and limited (if any) revenues are generated from these 'recently entered' skill sectors.

77. In contrast, OCR shows revenue growth in all but one skill sector and offers a similar range across most skills sector as EDI. This indicates that EDI may have placed (or may have grown to place) a greater constraint on Edexcel and the other major suppliers than some of the other smaller awarding organisations, but the evidence is not entirely conclusive. It also indicates, however, that OCR has also grown over the period and can be expected to continue to place a significant constraint on the merged entity and City and Guilds post-merger.

*Other evidence on closeness of competition reviewed by the OFT*

78. Other evidence reviewed by the OFT indicate that Edexcel and EDI's respective market shares represent a reasonable snap-shot of their competitive weight in this frame of reference. In other words, the merging parties are not closer to each other than relative to other large awarding organisations, most notably City and Guilds and OCR.
79. Edexcel and some third parties have stressed that EDI's portfolio of qualifications and customer bases are largely complementary to Edexcel's existing range and customers. They argue that this merger would allow Edexcel to offer a broader suite of products to the customers of both merging parties. Edexcel's internal documents do not corroborate this contention. A comparative table prepared by Edexcel<sup>35</sup> to prepare its Apprenticeships strategy show the level of overlaps in terms of skill sectors in which both Edexcel and EDI are active, as well as those of their two main competitors (City and Guilds and OCR). Other awarding organisations are also listed but the level of overlaps is materially much smaller. Other named awarding organisations focused on fewer specialised skill sectors include: EAL<sup>36</sup>, CACHE<sup>37</sup>, IMI<sup>38</sup>, NCFE<sup>39</sup> among others.
80. Most customers identified both Edexcel and EDI as competing companies, able to provide very similar qualifications (with some limited exceptions) and services. These respondents also listed many other awarding organisations, most notably City and Guilds and OCR which appear listed

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<sup>35</sup> Edexcel's internal presentation titled: *Apprenticeship Strategy* by Jack Kerr, slide 12.

<sup>36</sup> EMTA Awards Limited. It focuses on manufacturing, engineering and building services.

<sup>37</sup> CACHE specialises in care and education for children and young people.

<sup>38</sup> Institute of Motor Industry.

<sup>39</sup> Northern Advisory Council for Further Education

across many skill sectors. Other smaller (and more specialised) awarding organisations are listed in some of the skill sectors. Consistent with this recognised wide pool of suppliers, many colleges procure from more than 20 different of awarding organisations at a time. This often includes procuring qualifications from two or three awarding organisations to offer different qualifications in a given skill sector.

81. The OFT also notes that few customers complained about the merger, some were positive stating that the merger would lead to certain benefits. Six customers raised some concerns and pointed to a reduction in the number of suppliers which, in their view, might lead to higher prices and a reduction in innovation. However, none of these customers provided the OFT with evidence to support their views, in particular, a number of them had not used both parties in the past and also cited other awarding organisations as their next best alternatives to Edexcel. Of those very few that had used both parties, they were unable to provide evidence on how the rivalry and/or competition between the parties had been used by them to obtain better prices or terms or how this merger might result in an SLC. Most customers were either unconcerned or positive about the transaction.

#### Customer groups

82. As stated above there are four differentiated customer groups: schools, colleges, PTP and employers. The merging parties do not overlap in the supply to schools. This is the sales channel from which Edexcel obtains most of its revenues (Edexcel supplied £[ ]m worth of qualifications to schools in 2010). There is some overlap in the supply to (Further education) colleges, the second main distribution channel for Edexcel (with sales of over £[ ]million, around [30-40] per cent of its total vocational qualifications revenues). EDI generates [10-20] per cent of its revenues through this channel, just over £[ ] million of sales.
83. The most significant overlap relates to supply to PTPs. EDI generates over [70-80] per cent of its revenues through this sale channel and while this customer group represents less than [20-30] per cent of Edexcel's proportion of its vocational qualification sales, the absolute revenues are significant. The overlap represents an absolute figure of over £[ ] million.

84. Given the close interaction between PTPs and sales to employers (see Figure 1 above), it is reasonable to add the sales directly to employers. The absolute amount is now some £[ ] million.
85. In light of the above, the OFT has analysed whether the merger will have a greater impact on certain customer channels than others.

*Private Training Providers and employers*

86. Data collected by the OFT indicates that most new customers for both parties are PTP. Responses from PTPs indicate their willingness to switch to other awarding organisations if their current provider does not meet their commercial and pricing expectations. This response is materially different to the attitude observed by the OFT with respect to colleges which appear, to date, more reluctant to switch supplier. This may, in part, be due to the less relevance given to branding by the PTP as other factors such as customer service or cost efficiencies appear more relevant for their ultimate customers. In addition, PTPs are indirectly constrained by their ultimate customers (mostly employers) who can procure directly from awarding organisations and outsource training and other required services.
87. PTPs' procurement often relates to a narrower portfolio of qualifications as they tend to specialise in certain skill sectors. This opens up the array of possible suppliers as PTPs may not be so inclined to (or need to) contract with an awarding organisation offering a large range of qualifications across different skill sectors. Furthermore, PTPs have also entered into the supply of qualifications by setting their own awarding qualification and benefiting from their direct customer contacts.
88. The above proactive attitude results in a higher level of discounts obtained by this customer group (as compared to colleges and schools) and a lack of substantiated concerns raised by PTPs during this OFT investigation. The same applies to those employers which have made representations to the OFT during this investigation.

89. PTPs play a pivotal role in supplying apprenticeships programmes to employers. Many (in not most) apprenticeships are procured through PTP which put together the required goods (including the delivery of the relevant NVQ qualification) and services often from different suppliers. The above conclusions on the lack of expected significant effects on PTPs resulting from this merger also apply when referring to the supply of apprenticeships.

*Further Education colleges*

90. Notwithstanding the less significant overlap in the supply of vocational qualifications to colleges, this decision has also assessed any possible impact. EDI's presence in this distribution channel is relatively small. This is reflected by the proportion of colleges procuring from EDI and the small revenues per college.
91. In response to public calls for efficiency savings, colleges are more and more participating in consortia or associations of colleges which should increase their bargaining power and reduce their administrative expenses. However, the OFT has not yet observed that colleges have (despite their substantial acquisitions) any material buyer power.
92. A significant proportion of colleges have responded that they do not often switch away from large awarding organisations such as Edexcel, City & Guilds and OCR. This is often due to the importance of supplying established vocational qualifications from City and Guilds or, most importantly, Edexcel's 'BTEC'<sup>40</sup> branded vocational qualifications. The data also show that most colleges procure vocational qualifications from large and small awarding organisations, often from a pool comprising up to 30 different awarding organisations to offer their students a selection of qualifications. Administrative ease and good customer support take priority over pricing at the time of choosing the supplier of vocational qualifications.

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<sup>40</sup> BTEC is the acronym for British and Technology Education Council and is the brand commonly associated by default with many vocational qualifications.

93. This is also reflected by the minimal number of substantiated concerns raised by colleges. These complaints refer to the inflexible approach taken by Edexcel and City and Guilds when negotiating the supply of some of their vocational qualifications which are deemed to be 'an almost monopoly' due to their brand reputation and very limited recognised alternatives offered by other suppliers. These customers use both EDI and Edexcel for different qualifications but did not identify EDI as a suitable alternative for those qualifications that they are arguably forced to acquire from Edexcel and/or City and Guilds.
94. In summary, the evidence before the OFT indicates that the four large awarding organisations (Edexcel, City and Guilds, EDI and OCR) are close competitors able to supply a range or portfolio of qualifications across many (if not all) sector skills. However, the OFT does not consider that Edexcel and EDI were each other's closest competitors or that the merger will lead to unilateral effects in the supply of qualifications as a package or range. The merged entity will continue to face a strong constraint from City and Guilds and OCR and will face a constraint from some other smaller awarding organisations, especially in relation to supply to colleges who tend to acquire from a wider pool of awarding organisations. In relation to PTPs and employers, none have raised any concerns with the transaction and there remain a number of awarding organisations to choose from who can provide a wide range of qualifications. On balance, therefore, the OFT does not consider that the merger will lead to a realistic prospect of an SLC in the supply of vocational qualifications as a range or package (or, in relation to any customer group).

## **Unilateral effects in the supply of individual qualifications or categories of qualifications**

95. The OFT also assessed the impact of this merger in respect of individual qualifications or categories of qualifications. Specifically, a main overlap between the merging parties is in the provision of VRQs and NVQs in several Sector Subject Areas Classification (SSAC). The OFT and third parties have identified one SSAC at Tier 1 and six SSAC at Tier 2 of the Ofqual Glossary in which the merger gives rise to material overlaps. These are:

### Tier 1

95.1. Business, Administration and Law (SSAC 15)

### Tier 2

95.2. Public Services (Security) (SSAC 1.4)

95.3. Retail and wholesaling (SSAC 7.1);

95.4. Warehousing and distribution (SSAC 7.2);

95.5. Administration (SSAC 15.2);

95.6. Business Management (SSAC 15.3).

96. Two features identified in a structural competitive analysis of these sectors indicated consistent high shares of supply and limited alternative suppliers. This raised competition concerns which have now been dismissed in light of the mitigating factors, most notably the presence of City and Guilds and OCR, smaller awarding organisations and the lack of substantiated concerns by customers and competitors.

97. In considering the overlap in SSAC 15 (Business, Administration and Law) the combined share of qualifications would be 35 per cent (increment 12 per cent). However, it is not unusual to have one awarding organisation with a high share of qualifications when segmenting by SSAC. Edexcel is the largest awarding organisation in three SSACs (SSAC 2 Science and Mathematics – 65 per cent; SSAC 8 Leisure, Travel and Tourism – 28 per cent; and SSAC 15), City and Guilds is the largest in four SSACs (SSAC 4 Engineering and Manufacturing Technologies – 40 per cent; SSAC 7 Retail and Commercial Enterprise – 35 per cent; SSAC Education and



Training – 40 per cent; and SSAC 14 Preparation for Life and Work – 30 per cent) and OCR in two (SSAC 6 Information and Communication Technology – 54 per cent and SSAC 12 Languages, Literature and Culture – 38 per cent. EDI had not been the largest in any SSAC (it biggest presence being a 12.4 per cent of SSAC 15).

### **High shares of supply but strong alternative suppliers**

98. When considering qualifications on a sector by sector basis<sup>41</sup> this merger creates high combined shares of supply in several skills sectors, most notably in the supply of qualifications in Public Services (59 per cent), Retail and Wholesaling (59 per cent), Warehousing and Distribution (58 per cent), Administration (48 per cent) and in Business Management (37 per cent).<sup>42</sup>
99. In Public Services, the increment (from EDI) is 12 per cent but almost all of this comes from a single qualification (Certificate in Door Supervision) which no other provider supplies. If this is removed the increment then becomes very small. There are three other awarding organisations present with a share of 10 per cent or more. Also the OFT notes that at Tier 1 level (i.e. in Health, Public Services and Care in general), Edexcel's biggest rivals (City and Guilds and OCR) have been very innovative over the past few years (City and Guilds created 27 per cent of the newly accredited qualifications in this sector between 2003 and 2009, and OCR created 10 per cent of these newly accredited qualifications during the same period).
100. In Retail and Wholesaling, the increment (EDI) is [20-30] per cent, however, some [ ] of Edexcel's supply is to a single customer that has since taken its awards in-house. When this is allowed for the increment reduces to a modest [0-10] per cent. City and Guilds has a strong presence in this sector ([30-40] per cent).
101. In Warehousing and Distribution, the increment (EDI) is [20-30] per cent. About half of Edexcel's volume ([30-40] per cent) is represented by a

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<sup>41</sup> Based on Ofqual Glossary. See footnote 7 above.

<sup>42</sup> Third parties also identified the supply of qualifications for Services Enterprises as one of the areas where the parties might have significant shares of supply, but Ofqual data indicated that Edexcel and EDI only had a combined share of 4.9 per cent. As such this sector area has not been considered further in the analysis.

single qualification. City and Guilds also has a strong presence in this sector (30-40 per cent).

102. In Administration, the increment (Edexcel) is [15-25] per cent. Both City and Guilds ([20-30] per cent) and OCR ([15-25] per cent) are present in this sector.
103. In Business Management, the increment (EDI) is only [0-5] per cent. There are three other providers with shares at or above 10 per cent.
104. In addition, the OFT notes that customers have not raised concerns with regard to any of these narrow segments and competing awarding organisations, while noting the merging parties' high market shares, have not specifically raised concerns on any of these narrow segments either.
105. In summary, on the narrow sector by sector analysis of relevant SSAC sectors where the parties had high combined shares of supply, the OFT analysis has shown that the merged entity will still face significant competitive pressure from strong rivals post merger. The OFT therefore concluded that the merger would not lead to a significant restriction of competition in any of the above narrow segments.

#### **Similar outcome if segmenting by NVQs/VRQs**

106. In the skill sectors where the merging parties have high combined shares of supply of NVQs, the closest rival is City and Guilds and OCR. In those sectors with high combined shares of supply of VRQs, the strong rivals appear to be City and Guilds, OCR and other niche providers. As stated above, the OFT has found that large awarding organisations (see above) are more successful in entering and expanding into new skill sectors (supply side substitution). The OFT believes that the merged entity will continue to face direct competition from these strong rivals.
107. In addition, the introduction of the QCF might make it less likely or less realistic for the OFT to consider the NVQs and VRQs as a reliable frame of reference. The QCF is expected to stimulate competition in the market (that within sectors of qualification: it is expected that the QCF will allow students gaining a qualification from one AO to take units towards that qualification from another different AO and it will be possible for students to switch from one AO to another during the qualification course) and at

the moment the market is still in transition. It is too early to measure the impact of the QCF, but there are some indications suggesting that the QCF has slowed down the growth in NVQs in the UK (see SRF dataservice<sup>43</sup>). It is therefore not certain whether the shares of supply in terms of NVQs and VRQs observed before the QCF would be a realistic basis to define this market. Given that the narrow market is currently in a transition stage, perhaps we may consider that a cautious approach would be to limit our analysis at Tier 2 level.

### **Customer groups**

108. There are no indications that certain customer groups will be particularly affected in relation to these individual tiers than others. The same analysis set out in paragraphs 81 to 94 above applies in relation to this theory of harm.

### **Unilateral effects in the supply of publicly funded work-based learning programmes such as Apprenticeships**

109. Edexcel and EDI have a strong presence in work-based learning. This takes place mostly through PTPs and employers, and to a lesser extent, through some further education colleges. City and Guilds and OCR have also significant businesses targeting these customer bases. PTPs play a pivotal role in supplying apprenticeship programmes to employers. Many (if not most) apprenticeships are procured through PTPs which put together the required goods (including the supply of the relevant NVQ qualification) and services often from different suppliers. The above conclusions on the lack of expected significant effects on PTPs resulting from this merger also apply when referring to the supply of apprenticeships.

110. Edexcel and EDI account for around a quarter of the public funds dedicated to awarding organisations in the Apprenticeship frameworks

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<sup>43</sup> The possible impact of QCF on NVQs: 'between their introduction in 1987 and the end of September 2010, almost 9.6 million NVQs/SVQs have been achieved in the UK. The number of NVQs/SVQs achieved has increased from 961,000 in 2008/09 to 1,021,000 in 2009/10 – an increase of 6 per cent, compared with increases of 15 per cent between 2006/07 and 2007/08 and 24 per cent between 2007/08 and 2008/09. This 'slow down' can largely be attributed to the introduction of QCF Qualifications – reported for the first time in this SFR. See: <http://www.thedataservice.org.uk/NR/rdonlyres/AA0BA84A-7ACF-4280-8180-CEA7565A98A9/0/VQ200910Commentary>.

(with over 12 per cent each) leading to an estimated combined share of 24 per cent. City & Guilds represents [redacted] and other [redacted] organisations, including OCR complete the competitive set with estimated market shares between [redacted] and [redacted] per cent each.

111. The parties supplied switching data showing limited switching between the merging parties. In addition to the lack of evidence of switching between the merging parties, data received from a public body also indicates that post-merger there will be, at least, another large awarding organisation, OCR, present. OCR is an established player across the vocational qualifications sector and is likely to be in a strong position to expand its offering to Apprenticeship frameworks. The OFT also notes the presence of other smaller awarding organisations with non negligible shares of supply.
112. This may be favoured by the role played by PTPs and employers in the procurement of qualifications for Apprenticeship frameworks (see paragraph 89 above). While there was no evidence suggesting that there was any significant switching between EDI and Edexcel, most of the customers that they each gained or lost in 2009 and 2010 were PTPs and Employers. For these customer groups, pricing and customer service often take priority over the brand reputation or size of the awarding organisation. This opens up the array of awarding organisations from which these intermediary customers can aggregate qualifications to supply Apprenticeships programmes.
113. In addition, the OFT has not received any substantiated complaints from PTPs and employers about the merger.
114. Overall, whilst the parties are currently competing in the supply of Apprenticeships frameworks to PTPs and employers using their established record in the supply of vocational qualifications and contacts within these customer groups, they will continue post-merger to face strong competition from City and Guilds, OCR and a range of smaller awarding organisations who are all targeting this growing sector. In summary, therefore, the OFT does not consider that this merger will lead to a substantial lessening of competition in the supply of publicly funded training programmes including Apprenticeships.

## Countervailing factors

115. Edexcel considers that barriers to entry and expansion in the supply of vocational qualifications are low and that this is a countervailing factor for each of the four unilateral effects theories of harm assessed above.

116. Edexcel considers that:

116.1. implementation of the QCF would increase competition making entry and expansion into new sectors easier (barriers to entry and expansion are low);

116.2. learning providers can self-supply or vertically integrate, that is, easily become awarding organisations (For example, one customer of Edexcel, Elmfield, has taken awards in-house through Skillsfirst (self-supply is easy) and

116.3. frequent use of procurement consortia increasing buyer power (countervailing buyer power).

Taking each of these in turn

### **Barriers to entry and expansion - implementation of the QCF is expected to increase competition**

117. The evidence supporting the contention that barriers to entry and expansion are low is mixed. On the one hand, it is clear that there has been some new entry through specialist awarding organisations and existing smaller awarding organisations into new skill sectors. Set against this, entry or expansion on the scale and scope to replace EDI, which as noted above, has become a broad-based supplier of vocational qualifications, has not occurred. The key question therefore is whether the implementation of the QCF has made timely, likely and sufficient entry more likely. Even though it is easy to expand into new skill sectors and have units (and/or qualifications) recognised, there is mixed evidence on whether this will equate to increased sales to learning providers. Some smaller awarding organisations have grown their revenues but this has, in the main, been in more specialist areas. No smaller awarding organisation has been as successful as EDI in growing share across a range of

qualifications. That said, the OFT notes that the regulations implementing QCF have been in force only from 2010 and it may prove to be the case that it fosters growth, expansion and entry. In any event, since the OFT has not found an SLC in respect of any of the theories of harm it has not been necessary to determine whether entry is timely, likely and/or sufficient.

### **Learning providers can easily become awarding (for example Elmfield)**

118. Edexcel has expanded the pool of competitors to learning providers which might, in its view, easily enter into the supply of qualifications. In its views, learning providers are closer to the clients and would be able to in market share by starting to self-supply qualifications. Edexcel has only provided one significant example of self-supply, Elmfield. Given that there are many hundreds of colleges, private training providers and employers, the OFT cannot attach significant weight to one instance of integration. It is doubtful that if the OFT considered there were an SLC in this area, this evidence would be a sufficient constraint on the merged entity.

### **Frequent use of procurement consortia increasing buyer power**

119. As stated above, this sector is heavily influenced by public policy. Among these, there is a focus in improving procurement efficiency. This is leading to the creation of more and more consortia and other associations of learning providers to strengthen their buyer power and reduce their contracting expenditure. The OFT acknowledges this trend but it has not been presented with sufficient evidence to corroborate that to date, it has had a notable impact on the commercial or pricing policies of the awarding organisations.

### **Unilateral effects in the supply of computer based testing platforms**

120. Two competitors raised concerns with regard to alleged loss of competition in the supply of computer based test (CBT) platforms. These concerns were not confirmed by the feedback from the majority of the customers and the evidence before the OFT.
121. The majority of the customers indicated that post-merger there will be sufficient alternative suppliers with sufficient CBT platforms to maintain

effective competition. BTL was repeatedly named as the largest competitor. Other smaller CBT players, such as RM, Prometric and Questionmark were also listed. In addition, other awarding organisations explained that they had made the commercial decision to outsource their computer based testing platforms for efficiency reasons and sectoral expertise and this commercial decision could be reversed. Evidence indicated that switching among different competitors often take place.

122. As a result, the OFT does not believe that this merger creates the realistic prospect of a substantial lessening of competition with regard to the supply of CBT platforms to awarding organisations and learning providers.

## **CONGLOMERATE ISSUES**

123. Three third parties were concerned that –by offering better terms to learning providers which require some Edexcel qualifications (arguably some BTEC qualifications), Edexcel could entice them to also use its expanded portfolio of vocational qualifications, to the exclusion of other awarding organisations (large and small).

124. The OFT considers that anticompetitive conglomerate effects are only likely to arise where:

124.1. Edexcel have or the merger leads Edexcel to have market power in ‘must have’ vocational or academic qualifications or any other related services supplied to learning providers;

124.2. the ‘must have’ good or service and other Edexcel’s goods or services supplied to those learning providers are complementary (that is, demand for them by learning providers is positively related – an increase in demand for one also increases demand for the other);

124.3. there is a large pool of common customers for both types of goods or services, so that in the case of ‘pure bundling’<sup>44</sup> or ‘contractual

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<sup>44</sup> Pure bundling refers to a strategy where Pearson/Edexcel only supplies its goods or services as part of a bundle (and not separately).

tying'<sup>45</sup>, the additional revenue earned from the joint selling of both exceeds any revenue lost from customers buying only one or the other'<sup>46</sup> and

124.4. such foreclosure is profit enhancing, so that Pearson/Edexcel may have the incentive to do it. This in turn depends on the trade-off that Pearson/Edexcel faces between the possible costs from foreclosure and the possible gains from expanding market shares in the affected market, or from raising prices in that market.

125. The complaints received are best characterised as two separate forms of such conglomerate foreclosure, each of which is considered below using this framework.

### **Bundling of 'must have' BTEC qualifications and other Pearson/ Edexcel's goods or services**

126. Some third parties were concerned that, post merger, Edexcel would be able to fill in any existing product gaps in its offering by adding EDI's vocational qualifications portfolio. According to these third parties, Pearson/Edexcel will therefore be able to exert influence over a learning provider to procure vocational qualifications and other related services only from Pearson/Edexcel instead of a range of awarding organisations. In view of these third parties, Pearson/Edexcel would be able to offer a lower bundled price to learning providers for procuring a 'bundle' or 'portfolio' of qualifications (which could include academic and vocational) and other related goods or services (such as books or CBT) than would otherwise be available if those products were procured individually.

127. The OFT faces three questions when assessing this issue: (i) could Pearson/Edexcel offer better terms to learning providers taking the 'bundle' or 'portfolio' of goods and services ('mixed bundling') to the

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<sup>45</sup> Contractual tying refers to a strategy where learning providers are contractually tied to only take other Pearson/Edexcel's goods or services once they have purchased Pearson/Edexcel's 'must have' goods or services.

<sup>46</sup> An alternative strategy for the parties would be to continue to offer Pearson/Edexcel qualifications separately, but also offer them as a part of a bundle at a lower overall price (mixed bundling'). Mixed bundling may enable firms to increase sales by attracting customers who place different valuations on goods (price discrimination). The limited case in which mixed bundling may have a strong foreclosure effect is when there is a common pool of customers and goods are strongly complementary (in which case the bundled price will be significantly lower, and a large share of consumers will be attracted towards it).



exclusion of other awarding organisations or suppliers?; (ii) could learning providers be contractually tied to procure all qualifications (academic and/or vocational) and other related goods and services from Pearson/Edexcel?; and, (iii) have these bundling opportunities (if any) resulted from this merger?

128. A common feature which should apply to all the above scenarios is that when goods or services that are sold together are independent and not complements, such bundled-selling often occurs where there are economies of scale in purchasing.<sup>47</sup> These 'one-stop shopping' effects are generally classified as demand-side efficiencies, as customers derive some benefit from buying a range of products from a single supplier. This is the case for example when purchasing from a single supplier reduces learning providers' transaction costs or improves the educational services they, in turn, offer (for example, better teaching programmes, qualifications contents or faster and more accurate assessment or marking). The OFT would generally regard a merger giving rise to increased bundling to result in lower prices (for the products in the bundle) and as such, such mergers may be pro-competitive.
129. To assess conglomerate foreclosure, the OFT would need to determine whether Pearson/Edexcel will have the ability and incentive to foreclose other awarding organisations, CBT or any other supplier of related services (such as publishers), and whether this will result in harm to competition. In part, this depends on Pearson/Edexcel having market power in distinct 'must have' academic (or vocational) qualifications (arguably BTEC branded qualifications).
130. The contention would be that Pearson/Edexcel could leverage the need to procure BTEC qualifications into other vocational or academic qualifications in which it does not have similar market power by using this form of pricing strategy. However, the OFT notes that the majority of EDI's customer base buy vocational qualifications only because EDI's business is focused on WBL. Up to [80-90] per cent of EDI's revenues in 2009/10 were earned from PTPs and employers (who do not often procure academic qualifications). In addition, EDI does not supply vocational

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<sup>47</sup> For example, supermarkets sell groceries that are substitutes, complements and independent products in the eyes of their customers. They do so partly because there are economies of scale in purchasing for shoppers ('one stop shopping'). Therefore, the observation that a shopper buys basket of groceries does not mean that all the products in the basket are complements.

qualifications to schools and so the remaining 15 per cent of its 2010 revenues were earned from Further Education colleges where Edexcel and its main competitors (City and Guilds and OCR) earned over 30 per cent of their revenues. Thus, the merger would lead to a small increase (4 per cent) in Edexcel's revenues from Further Education colleges. This indicates that the incentive to undertake such foreclosure strategy barely changes and the OFT has not been presented with evidence that such strategy is operating pre-merger. Data submitted by colleges rather shows that they procure from a large pool of awarding organizations.

131. Evidence submitted to the OFT indicates that discounting is applied to the overall volume – not focused on specific qualifications. The same applies to the merging parties pricing policies (which apply by type and level of qualification (as opposed to sector or individual qualification) which seems to indicate that, while highly regarded, BTEC branded qualifications do not carry any plus marking resulting from any alleged market power or 'must have' nature.
132. On the possible changes on the ability to engage in such a foreclosure strategy, the market responses have indicated that Pearson/Edexcel was already able to offer a similar basket of vocational qualifications as EDI, therefore, the acquisition of EDI does not necessarily have any (significant) increase in its product portfolio. As to the increase in its customer portfolio, due to EDI's focus on PTPs, the OFT notes that, whilst PTPs were not Edexcel's main customer group, the revenues from such customer group are higher than EDI's sales to PTPs. This indicates that Pearson/Edexcel already had the ability to engage in such a strategy if it had intended to and the merger does not substantially increase such ability.
133. As discussed above this merger does not create the realistic prospect of a substantial lessening of competition at horizontal level which could then be leveraged to raise conglomerate issues. The OFT has not seen any substantiated evidence that such horizontal market power or bundling strategy exists pre-merger either. Nevertheless, the OFT also sought to analyse other evidence pertaining to the parties' ability and incentive to foreclose competition via bundling.

134. As noted above, the OFT only regards foreclosure as anticompetitive where it results in a substantial lessening of competition in the affected market, not merely where it disadvantages one or a few competitors. In this case:

134.1. Other awarding organisations (either individually or in partnerships) have the capacity to offer a large range of qualifications (academic and vocational) competing with Pearson and/or EDI for the provision of a package or bundle of qualifications (and related goods or services) – range products foreclosure.

The OFT notes the limited increment (if assessing the merger through a wider frame of reference relating to the supply of all accredited qualifications), below 2 per cent (see paragraphs 62 and 63 above). In addition, there exist potential rivals which are supplying or are capable of supplying both vocational and academic qualifications. OCR currently supplies both vocational and academic qualifications (in 2008/9, OCR had over 21 per cent share of total GCSE achievements and in 2009/10 it had 18 per cent of total achievement in all accredited qualifications and 13 per cent of total achievements in accredited vocational qualifications).

The OFT also understands that City and Guilds has a partnership with AQA to supply 'diplomas' which may combine vocational and academic qualifications. AQA is the largest supplier of some academic qualifications (such as GCSE) and City and Guilds is the largest supplier of vocational qualifications. Other smaller awarding organizations, such as WJEC<sup>48</sup>, are also active in the supply of both academic and vocational qualifications.

134.2. Other specialist (niche) awarding organisations do not appear to be foreclosed from supplying their niche (or narrower) range of niche qualifications (or related services) forming part of the bundle of qualifications (or related services) which are usually required by many learning providers (in particular PTPs and employers which often seek more specialised qualifications).

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<sup>48</sup> Formerly known as the Welsh Joint Education Committee.

135. The evidence on whether either or both of the merging parties have sought to engage in bundling pre-merger, is mixed but it does not indicate that it refers to pure anticompetitive bundling. The discounting policies are related to overall volumes without differentiating by sector skills or qualifications. Also the procurement policies of many 'centres' (particularly colleges) which delegate the procurement decision to departmental level make it more difficult to effectively set a 'bundling' selling strategy as different departments may opt for different suppliers.
136. Given that there is no evidence suggesting that Pearson/Edexcel has sought to engage in bundling pre-merger, the OFT's analysis of 'range products foreclosure' considered whether Pearson/Edexcel had the incentive to offer bundled prices post-merger in order to foreclose competition in the supply of vocational qualifications to other awarding organisations, and in particular to smaller niche suppliers in skills sectors where EDI had a strong position and Edexcel had no significant activity. As stated above, Edexcel was already active in most (if not all) skills sectors or could easily enter into those sectors in which it did not generate any revenues. Therefore, the contention that this merger would offer Edexcel a new opportunity to fill in gaps in its product offering does not appear to be substantiated by the evidence before the OFT.
137. The above arguments are corroborated by the fact that most colleges buy their vocational qualifications from a wide range of awarding organizations. The responses to the OFT information request indicated that colleges often source qualifications from over 20 different awarding organisations in average. This merger does not substantially change the competitive structure and therefore the OFT does not expect that this practice would substantially change as a result of this merger.

138. Furthermore, the main overlap resulting from this merger would be in PTPs. This customer group often procures from a smaller pool of suppliers in search for administrative efficiencies. From one to five suppliers at the time is the average. In addition, for this customer group, pricing, customer service and a tailored-offer to suit their client take precedent over brand reputation of awarding organisations. Thus, the weight that the BTEC brand might have in other academic forums is not so significant for PTP. These do not require any material quantity of academic qualifications either, weakening further any possibility to bundle EDI's vocational qualifications with the existing Pearson/Edexcel's BTEC-branded vocational and academic qualifications.

## **Conclusion**

139. On the basis of the above, the OFT does not believe that it is or may be the case that the merger gives rise to the ability and incentive to engage in bundling of the enlarged portfolio of qualifications (by adding EDI's vocational qualifications portfolio and CBT services) to the exclusion of other large and small awarding organisations or CBT suppliers, nor that any such strategy could have an anticompetitive effect in the procurement of qualifications or related services. As a result, the OFT does not believe that it is or may be the case that this merger may be expected to result in a substantial lessening of competition based on conglomerate concerns.

## **THIRD PARTY VIEWS**

140. The OFT contacted directly over 150 customers and competitors and some representative trade associations of the sector to urge their members to contact the OFT to present their views on this merger. The OFT received over 35 responses. Six customers and most competitors raised concerns. These concerns have been addressed above.

## ASSESSMENT

141. Pearson/Edexcel and EDI overlap in the supply of vocational qualifications and the supply of computer based testing platforms in England, Wales and Northern Ireland.
  
142. While it is not possible for the OFT to conclude, within the timeframe of this assessment, on the precise market definition, the OFT has taken a cautious approach and considered that the product scope or framework of assessment for the analysis of this merger is as follows:
  - 142.1. The supply of vocational qualifications to learning providers;
  
  - 142.2. The supply of vocational qualifications by awarding organisations providing a significant portfolio or range of qualifications and related services;
  
  - 142.3. The supply of vocational qualifications in specific SSAC sectors as segmented at Ofqual's Tier 1 and Tier 2;
  
  - 142.4. The supply of work-based learning programmes and Apprenticeships; and
  
  - 142.5. The supply of computer based testing platforms.

The competitive assessment has considered the competitive effect of the merger with specific reference to certain awarding organisations (those able to supply a range of qualifications and/or related services) and with respect to different customer groups (in particular private training providers and employers).

143. Given the regulatory conditions and the merging parties' geographic area of activities, the OFT has assessed the impact of this merger on the supply of qualifications in England, Wales and Northern Ireland. With regard to the supply of computer based testing platforms, without reaching a conclusion, this assessment has taken a cautious approach and considers the geographic frame of reference to be the UK only.

144. This merger raised unilateral non-coordinated horizontal concerns (the loss of actual and potential competition) in the supply of vocational qualifications. Three third parties also raised conglomerate concerns.
145. On possible unilateral effects, there are two main theories of harm:
- 145.1. Unilateral effects in the supply of vocational qualifications:
- 145.1.1. loss of competition between suppliers with an established reputation and capability across a range of vocational qualifications including the loss of a firm with strong innovation and expansion possibilities;
  - 145.1.2. loss of competition between suppliers in respect of individual qualifications or categories of qualification;
  - 145.1.3. loss of competition between suppliers in respect of the provision of work-based training programmes, in particular, Apprenticeships and other publicly funded training programmes
- 145.2. Unilateral effects in the supply of computer based testing platforms.
146. While the merger reduces the number of large awarding organisations with an established reputation and capability across qualifications from four to three, several mitigating factors indicate that this loss of competition will not be substantial. Among these: the presence of City and Guilds, the largest supplier of vocational qualifications and the strength of OCR, the commercial acumen of the most affected customer groups (private training providers and employers) and the constraint (albeit much more limited) that other 165 more specialised awarding organisations can confer in aggregation.
147. With regard to the supply of individual qualifications or categories of qualifications, and in particular, with regard to six sector skills, in accordance to Ofqual Glossary (Tier 2), the OFT notes that in addition to the constraint from the large awarding organisations, the constraint from those niche awarding organisations which focused on those areas is more

significant. In these cases, some of those remaining 165 awarding organisations are as efficient suppliers to all customer groups as the large organisations. This has been confirmed by customers, which have not raised specific concerns either, and other evidence presented to the OFT.

148. The overlap in the supply of computer based testing platforms does not create the realistic prospect of a substantial lessening of competition. The majority of customers (both end customers and awarding organisations which re-sell this product/service as part of a wider package) have confirmed that there will be sufficient alternative suppliers and that their decision to outsource this technical service to specialised companies can be reversed if necessary.
149. With regard to possible conglomerate effects, some third parties were concerned that, post merger, Edexcel would be able to fill in any existing product gaps in its offering by adding EDI's vocational qualifications portfolio. According to these third parties, Pearson/Edexcel will therefore be able to exert influence over a learning provider to procure vocational qualifications and other related services only from Pearson/Edexcel instead of a range of awarding organisations. In view of these third parties, Pearson/Edexcel would be able to offer a lower bundled price to learning providers for procuring a 'bundle' or 'portfolio' of qualifications (which could include academic and vocational) and other related goods or services (such as books or CBT) than would otherwise be available if those products were procured individually.
150. The evidence before the OFT do not indicate that this merger has altered Pearson/Edexcel's incentive or ability of the merging parties to engage in any anticompetitive conglomerate or bundling practices. And the OFT has not been presented with substantiated evidence that such practices are taking place pre-merger. The main contention from third parties relates to Edexcel's strength resulting from its BTEC brand and the aggregation of EDI's product portfolio. The OFT notes that Pearson already supplied its BTEC branded qualifications and it already supplied (or was capable to supply) most of EDI qualifications.
151. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.



## DECISION

152. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.