

# ANTICIPATED ACQUISITION BY RM PLC ('RM') OF HEDGELANE LTD ('HEDGELANE')

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

**ME/6678/17**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 1 June 2017. Full text of the decision published on 16 June 2017.

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. RM plc (**RM**) has agreed to acquire Hedgelane Limited (**Hedgelane**) (the **Merger**). RM and Hedgelane 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. Both parties distribute educational resources in the United Kingdom (**UK**). Educational resources encompass a variety of products such as teaching aids and consumables, books and printed resources, janitorial supplies, stationery, information and communications technology (**ICT**) products, furniture, arts and craft materials, laboratory equipment, sports / play equipment, design and technology materials.
4. The parties supply early years, primary and secondary schools (collectively referred to as **educational institutions**). The CMA's investigation identified a variety of suppliers of educational products. Certain suppliers (including the parties) offer a broad variety of educational resources on a UK-wide basis (**national distributors**). Other distributors and manufacturers specialise in

particular categories of educational resources (**specialist suppliers**). There are also a number of online retailers which offer educational resources to educational institutions.

5. The CMA has primarily assessed the competitive impact of the Merger in relation to the distribution of educational resources by national distributors in the UK. The CMA has found that the Merger will combine two of the five national distributors of educational products in the UK, and will therefore reduce the number of national distributors from five to four. The CMA has found, however, that the remaining three National distributors – Findel Education Limited (**Findel**), YPO Supplies Limited (**YPO**) and the Eastern Shires Purchasing Organisation (**ESPO**) – will continue to effectively constrain the parties post-Merger.
6. The CMA's investigation also found that educational institutions purchase educational resources from a wide variety of sources (the five national distributors together account for only around 15% of total expenditure on educational resources). In this regard, the CMA found that the parties will also continue to be constrained, in relation to specific product lines (such as furniture, janitorial products, sports equipment, etc), by a wide variety of specialist suppliers. The CMA also found that online retailers already supply educational resources to educational institutions and that the extent of such supply is expected to increase in future.
7. 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 as a result of horizontal unilateral effects.
8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

9. RM is a UK public company that includes the operating business **TTS**, which distributes a wide range of educational resources to educational institutions. RM's worldwide turnover for 2016 was around £167.6 million and around £149.3 million in the UK.
10. Hedgelane is the holding company for The Consortium for Purchasing and Distribution Limited (**The Consortium**), an education and care division business which also supplies educational resources to educational

institutions. Hedgelane's worldwide turnover for 2016 was around £64.9 million and around £[~~8~~] million in the UK.

11. In the supply of educational resources, the parties are principally active as distributors of third party-manufactured products. RM also designs and develops its own range of educational products. The Consortium does not develop any of its own products, but does add its own branding to certain white label products it distributes.

## Transaction

12. RM intends to purchase Hedgelane for £56.5 million.

## Jurisdiction

13. As a result of the Merger, the enterprises of RM and Hedgelane will cease to be distinct.
14. The parties overlap in the supply of educational resources to educational institutions in the UK. The CMA found that, on the basis of the supply of educational resources by national distributors (namely the parties, Findel, YPO and ESPO), the parties' combined share of supply post-Merger will be around [30-40]% (with an increment of [10-20]%).<sup>1</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.
15. The CMA believes therefore 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.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 5 April 2017 and the statutory 40 working day deadline for a decision is 5 June 2017.<sup>2</sup>

## Counterfactual

17. 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.

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<sup>1</sup> Based on the national distributors' turnovers in the last available financial year.

<sup>2</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

18. In this case, the CMA has found no evidence supporting an alternative counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Background

19. Educational resources comprise a wide range of products used in teaching, learning and the other aspects of the day-to-day operations of educational institutions.<sup>3</sup> Such products include: teaching aids and consumables, books and printed resources, janitorial supplies, stationery, ICT, furniture, arts and craft materials, laboratory equipment, sports / play equipment, design and technology materials.
20. Suppliers of educational resources include:
- (a) General educational resource suppliers, which supply a wide range of educational resources across all or the majority of product categories to all types of educational institutions in the UK via catalogues and websites. These suppliers include the five national distributors (the parties, Findel, YPO, and ESPO) (the “national distributors”), as well as several other smaller suppliers that are active across all or parts of the UK;
  - (b) Specialist educational resource suppliers, which focus on particular subject(s), product categories or educational institution levels (eg Community Playthings, Office Depot) (“specialist suppliers”);
  - (c) Online retailers, which offer a wide variety of products (including educational resources) nationally and internationally (eg Amazon, Ebay); and
  - (d) Local shops, such as local high street retailers (eg Ryman) and large supermarkets (eg Sainsbury's, Tesco).
21. Educational institutions can be distinguished by pupil age (early years, primary, or secondary institutions) and by type of funding (privately-funded or state-funded). These institutions purchase educational resources in different ways, including through mail-order (catalogues) or online platforms. When procuring educational resources, educational institutions often compare prices across distributors and suppliers, requesting various quotes before placing an

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<sup>3</sup> In this decision, “educational institutions” includes early years, primary and secondary institution but excludes universities and other tertiary educational institutions. The parties do not overlap in sales to tertiary educational institutions.

order.<sup>4</sup> Educational institutions tend to focus mostly on the price, although service (including speed of delivery) and the range of products offered are also important factors.<sup>5</sup>

22. Privately-funded educational institutions are free to buy from any supplier they choose, and might also use preferred supplier lists to purchase educational resources.<sup>6</sup>
23. In some cases, state-funded educational institutions purchase educational resources through so-called 'framework agreements', which are briefly described further below.

### *The role of framework agreements*

24. Where a Local Authority puts a framework agreement in place, a supplier submits the prices at which it will offer educational resources in a tender process. If the supplier's bid is successful, the supplier will join the framework and be able to supply to the state-funded educational institutions within that Local Authority. As explained below, the extent to which educational institutions purchase educational resources through framework agreements varies from case-to-case.
25. In England and Wales, some Local Authorities have put framework agreements in place for the state-funded educational institutions in their local areas. These agreements are 'non-exclusive' which means that the educational institutions in those areas can choose to procure educational resources from the suppliers listed on the framework agreements or from other suppliers.
26. In Scotland, Scotland Excel oversees a centralised procurement system for state-funded educational institutions. The framework agreements put in place by Scotland Excel are 'exclusive' which means that the educational institutions in that area are required to procure educational resources from

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<sup>4</sup> Most of the third parties who participated in the CMA's investigation submitted that purchases for local shops are only used for infrequent, one-off purchases. Some third parties said that online retailers (such as Amazon and eBay) are an increasing competitive presence in the educational sector.

<sup>5</sup> Research conducted by C3 Research and the National Education Research Panel for TTS, illustrates that the main factor that affects primary schools' decision to change educational resources supplier is price. However, the research also indicates that service is important, with free postage, reliability of service and speed of service all listed as reasons for changing supplier.

<sup>6</sup> Preferred supplier lists are lists of suppliers who have been pre-selected by the relevant institution to supply educational resources. Educational institutions can add and remove suppliers from their lists at any time.

one of the (many) suppliers listed on the framework agreements (where the educational resource in question is available from one of these suppliers).<sup>7</sup>

27. In Northern Ireland, the Education Authority oversees a centralised procurement system for state-funded educational institutions. As in Scotland, the framework agreements put in place are 'exclusive' for the educational institutions in that area and include many suppliers.

## **Frame of reference**

28. 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>

## **Product scope**

29. The parties overlap in the supply of all types of educational resources to all educational institutions across the UK. As explained in paragraph 20 above, suppliers of educational resources in the UK, include other general educational resource suppliers, specialist suppliers and online retailers.
30. The parties' internal documents<sup>9</sup> and evidence from third parties indicate that the parties compete most closely with three other national distributors: Findel, YPO and ESPO. Like the parties, the other national distributors supply all types of educational resources and are active across all educational institutions. Accordingly, the CMA has primarily assessed the competitive impact of the Merger in relation to the supply of educational resources by these national distributors.
31. The CMA notes that certain educational resource suppliers focus on particular types of products or particular types of educational institution. The CMA did not, however, consider it necessary to define separate frames of reference on the basis of any particular characteristics of supply in the circumstances of the

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<sup>7</sup> State-funded educational institutions must purchase educational resources from the suppliers listed on the framework agreements when purchases reach EU Procurement thresholds. According to the parties, however, a significant amount of expenditure falls outside of the Scotland Excel framework agreements because purchases fall below the threshold.

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

<sup>9</sup> Annexes 9(a) and 10(a)u of the Merger Notice submitted on 4 April 2017 (the Merger Notice).

present case, in particular because all of the national distributors are generally active across all product types and all types of educational institution.

32. While suppliers other than national distributors have not been included within the frame of reference, the CMA has taken the constraint imposed by other suppliers of educational resource – including other national suppliers, local suppliers, specialist suppliers, and internet retailers – in its competitive assessment.
33. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of educational resources by national distributors. The CMA has not required to conclude on the product frame of reference, since, for the reasons set out below, competition concerns do not arise on any plausible basis.

### ***Geographic scope***

34. The CMA found that the parties and their main competitors (ie Findel, YPO and ESPO) operate across the whole of the UK. The parties have a UK-wide catalogue (and website) price and UK-wide price lists upon which they apply UK-wide [✂].
35. The CMA's investigation suggested that there may be some variation in competitive dynamics within different areas of the UK, in particular because the parties, and also some of their main competitors, are recognised as being a stronger competitive presence in certain areas of the UK. Some third parties noted that these local strengths could be attributed to the historical presence and commercial strategies of these suppliers, rather than to any structural feature of the markets.
36. The CMA has assessed the impact of the Merger on the basis of a UK-wide frame of reference. To the extent that there are differences in the procurement of educational resources between different Local Authorities (as described above, paragraphs 24 to 27), these do not give rise to a separate frame of reference for the purposes of the Merger in particular because:
  - (a) where non-exclusive frameworks agreements exist (eg in Wales and England), the available evidence shows that educational institutions can and do procure from suppliers across the UK that are not included on the framework agreements; and
  - (b) where exclusive framework agreements exist (Scotland and Northern Ireland), suppliers across the UK typically compete to be included on those agreements.

37. Accordingly, for the reasons set out above, the CMA has considered the impact of the Merger on a UK-wide basis. Certain differences in the conditions of supply between different areas in the UK – in particular because of the existence of framework agreements – have been taken into account, to the extent relevant, within the CMA’s competitive assessment.

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

38. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of educational resources by national distributors in the UK.

## **Competitive assessment**

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

39. Horizontal unilateral effects may arise when one firm merges with a competitor that previously posed 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>10</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA 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 relation to unilateral horizontal effects in the distribution of educational resources to educational institutions in the UK by the five national distributors.

### ***Shares of supply***

40. The CMA has analysed the shares of supply of the parties and competitors.<sup>11</sup> This analysis shows that the parties have an overall share of supply of [30-40]% (RM with [10-20]% and The Consortium with [10-20]%). The position of the merged entity will therefore be similar to that of YPO with [30-40]% and Findel with [20-30]%, which are all slightly larger than ESPO with [10-20]%.
41. As noted above, the CMA believes that all national distributors are active across all educational institutions and therefore that it is not necessary to analyse the Merger by reference to supply to across different types of educational institutions. The CMA has nevertheless also considered shares on this basis, with its analysis showing that:

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<sup>10</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>11</sup> Shares of supply are based on the turnover of the parties and the three other national distributors in 2016.



- (a) In supply to secondary schools, the parties would have a share of [20-30]% (RM with [0-10]% and The Consortium with [20-30]%). The position of the merged entity would therefore be broadly similar to that of the other three national distributors, as Findel, ESPO and YPO would respectively account for [20-30]%, [20-30]% and [30-40]% of the market;
  - (b) In supply to primary schools, the parties would have a share of [30-40]% (each with [10-20]%). The position of the merged entity would therefore be broadly similar to that of other two national distributors – and slightly smaller than the third national distributor, as ESPO, Findel and YPO would respectively account for [10-20]%, [20-30]% and [30-40]% of the market;
  - (c) In supply to early years, the parties would have a share of [50-60]% (RM with [20-30]% and The Consortium with [20-30]%). The position of the merged entity within this segment would be larger than that of ESPO, YPO and Findel, which would respectively account for [0-10]%, [10-20]% and [20-30]% of the market.
42. While the merged entity holds a significant share of supply in supply to early years institutions, the CMA considers that this does not give rise to competition concerns, in particular, because:
- (a) All national distributors are active in the supply to all types of educational institutions and therefore would be readily able to expand their activities in relation to early years institutions;
  - (b) The market shares set out above in paragraph 40 (for all segments) are likely to overstate the market presence of the parties. In practice, educational institutions purchase their supplies from a wide range of sources, with the five national distributors together accounting for only around 15% of total expenditure on educational resources. The remaining expenditure is accounted for by spending with the other types of supplier set out in paragraph 20 above;
  - (c) The available evidence suggests that the parties are not particularly close competitors in relation to early years institutions, with significant differentiation between their activities. RM mainly supplies curriculum resources, ICT and Audio Visual products, furniture and ‘early years

specific' products,<sup>12</sup> and The Consortium mainly supplies commodity consumables and arts and crafts;<sup>13</sup> and

- (d) The CMA has also not received any concerns from customers about the potential impact of the Merger in relation to supply to early years institutions (or any other type of educational institution).

*Closeness of competition between the parties and strength of alternative competitors*

43. The CMA has analysed the extent to which the parties should be considered as close competitors, as well as the strength of the constraint exercised by the other three national distributors. The CMA has also considered the competitive constraint posed by other suppliers, including specialist suppliers and online retailers.
44. The parties submitted that their businesses are complementary in nature in particular because RM primarily focuses on supplying curriculum-focused classroom resources,<sup>14</sup> whereas The Consortium primarily focuses on supplying commodity consumable products.<sup>15</sup> In support of this position, the parties submitted sales data showing that:
- (a) [40-50]% of RM's educational resource sales are in the 'teaching aids and consumables' category (whereas only [10-20]% of Hedgelane's sales are within these categories); and
- (b) [50-60]% of Hedgelane's educational resource sales are in the 'stationary and other materials' category (whereas only [0-10]% of RM's sales are within these categories).<sup>16</sup>
45. In its assessment of closeness of competition and the strength of alternative competitors, the CMA has also analysed the parties' internal documents. In general, these documents show that:

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<sup>12</sup> The parties estimated their sales by resource category as a percentage of total expenditure by early years institutions. The parties estimated total expenditure by resource category for early years institutions using BESA data.

<sup>13</sup> The correlation coefficient between RM's and The Consortium's shares was [REDACTED].

<sup>14</sup> This includes learning resources for curriculum subjects and visual aids such as interactive whiteboard and touchscreens, visualisers, projectors and screens, TVs and DVD players and photography; consumables such as glue sticks, handwriting pens and whiteboard markers; and early years products like nursery and toddler resources, sensory exploration, and early years learning resources.

<sup>15</sup> This would typically be stationary.

<sup>16</sup> See also paragraph 41(c) above in relation to early years shares.

- (a) The parties monitor and benchmark each other, but also do the same with the three other national distributors (and also, on occasions, with other suppliers);
  - (b) The parties' competitive offering largely focusses on different geographic regions, with RM being stronger in the East, East Midlands, Yorkshire and North West regions of England, and The Consortium being stronger in the West Midlands and the southern regions of England, Scotland and Wales;<sup>17</sup>
  - (c) Other competitors (including other general and specialist distributors / suppliers, such as Herts Fullstop and Hampshire County Supplies) also constrain the parties,<sup>18</sup> albeit to a lesser extent than the national distributors; and
  - (d) Although online retailers (eg Amazon) do not, at present, compete as effectively as general and specialist distributors and suppliers,<sup>19</sup> online ordering is becoming increasingly common for educational institutions.<sup>20</sup>
46. The CMA has also analysed benchmarking data submitted by RM (consisting of a spreadsheet that RM uses to prepare its price lists).<sup>21</sup> The CMA's analysis indicates that:
- (a) The Consortium's products were less frequently identified as closest competitor than those of YPO, Findel and ESPO,<sup>22</sup> suggesting that the parties are not particularly close competitors within the group of national distributors; and
  - (b) RM is also constrained by competitors outside the group of national distributors, with Kent County Supplies, in particular, identified as the closest competitor for some products.<sup>23</sup>

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<sup>17</sup> Annex 9(a) of the of the Merger Notice.

<sup>18</sup> Annexes 10(a)u, 10(a)w and 10(a)n of the Merger Notice.

<sup>19</sup> Annex 9a of the Merger Notice.

<sup>20</sup> Annex 10(a)af of the Merger Notice.

<sup>21</sup> Annex 10(a)k of the Merger Notice.

<sup>22</sup> Annex 10(a)k of the Merger Notice.

<sup>22</sup> For each product, RM identifies each supplier selling it and the price at which it is selling the product and orders them in order of price (the one with the cheapest product is named as "Competitor 1" for that product and so forth). The CMA analysed the names of the suppliers that come up most often as Competitors 1, 2 and 3. The Consortium came up less frequently than YPO, Findel and ESPO as 'Competitor 1'. This was also the case on the basis of frequency with which companies were identified as competitors 1 or 2. On the basis of frequency with which companies were identified as competitors 1 or 2 or 3, The Consortium came up less frequently than YPO and Findel, but more frequently than ESPO.

<sup>23</sup> Annex 10(a)k of the Merger Notice.

47. The CMA has also sought views from third parties on the closeness of competition between the parties and strength of other suppliers. Third party responses indicate that:
- (a) The parties exert a strong competitive constraint on each other, with Findel, YPO and ESPO also exerting a strong competitive constraint on the parties;
  - (b) Kent County Supplies and Herts Fullstop also exert some competitive constraint on the parties, albeit to a lesser extent than the other national distributors, as do three other suppliers (East Riding of Yorkshire, Nottinghamshire County Supplies and North East Procurement Organization);
  - (c) Specialist educational resource distributors/suppliers (eg Community Playthings, Early Years Resources) also exert some competitive constraint on the parties in relation to the specific categories of products that they supply; and
  - (d) Online retailers already constrain the parties and that the extent of this constraint is likely to increase in future.
48. The CMA analysed the parties' positions on framework agreements and preferred supplier lists. This analysis showed very limited overlap between the parties, with only [✂] overlap between the parties in the sample of 67 framework agreements/preferred supplier lists for which information was available to the CMA. The CMA considers that this evidence is consistent with the parties not being particularly close competitors.
49. In conclusion, the CMA's investigation indicates that the parties compete most closely with other national distributors but are not, within this group, particularly close competitors. Post-merger, the merged entity will continue to be constrained by the other national distributors – YPO, Findel and ESPO. The merged entity will also continue to be constrained by a variety of smaller general educational resource suppliers, specialist suppliers, and internet retailers.
50. 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 as a result of horizontal unilateral effects.

#### *Conclusion on horizontal unilateral effects*

51. The CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects

in relation to the supply of educational resources to educational institutions in the UK.

## **Decision**

52. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
53. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Colin Raftery**  
**Director, Mergers**  
**Competition and Markets Authority**  
**1 June 2017**