

Anticipated acquisition by IP Group plc of Touchstone Innovations plc

Decision on relevant merger situation and substantial lessening of competition

ME/6697-17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 17 October 2017. Full text of the decision published on 8 November 2017.

Please note that [✂] indicates figures or text which has been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality or to protect an individual's interest.

SUMMARY

1. IP Group plc (**IPG**) has agreed to acquire Touchstone Innovations plc (**Touchstone**) (the **Merger**). IPG and Touchstone 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 patient capital¹ and non-funding advisory (ie expertise on the development and commercialisation of intellectual property (**IP**) and technology) and support services to companies spun-out from higher education institutions (**HEIs**) in the UK (the **Services**). The Services can be provided to HEI spin-outs either on an ad hoc basis or under the terms of a commercialisation agreement, which governs the relationship between a services provider and an individual HEI. The CMA has assessed the impact of the Merger in the supply of the Services to HEI spin-out companies in the UK.

¹ Patient capital is long-term, open ended investment in innovative firms led by entrepreneurs and investors who want to build large scale business.

The CMA notes, however, that the Services can be highly differentiated in nature, depending on the needs of the spin-out and the commercial strategy of the services provider, which the CMA has taken into consideration in its competitive assessment.

4. The CMA first considered the impact that the loss of competition between the Parties would have on HEIs and spin-outs. The evidence indicates that the Parties have a similar business model, which differs to that of some of their competitors. The CMA found that there were differences in competitive conditions inside and outside the so-called 'Golden triangle', ie the group HEIs comprising the University of Cambridge, Imperial College London (**Imperial**), King's College London (**KCL**), the London School of Economics (**LSE**), the University of Oxford, and University College London (**UCL**).² Outside the Golden triangle, spin-out companies will typically have fewer alternatives for the supply of the Services, but this is not an area of focus for Touchstone and therefore there is limited competition between the Parties at present. While the Parties do compete inside the Golden triangle, the available evidence indicates that there are a large number of credible alternatives available to spin-out companies. These include investors specialising in HEI spin-out companies (including those with commercialisation agreements with HEIs) as well as other venture capitalists and business angels (including angel investors and high net worth individuals) that invest in start-up companies more broadly.
5. The CMA also considered the extent to which the Merger could result in a reduction in actual or potential competition between any of the Parties' portfolio companies. The CMA's investigation indicates that the Parties do not have many actual or potential competing portfolio companies and, where they do, either the level of control over them is not sufficient to give rise to concerns or they are not closely competing companies and there are likely sufficient alternatives in any event.
6. The CMA believes that these factors, 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
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

² Due to the LSE's political and economics focus, it has minimal need for the Services and for the purpose of this Decision is not taken account of when discussing the Golden triangle.

ASSESSMENT

Parties

8. IPG is an equity finance company specialising in the commercialisation of IP. IPG is listed on the London Stock Exchange. Its turnover in the financial year ended 31 December 2016 was approximately £2.8 million worldwide. This was derived almost entirely from activities in the UK.³
9. Touchstone is also an equity finance company specialising in the commercialisation of IP. Touchstone is listed on the Alternative Investment Market (**AIM**). The turnover of Touchstone for the financial year ended 31 July 2016 was approximately £4.3 million, all of which is attributable to the UK.

Transaction

10. IPG intends to acquire the entire issued share capital of Touchstone, by way of a public bid pursuant to the City Code on Takeovers and Mergers.
11. IPG proposes to undertake the Merger by way of an all-share nil-premium share exchange, with Touchstone shareholders receiving new IPG shares in exchange for their Touchstone shares. Following completion of the share exchange, the ownership of the combined entity would be split 66.1:33.9 between former IPG and Touchstone shareholders, respectively.
12. The Merger is conditional on Phase 1 clearance by the CMA.

Jurisdiction

13. As a result of the Merger, the enterprises of IPG and Touchstone will cease to be distinct.
14. The Parties overlap in the supply of the Services to HEIs. The Services can be provided on either an ad hoc basis or pursuant to a commercialisation agreement with a particular HEI. Commercialisation agreements are more common among HEIs that regularly initiate spin-out companies.⁴ IPG and Touchstone have commercialisation agreements with 13 HEIs and one HEI, respectively, out of a total of 46 HEIs in the UK that have commercialisation

³ The turnover attributable to IPG's activities in the United States during the 2016 financial year was reported as 'immaterial' (see IPG's Annual Report and Accounts for the financial year ended 31 December 2016, page 116).

⁴ For example, the majority of the 24 Russell Group universities have a commercialisation agreement with an external Services provider.

agreements. Therefore, on this basis, the Parties will have a combined share of supply of [30–40]% (with the Merger bringing about an increment of [0–5]).⁵ For this reason, the CMA believes that the share of supply test in section 23 of the Act is met.

15. 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.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 20 August 2017 and the statutory 40 working day deadline for a decision is therefore 24 October 2017.

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. 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.⁶
18. In this case, the CMA has seen no evidence supporting a different counterfactual, and IPG 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.

Background

19. The Services provided by the Parties facilitate the development and commercialisation of IP and technologies that have been discovered as a result of research activities in HEIs. In particular, the Parties invest in the development of a discovery at inception, when the relevant IP and technology is still 'materially unproven', and provide advisory services and support to help develop a successful spin-out company.

⁵ As a proportion of the 24 Russell Group universities, the Parties have commercialisation agreements with [40–50]% (increment of [0–5]).

⁶ *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).

20. When such a discovery is made, the academic founder and the HEI (typically its technology transfer office (**TTO**)) will discuss whether the IP and technology can be commercialised and what might be the most appropriate means of doing so. A TTO is the part of a HEI dedicated to identifying research discoveries that have potential commercial interest and devising and implementing strategies to commercialise the relevant IP and technology. Accordingly, TTOs will often also provide the Services to new spin-out companies arising from the HEI of which it is part. The CMA received evidence from many TTOs which confirmed that they will frequently provide initial funding for a spin-out company to develop the proof of concept and will help to find third parties willing to provide additional elements of the Services to further develop the spin-out (including from providers such as the Parties).⁷
21. The Parties' activities relate primarily to situations where the academic founder and the HEI decide to form a spin-out company in which they would both have shareholdings. In these situations, the Parties or any other provider may then be approached to provide the Services, typically in return for a significant minority shareholding.⁸
22. As described in paragraph 14 above, the HEI may have a commercialisation agreement in place with a provider that governs the main parameters of the Services and the terms on which they are provided. These are typically long-term agreements that give the provider access to commercialisation opportunities arising from the HEI (and typically the first chance to invest in a spin-out for an agreed equity stake and other co-investment rights) and outline the terms of investment where an opportunity meets the provider's investment criteria. Commercialisation agreements are more common in respect of HEIs that produce a larger number of spin-outs. However, such HEIs may also have TTOs equipped to provide the Services to new spin-out companies without relying on external support.
23. During the course of its investigation, the CMA received a large number of responses from third parties, including HEIs, spin-out companies and various competitors. The CMA considered that the views of HEIs were particularly important, and should be given particular weight, as TTOs typically have greater experience of negotiating early stage investments for various spin-out companies. They therefore have a wider network of potential investors and

⁷ The CMA was also told that TTOs can outsource these functions through relationships with multiple third party Service providers.

⁸ IPG refers to this spin-out method of commercialisation as 'route 1'. In some cases, the academic founder may hold all the relevant IP and will create a company without the involvement of the HEI. This 'start-up' company method is referred to by IPG as route 2. Alternatively, the HEI or academic founder may license or sell the discovery to a third party who would then develop it on a standalone basis (referred to by IPG as 'route 3'). IPG submitted that it has limited activities in respect of routes 2 and 3 and that these do not form a material part of its business. For this reason, the CMA has focused its assessment on route 1 investment in spin-out companies.

more complete knowledge of the various investor options available for spin-out companies.

24. IPG and Touchstone only invest in a small proportion of all opportunities they receive (IPG estimates around [X]%). Several third parties told the CMA that they do not expect all opportunities to receive funding and it is understandable that only a small proportion of the investment opportunities presented to investors are taken up. The reasons for those investment decisions vary considerably (including the expectation of commercial success, level of investment required, etc).
25. The CMA notes that the UK government is currently conducting a review of the financial system affecting the provision of long-term finance to growing innovative firms (the Patient Capital Review).⁹ This review is intended to identify the barriers to access to long-term finance and to support the expansion of long-term capital for growing innovative firms. The CMA liaised with HM Treasury during this assessment to understand the wider context of the markets for patient capital. Third parties have told the CMA that this sector has evolved in recent years, HEIs have enhanced their expertise in the provision of the Services and sources of investment may have widened, at least for some HEIs.

Frame of reference

26. 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.¹⁰
27. The Parties overlap in the provision of the Services to companies spinning-out from HEIs in the UK.

Product scope

28. In *IP Group plc / Fusion IP plc (IPG/Fusion)*,¹¹ the CMA's predecessor, the Office of Fair Trading (**OFT**), assessed the merger in respect of the supply of the Services to HEI spin-out companies. However, the OFT did not find

⁹ Further details are available on the [Patient Capital Review](#) page on GOV.UK.

¹⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹¹ ME/6387/14 *Anticipated acquisition by IP Group plc of Fusion IP plc* (13 March 2014).

sufficient evidence to include in its frame of reference the wider group of equity finance companies and supply options, such as:

- (a) specialist venture capital investors;
- (b) private individuals and angel networks (ie business angels);
- (c) privately managed funds supported by government funding;
- (d) direct public funding;
- (e) large private institutional investors.

29. This was based primarily on the responses of third parties, which indicated that, while these alternatives may be credible in some specific circumstances, in general they were (variously) unwilling to invest at as early a stage as the parties to the merger (or would only do so as co-investors), could only raise limited funds, or were unable to offer non-funding advisory services and support to the spin-out.¹²
30. While IPG and Touchstone focus predominantly on HEI spin-outs, IPG argued that the relevant frame of reference includes other equity finance options, such as those listed in paragraph 28 above, which may also invest in start-up companies and in companies more broadly. IPG also suggested that self-supply by TTOs is also a viable alternative for HEI spin-out companies.
31. Responses to the CMA's investigation, from HEIs and spin-out companies, indicated that the sector has evolved since *IPG/Fusion*. These responses indicated that there are credible options for the supply of the Services (both early stage funding as well as non-funding advisory services and support) from across the spectrum of investment providers and in particular those with commercialisation agreements, venture capitalists (**VCs**) and business angels.¹³
32. Therefore, while nature of the offering of different providers of the Services is highly differentiated, and dictated by the business strategy of the individual provider, all options would be considered by customers on their individual merits. Third parties did not consider it important for a provider to be solely focused on HEI spin-out companies (as the Parties and others providers with commercialisation agreements tend to be) so long as they were offered the Services to the extent required. The CMA therefore believes that it is

¹² IPG/Fusion, paragraph 24.

¹³ Institutional investors and direct public funding (eg crowd funding) were less likely to be considered credible alternatives for early stage investment in spin-outs.

appropriate to consider all these alternatives within its competitive assessment. To the extent there are differences in the nature and extent of the Services provided by these alternatives, this will be reflected in the competitive assessment.

33. *IPG/Fusion* involved the acquisition by IPG, which invested in and provided the Services across multiple economic sectors, of Fusion, which specialised in investments in life science and physical science, sectors in which IPG did not have a material presence at the time¹. In its decision, the OFT did not conclude on whether the relevant frame of reference should be segmented further according to the sector of investment, given no competition concerns would arise on this basis.
34. Both IPG and Touchstone provide investment and the Services to HEI spin-outs in various economic sectors. IPG submitted that it organises its business according to different sectors (healthcare, technology, cleantech and biotech), primarily for internal reporting purposes, and that staff work across all sectors. IPG argued that the same underlying skill sets are needed regardless of segment and third party experts can readily be brought in as and when required.
35. The CMA's investigation indicated that, while some providers of the Services specialise in a particular sector, many others are multidisciplinary and operate across a range of different sectors. Furthermore, the responses of competitors did not indicate that, on the supply-side, any particular sector required a differentiated skill set when providing the Services. Responses from spin-out companies and HEIs were more mixed. Some HEIs noted the importance of sector expertise and experience, while others felt that the technology of their spin-out was so specific that no-one would have an advantage in any case.
36. As the available evidence does not indicate that competition concerns would arise within specific segments, in particular because no third party concerns have been raised regarding the impact of the Merger within any particular segment, the CMA does not consider it necessary to conclude on whether the frame of reference should be split by segment.

Conclusion on product scope

37. For the reasons set out above the CMA has considered the impact of the Merger in the supply of the Services to HEI spin-out companies.
38. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out in the competitive assessment below, no competition concerns arise on any plausible basis.

Geographic scope

39. In *IPG/Fusion*, the OFT assessed the impact of the merger on a UK-wide basis but did not conclude on the geographic scope as no competition concerns would have arisen under any plausible geographic market definition.
40. IPG submitted that the geographic market for provision of the Services is global, but that, even on the narrowest possible approach, the relevant geographic frame of reference is at least UK-wide. The CMA's investigation confirmed that, while some providers may focus their activities in certain regions of the UK or with specific HEIs,¹⁴ in general, the Services can be (and are) provided to HEIs and spin-out companies anywhere in the UK by providers anywhere in the UK.
41. As a result, the CMA has considered the impact of the Merger in a UK-wide geographic frame of reference.
42. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

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 the Services to HEI spin-out companies in the UK.

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.¹⁵ 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 a substantial lessening of competition

¹⁴ For example: Mercia Technologies plc describes itself as a national investor with a focus on the Midlands, North of England and Scotland; Touchstone is active primarily in the Golden triangle; Cambridge Innovation Capital plc (**CIC**) invests in companies with a connection to the University of Cambridge or otherwise based in the 'Cambridge cluster'; and Oxford Sciences Innovation plc (**OSI**) only invests in spin-outs from the University of Oxford.

¹⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

(SLC) in relation to unilateral horizontal effects in the supply of the Services to HEI spin-outs in the UK.

46. In this case, any competitive harm could be manifested through a deterioration of the terms of investment in HEI spin-outs (ie any SLC could negatively impact the ability of HEIs and academic founders to negotiate sufficiently attractive terms with investors). For instance, a hypothetical SLC within this segment could potentially reduce the amount of funding available to spin-off companies or make it available at less favourable conditions for customers, such as requesting a higher share of the company in exchange for a given level of investment (ie offering a lower valuation for the company) or imposing stricter corporate controls (eg requiring preferential rights to be attached to their shares). Such an SLC could potentially occur both during ad hoc negotiations or at the point of negotiating a commercialisation agreement, both of which could govern the terms of future investments in spin-outs from a HEI.
47. In addition, the CMA has investigated whether horizontal unilateral effects could arise in respect of companies within each of the Parties' portfolios, where they have material influence over those companies. The Parties both have shareholdings in numerous spin-out companies and may have shareholdings in companies that are (actual or potential) competitors. The CMA assessed the extent to which the Merger could result in a reduction in (actual or potential) competition between portfolio spin-out companies, which could give rise to an SLC in relation to unilateral horizontal effects at the level of the portfolio companies (either through less investment resulting in reduced innovation; through the exit of one spin-out or as a worsening of price, quality, range or service if/when those companies bring products to market).

The supply of the Services to HEI spin-outs in the UK

Closeness of competition

The Parties' service propositions

48. As described above, the Parties have similar propositions, in particular their focus on multidisciplinary/multisector HEI spin-out investments and their relationships with universities. IPG has commercialisation agreements with 13 universities across the UK, while Touchstone has an agreement with Imperial College London to provide the Services and also to function as the TTO. Both Parties also have informal relationships with HEIs and invest in spin-outs originating from HEIs with which they do not have a commercialisation agreement on a more ad hoc basis.

49. Most third parties noted that IPG and Touchstone provide a similar set of services and have a similar strategic focus, in particular on early stage funding of HEI spin-outs and their relationships with universities. As a result of this focus, third parties noted that the Parties offer a more structured and comprehensive service offering, particularly with regard to non-funding advisory services and support, which is highly valued by spin-outs.
50. Some third parties also noted that there are differences in the Parties' activities. For example, some noted that the Parties' portfolios differ in terms of the weight of coverage across sectors. Other third parties indicated that there is at least a perception that Touchstone commonly invests at a later stage in a spin-out's development (more akin to a traditional venture capitalist). Nevertheless, there was a broad consensus among third parties that IPG and Touchstone are the largest two providers with a specific focus on HEI spin-outs.

Competitive dynamic between the Parties

51. As explained above, there are some similarities in the nature of the Services which represent the strategic focus of the Parties. The available evidence indicates, however, that the Parties do not – in planning and executing their respective commercial strategies – consider each other to be particularly close competitors.
52. For example, evidence from internal documents does not suggest that the terms of investment, valuation of spin-outs, or commercial strategies of the Parties are influenced by each other. Similarly, the CMA is not aware of any occasion upon which the Parties have been in direct competition to invest in the same HEI spin-out company at the time of its formation.¹⁶

Geographic focus

53. An HEI's demand for the Services is determined by the extent to which it generates IP or technology that is suitable for commercialisation. In this regard, the CMA notes that the majority of spin-out companies originate from the Golden triangle. Evidence provided by HEIs contacted by the CMA during the investigation shows that 164 companies were spun-out from five Golden triangle HEIs in the last three years,¹⁷ compared to 71 companies spun-out from 11 other leading HEIs across the UK.

¹⁶ The CMA notes that the Parties have subsequently co-invested in the same spin-out company, although IPG told the CMA that it believes there are only five overlaps in shareholdings between the portfolio companies of the Parties.

¹⁷ LSE excluded.

54. This highlights a key difference in the Parties' activities – that while IPG invests across the UK, Touchstone currently focuses primarily on investments within the Golden triangle. Touchstone's annual report indicates that around one-third of its spin-out investments originate from Imperial College London, around one-third originate from the Cambridge cluster, and the final third originate from University of Oxford, UCL and other organisations around London.¹⁸
55. Due to Touchstone's narrower focus, the CMA has, in its competitive assessment, assessed the specific impact of the Merger in relation to the Golden triangle HEIs, as well as across the rest of the UK.

Third party views

56. In the Golden triangle, there is some competitive interaction between the Parties, with nearly all HEIs responding that they are both credible options for the Services. However, consistent with the Parties' description of the competitive dynamics (as set out in paragraph 52 above), the responses of HEIs also indicated that they would not play one Party off against the other to get a better deal.
57. Most HEIs located outside the Golden triangle told the CMA that they do not currently consider Touchstone to be a credible option for investment in spin-outs originating from their HEI. Touchstone also [REDACTED].¹⁹ Accordingly, for the most part, HEIs outside the Golden triangle (of which 11 responded to the CMA's investigation) indicated that they did not have concerns about the Merger.
58. Only [REDACTED] HEIs located outside the Golden triangle ([REDACTED]) expressed concerns about the Merger. Touchstone had [REDACTED].²⁰ [REDACTED]. The evidence presented to the CMA indicates, however, that this was [REDACTED] a minimal number of occasions upon which [REDACTED]. Moreover, as was the case in relation to the Golden triangle HEIs (as described in paragraphs 52 and 56 above), there is no evidence to suggest that the Parties were close competitors for [REDACTED] (that is, the offer of one Party was not materially influenced by the subsequent involvement of the other Party).

¹⁸ Touchstone's Annual Report and Accounts for the financial year ended 31 July 2016, page 3.

¹⁹ Touchstone informed the CMA that [REDACTED].

²⁰ The CMA believes that this is the case even taking into account [REDACTED]. IPG submitted that this is broadly equivalent to its 'biotech' sector, which accounts for only around [REDACTED]% of the value of IPG's portfolio of spin-out companies.

Conclusion on closeness of competition

59. The CMA believes that the Parties are both credible alternatives to provide the Services within the Golden triangle even if, within the market context, the extent of head-to-head competition is limited in practice.
60. Outside the Golden triangle, the evidence described above indicates that, notwithstanding the similarities in their activities, the Parties effectively do not compete against each other outside the Golden triangle at present. The CMA therefore considers that the Merger will not give rise to a material change in the market structure, and in the options for HEIs and spin-outs, outside the Golden triangle.²¹

Competitive constraints

61. As described at paragraph 31 above, the Parties' main competitors in the provision of the Services can be grouped broadly into investors with commercialisation agreements (and therefore a focus on HEI spin-outs), VCs and business angels.
62. Most of the Golden triangle HEIs have commercialisation agreements (the University of Oxford with OSI and Technikos; the University of Cambridge with CIC; Imperial with Touchstone,²² and KCL with IPG²³).
63. Many HEIs outside the Golden triangle also have commercialisation agreements with providers of the Services. The most notable examples are Mercia (which has commercialisation agreements with 18 HEIs across the Midlands, North England and Scotland) and Arix Bioscience (which has commercialisation agreements with six HEIs across the UK).²⁴

Third party views

64. All HEIs located in the Golden triangle who replied to the CMA's requests for information told the CMA that they have a large number of investors to choose from. In particular, they told the CMA that commercialisation agreements are

²¹ The CMA believes that this is the case even taking into account the potential increase in Touchstone's presence outside the Golden triangle from Project Gemini. In any event, Project Gemini is limited to the therapeutics sector. IPG submitted that this is broadly equivalent to its 'biotech' sector, which accounts for only around 10% of the value of IPG's portfolio of spin-out companies.

²² This commercialisation agreement expires in 2020. Imperial told the CMA that it is considering a number of alternativeⁱⁱ options once this expires, including bringing TTO functions in house (which it considers would be relatively straightforward) and not entering into a commercialisation agreement with any particular provider.

²³ KCL said that it also has agreements in place with other entities such as the Wellcome Trust and Epidarex.

²⁴ Arix Bioscience only has commercialisation agreements in respect of healthcare and therapeutics spin-outs.

not a necessity,²⁵ and there are many other options for funding, including VCs and business angels. For example, the University of Oxford has over 250 registered investors and typically contacts this entire network when looking for spin-out investment. The University of Cambridge has, on average, around 10 suppliers it could consider for any particular investment, while KCL told the CMA that it had no shortage of investors. Imperial noted that the funding landscape had changed, and it now has far more options than it did a decade ago. Imperial also told the CMA that it can self-supply or outsource the provision of the Services to several external advisors.

65. Outside of the Golden triangle, the responses from HEIs were mixed as to the availability of alternative options for Services. Some HEIs (including [REDACTED], [REDACTED] and [REDACTED]) told the CMA that they had sufficient options. Others (such as [REDACTED] and [REDACTED]) said they considered there to be few options available. [REDACTED] HEI (the [REDACTED]) was concerned about whether other suppliers could provide the same level of advisory Services and support as the Parties. This HEI noted that it could provide these services in-house through its TTO, but that this was a sub-optimal outcome.
66. Overall, third party responses suggest that there are a wide range of VCs and business angels, some which are typically more willing to invest in early-stage spin-outs than others, some which typically focus on particular sectors, and some typically in certain geographic locations. Nevertheless, the CMA considered that these responses, considered in the round, indicated that there will be sufficient alternatives for the provision of the Services across the UK to continue to constrain the Parties post-Merger.

Conclusion on competitive constraints

67. The CMA believes Golden triangle HEIs have plenty of alternative funders, whether via their commercialisation agreement provider, or VCs and business angels more generally. Outside of the Golden triangle, the CMA believes that there may be fewer providers of the Services. However, as most of these HEIs do not see Touchstone as a viable option in any case, the Merger will not result in the removal of a significant competitive constraint on IPG.

Overlaps in the Parties' portfolio companies

68. IPG provided the CMA with details of companies within the Parties' portfolios that could be considered actual or potential competitors. The CMA considers

²⁵ It was also common for HEI spin-outs, whether part of the Golden triangle or not, to receive early stage investment from VCs and angel investors, despite having a commercialisation agreement with a different provider.

that, post-Merger, IPG would only have the ability to implement a strategy based on horizontal unilateral effects where it has sufficient control over the decision-making of both companies. In this regard, the CMA considered any shareholding below 25% would, the absence of any other potential source of influence, likely not be sufficient to enable the Parties to exercise material influence over the commercial policy of portfolio companies.

69. In addition, IPG also submitted that while it will often hold a significant minority stake when it initially invests in a newly formed spin-out company, by the time the company reaches the stage that it is revenue-generating, its stake has usually been diluted through subsequent rounds of funding to the lower end of its target [X] % range.
70. There are only two sets of portfolio companies whose activities were identified as overlapping and in which both Parties had a shareholding of 25% or more in their respective company. These are discussed below.

(a) Relitect Ltd and Abingdon Health

71. IPG has a [X] % shareholding in Relitect Ltd, while Touchstone has a [X] % stake in Abingdon Health. IPG identified both companies as operating molecular diagnostic detection platforms, but also submitted that these companies have different target applications and there are, in any event, many competitors in this area. In its response to the CMA, Abingdon Health named three competitors (not including Relitect), two of which are larger and more established companies. Given that Abingdon Health appears to face two established competitors, and does not consider Relitect to be a meaningful competitor, the CMA does not believe that bringing the Parties' shareholdings in these companies under the common ownership of IPG will give rise to a realistic prospect of an SLC in any market or markets.

(b) Salunda and Silicon Microgravity

72. IPG has a [X] % stake in Salunda,²⁶ while Touchstone has a [X] %ⁱⁱⁱ stake in Silicon Microgravity. IPG told the CMA that both companies produce sensor technology in the oil and gas sector but submitted that there are no direct competitors to Salunda. In addition, Salunda told the CMA that Silicon Microgravity is not a competitor as its technology is of a different type and is used for a different application. Given that there appears to be limited competitive interaction between Salunda and Silicon Microgravity, the CMA does not believe that bringing the Parties' shareholdings in these companies

²⁶ IPG has a direct [X] % stake and an indirect [X] % stake through its wholly owned subsidiary, Parkwalk.

under the common ownership of IPG will give rise to a realistic prospect of an SLC in any market or markets.

Conclusion on horizontal unilateral effects

73. In practice, the options available to any HEI will vary for each individual spin-out. As set out above, the CMA believes that, while IPG and Touchstone have similar business models and strategies, inside the Golden triangle (where the Parties are seen as credible alternatives) HEIs and spin-outs have a large number of credible funding alternatives. Outside the Golden triangle, there are likely to be fewer alternatives for funding, but Touchstone is generally not considered to be a viable provider of the Services in any event, and so the Merger will not result in the removal of a significant competitive constraint on IPG.
74. Accordingly, 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 the Services.
75. In addition, the CMA does not believe that the Parties have strongly (actual or potential) competing or overlapping portfolio companies that would give rise to concerns post-Merger.

Decision

76. 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.
77. The Merger will therefore **not be referred** under section 33(1) of the Act.

Colin Raftery
Director of Mergers
Competition and Markets Authority
17 October 2017

ⁱ IPG has clarified that it was actually active in the 'life science' and 'physical science' sectors at the time of the IPG/Fusion decision.

ⁱⁱ Imperial College London has clarified that they are considering all possible options.

ⁱⁱⁱ Touchstone has a [X] % stake in Silicon Microgravity.