

# Completed acquisition by Hammerson plc of the Grand Central Shopping Centre

## Decision on relevant merger situation and substantial lessening of competition

**ME/6597/16**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 28 July 2016. Full text of the decision published on 22 August 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. On 12 February 2016, Hammerson plc (**Hammerson**) acquired the Grand Central Shopping Centre business (**Grand Central**) (the **Merger**). Hammerson and Grand Central are together referred to as the **Parties**.
2. Hammerson is the owner of the Bullring shopping centre located in central Birmingham. Grand Central is a recently-developed shopping centre above Birmingham New Street train station in central Birmingham. As the Parties overlap in the supply of retail space, the CMA assessed the impact of the Merger in the supply of retail space in the area within the A4540, known as the Birmingham Middle Ring Road (**Birmingham City Centre**).
3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
4. The evidence available to the CMA indicates that:
  - (a) While the Parties' retail space offerings in Birmingham City Centre are competing to some extent, and may represent alternatives for some

retailers, they are differentiated in some important respects and are not considered as close alternatives by most retailers;

- (b) There will be sufficient competitive constraint remaining post-Merger from a range of different retail space options within Birmingham City Centre, in particular from the 'high street' offering,<sup>1</sup> including for those retailers for which the Parties' centres are alternatives for their requirements to some extent.
5. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

7. Hammerson is a FTSE 100 owner, manager and developer of retail property throughout Europe. In the UK Hammerson has 11 shopping centres, 21 retail parks and one premium outlet. In Birmingham its retail interests include:
- (a) The Bullring, which is owned by a joint venture in which Hammerson holds a 50% interest.
- (b) Martineau Galleries, which is wholly-owned by Hammerson and is situated off Bull Street in the Edgbaston area of Birmingham.<sup>2</sup>
8. Hammerson's turnover in terms of gross rental income in the UK in the financial year ended 31 December 2015 was £366.4 million (on a proportionally consolidated basis).<sup>i</sup>
9. Grand Central is a new shopping centre located above and closely integrated with Birmingham New Street station, the busiest railway station in the UK outside of London. Grand Central was redeveloped by Network Rail and Birmingham City Council (**BCC**). It opened in September 2015 as part of the

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<sup>1</sup> ie the main shopping streets of New Street, High Street, and to a lesser extent Corporation Street.

<sup>2</sup> The CMA notes that its assessment has focused primarily on competition between the Bullring and Grand Central. Although Hammerson also owns Martineau Galleries within the relevant geographic area, evidence available to the CMA on factors relevant to the attractiveness of retail space to retailers, (eg location, footfall, demographic base and unit size and configuration), indicates that this site does not present any substantial competitive constraint on either the Bullring or Grand Central. However, on a cautious basis, the CMA has included Martineau Galleries' gross lettable area in its share of supply estimates below.

wider £750 million redevelopment of Birmingham New Street station. Network Rail continues to own the freehold in relation to Grand Central.

10. All of the initial lettings in Grand Central were entered into by BCC prior to the competitive tender process for the sale of the shopping centre. The retail units in Grand Central are currently close to fully let, with 96% occupancy.
11. Hammerson estimated that Grand Central presently has annualised passing rent<sup>3</sup> of approximately £14 million.

## Transaction

12. Following a competitive bid process conducted in 2015 by BCC, Hammerson was selected as the preferred bidder for the 150-year head lease relating to Grand Central, allowing it to acquire and operate the Grand Central shopping centre business.

## Jurisdiction

13. As a result of the Merger, the enterprises of Hammerson and Grand Central have ceased to be distinct.
14. The Parties overlap in the supply of retail space in Birmingham City Centre, with a combined share of supply by share of floor-space of [40-50]% (increment [10-20]%).<sup>4</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.
15. The Merger completed on 12 February 2016 and was first made public on 12 February 2016. The four month deadline for a decision under section 24 of the Act is 27 August 2016, following extension under section 25(2) of the Act.
16. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on Monday 6 June 2016 and the statutory 40 working day deadline for a decision is therefore Friday 29 July 2016. The Merger was considered at a Case Review Meeting.<sup>5</sup>

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<sup>3</sup> Passing rent is defined by Hammerson as "[t]he annual rental income receivable from an investment property, after any rent-free periods and after deducting head and equity rents and car parking and commercialisation running costs" (Hammerson 2015 Annual Report, page 182).

<sup>4</sup> See share of supply analysis at paragraphs 50 and 54 below.

<sup>5</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#), from paragraph 7.34.

18. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to Hammerson on 29 February 2016.<sup>6</sup>

## Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger 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.<sup>7</sup>
20. In this case, the CMA understands that if Hammerson had not acquired Grand Central, BCC would have sold it to one of the other bidders that participated in BCC's auction process. Therefore, in the relevant counterfactual, Grand Central would have continued to operate under independent ownership in competition with Hammerson.
21. As such, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

## Frame of reference

22. 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 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.<sup>8</sup>
23. The Parties overlap in the supply of retail space in Birmingham.

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<sup>6</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>7</sup> [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](#), Annex D).

<sup>8</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

## **Background**

24. Hammerson submitted that, in determining the frame of reference, the CMA should have regard to a recently conducted shopper survey conducted on Hammerson's behalf by [X] (the **shopper survey**).<sup>9</sup>
25. The CMA considered what evidence is most relevant for determining the frame of reference and for its assessment of the Merger, taking into account the specific features of the supply of retail space. In particular, the CMA considered the relative relevance of evidence of shopper and retailer preferences.
26. The CMA notes that, as recognised in Hammerson's submissions and previous OFT decisional practice,<sup>10</sup> shopping centres, and retail space more generally, are two-sided platforms, serving and bringing together two distinct groups of customers – retail tenants and shoppers. As such, there may be indirect network effects, such that the value of the retail space for each group is affected by the number or type of customers in the other group.<sup>11</sup> Shopping centres have an incentive to maximise the number of shoppers/footfall, as this will increase both the revenue from retailers (via higher rents) and also the capital appreciation of the property. For this reason, the CMA believes that any competition concerns arising from the Merger are more likely to manifest in worse contract terms for retailers rather than in a diminished offering to shoppers.
27. Therefore, for the purposes of determining an appropriate frame of reference and its assessment more generally, in this case, the CMA has placed more weight on retailers' views regarding substitutability between different types of retail space and geographic locations. Nevertheless, the CMA has considered the results of Hammerson's shopper survey where relevant in its competitive assessment.

## **Product scope**

28. The CMA's approach to product frame of reference is to start with a narrow frame of reference based on the products where the Parties overlap, and then to see whether it can be widened on the basis of demand-side considerations. The narrowest product frame of reference based on the Parties' products

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<sup>9</sup> The survey asked 987 shoppers at the Bullring and Grand Central to provide their postcodes and their key reasons for visiting Birmingham. Interviews were conducted between 18 February and 24 February 2016, with 55% of interviews conducted in Bullring and 45% in Grand Central.

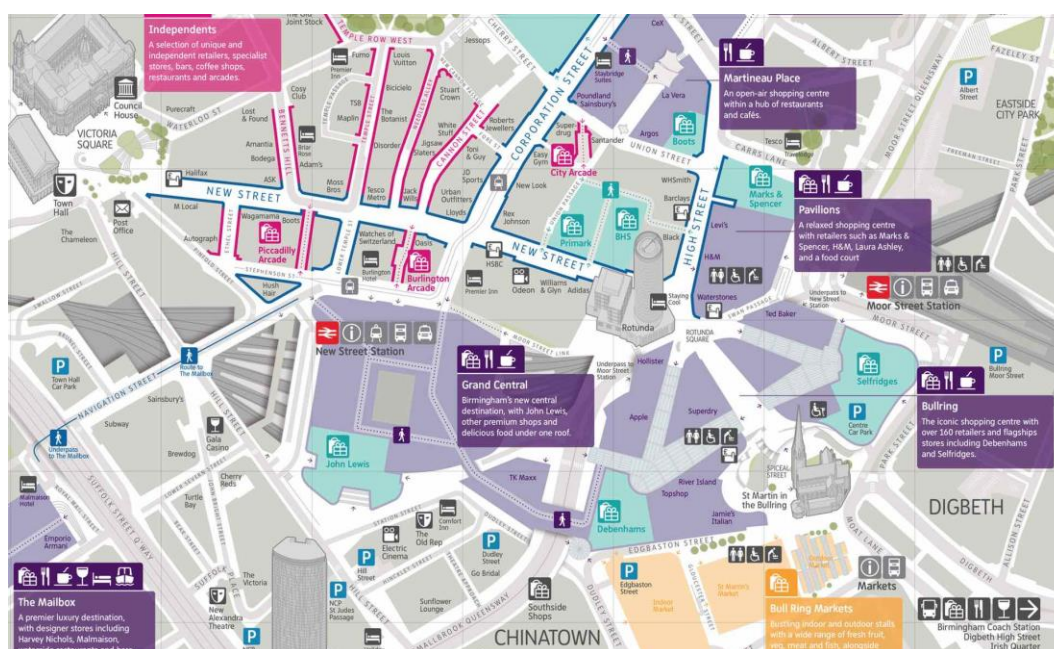
<sup>10</sup> Completed acquisition by Capital Shopping Centres of the Trafford Centre, 21 June 2011 (**CSC/Trafford Centre**); and Completed acquisition by Capital Shopping Centres of Broadmarsh Retail Limited Partnership, 14 March 2012 (**CSC/Broadmarsh**).

<sup>11</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 5.2.22.

would be the supply of shopping centre retail space. The CMA considered whether to expand this product frame of reference to include the supply of all retail space. The CMA considered Hammerson’s submissions, past decisional practice and the views of third parties in reaching its views, as set out below.

29. Hammerson submitted that the relevant product scope is the supply of all retail space, whether available on the high street, in retail parks, or in shopping centres in and outside Birmingham.
30. Previous decisional practice<sup>12</sup> did not conclude on the product scope, but stated that ‘[r]etail space exists along a spectrum of locations (including city centres, local town centres and out of town centres) and in a range of different formats (including shopping centres, retail parks and high streets)’.<sup>13</sup>
31. As show by the map below, a significant proportion of the retail space in Birmingham is concentrated in Birmingham City Centre and includes shopping centres (the Bullring, the Mailbox, Martineau Place) and the ‘high street’ (ie the main shopping streets of New Street, High Street, and to a lesser extent Corporation Street).

**Figure 1: Retail locations near Bullring and Grand Central**



Source: Retail Birmingham (September 2015).

32. Most third parties which responded to the CMA’s market investigation indicated that the ‘high street’ retail space offer in Birmingham City Centre may be substitutable to Grand Central’s offering. However, consistent with

<sup>12</sup> CSC/Trafford Centre, CSC/Broadmarsh.

<sup>13</sup> CSC/Trafford Centre, paragraph 14.

decisional practice, third party views indicated that there is significant differentiation between different retail space offerings across a range of factors. The key factors for differentiation relate to: location; footfall; shopper demographics; unit size; and tenant mix, with retailers' preferences on these factors varying depending on their own offering.

33. On the basis of this evidence, the CMA believes that the appropriate frame of reference within which it should assess the impact of the Merger is the supply of retail space, including shopping centres and the high street. The CMA notes that these offerings supply the same core service (ie retail space) and most retailers indicated that other retail space may offer an alternative in the context of their preferences across a range of factors, including location.
34. Given the range of different retail offerings and retailer preferences, the CMA did not segment its assessment by any particular factor or retailer type. However, the CMA noted the physical differences between Grand Central and the Bullring, particularly in terms of unit sizes available.<sup>14</sup> The CMA noted that retailers occupying 'smaller' units<sup>15</sup> at the Bullring could be more able to substitute to Grand Central, and the CMA therefore paid particular attention to the views of these retailers at the Bullring and to Grand Central's retailers in determining the extent to which the Merger may give rise to a SLC.
35. Finally, the CMA has recognised that the strength of the competitive constraint provided by each offering will vary and this has been taken into account in the competitive assessment.

#### *Conclusion on product scope*

36. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of retail space.

#### ***Geographic scope***

37. Hammerson submitted that, based on a catchment area containing 80% of the Bullring and Grand Central's shoppers who responded to the shopper survey,

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<sup>14</sup> Apart from John Lewis, Grand Central has relatively small units (see para 60(b)), while Bullring has both small and large units.

<sup>15</sup> Ie those of comparable size to those available at the Grand Central. Evidence from Hammerson on the feasibility of an alternative owner physically reconfiguring Grand Central to increase its appeal for retailers that might be otherwise attracted to the Bullring (eg by creating larger units) indicated that this would be very difficult and [REDACTED]. [REDACTED].



the relevant geographic scope is a 45-minute drive-time radius from the Bullring or Grand Central.<sup>16</sup>

38. The CMA notes that the extent to which Hammerson's shopper survey reflects shoppers' alternative options needs to be considered in the context of Birmingham's prominence as a major city in the region. For example, many shoppers commute into Birmingham City Centre for work. The distance which shoppers travel may therefore not be reflective of the actual competitive constraint other shopping locations pose on shopping options in Birmingham City Centre.
39. In addition, and more importantly, as noted above, the CMA's expectation is that any impact on competition is more likely to manifest in worse contract terms for retailers rather than a diminished offering for shoppers. Therefore, the CMA has placed more weight in its assessment on retailers' views on the substitutability between retail spaces in different geographic locations.<sup>17</sup>
40. In the present case, most third parties responding to the CMA's market investigation did not regard retail space outside of Birmingham City Centre as a substitute for retail space in Birmingham City Centre. Several retailers said that a location in the city centre was important to their strategy.
41. On the basis of this evidence, the CMA believes that the appropriate frame of reference within which it should assess the impact of the Merger is Birmingham City Centre.<sup>18</sup> Nonetheless, where appropriate in its competitive assessment, the CMA has considered the constraint posed by competitors outside Birmingham City Centre as well.

#### *Conclusion on geographic scope*

42. For the reasons set out above, the CMA has considered the impact of the Merger in Birmingham City Centre.

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<sup>16</sup> As the Bullring and Grand Central are adjacent to each other and physically connected by a pedestrian walkway, the two radii almost completely overlap

<sup>17</sup> This is also consistent with the approach adopted in *CSC/Broadmarsh*, in which the parties in that case submitted that the relevant geographic scope should be a 45-minute drive-time catchment area, but the OFT's market testing found that retailers almost unanimously stated that retail space outside of Nottingham city centre was not a substitute for retail space in the city centre. Therefore, in *CSC/Broadmarsh*, the OFT, on a cautious basis, assessed the merger using Nottingham city centre as the relevant geographic scope. An earlier decision by the OFT, *CSC/Trafford Centre*, used a 60-minute drive time geographical frame of reference on the basis of the parties' submissions in that case, again derived from 80% catchment areas for shoppers. However, in that case, the OFT did not conclude on the appropriate geographical frame of reference. Also, that merger involved the acquisition of an out-of-town shopping centre.

<sup>18</sup> This is smaller than the 45 minute drive time catchment area proposed by Hammerson.



## ***Conclusion on frame of reference***

43. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of retail space in Birmingham City Centre.

## **Competitive assessment**

### ***Horizontal unilateral effects***

44. 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.<sup>19</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors.
45. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of retail space in Birmingham City Centre.
46. Horizontal unilateral effects from the Merger may lead to a reduction in retail space options for actual and prospective retail tenants in Birmingham City Centre, leading to higher rents or worse terms from Hammerson and other landlords. These effects would be strongest for those retailers which consider the Parties' centres to be close substitutes for their retailing needs.
47. The CMA also considered the extent to which there may be knock-on effects for other retailers. The CMA understands that historic market rents feed into a pool of evidence used in lease negotiations, so higher rents for some retailers could impact on general 'rental tone', lead to higher rents more generally.
48. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered:
- (a) Shares of supply;
  - (b) The closeness of competition between the Parties and, in particular, the extent to which the Parties compete closely for some retailers; and
  - (c) The remaining competitive constraint from alternative suppliers of retail space in Birmingham City Centre.
49. As noted above, in paragraphs 24 to 27, in this case, the CMA considered that shopper preferences may be indicative but will not fully reflect retailer

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<sup>19</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

preferences. In addition, although as noted at paragraph 34, given the range of different retail offerings and retailer preferences, the CMA did not segment its assessment by any particular factor or retailer type. However, the CMA noted the physical differences between Grand Central and the Bullring, particularly in terms of unit sizes available. The CMA noted that retailers occupying ‘smaller’ units at the Bullring could be more able to substitute to Grand Central, and the CMA therefore paid particular attention to the views of these retailers at the Bullring and to Grand Central’s retailers in determining the extent to which the Merger may give rise to a SLC.

### Shares of supply

50. On the basis of evidence provided by Hammerson and available from a third party market report, the CMA estimated that the Parties have a combined share of supply of retail space in Birmingham City Centre of [40-50]%, with a [10-20]% increment arising from the Merger, as shown in Table 1.<sup>20</sup>

**Table 1: Retail space in Birmingham City Centre, estimated share of floor-space**

	<i>Floor-space (m<sup>2</sup>)</i>	<i>Share of supply (%)</i>
<b>Hammerson (total)</b>	[X]	[30-40]
Bullring	[X]	[20-30]
The Square (Martineau Galleries)	[X]	[5-10]
<b>Grand Central</b>	[X]	[10-20]
<b>Combined</b>	[X]	[40-50]
The Mailbox	[X]	[5-10]
Martineau Place	[X]	[0-5]
The Pavilions	[X]	[0-5]
The Arcadian	[X]	[0-5]
The Cube	[X]	[0-5]
City Plaza	[X]	[0-5]
Total shopping centre	[X]	[60-70]
Other (eg High Street, New Street and Corporation Street)	[X]	[40-50]
<b>Total</b>	[X]	100

Source: Hammerson, GVA and CMA estimates.

51. The CMA also considered evidence on shares of supply across different types of retail space and across other measures from Hammerson’s submissions and internal documents. This evidence indicates that, on some measures, the Parties’ shares may be higher than indicated in Table 1:

<sup>20</sup> The CMA’s estimates are based on information provided by Hammerson and estimates on retail space from a [GVA survey](#) of office and retail property in Birmingham’s central business district (which is a subset of the CMA’s geographic scope) in 2013. Within the geographic scope of Birmingham City Centre, retail space is concentrated in a few key shopping streets and shopping centres. The main retail streets in Birmingham City Centre are New Street, High Street, and Corporation Street, which are all within the area surveyed by GVA. Therefore, the CMA considers that it can place some reliance on GVA’s survey to obtain an estimate of the total retail space in Birmingham City Centre. GVA reported that it surveyed ‘15 million sq. ft of office and retail property, of which... 29% is retail’. The CMA inferred, therefore, that there was around 404,128m<sup>2</sup> of retail space in this area, of which [X] m<sup>2</sup> is accounted for by shopping centres listed in Table 1 (apart from Grand Central, which had not opened at that time).

- (a) Hammerson estimated that the Parties have a combined share of floor-space in shopping centres in Birmingham City Centre of [70-80]%, with an increment of [10-20]%
- (b) An internal document provided by Hammerson stated that Grand Central and the Bullring will account for [90-100]% of covered retailing within central Birmingham.<sup>21</sup>
- (c) An internal document provided by Hammerson stated that [redacted] estimate that the Bullring accounts for [50-60]% of current retail sales in Birmingham and Grand Central will account for [20-30]%, implying the Parties together would have a combined share of retail sales of [80-90]%.<sup>22</sup>

52. In this context, the CMA considered what significance to place on these shares of supply.

53. The CMA notes that there is evidence to suggest that in this case shares of supply need to be considered with some caution as:

- (a) As noted above, Hammerson and third parties said that there is significant differentiation within the supply of retail space (eg in location, unit size, unit shape, tenant mix, footfall, etc). Therefore, any share of supply which is based on only one of the factors on which the Parties compete (eg floor-space) could significantly misrepresent the extent of competition between the Parties.<sup>23</sup>
- (b) Some of the measures used above do not reflect retailer preferences. For example:
  - (i) Estimates of shopping centre space or covered retail space do not reflect that many retailers consider the high street to be an alternative (see paragraph 31);
  - (ii) Estimates on the basis of retail sales may reflect shopper footfall and indicate that the Bullring and Grand Central are both important retail locations in Birmingham City Centre, but they do not indicate if the two locations serve the same shoppers or, therefore, the same retailers.

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<sup>21</sup> [redacted]

<sup>22</sup> [redacted]

<sup>23</sup> For example, the Parties may compete particularly closely for retailers seeking a certain size of unit. As reliable data on sizes of retail units in Birmingham City Centre was unavailable, the CMA considered the views of retailers occupying units in the Bullring of comparable size to those in Grand Central as particularly relevant.

54. For these reasons, the CMA believes that, while the shares of supply of retail space provide an indication of the significance of the Parties' retail offerings in Birmingham City Centre, it also considered the extent to which the Parties compete on the basis of other evidence available from Hammerson and third parties.

#### *Closeness of competition*

55. The CMA considered the extent to which the Parties compete, based on evidence from Hammerson's submissions and its internal documents, and third party views.

#### *Hammerson's submissions*

56. Hammerson submitted that the Bullring does not compete closely with Grand Central, for the following reasons:
- (a) Grand Central is much smaller than the Bullring. The two centres have total gross lettable areas of [REDACTED] m<sup>2</sup> and [REDACTED] m<sup>2</sup> respectively. In addition, nearly half of Grand Central's gross lettable area is occupied by its anchor tenant, John Lewis, which has a very long ([REDACTED] year) lease.
  - (b) Grand Central has smaller units (apart from John Lewis), on average, than the Bullring, and only offers 'standard sized' units. In contrast, the Bullring offers a wide range of unit sizes and configurations, including large Major Space User (**MSU**) units. As certain retailers require large MSU units, the absence of them in Grand Central precludes a range of retailers from locating there.
  - (c) Although the Bullring and Grand Central overlap in the supply of smaller or 'standard sized' units, this does not imply a high degree of substitutability from the perspective of those retailers who require units of this size due to the other factors of differentiation between the centres, including the tenant mix. In particular:
    - (i) Apart from John Lewis, Grand Central is geared towards 'grab-and-go' purchases, including food and beverage retail, as is appropriate given low shopper dwell times and its location above Birmingham New Street station, while the Bullring has a different and more diverse tenant mix with longer dwell times.

(d) The shopper survey indicated that:<sup>24</sup>

- (i) Bullring shoppers are significantly more likely than Grand Central shoppers to cite 'wide range of shops' as their motivation for visiting the centre;<sup>25</sup> and
- (ii) Grand Central users are more likely than Bullring users to cite 'wide range of restaurants or cafes'<sup>26</sup> or 'food/drink is good'<sup>27</sup> as reasons for visiting the centre.

57. The shopper survey indicates a degree of competition between the parties. Specifically that:

- (a) There is a significant proportion of dual use by shoppers of the Bullring and Grand Central, which could indicate that retailers targeting these shoppers could see the two centres as alternatives (though the CMA acknowledges that shoppers could be visiting the two centres for different purposes);<sup>28</sup> and
- (b) There has been some reduction in footfall at the Bullring since the opening of the Grand Central.

58. Overall, for the reasons given above (see paragraph 25 to 27), the CMA believes that the shopper survey has limited probative value in determining the closeness of competition between the centres, particularly competition for retail tenants.

#### *Internal documents*

59. The CMA reviewed the Parties' internal documents to investigate the extent to which the Parties' viewed each other as a close competitor.

60. The CMA notes that some of the analysis and commentary in Hammerson's internal documents indicate some competition between the Parties. In particular:

(a) Hammerson's internal documents show that [REDACTED]:

- (i) [REDACTED];

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<sup>24</sup> Annex 2 - Bullring & Grand Central Birmingham – Shopper Survey Report – [REDACTED], 4 March 2016.

<sup>25</sup> 75% of Bullring shoppers vs. 45% of Grand Central shoppers.

<sup>26</sup> 28% of Grand Central shoppers vs. 19% of Bullring shoppers.

<sup>27</sup> 20% of Grand Central shoppers vs. 14% of Bullring shoppers.

<sup>28</sup> Around half (54%) of Bullring users also visited Grand Central, and a majority (74%) of Grand Central users also visited the Bullring.

(ii) [REDACTED].<sup>29</sup>

(b) In February 2015, Hammerson commissioned [REDACTED] to analyse the potential impact of Grand Central on the Bullring ([REDACTED] analysis). [REDACTED].<sup>30</sup> [REDACTED].<sup>31</sup>

(c) The [REDACTED] analysis indicated that, if Hammerson did not acquire Grand Central, [REDACTED].<sup>32</sup>

(d) Hammerson predicted that an independent Grand Central would [REDACTED].<sup>33</sup>

(e) Hammerson noted that sales [REDACTED].

61. While this evidence indicates some level of competition between the Parties, the CMA believes that it does not indicate that the Parties would necessarily have competed closely absent the Merger for the following reasons:

(a) The [REDACTED] analysis is limited in its probative value in assessing closeness of competition for several reasons, including:

(i) The analysis was conducted when Grand Central was only partially let and therefore does not reflect the actual tenant mix which existed pre-Merger. The extent of the constraint on the Bullring from Grand Central will be different with Grand Central's actual tenant mix than with that predicted by [REDACTED].

(ii) The analysis showed that the majority of the impact [REDACTED].

(iii) [REDACTED], indicating limited competitive interaction between the Parties. [REDACTED]. Given that BCC chose, independently, a tenant mix for Grand Central which, evidence available to the CMA (as discussed further below) suggests is largely complementary to that at the Bullring, it is not clear that [REDACTED].

(iv) As noted above, in this case, the CMA considered that shopper preferences may be indicative but will not fully reflect retailer preferences. The specific views of retailers are therefore more probative on the extent of competition.

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29 [REDACTED]  
30 [REDACTED]  
31 [REDACTED]  
32 [REDACTED]  
33 [REDACTED]

(b) Other Hammerson internal documents prepared to assess the Merger note that:

(i) [REDACTED];<sup>34</sup> and

(ii) The two centres are clearly differentiated with a different retail focus.<sup>35</sup>

(c) In general, Hammerson's strategy [REDACTED].<sup>36</sup>

#### *Third party views*

62. The CMA contacted a large number of third parties, including a range of retailers and several alternative suppliers of retail space both within and outside Birmingham City Centre.
63. Third parties, and in particular retailers, confirmed that the choice of retail location was based on several factors, including: location; footfall; shopper demographics; unit shape; unit size; and local tenant mix. Retailers' preferences on these factors and therefore their perception of the options available to them at each of the Bullring and Grand Central varied widely, reflecting the diversity of their requirements.
64. The CMA did not segment its assessment by particular retailer type. However, as noted above, apart from John Lewis, Grand Central has relatively small units (see paragraph 56(b)), while the Bullring has both small and large units. For this reason, the CMA believes that retailers in the Bullring occupying 'smaller' units may be more able to substitute between Grand Central and the Bullring and it therefore paid particular attention to the views of both these retailers and current Grand Central retailers.
65. Some third parties indicated that the Parties are alternatives for some retailers. In particular:
- (a) Several retailers, including a couple of Grand Central retailers and the majority of retailers which responded to the CMA's questions with 'smaller' units at the Bullring, said that Grand Central and the Bullring are close alternatives across some factors relevant to their requirements. However, the factors flagged by these retailers did not just relate to unit size and included location and footfall.

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<sup>34</sup> [REDACTED]

<sup>35</sup> [REDACTED].

<sup>36</sup> [REDACTED]



(b) The majority of all retailers considered retail space in the Bullring to be a closer substitute to Grand Central than alternative retail space in Birmingham.

66. However, the majority of retailers which responded to the CMA's questions, including the majority of Grand Central retailers and several 'smaller' Bullring retailers, also highlighted that the two retail spaces were differentiated in important respects. Specifically, third parties said that, although having John Lewis as an anchor tenant made Grand Central attractive for a wider range of tenants,<sup>37</sup> it was still, in many important respects, a very different offering to the Bullring offering for many retailers. In this context, retailers highlighted the differences in their unit shapes, tenant mix, shopper demographics and locations, especially noting Grand Central's integration with a train station.

67. The CMA also noted internal documents submitted by [X] which indicated that [X] Grand Central to be a complementary retail space to the Bullring.

#### *Conclusion on closeness of competition*

68. On the basis of this evidence, the CMA believes that, while the Parties were competing pre-Merger to some extent and may have represented alternatives for some retailers, the Bullring and Grand Central were differentiated in many important respects and are not considered close alternatives by most retailers.

#### *Competitive constraint from alternative suppliers*

69. Hammerson submitted that retail locations on the high street and in many retail parks, as well as other shopping centres, exercise an important competitive constraint on the Bullring and Grand Central.

70. The CMA has considered evidence from Hammerson's internal documents and from third parties in order to determine the extent to which alternative retail space both on the 'high street' and in other locations may constrain the Parties in the context of the factors that are important to retailers.

#### *Internal documents*

71. Hammerson's internal documents make a number of references to alternative retail space in and around Birmingham City Centre. These references

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<sup>37</sup> For example fashion retailers.

generally indicate that the Parties will be constrained by a range of alternative suppliers of retail space post-Merger. In particular:

- (a) Hammerson [REDACTED].<sup>38</sup>
- (b) The [REDACTED] analysis predicted [REDACTED]. However, as noted above, in this case, the CMA believes that retailer views may be more determinative in this context (these are discussed further below).

#### *Third party comments*

- 72. Most retailers indicated that the high street offering in Birmingham City Centre represents a significant alternative to retail space in Grand Central. In particular, among those retailers that considered the Parties to be substitutes for their requirements to some extent, the large majority considered the high street to be a viable alternative. Most of these retailers, noted that these streets have high footfall, a central location, and a mix of retailers; and several of these retailers also noted that the attractiveness of these streets may increase in the near future, which would increase the competitive constraint imposed by the 'high street' on the Parties.<sup>39</sup>
- 73. The large majority of alternative suppliers of retail space supported these observations.<sup>40</sup>

#### *Conclusion on competitive constraint from alternative suppliers*

- 74. On the basis of this evidence, the CMA believes that the Parties will continue to face significant constraints from a range of alternative retail locations in Birmingham City Centre, in particular from the 'high street', and including for those retailers which considered the Parties' centres to be substitutes for their requirements to some extent.

#### *Conclusion on horizontal unilateral effects*

- 75. As set out above, the CMA believes that the evidence available indicates that:
  - (a) While the Parties' retail space offerings in Birmingham City Centre compete to some extent, and may represent close alternatives for some

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<sup>38</sup> [REDACTED]

<sup>39</sup> Third parties cited the examples of Apple choosing to relocate from the Bullring to New Street, and the recent redevelopment of the Pavilions by Primark.

<sup>40</sup> Overall, retailer views confirmed that retail parks and shopping centres outside of Birmingham City Centre would not be considered as offering a particularly significant constraint, with retailers not generally considering them a substitute to retail space in Birmingham City Centre. Third parties also noted that the Mailbox, due to differences in its offering and location, may not be a close alternative to Grand Central.

retailers, they are differentiated in some important respects which mean that most retailers do not consider them alternatives;

(b) There will be sufficient competitive constraints remaining post-Merger from a range of different retail space options within Birmingham City Centre, in particular from the 'high street', and including for those retailers for which the Parties' centres are alternatives for their requirements to some extent.

76. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a SLC as a result of horizontal unilateral effects in relation to the supply of retail space in Birmingham City Centre.

### ***Barriers to entry and expansion***

77. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

78. The CMA contacted customers (retailers) and competitors (other suppliers of retail space) of the Parties. The CMA also contacted [REDACTED]. A few customers and one competitor raised concerns about the Merger possibly reducing the retail space options available and therefore leading to worse terms and higher 'rental tone'. No other third parties raised concerns about the Merger.

79. As noted above, retailers that considered the Parties to be substitutes for their requirements to some extent also tended to consider the high street to be an alternative. Overall, nearly all third-party retailers either did not regard the Parties as close competitors or viewed the main shopping streets as an alternative to the Parties' centres, or both.

80. Third party comments have been taken into account where appropriate in the competitive assessment above.

### **Conclusion on substantial lessening of competition**

81. Based on the evidence set out above, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a SLC as a result of horizontal unilateral effects in relation to the supply of retail space in Birmingham City Centre.

## Decision

82. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a SLC within a market or markets in the UK.
83. The Merger will therefore **not be referred** under section 22(1) of the Act.

**Sheldon Mills**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**28 July 2016**

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<sup>i</sup> **End note:** Hammerson clarified that Hammerson's gross rental income in the financial year ending 31 December 2015 of £366.4 million as recorded in Hammerson's latest Annual Report is turnover on a group-wide basis, and is not limited to the UK.