

Anticipated acquisition by Safetykleen UK Ltd of Pure Solve UK Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6593/16

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 11 May 2016. Full text of the decision published on 13 June 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Safetykleen UK Ltd (**Safetykleen**) has agreed to acquire Pure Solve UK Limited (**Pure Solve**) (the **Merger**). Safetykleen and Pure Solve are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of parts washing machines and related services in Great Britain (**GB**) (**parts washing services**) where they are the number one and two suppliers. Post-Merger, they would have a very high combined market share of [60-70]% of parts washing services in GB, with the next largest competitor capturing just approximately [0-5]% of the market.¹
4. Safetykleen is by far the largest supplier of these services in GB. It has a market share of [60-70]% and has maintained its strong market position for

¹ Measured by number of parts washing machines.

many years, whereas other competitors in this sector have struggled to build significant market share.

5. Pure Solve, as the second largest supplier, has a market share of [5-10]%. Although it is small in comparison with Safetykleen, it is estimated to be at least twice the size of the next largest player. The CMA considered that Pure Solve acts as an important competitive constraint on Safetykleen by virtue of operating four depots and its well-established position which it has grown over many years (since it re-entered the market having previously been bought out by Safetykleen in 1996). It is part of the NCH Group, a global player in industrial, commercial, and institutional maintenance products and services.
6. By contrast, other suppliers (with the exception of Safetykleen) operate from only one depot and form part of a long tail of companies with significantly fewer machines than Pure Solve and much lower shares of supply. In assessing the constraint these suppliers would impose on the Parties post-Merger, the CMA took account of evidence demonstrating that the market has not been particularly dynamic and that it appears to take considerable time to expand in this market. Overall, the CMA did not consider that these smaller competitors would be in position to adequately replace the constraint Pure Solve exerts on Safetykleen.
7. The CMA found that the Merger would lead to competition concerns in relation to customers with multiple sites, or large customers, as well as in relation to single site customers. With respect to both these sets of customers, the evidence indicates that the Parties are close competitors. For multiple site customers, third parties stated that the Parties were close competitors and that the Merger would lead to the loss of a GB-wide alternative. For single site customers, the evidence indicates that the reduction in the number of credible alternative suppliers post-Merger in some regional areas would have the greatest impact around Pure Solve's depot in Maidstone. The CMA did not receive sufficient evidence indicating that the long tail of 'other' competitors would protect these single site customers on a regional basis from price increases or a worsening of the competitive offering post-Merger.
8. The Parties submitted that they were constrained by the prospect of customers purchasing their own machine and switching to self-supply. The evidence gathered by the CMA did not support that sufficient customers would switch to purchasing their own machines and to sourcing other parts of the bundle of services supplied by the Parties on a disaggregated basis in response to a small but significant price increase post-Merger. Therefore, the CMA placed less weight on self-supply as a potential source of competitive constraint, although it took all constraints into account in its competitive assessment where appropriate.

9. The CMA received concerns from a number of third parties, including customers and competitors. Several customers told the CMA that they had switched from Safetykleen to Pure Solve, indicating that the Parties are regarded as close competitors. Some third parties also estimated that the Parties' combined market shares may be even more significant than stated above.
10. On the basis of the evidence available to it, the CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
11. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 18 May 2016 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

12. Safetykleen is a supplier of parts washing and related chemical application and waste management services from 17 sites in the UK. Safetykleen is part of the Safetykleen Group which operates in 11 European countries, including the UK, as well as in Brazil, China and Turkey. The UK turnover of Safetykleen for the financial year ended 31 December 2014 was £59.3 million.
13. Pure Solve is also a parts washing and degreasing specialist providing services GB-wide from four sites. Pure Solve is part of the NCH Group. The UK turnover of Pure Solve in the financial year ended 30 April 2015 was £3.2 million.

Transaction

14. The proposed transaction is the acquisition by Safetykleen of the entire issued share capital of Pure Solve from CPS Industries UK Limited, which in turn is a subsidiary of the NCH Group.

Jurisdiction

15. As a result of the Merger, the enterprises of Safetykleen and Pure Solve will cease to be distinct.

16. The Parties overlap in the supply of parts washing machines and associated services in GB² and post-Merger will have an estimated combined share of supply of [60-70]% with an increment of [5-10]%.³ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
17. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 14 March 2016 and the statutory 40 working day deadline for a decision is therefore 11 May 2016. The Merger was considered at a Case Review Meeting.⁴

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁵
20. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

21. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be

² The CMA notes no overlap exists in Northern Ireland. While Pure Solve is not physically present in Scotland and Wales, the CMA is aware that Pure Solve also serves customers in Scotland (from call with Pure Solve on 8 March).

³ By number of machines.

⁴ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

⁵ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁶

Product scope

22. Parts washing services involve the supply of a range of component cleaning machines and parts under a service agreement, which includes the provision of some or all of the related services described in the paragraph below.
23. As part of their respective parts washing machines and associated services offering (**machine and service**), the Parties' activities overlap in a number of areas, including in relation to the supply of the following machines:
 - parts washer machines: these are machines aimed at cleaning oil and grease from parts. There are several methods of cleaning, including using hydrocarbon solvents (**solvent**) or water, and parts can either be washed manually or automatically;
 - spray cleaning equipment: these machines are used to clean paint from spray guns and paint cups using either paint thinner or water; and
 - specialised cleaning machines: these include cleaning machines for brakes, clutches, and de-rusting machines.
24. In addition to the provision of these machines, the Parties offer a bundle of additional services⁷ which include maintenance, pre-scheduled waste collection and fluid replenishment,⁸ waste management and completion of compliance paperwork.⁹ Service frequency varies, ranging from [~~8~~] services a year on average, depending on the customers use of the machines and the standards required by the customers For example, aviation customers require much higher standards and thus more frequent servicing.

Parts washing machines

25. The Parties originally submitted that it would not be appropriate to define separate product markets for specific types of machines since the Parties

⁶ *Merger Assessment Guidelines*, paragraph 5.2.2.

⁷ www.safetykleen.eu/uk and www.puresolve.com.

⁸ Either solvent or aqueous solutions.

⁹ In the case of Safetykleen this is provided by a nationwide network of branches. In the case of Pure Solve this is provided from its four branches.

considered that competition occurs at the service level and does not depend on the type of machine provided.

26. However, at the Issues Meeting Safetykleen submitted that aqueous parts washers were differentiated from solvent-based parts washers. This is because, although there was demand-side substitutability as all different types of machine are aimed at satisfying the same needs, there is a price differential between solvent and aqueous based parts washers, and some customers have a preference for aqueous due to factors such as health and safety, and environmental concerns.
27. The Parties submitted, in their Merger Notice, that a single customer may be supplied with a variety of machines offering both solvent and aqueous solutions under one service agreement. Further, their competitors generally supply all types of parts washing services and have the ability to quickly move between the different machines and service offerings in response to a change in demand by the customers by either purchasing or leasing the equipment required. Evidence supplied by the Parties at the Issues Meeting confirmed that a large number of their competitors supply both aqueous and solvent machines.
28. Third parties did not comment on a split between solvent and aqueous based machines. Moreover, and as set out in the competitive assessment, the CMA notes that both Parties supply solvent and aqueous based parts washers with neither demonstrating a particular strength for the sale of one type of machine over the other when their product sales are compared. The CMA has therefore not found it necessary to segment the product scope further in this case. However, even if the CMA were to consider these products to form part of separate markets, the CMA does not consider that this would change its substantive assessment of the Merger given the material overlaps of the Parties in relation to both types of machines.

Self-supply of machines and associated services

29. The Parties also submitted that the product frame of reference should take account of in-house ownership of machines, and more basic do-it-yourself options.
30. The CMA notes that the Parties provide a bundled service to customers consisting of a leased machine, fluid replenishment, and waste management services. Given the context of this offer, in order to switch away from the bundle of services provided by the Parties and similar rival providers, the customer would need to source the separate elements of the service in addition to purchasing a machine. In particular, a customer would need to

source the relevant solvents or aqueous cleaning solutions, change these solutions at regular intervals, and ensure appropriate disposal of waste materials.

31. The CMA has, based on the evidence available to it, examined whether self-supply could be regarded as forming part of the same market as the bundle of services provided by the Parties (or whether it is more appropriate to take a constraint from self-supply into account as part of the overall competitive assessment). To assist with this question, the Parties provided customer loss data which was collected with the aim of identifying the alternatives to which the Parties lost customers. This data included customers which chose to use other rival suppliers of parts washing machines and associated services, but also indicated the proportion of customers lost which could be identified as choosing to purchase their own machine (self-supply). If sufficient customers were switching to purchasing their own machines in response to changes in the relative attractiveness of leasing a machine and purchasing associated services, then this may indicate that self-supply by way of a machine-purchase would provide an effective alternative such that it could be included in the same frame of reference.
32. The data indicates that, of the customers Safetykleen lost over the last three years to known competitors or self-supply, around [X]% purchased their own machine. Whilst this does indicate that some customers of Safetykleen do have the option of purchasing their own machines, it is not clear whether these lost orders were due to a price increase or due to changes in the circumstances and evolving preferences of customers over time. If the decision to switch to machine-ownership was made due to factors which were largely independent of the terms offered by suppliers of the bundled service, then the CMA would not expect such switching decisions to place a competitive constraint on the suppliers of bundled services.
33. Safetykleen provided some examples of customers purchasing their own machines, but these generally did not appear to be in response to price increases. In addition, the majority of third parties that responded to the CMA's market testing stated that they would neither revert to cleaning parts without a machine, nor consider purchasing their own parts washing machines in response to a price increase.
34. Therefore, the CMA does not consider, based on the evidence available, that customers would substitute to purchasing their own machines and source other parts of the bundle of services supplied by the Parties in response to a small but significant increase in price post-Merger. The CMA therefore believes that alternative means of sourcing the bundle of services supplied by the Parties are insufficiently close substitutes to be included in the product

frame of reference. Rather, these alternatives are assessed in the context the competitive assessment below.

Customer segmentation

35. The CMA also considered whether the market should be segmented by customer size or type.
36. The Parties argued that, although there were differences in the machines supplied to customers, the bundle of services that are supplied are similar across customers. The Parties also submitted that the number and type of machines, and the required frequency of service, is dependent on the size of the business and factors such as the cost of labour and specific cleaning needs rather than based on specific industry requirements.
37. However, in the context of their submissions on countervailing buyer power, the Parties told the CMA that they face different pressures from [REDACTED].
38. The CMA received customer responses from a range of industries. None identified parts cleaning services that were specific to their industry. In addition, the majority of competitors to whom the CMA spoke appeared to be able to offer a parts-cleaning service that covered a range of industries.
39. The Parties provided their revenue broken down by industry which indicated that they were both full service and had no particular strength (on an overlapping basis) in any particular industry. As such, the CMA has not considered it necessary to consider the competitive effects on a narrower industry specific basis, but any industry specific effects will be considered as part of the competitive assessment, as necessary.
40. A number of customers that the CMA spoke to required services across multiple sites. One customer told the CMA that since it had a national footprint it would require a supplier with a national footprint. In addition, another customer stated that a supplier would need to maintain a sufficient level of service over its whole network.
41. One customer¹⁰ told the CMA that they had a group contracted supplier, although a number of companies within the group did use other suppliers.
42. The Parties, and their main rivals, appear primarily to serve single site customers ([REDACTED]% by volume in the case of Safetykleen) but will also bid for large multi-site customers,

¹⁰ [REDACTED]

43. Given the evidence set out above, the CMA believes there may be segmentation between parts washing machine customers, based on size rather than industry, since some large customers require a GB-wide service across multiple sites, or firms with a strong and credible track record, and other smaller customers may not. As noted by the Parties (see paragraph 37 above), [REDACTED]. As such, the CMA considers that the dynamics of competition may differ between larger and smaller customers.
44. The CMA considers that it is difficult to draw a precise delineation on the categorisation of customers and notes that it has not received from the Parties data split by customer type. However, in its competitive assessment the CMA has considered any differences in customer type. In particular, the CMA will consider any differences in competitive conditions for customers with multiple sites and which are relatively large customers, and smaller, single-site, customers.

Conclusion on product scope

45. For the reasons set out above, and on a cautious basis based on the evidence available, the CMA has considered the impact of the Merger in the following product frame of reference:
- the supply of parts washing services, including the supply of all types of parts washing machine.

Geographic scope

46. The Parties, in their Merger Notice,¹¹ submitted that the relevant geographic market was GB-wide, as customers in different areas of the country are serviced by providers located across GB. Safetykleen noted that while it provides nationwide coverage from 17 branches across the UK, Pure Solve is able to operate a GB-wide service from four branches and that other competitors claimed GB-wide coverage from a single site.
47. The Parties, in their response to the CMA's Issues Paper, however, submitted that the geographic market should be considered as regional or local, but that there were no barriers to a GB-wide service.

¹¹ Paragraph 28 of the Merger Notice.

48. The CMA notes that [redacted].¹² However, the CMA has not received any evidence of the location of these single site customers, or any indication of local catchment areas. Safetykleen's customer loss data provides [redacted].
49. Two customers commented that they required a GB-wide provider to service multiple sites. However, the majority of customer responses did not consider the location of the supplier's depot to be important. Rather, customers were indifferent to the location of a supplier's depot as long as the service was delivered to the customer's site at the appropriate intervals and at a reasonable cost.
50. The evidence gathered by the CMA indicates that a number of competitors are active across the country and that they are willing, and do, serve customers across GB from only one site. The CMA notes that, including the Parties, there are at least six suppliers that have confirmed they are active across GB, albeit that they do not all offer the same level of pricing or discounts across it. As such, it is difficult to conclude that a hypothetical monopolist in any particular region would be able to profitably raise prices, as customers would appear to be able to switch to other GB-wide suppliers.
51. However, some competitors indicated that they did not serve all areas of the country. Other competitors indicated that they operated different pricing structures across the country, offering potentially larger discounts to customers closer to their site of operation. Therefore, with the exception of customers that require a GB-wide presence, for whom the CMA considers the market GB-wide (by definition), there appear to be some regional aspects to the market. This appears to be consistent with the views of the Parties, as expressed at the Issues Meeting, and some competitors.
52. Pure Solve operates four sites around the country and Safetykleen operates depots reasonably close to each of the Pure Solve depots. Given these geographic overlaps, and the apparent regional variation in competitive conditions, the CMA has given particular consideration to these regions in the context of a GB geographic frame of reference.

Conclusion on geographic scope

53. On the available evidence, the CMA has assessed the market using a frame of reference for supply within GB.¹³ In addition, the CMA has also considered whether there is scope for regional variation in competitive conditions within

¹² Slide 14 of Safetykleen's response to the Issues Meeting, 22 April 2016.

¹³ The CMA notes no overlap exists in Northern Ireland. Pure Solve is also not physically present in Scotland and Wales but the CMA is aware that Pure Solve serves customers in Scotland (from call with Pure Solve on 8 March).

GB. The CMA considers that it is difficult to identify the boundaries of any regional market that might exist, but that it would expect both Parties to compete particularly closely for customers in regions where they both have depots.

54. Therefore, for the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- On a GB-wide basis, given that there are a number of competitors who supply the service GB-wide from a single depot, and also some customers who require the service on a GB-wide basis.
 - The CMA will also consider regional variations in the dynamics of competition around the Pure Solve depots.

Conclusion on frame of reference

55. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- the supply of parts washing services on a GB-wide basis; and
 - the supply of parts washing services considering regional variations around the four Pure Solve depots.

Competitive assessment

Horizontal unilateral effects

56. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.¹⁴ Horizontal unilateral effects are more likely when the merger parties are close competitors.
57. The CMA has therefore assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in the supply of bundled parts washing services, on a GB-wide basis. The CMA has also considered the supply of the bundled service on a non-national basis around the four Pure Solve depots.

¹⁴ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Supply of parts washing machines and services GB-wide

Shares of supply

58. The Parties estimated GB-wide shares of supply to all customers based on the number of machines in the relevant market, see Table 1 below. The Parties did not provide shares of supply split on the basis of customer size or on a local or regional basis.

Table 1 – 2015 Estimated shares of supply

	Estimated share of supply of parts washing services in the UK by number of machines serviced
Safetykleen	[60-70]%
Pure Solve	[5-10]%
Combined	[60-70]%
Pure Clean*	[0-5]%
Oakwood Fuels	[0-5]%
D-Grease UK	[0-5]%
Others	[20-30]%

Source: the Parties

Note: * It is not clear from the Parties' submission whether this share of supply should be attributed to Pure Clean Environmental based in Bristol or Pure Clean Waste Solutions (**PCWS**) of Stockport, or a combination of the two.

59. The Parties did not provide estimated market shares on a revenue basis. However, the CMA spoke to a number of suppliers of parts cleaning services to understand whether their revenues, and market shares on a revenue basis, were in line with the machine-based estimates of the Parties in the table above. Although the CMA was not able to obtain revenue figures from all competitors in the market, those from whom it was able to obtain revenue data broadly supported the market share estimates, based on the number of machines, provided by the Parties. It is worth noting, however, that the CMA

was unable to obtain revenues for the vast majority of the suppliers contained within the 'others' grouping.

60. Some third parties provided estimates of the Parties' market shares that were significantly higher than those suggested in table 1 above. As such the CMA considers that there is some uncertainty regarding the precise market shares of the Parties in the supply of parts washing services.
61. The available market share estimates indicate that Safetykleen is by far the largest supplier of machines and associated services in GB, with [60-70]% market share. The share data also indicates that this is a highly concentrated market.¹⁵ In contrast to Safetykleen, all other suppliers are far smaller, with Pure Solve being the second largest supplier.
62. The CMA considers that, when considering mergers in the context of highly concentrated markets, the role of smaller firms in constraining the largest firm is of particular importance.¹⁶
63. Although Pure Solve is small relative to Safetykleen, it is the second largest supplier in the market and it is twice the size of its next largest rival on the basis of market share. This rival, Pure Clean, is estimated to have half as many installed machines as Pure Solve. In addition, the CMA has doubts about the estimate of Pure Clean's share. As indicated in the note to Table 1, the estimate for Pure Clean may actually capture sales by two different companies with 'Pure Clean' in their company names. This may indicate that the next largest supplier after Pure Solve has even less than a [0-5]% share, which would imply that Pure Solve is three times as large as the next largest competitor.
64. The difference in market shares of competitors shows some correspondence to the number of depots which suppliers have. Safetykleen serves, roughly, [60-70]% of the market through 17 depots. Pure Solve serves [5-10]% of the market through 4 depots. All other suppliers that the CMA spoke to, each with less than [0-5]% of the market, operated with only a single depot.

¹⁵ The CMA has estimated that the post-merger Hirschman-Herfindahl Index (HHI) is likely to be about 3,666. This is based on an assumption that the [20-30]% market share accounted for by 'Others' consists of equally-sized suppliers, each with [0-5]% market share – implying that there are [∞] competitors within 'Others'. The calculation of the HHI in this case is not sensitive to this assumption. The CMA's Guidance indicates that any market with a post-merger HHI exceeding 2,000 is considered to be highly concentrated. The HHI is a measure of market concentration which is calculated by adding together the squared values of the percentage market shares of all firms in the market and takes account of the differences in the sizes of market participants. 5.3.4 Merger Assessment Guidelines.

¹⁶ It is notable that some third parties raised particular concerns about the poor quality of service provided by Safetykleen, which may indicate that it already faces limited competitive constraints.

65. The CMA did not receive data on market shares over a number of years. However, it is clear that Safetykleen has maintained its very strong position in the market for many years.¹⁷ Pure Solve is also well-established in the market. It had previously been active in the market until 1996, when it sold its business to Safetykleen. It then re-entered the market in 2000 and has, since then, slowly built its position to be the second largest provider. At the Issues Meeting, Pure Solve indicated that [REDACTED]. Whilst the CMA did not receive evidence to support this, it notes that this is consistent with the CMA's view that this market shows little indication of dynamic change. The largely static nature of the market means that market shares may be a particularly good indicator of the strengths of competitive constraints. Therefore, the CMA considers the market share estimates to provide strong prima facie evidence of competition concerns.
66. The Parties did not supply share data split regionally. The Parties' estimate of market shares also did not split between larger customers with multiple sites on the one hand, and smaller single site customers on the other. Therefore, the market share estimates leave open the possibility that there is variation in the effectiveness of competitive constraints depending on region and customer type. The Parties' estimated market shares of smaller regional players may understate the strength of these competitors in their home regions, but overstate the constraint that they may pose outside the region in which they are based. Similarly the market shares may not give an accurate indication of the constraint posed by these smaller competitors for different customer types.

Closeness of competition

67. The CMA considers that the market shares of the Parties, the very small presence of other suppliers, and static nature of the market together indicate that the Parties are likely to be close competitors. The Parties also both serve customers throughout GB, each serving them through a network of depots. Unlike some other competitors, the Parties [REDACTED].
68. The Parties both supply a range of similar aqueous and solvent machine types, although there are also similar ranges supplied by a number of competitors.
69. Third parties suggested that the Parties are close competitors for GB-wide customers, and were concerned that the Merger would see the loss of an

¹⁷ The CMA notes that the number of machines which Safetykleen supplies has seen very little change in recent years, despite Safetykleen claiming that it faces strong competition from recent entrants and the long tail of much smaller competitors.

alternative GB-wide supplier. One customer¹⁸ stated that it considered the Parties to be close competitors, as there were ‘few other suppliers who can give the same level of service across a large network.’ Another customer¹⁹ told the CMA that the Parties were the only two suppliers that they were aware of, and another²⁰ indicated that the Parties were the market leaders.

70. The CMA also received responses from several customers who had switched from Safetykleen to Pure Solve, suggesting that the Parties represent alternatives for customers.
71. Customers were also able to name some alternative suppliers to the CMA. The strength of these alternative suppliers and their ability to constrain the Parties post-Merger is discussed below.
72. Some customers of Safetykleen were either not aware of Pure Solve or had not considered switching to them. For example, [redacted] told the CMA that in a recent tender exercise there were three bidders, Safetykleen (which won), [redacted]²¹ and [redacted]. Similarly, one competitor told the CMA that whilst Safetykleen was their main competitor, Pure Solve was not considered to be a significant competitor. However, the CMA does not find these views to be inconsistent with the Parties being the closest competitors in the market. Pure Solve remains far smaller than Safetykleen (by revenue and volume of machines) and it is unsurprising that not all customers are familiar with it and that competitors would not necessarily see it as strong a competitor as Safetykleen.
73. On the basis of the evidence available, the CMA considers that Pure Solve is the closest competitor to Safetykleen and is therefore likely to exert an important competitive constraint on Safetykleen.

Rival suppliers

- *The Parties’ views*

74. The Parties submitted that they will continue to face a strong competitive constraint post-Merger. In particular, they stated that they compete directly with Pure Clean (two separate companies), Oakwood and D-Grease, but also with a large number of other parts cleaning local service providers which offer

¹⁸ [redacted]
¹⁹ [redacted]
²⁰ [redacted]
²¹ [redacted]

competing parts washing services at highly competitive prices. These other suppliers included Metal Wash, RED Industries, Rozone and Safe Solvents.

- *Third party views*

75. The majority of customers that responded to the CMA were unaware of the alternative suppliers in the market and were generally unable to provide a view as to the strength of alternative providers.
76. Of the 11 customers who responded on this point, one customer considered Oakwood, as a moderately strong competitor, one customer considered RED Industries Limited (**RED**), as a strong competitor, while another considered it to be a moderately strong competitor, and one customer considered Houghton to be a strong competitor.
77. Two customers referred to Pure Clean, with one telling the CMA that Pure Clean offered the same service and geographic coverage as the Parties. However, it was not clear whether these customers were referring to PCWS based in Stockport or Pure Clean based in Bristol.²²
78. Other customers were also able to point to suppliers such as D-Grease and OSS,²³ although some noted that these were expensive options for them.
79. In general, customer responses appeared to reflect the market share data, which suggest that there are a range of options available to customers but that they are somewhat limited in strength. Oakwood, RED, Pure Clean and D-Grease were suppliers mentioned most regularly by customers as alternatives to the Parties, but even these were far from universally known by customers.
80. The websites of some competitors indicated that they were able to offer a GB-wide service from single sites, these included RED,²⁴ D-Grease,²⁵ and Oakwood.²⁶ Other competitors²⁷ told the CMA that they served a more limited geographic area.
81. In respect of single site customers, which make up the majority of the Parties' customers, the Parties did not show, and the CMA been unable to verify, the extent to which the long tail of 'other' competitors can and do provide a similar service to the Parties, and, therefore, the CMA has placed little weight on the

²² [REDACTED].

²³ See footnote 15 above.

²⁴ <http://www.redindustries.co.uk/>

²⁵ <http://satellite3.org.uk/>

²⁶ <http://www.oakwoodfuels.co.uk/degreasing-equipment>

²⁷ [REDACTED]

level of competitive constraint that these other competitors may pose. This has led the CMA to consider that the Parties' market shares and subsequent strength in the market may be even higher than estimated.

Competitive interaction between the Parties and rivals

82. Safetykleen submitted that [REDACTED]. This method of introducing the product and service was confirmed by third parties, who commented that Pure Solve had a similar strategy. Pure Solve submitted [REDACTED]. However, Safetykleen argued that the Parties are not close competitors for many customers, since Safetykleen focuses on a higher value-added fully-integrated service,²⁸ while it stated that Pure Solve does not,²⁹ and it argued that this was reflected in bidding data that was provided to the CMA.
83. The Parties told the CMA that they rarely receive invitations to tender³⁰ and the CMA notes that the tender data covers a relatively short period. Given that tenders are not used very widely in the industry, and only by multi-site customers, the CMA considers that this evidence may not be representative of the competitive interaction between the Parties. More specifically, the CMA notes that [REDACTED]% of Safetykleen's customers are single-site customers and that therefore the tender data information is not representative of the way in which the vast majority of customers purchase parts washing services. Further, the tender data does not appear to be representative of the general position of Safetykleen and Pure Solve in the market when considering the market share data supplied by the Parties.
84. Taking these limitations into account, the tender data that the Parties were able to provide appears to be exclusively in relation to GB-wide customers. The CMA has assessed those invitations to tender in which the Parties engaged in 2014 and 2015.
85. [REDACTED]:

²⁸ For example: Safetykleen's offer includes: National network of waste transfer stations with local service provision (with the result that waste is not transported over long distances); cradle to grave product supply and recycling for re-use of machines and solvents compliant with the Waste Framework Directive, WM3 and CLP Regulations; refurbishment program and stock provision, capable of replacing standard machines to point of use within a 48 hour timeline; and provision of a collectable waste service with no requirement for third party involvement for full service provision of collectable waste services.

²⁹ Safetykleen submitted that Pure Solve is unable to provide a customer with suitable continuous improvements or compliance with ISO1400, and does not offer waste services, instead contracting these out to a third party collectable waste service provider and oil waste collection service provider.

³⁰ Safetykleen estimated that only [REDACTED]% (by value and volume) of its current customers were acquired through a tender process, while the remaining [REDACTED]% (by value and volume) were acquired through prospecting for sales. Pure Solve estimates that [REDACTED].

86. Safetykleen told the CMA that it had bid for [REDACTED] contracts. Of these [REDACTED] contracts, detailed information was provided on [REDACTED]³¹
87. The tender data indicates that [REDACTED].
88. The CMA has placed limited weight on the bidding data provided for the reasons set out in paragraph 83. As numbers one and two in the market, even the threat of Pure Solve bidding may provide an important competitive constraint given its size in the market relative to other competitors.³² In addition, the (incomplete) information provided by Safetykleen indicates that it is most frequently facing no more than [REDACTED] other bidders in the tender process. This could suggest that there are a limited number of credible options available to GB-wide customers. Further, whilst there are other competitors that are also active, it is not clear from the data how closely or strongly these rivals compete with the Parties.

*Customer loss data*³³

89. The Parties provided data on the customers that they have lost.³⁴ This data was supplemented with a longer dataset after the Issues Meeting.
90. Pure Solve [REDACTED].
91. Initially, Safetykleen provided customer loss data for a period of [REDACTED]. Safetykleen identified customers lost to competitors or to own machine purchases. As explained further below, [REDACTED]. However, there is uncertainty over the overall value of customers lost in this way, and what led to the switch to self-supply, since [REDACTED].
92. From Safetykleen's customer loss data for [REDACTED], Safetykleen lost customers with an annual value of [REDACTED]:
- [REDACTED]
93. The CMA notes that on the basis of the evidence submitted that Safetykleen lost [REDACTED]% of its customers as a result of the customer buying its own machine rather than switching to Pure Solve. This number reduces to [REDACTED]% based on customer loss data over a three year period.³⁵ However, it is not clear from the data whether these lost orders were in response to a worsening of

³¹ [REDACTED]

³² Pure Solve is twice the size of other competitors, based on estimated GB-wide market share, and has more depots than other competitors.

³³ This section is not split by GB-wide v regional customers due to lack of information permitting this split.

³⁴ Annexes IV(A) and IV(B)

³⁵ The percentage of lost customers as a result of machine purchases is [REDACTED] and [REDACTED] for the three year period.

Safetykleen's offer or for other factors. If the decision to switch to self-supply, or machine-ownership, was made due to factors which were largely independent of the terms offered by suppliers of the bundled service, then the CMA would not expect such switching decisions to be constraining Safetykleen's offering at the margin.

94. Safetykleen was able to provide some email evidence of customers choosing to purchase their own machines. However, again, it is not clear that this was an option chosen as a response to a small but significant increase in price. The CMA notes from the evidence provided by Safetykleen that [REDACTED].³⁶ This evidence demonstrates that [REDACTED].
95. The CMA considers that whilst the customer loss data does provide some evidence of the constraints on the Parties, it has concerns about the robustness and representativeness of the evidence. This is particularly the case as the customer loss data is not consistent with the market share information and customer views discussed above.
96. The CMA notes that Safetykleen's first set of data includes a large number of entries where the end destination is unknown ([REDACTED]) and that the period covered by the data was only [REDACTED]. In addition, [REDACTED]. As such, the CMA was not confident that the data provided is representative of competitive interactions in the market and that it is sufficiently robust for the CMA to infer that the Parties are not close competitors. This is particularly true in light of the third party feedback received and in light of the Parties' relative positions, as numbers one and two, by revenue, in the market.
97. In addition, the data did not distinguish between GB-wide and non-national customers. This meant that the CMA could not identify whether some competitors are placing a stronger constraint on the Parties for some types of customers than others.
98. Following the Issues meeting Safetykleen provided updated customer loss data covering three years. This updated data provided additional information on the competitors Safetykleen lost customers to and provided more information on a regional basis based on Pure Solve's depot locations.
99. Given that the CMA has been unable to verify some of the differences between the lost customer data previously provided and the latest set, it is not clear how much weight should be put on this information. However, the CMA

³⁶ Safetykleen's response of 27 April 2016.

notes that there are some consistencies in the data, particularly in regard to [REDACTED].

100. The customer loss information suggests that whilst [REDACTED]. However, as highlighted above, the CMA has not been able to verify Safetykleen's customer loss data against changes in estimated market shares over time. [REDACTED]. On the basis of this, and bearing in mind the Parties' high combined market share, the CMA treated the customer loss data with caution.
101. The data provided by Safetykleen indicates that [REDACTED]. Given the strength of Safetykleen's position in the market, the CMA would expect that smaller companies capable of placing an effective constraint on Safetykleen would likely lead to a reduction in the number of machines supplied by Safetykleen (depending on overall industry supply).
102. Moreover, the CMA notes that it took Pure Solve and others a number of years to build up to their current estimated share of supply based on the number of machines in their portfolio. The CMA, therefore, believes that this (and the other points mentioned above) do not suggest a particularly dynamic market where customer loss data necessarily accurately indicates the strength of competitors.

Competitive constraints

103. Safetykleen argued that [REDACTED].³⁷ Pure Solve told the CMA that [REDACTED].³⁸ Safetykleen submitted that water based machines were now preferred by customers over solvent machines, largely for health and safety reasons, and that this type of machine is replacing solvent machines in the market.
104. The CMA notes that on a [REDACTED] split between solvent and aqueous machines, Safetykleen would have around [REDACTED] of the latter. On this basis, even if the parts washing market was moving away from solvent based machines to water based machine, Safetykleen would still appear to be the largest player in the supply of aqueous parts washing machines by some distance compared to its nearest rival.
105. The CMA also notes that previously the Parties had submitted that all machines types should form part of the same market and third party evidence suggests that competitors supply both solvent and aqueous machines.

³⁷ Safetykleen submitted that [REDACTED]% of its machines were solvent based.

³⁸ Pure Solve submitted that the split between solvent and water based machines was [REDACTED]% solvent / [REDACTED]% aqueous based.

Regional variations

106. The CMA considers that the competitive landscape is characterised by regional variations. Insofar as the competitive strength of the Parties and/or other competitors differs in some areas, the CMA considers that there may be additional competition concerns arising for single site customers who, depending on the geographic area, may have fewer credible alternatives post-Merger.

Shares of supply

107. As noted above, the Parties only provided market shares on a GB-wide basis and the CMA considers that smaller, regional competitors may only be able to provide a constraint in specific regions or for particular customers. The CMA considers that the GB-wide market share estimates may not reflect that there may be differences between the effectiveness of competitive constraints in different regions. Market shares of smaller regional competitors may effectively understate the strength of these players in a particular region, but overstate the constraint that they would place outside the region in which they are based. For example, if a supplier was active only in one region of the country but supplied a large number of customers in that area, its national market share would understate the competitive strength in that particular region, but overstate its competitive strength in other regions or nationally.

Closeness of competition

108. As noted earlier, there appears to be regional variation in competitive conditions. Therefore, the CMA has considered in greater detail those areas where the Parties overlap geographically, due to both Pure Solve and Safetykleen having depots relatively close to each other. To the extent that the Parties compete on a regional basis, the Parties are located close to one another in three areas based on the location of Pure Solve's depots (Maidstone 9.1 miles, Wigan 4.9 miles and Derby 12.1 miles), and are relatively close in the South West (Bristol and Swindon 35.2 miles).
109. The CMA was not provided with sufficient data to conduct catchment area analysis or divide GB into specific regions. However, from an analysis of the locations of competitors it appears, prima facie, that the Parties face at least one (geographically close) remaining competitor in each of the 'regions' in which they overlap with the exception of Maidstone/the South East.
110. Table 2 below gives an indication of the location from each of the Parties relative to their geographically closest and next closest competitor (excluding the other Party). In all areas except Maidstone, at least two competitors

remain within 50 miles. Given feedback from third party competitors as to the area that they serve, a 50 mile radius appears quite conservative in assessing the remaining competitors to the Parties.

Table 2: Location of closest non Safetykleen/Pure Solve competitor from Parties' sites

	Closest to Safetykleen		Closest to Pure Solve	
	Closest	Second closest	Closest	Second closest
Bristol/Swindon	5.5 miles	14.5 miles	21.6 miles	36.1 miles
Wigan	33.8 miles	46.0 miles	35.5 miles	47.8 miles
Derby	30.9 miles	39.9 miles	23.1 miles	49.3 miles
Maidstone	144 miles	154 miles	151 miles	161 miles

Distances calculated using shortest drive time, Google maps. Note there may be geographically closer sites that take longer to get to due to the roads used.

111. Third parties did not raise any specific concerns relating to a specific part of Great Britain. The CMA notes however that it was not able to speak to a large number of single site customers as part of its market testing.

Customer loss data

112. After the Issues Meeting, the Parties provided data on the customers that they have lost split into four areas based on the location of the Pure Solve depots, essentially splitting GB into four sections and then assigning Safetykleen's lost customers to a sector.
113. For the reasons set out above, the CMA has a number of reservations about the robustness of this information and therefore the evidentiary weight that should be placed on it. In addition, due to the timing of the submission of the data, the CMA was unable to replicate the results.
114. The CMA also notes that this method of splitting the country into regions is simplistic in nature and may not capture the true underlying competitive dynamics. For example, it is not clear whether it is appropriate to attribute all customer losses in Scotland to the Wigan depot of Pure Solve.
115. The splits show that for three of the regions identified, Maidstone, Swindon and Derby, Safetykleen lost between [redacted] of its customers to [redacted], although this would be higher if customers who purchased their own machine are excluded. For the Wigan area, which the CMA notes includes large areas of Scotland, Safetykleen lost [redacted] of customers to [redacted]. This suggests that [redacted].

However, the CMA notes that this data covers a wide area and may therefore understate the competition between the Parties over a smaller region.

116. The CMA performed some analysis on the proportion of customers Safetykleen lost from each of its branches that were nearest to the Pure Solve branch. This was based on the Safetykleen customer loss data covering a nine month period. The analysis showed that for the Safetykleen Maidstone branch, [REDACTED]. At the other branches, [REDACTED]. The CMA notes that these four branches accounted for only around [REDACTED].
117. This suggests that whilst the competitive landscape looks broadly similar by regional split as it does GB-wide, the competitive effects of the Merger may be more acutely felt in the South East around Maidstone given the lack of geographically close alternative suppliers to the Parties.

Conclusion on horizontal unilateral effects

118. For the reasons set out above the CMA believes that the Parties are each other's closest competitors. This view is supported by third party comments, and the fact that the Parties are numbers one and two in the market. While some competitors offer a degree of constraint on the Parties, and in particular Safetykleen, there is a big gap between the number two in the market, Pure Solve, and the next competitor, based on the Parties' market share estimates. This is supported by third party comments on the potential competitors to the Parties. The CMA has also noted third party estimates of Safetykleen's shares of supply were even higher, market shares had remained static over time and there was little evidence of quick or easy expansion on any significant basis (see below), and comments from third parties that some competitors avoid competing directly with Safetykleen.
119. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of all parts washing machines and services on a GB-wide basis.

Barriers to entry and expansion

120. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³⁹

³⁹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

121. [REDACTED]⁴⁰
122. The CMA notes that new entry on a small scale is relatively easy, and this is supported by the number of ex-employees of the Parties setting up their own parts washing companies. However, this is a slow moving market and it appears that building share in the market takes a number of years. For example, Pure Solve re-entered the market in 2000, and 16 years later only has a share of supply of some [5-10]%, despite a prior history in the market and strong positions internationally.
123. While some third parties have expressed their intention to expand they have not provided specific plans to the CMA and, therefore, given the difficulty in growing share of supply, as noted above, the CMA believes that any expansion would not be sufficient or timely enough to mitigate the anti-competitive effects of the Merger
124. For the reasons set out above, in particular the difficulties associated with expanding in this relatively slow-moving market, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Countervailing buyer power

125. Safetykleen submitted that large GB-wide customers have a significant leverage over parts washer service providers, who have to compete against at least two or three other providers to win a tender. However, Safetykleen also said that large GB-wide customers' service volumes were very limited and not significantly higher than regional or small local customers, and that they rarely receive invitations to tender for contracts.
126. Safetykleen submitted that the fact that some customers purchase their own machines added to the degree of countervailing buyer power exercised by customers.
127. Safetykleen also submitted that small regional customers were highly price sensitive, viewing parts washing services as a 'nice to have' rather than a 'must have' and would stop using any form of outsourced parts washing services in response to a price increase.
128. The CMA notes the arguments made about GB-wide customers and the tender process have been discussed above. With regard to the argument made in respect of smaller customers, the CMA has not received compelling

⁴⁰ [REDACTED].

evidence that suggests that customers are willing to stop using these services in response to a small but significant increase in price.

129. The CMA therefore believes that there is insufficient evidence to conclude that the Parties' customers will possess sufficient countervailing buyer power to prevent the Parties' worsening their competitive offering post-Merger.

Third party views

130. The CMA contacted customers and competitors of the Parties. The majority of customers raised concerns regarding the loss of an alternative GB-wide supplier of parts washing machines and associated services.
131. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

132. Consequently, the CMA believes 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.
133. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised⁴¹ whilst the CMA is considering whether to accept undertakings⁴² instead of making such a reference. The Parties have until 18 May 2016⁴³ to offer an undertaking to the CMA.⁴⁴ The CMA will refer the Merger for a phase 2 investigation⁴⁵ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides⁴⁶ by 25 May 2016 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Sheldon Mills
Senior Director, Mergers
Competition and Markets Authority
11 May 2016

⁴¹ Section 33(3)(b) of the Act.

⁴² Section 73 of the Act.

⁴³ Section 73A(1) of the Act.

⁴⁴ Section 73(2) of the Act.

⁴⁵ Sections 33(1) and 34ZA(2) of the Act.

⁴⁶ Section 73A(2) of the Act.