Entry and expansion in UK merger cases

An ex-post evaluation

KPMG LLP

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Contents

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Executive Summary

Scope and aims of the study

1 The Competition and Markets Authority (CMA) has commissioned KPMG ("us" or "we") to conduct an external evaluation of some past CMA, Competition Commission (CC) and Office of Fair Trading (OFT) merger decisions. The focus of the study is to draw lessons about the CMA's assessment of entry and expansion in merger control. In particular, the aim of the study is to assess whether the CMA/ CC/ OFT (together, the "Authorities") has correctly assessed the propensity and impact of entry and expansion; whether the Authorities have been consistent across cases in assessing entry and expansion; and what types of evidence and market features are the best predictors of entry and expansion.

2 Rather than conducting an in-depth study of a small number of decisions (as it had done in previous ex-post evaluations), in this case the CMA wished to consider the issues set out above across a larger number of cases. We therefore conducted an ex-post evaluation of eight merger cases:

- Sheffield City Taxis/ Mercury Taxis (CMA Phase I, 13th October 2015)
- CooperVision/ Sauflon (CMA Phase I, 4th December 2014)
- Ballyclare/ LHD (CMA Phase I, 26th August 2014)
- Cineworld/ City Screen (CC Phase II, 8th October 2013)
- Web Reservations International (WRI)/ Hostelbookers (OFT Phase I, 2nd August 2013)
- Zipcar/ Streetcar (CC Phase II, 22nd December 2010)
- Cartonplast/ Demes (OFT Phase I, 23rd March 2010)
- NBTY/ Julian Graves (CC Phase II, 20th August 2009)

3 These cases were all clearance decisions where entry or expansion was an important factor in that clearance. Clearance decisions were chosen as they give clear testable propositions about whether the entry and expansion predicted by the Authorities occurred. We recognise, however, that focussing on clearance decisions limits our ability to test whether the Authorities may have over-enforced or under predicted entry or expansion. Selecting these clearance decisions also means we are focussing on cases of expected or failed entry, and may be less likely to observe entry that was unexpected.

4 These cases were chosen from a list of 15 clearance decisions since October 2008, drawn up by the CMA, where entry or expansion was a relevant factor in the clearance. The cases we chose, in consultation with the CMA, were cases that were more likely to lead to informative results in the ex-post evaluation, for example because they involved the clearest testable predictions or because we had reasons to think that some general lessons could be learnt given the sectors involved. As such, we recognise that the list of cases reviewed should not be seen as representative of the Authorities' past decisions over entry and expansion, and may not represent necessarily the mix of cases that are received in future.

5 In conducting the ex-post evaluation, we reviewed the Authorities' original decision, as well as key supporting evidence from the case file. In particular, we understand that the CMA is required by the Enterprise Act 2002 to ensure that it has sufficient information to take informed decisions and to carry out its other functions effectively, including by conducting ex-post evaluations and learning lessons from past cases. In order to discharge this function, we understand that the CMA is permitted to disclose certain information to third parties and was therefore able to disclose certain aspects of the casefile to us for the purposes of conducting this report only. The information consisted of the full text of the decisions, together with some key additional information which included archived data, internal notes, particular third party evidence and some market reports.

6 In addition to the evidence above, we have then gathered a range of evidence to assess how the markets have developed following the Authorities' decisions. This included publicly available information, reports and desktop research; interviews with key stakeholders (such as merger parties, competitors, customers, etc.); and quantitative data (such as data on prices or market shares). Given the relatively large number of cases examined – and the broad range of evidence we sought to gather for each case – a full econometric analysis of how outcomes have developed following any of the Authorities' decisions was beyond the scope of this review.

7 We recognise that our review has the benefit of hindsight, something which is obviously not available to decision-makers at the time of the case. In addition, we recognise that the Authorities have fixed timescales in order to gather evidence and make decisions. In the report, we look at whether predictions that were made by the Authorities were realised, but this is not the same as assessing whether the decisions or the decision-making process were correct. Our review is aimed at facilitating a consideration of these issues, through drawing lessons about the evidence gathered and the analysis conducted, and ultimately providing recommendations for future cases.

Findings on whether the Authorities have correctly assessed the propensity and impact of entry and expansion

8 There is a mixed picture across the cases we reviewed of whether the Authorities' predictions about entry and expansion were realised:

- In some cases, the CMA / OFT predicted that entry or expansion would be timely, likely, and sufficient to prevent an SLC,[1] and our review suggests that this prediction has been realised (Sheffield City Taxis/ Mercury Taxis, WRI/ Hostelbookers, Coopervision/ Sauflon).
- In one local market in the Cineworld/ City Screen decision, the CC placed significant weight on entry occurring, while our review has found that none materialised following the merger. In this local area, prices appear to have increased in comparison to other similar local areas.
- In Zipcar/ Streetcar, the CC placed significant weight on timely, likely, and sufficient entry and expansion. Our review has found that while some entry did occur, a significant proportion of the firms that entered subsequently exited, and did not expand in the way

[1] CMA Merger assessment guidelines, CC2/OFT1254 (hereafter "CMA Merger Guidelines"), para. 5.8.3.

predicted by the CC. In this market, we have also found that the merger parties' prices have increased following the merger, whereas the prices of one smaller operator have fallen.

- In NBTY/ Julian Graves, the CC put less weight on entry or expansion, instead putting weight on barriers to entry or expansion being low (as well as existing constraints from other retailers). It is more difficult to assess whether the CC's prediction that the potential for entry or expansion would constrain the merger parties has been realised. However, there has been limited entry, and there is evidence that the merger parties' prices have increased since the merger in comparison to prices at other stores.
- In Cartonplast/ Demes, the OFT put weight on there being timely, likely, and sufficient entry by a particular firm. Our review has found that this firm did not enter, but instead an existing supplier has expanded and appears to constrain the merger parties.
- Finally, in Ballyclare/ LHD, the CMA placed weight on there being timely, likely, and sufficient expansion by a particular firm. Our review has found that, although this particular firm has begun competing in the particular market assessed by the CMA, we found limited evidence on the strength of competition from this firm on the merger parties, following the clearance of the transaction.

9 We considered whether there were differences across Phase I and Phase II cases in terms of whether the Authorities' predictions were realised. The CMA has a different legal test for its decision-making in Phase I compared to Phase II decisions, intervening in Phase I if it believes the merger will results in a *"realistic prospect"* of an SLC, and at Phase II if it believes that on the *"balance of probabilities"* an SLC will arise.[2] As a result, particularly clear and compelling evidence on the timeliness, likelihood and sufficiency of entry / expansion would be needed for the CMA to conclude at Phase I that a merger should not be referred on the basis of these factors.[3] Therefore, while we would not necessarily expect to see predictions of timely, likely and sufficient entry or expansion from clearance decisions at either Phase to be realised, we might expect such predictions to be realised more often following Phase I than Phase II decisions. In most cases, the predictions made by the CMA / OFT in the Phase I cases we reviewed were largely realised – or where they were not, alternative sources of entry/ expansion seem to have constrained the merger parties. In all three of the Phase II cases we reviewed, however, entry did not occur in the way the CC predicted and there is some evidence to suggest prices have increased as a result of the merger though we cannot draw a firm conclusion in this respect. While we have reviewed only three Phase II cases, the consistency in our findings on the Phase II cases might suggest that some lessons can be learned.

10 We recognise that in all of the cases we reviewed, the Authorities gathered a large volume of evidence and it is difficult to know what might have been possible at the time of the merger review. Nevertheless, we found that in some cases, where the Authorities' predictions on entry or expansion were not realised, there may have been further evidence that, if feasible to have gathered, might have made the Authorities' predictions more accurate (for example, in relation to barriers to expansion in some specific cases). Furthermore, there is some evidence which, if given more weight may have made the

[2] CMA Merger Guidelines, para. 2.2.
[3] CMA Merger Guidelines, para. 5.1.3.

Authorities' predictions more accurate (for example, in relation to the uncertainty surrounding entry created by local regulation).

Findings on what evidence and features might predict entry / expansion

11 There are various ways to categorise the characteristics of new entry or expansion – for example, de novo entry versus expansion from existing firms, or entry with differentiated versus similar products to existing suppliers.

12 Across the cases we have reviewed in this study, we have seen entry and expansion with a number of different features and characteristics. We have sought to identify the characteristics of entry or expansion that have appeared most frequently in the cases we reviewed, as this may be informative of the sorts of characteristics of entry or expansion that may appear in other cases.

13 Most of the examples of entry and expansion we have observed has a number of different features, but we have identified the following (non-mutually exclusive) characteristics of entry occurring in a number of the cases we reviewed: i) entry by suppliers that already operate in closely related markets; ii) entry or expansion by suppliers with new or innovative products.

14 We have also identified one type of barrier to entry or expansion that has appeared in a number of the cases we reviewed. Specifically, we have seen in a number of cases (Cineworld/ City Screen, Zipcar/ Streetcar, Sheffield City Taxis/ Mercury) that local regulation or policy has either had, or had the potential to have, a negative impact on entry or expansion. In the first two of these cases, entry or expansion has been less than the CMA/ CC predicted, and our review suggests that local regulation / policy has been a key reason as to why entry or expansion did not materialise. In some of these cases, some of the potential new entrants appeared to be more optimistic about their prospect of entry than turned out to be the case.

Findings on whether the Authorities have been consistent in their assessment of entry and expansion

15 As well as assessing whether the Authorities' predictions about entry or expansion were consistent across cases, we sought to assess whether there were any patterns across cases that suggested that there were inconsistent approaches taken by the Authorities.

16 We have identified a number of issues where the accuracy of the Authorities' decisions, or the depth of the analysis conducted appeared to be inconsistent across cases.

17 First, we found that there has been some inconsistency in relation to the Authorities' assessment of expansion (as opposed to entry). Specifically, we have seen in one case (Zipcar/ Streetcar) that the CC either did not consider that certain barriers had specific effects on the ability to expand or was optimistic with regards to the ability to overcome them. In Zipcar/ Streetcar, while some entry occurred, it was unsuccessful and firms could not expand from a small scale as the CC had predicted. In another case, however (WRI/ Hostelbookers), the OFT gathered a range of evidence and assessed in some detail the likelihood of expansion by small scale existing players, and appears to have correctly predicted that this would occur.

18 Second, we have seen some inconsistency in the degree to which the Authorities assessed and predicted different forms of entry or expansion. The Authorities appeared to have generally successfully predicted entry from suppliers in closely related markets. However – perhaps unsurprisingly – the picture is more mixed for entry / expansion involving new or innovative products – in some cases this was predicted by the Authorities, but in others it was not.

19 Third, we have seen some inconsistency in the treatment of local regulation or policy as a barrier to entry. While, overall, the Authorities appear to have under-predicted the degree to which such issues have restricted entry in the relatively limited number of decisions we have reviewed, we have seen some variation. In particular, in different local markets in the Cineworld/ City Screen case, the CC appeared to have put varying degrees of weight on potential uncertainty caused by local planning processes.

Recommendations and lessons learned

20 The findings from our ex-post review suggests a number of recommendations and lessons learned for future merger cases. Some of these recommendations may be easier to implement or more applicable to Phase II, rather than Phase I, cases given the differences in timescales and ability to gather evidence at these different Phases.[4] We have not sought to tailor specific recommendations for Phase I or Phase II decisions, but this is likely to be something that the CMA will need to develop in more detail, as it considers the results of this study and the recommendations.

21 We have identified recommendations related to assessing the evidence on entry or expansion with different characteristics:

- Recommendation 1: The CMA / OFT appears to have correctly predicted specific examples of entry/ expansion from closely related markets. We recommend that the CMA continues to seek evidence on the factors – such as costs, demand and entry plans – which make such entry or expansion more likely. In particular, specific evidence on factors such as costs of entry being relatively low, consumer preferences supporting such entry, and plans for entry being particularly well-progressed, all appeared to be important predictors of sufficient and timely entry or expansion. Specific examples of evidence that was particularly important in predicting entry of this form could be maintained, and circulated internally or built into an internal checklist, to help maintain consistency across cases.
- Recommendation 2: There is some evidence from our review that the Authorities could have sought to understand in more detail the likely success of suppliers with innovative products, when assessing how successful their expansion might be. While we acknowledge that there is evidently a difficulty in predicting the likelihood, timeliness and effects of entry with products that are different from those already in the market – and successful innovation is inherently difficult to predict – our review suggests that this is an aspect that could helpfully be analysed closely in future cases. We, therefore,

[4] We also note that the CMA's powers to gather information in Phase I have changed compared to its powers in the OFT Phase I decisions we reviewed, which might already have had an impact on evidence gathering. This is not an issue we have considered or reviewed in our ex-post study.

recommend that the CMA assesses such entry in a more systematic way across cases, and performs a fuller assessment of the potential for such entry or expansion where this appears to be a possibility. Similar factors as assessed in those cases discussed in the previous recommendation are likely to be relevant – costs, consumer preferences, and specific evidence of innovative entry having gained a foothold in the market – and we found that in some of the cases we reviewed where expansion by innovative providers was relevant, these factors were not assessed in detail. In addition, specifically in relation to innovation, looking consistently across cases at evidence on factors such as patterns of innovation and product take-up of innovative products in other geographic markets and identifying the innovation pipeline for potential new entrants, might also help the CMA to assess the likelihood of entry or expansion by innovative providers.

22 We have identified a recommendation based on our finding that the Authorities' assessment of expansion may not have been consistent across cases:

- Recommendation 3: Our findings suggest that the CMA should look to assess the likelihood of and ease of expansion more systematically across cases. This should include, as a matter of course, assessing whether entry is likely to be successful and pose a sufficient constraint even if it does materialise, assessing whether certain existing suppliers may expand to pose a greater competitive constraint, and considering whether there are specific barriers to expansion (in addition to entry).

23 We have identified a number of recommendations related to the assessment of local regulation or policy as a barrier to entry:

- Recommendation 4: Overall, local regulatory or policy restrictions need to be assessed on a case-by-case – and, in some instances, a local market by local market – basis. However, in the cases we reviewed, the Authorities were aware that local regulation or policy issues in existence or in contemplation at the time of the merger made entry or expansion less certain. We, therefore, recommend that in cases where there are local regulatory or policy issues, the CMA should ensure these are given appropriate weight, and treated consistently across different local areas where relevant.

- Recommendation 5: Furthermore, we found that potential entrants or firms looking to expand might, in their interactions with the Authorities, in some instances have tended towards being optimistic about their ability to enter or expand in spite of potential uncertainty created by regulatory or policy issues. In this context, we recommend that the CMA continues to seek the views from local authorities on the potential impact of their regulatory decisions on new entry or expansion, as it did in the cases we reviewed. In addition, we recommend that the CMA should test the views expressed by the potential new entrants against some of the factors discussed in recommendations 1 and 2, such as costs and demand in order better to assess the extent to which such entry plans are realistic, and whether the entrants have anticipated the right challenges that they would need to overcome.

- Recommendation 6: In the taxi industry, in particular, our review has suggested that local regulations can and do change rapidly. We recommend that the CMA should look at potential local regulatory changes in specific markets – like taxis – where such change is possible, and should consider the impact of such changes on the ability for operators to enter and expand when considering any further consolidation. In addition, if markets are identified where regulatory change has the potential to have a particularly strong impact on entry and expansion, and ultimately competition, this is likely to be relevant information for the CMA's ongoing programme of competition advocacy work.

24 Finally, we have identified one recommendation in relation to the conduct of future ex-post evaluation studies:

- Recommendation 7: We recommend that the CMA archives information relevant for ex-post evaluation more carefully following the closure of cases, and, in particular, stores relevant assumptions and data that might be useful for such evaluations. This includes not only evidence that was used in the decision, but also data and assumptions made in analyses that was gathered and not relied on, but which might nevertheless be useful for ex-post evaluation purposes. It might also be that the CMA needs to do more to ensure that it has gathered all relevant assumptions on data that is submitted by parties, where such data is not relied on in the decision (and hence which may not have received as much scrutiny in the course of the original case). This recommendation is therefore for an additional focus when archiving information which may be helpful specifically for the purpose of ex-post evaluation.

1 Introduction

1.1.1 The Competition and Markets Authority (CMA) has commissioned KPMG ("us" or "we") to conduct an external evaluation of some past CMA, Competition Commission (CC) and Office of Fair Trading (OFT) merger decisions. The focus of the study is to draw lessons about the CMA's assessment of entry and expansion in merger control.

1.1.2 The CMA identified three important aspects which it wished to assess through this study:

- first, whether the CMA / CC / OFT (together "the Authorities") have correctly assessed the propensity for and impact of entry and expansion;
- second, whether the approach followed by the Authorities in assessing entry and expansion has been consistent across cases; and
- third, what types of evidence and market features are the best predictors of entry and expansion.

1.1.3 Past merger evaluation work commissioned by the CC and the OFT has tended to evaluate each element of a narrow list of cases. With this evaluation, by contrast, the CMA has decided to commission a review of a relatively large number of cases, but focussing specifically on entry and expansion. The CMA noted that the potential for entry and expansion is an issue that arises regularly in merger assessment and is a good topic for an ex-post evaluation study, as there are often clear predictions against which actual outcomes can be compared.

1.1.4 We have reviewed eight Authorities' merger decisions:

- Sheffield City Taxis/ Mercury Taxis (CMA Phase I, 13th October 2015)
- CooperVision/ Sauflon (CMA Phase I, 4th December 2014)
- Ballyclare/ LHD (CMA Phase I, 26th August 2014)
- Cineworld/ City Screen (CC Phase II, 8th October 2013)
- Web Reservations International/ Hostelbookers (OFT Phase I, 2nd August 2013)
- Zipcar/ Streetcar (CC Phase II, 22nd December 2010)
- Cartonplast/ Demes (OFT Phase I, 23rd March 2010)
- NBTY/ Julian Graves (CC Phase II, 20th August 2009)

1.1.5 All of these decisions were clearances where entry and/or expansion was an important factor in the decision.[5] Assessing outcomes in clearance cases should be more straightforward than conducting the same exercise in intervention cases as there is less need to formulate a counterfactual (i.e., what would have happened if the merger had been cleared). However, we recognise that focussing only on clearance cases has some limitations. First, we will not be able to draw conclusions or make recommendations on

[5] We note that in Cineworld/ Cityscreen, however, the CC blocked the merger in a number of local areas where the merger parties overlapped. Similarly, in Sheffield City Taxis/ Mercury Taxis, the CMA found an SLC in one of the relevant markets; however, it decided to make the *de minimis* exception owing to the insufficient importance of this market. Sections 5 and 2 below discuss these cases in detail.

whether the Authorities have over-enforced the merger control regime (i.e., blocking a merger that, for reasons including prospective entry and expansion, should have been allowed to go ahead). For example, we will not be able to comment on cases where entry or expansion materialised even though that was not predicted at the time of the merger review.

1.1.6 The decisions reviewed were selected from a list of 15 potential cases drawn up by the CMA, and as set out above, include a mix of both Phase I and Phase II cases. The cases were selected based on a range of factors, including: the degree to which evidence might be available; cases with clear, testable predictions; and cases which, for other reasons, might have been more likely to be conducive to interesting analyses and conclusions. The cases selected are therefore by design not a representative sample of the Authorities' past cases, nor necessarily representative of the types of cases that the CMA might receive in future.

1.2 Evaluating the Authorities' predictions on entry and expansion

1.2.1 It is important to put our ex-post evaluation of the Authorities' merger decisions in the right context, by reference to the CMA's merger guidelines. The guidelines note that competition in the market may be affected as new firms enter, or rivals take actions expanding and enhancing their ability to compete against the merged firm.[6] Such actions may mitigate the initial effect of the merger on competition and, in some cases, may mean that there is no SLC.[7] A core question of our analysis is, therefore, whether the Authorities' predictions about entry and/or expansion were borne out by market developments since the merger was cleared. This includes assessing not only whether entry and/or expansion occurred following the clearance of the merger, but also whether the types of entry and/or expansion that were predicted by the Authorities were the same as those that materialised.

1.2.2 The guidelines also note that in assessing whether entry and expansion might prevent an SLC, the CMA should consider whether entry and expansion would be timely, likely and sufficient.[8] Where possible, our evaluation therefore seeks to assess not only whether any entry and/or expansion predicted by the Authorities occurred, but also whether the Authorities were correct in predicting that entry and/or expansion would be timely and of sufficient scale to prevent an SLC. The extent to which we can form a view on the timeliness and sufficiency of entry or expansion varies from case to case, depending on the amount of information available. For example, in some cases, an assessment of whether entry or expansion was 'sufficient' might require a consideration of both the outcomes (such as prices) that have materialised following the merger and outcomes at the time of the merger, and such information is available only for a sub-set of the cases we have reviewed.

1.2.3 It is to be expected that in some cases predictions by the CMA of entry and/or expansion may not be realised in practice. The legal test applied by the CMA is a probabilistic test (at both Phase I and Phase II), and the CMA cannot predict the future with perfect

[6] CMA Merger Guidelines, para. 5.8.1.
[7] CMA Merger Guidelines, para. 5.8.1.
[8] CMA Merger Guidelines, para. 5.8.3.

foresight. It is therefore to be expected that sometimes the outcome may be different to the CMA's predictions. We would expect this more often to be the case in relation to Phase II cases, where the CMA applies a 'balance of probabilities' test to its decision-making (rather than Phase I, where the CMA intervenes whenever there is a realistic prospect of an SLC).

1.2.4 We have therefore distinguished between Phase I and Phase II cases in our evaluation, and sought to highlight any differences in the conclusions across those categories of cases.

1.2.5 In addition, we sought to consider whether, in those cases where the Authorities' predictions did not turn out to be accurate, this might have been foreseen by them, given the evidence available at the time of the merger decision. Such examples are likely to be more instructive in drawing lessons learned than those cases where there is no reason to expect that the Authorities could have reached any other view, given the evidence available at the time of the merger.

1.2.6 As well as assessing whether predicted entry and/or expansion occurred, we considered evidence on *why* entry and/or expansion did or did not occur. The Authorities may have reached a view that entry and/or expansion would prevent an SLC because of specific evidence of planned entry and/or expansion. In that context, if the planned entry cited by the Authorities did not occur once the merger was cleared, it is important to consider the reasons why – for example, plans for entry may have been less certain than the Authorities had originally expected. In some circumstances, the merger itself may have been a factor if it led to substantial efficiencies for the merged firm, such that the potential entrant would be less able to compete and would find entry less profitable as a result.

1.2.7 More generally, the Authorities may have reached a conclusion that entry and expansion would prevent an SLC because of a view that barriers to entry were low enough, such that entry would occur if prices increased following the merger. In that context, if entry didn't occur, it's important to consider whether that was because barriers were higher than the Authorities expected, or whether existing firms cut prices in anticipation of potential entry, which then removed any profitable opportunity for entry to occur. Overall, different explanations for a failure of planned entry or a lack of entry imply different conclusions about the impact of the merger on competition, and therefore might give rise to different lessons learned for the assessment of entry and/or expansion in different cases. While it is not possible in a number of cases to reach a firm view on these matters, these considerations need to be taken into account as a backdrop for our evaluation.

1.2.8 Finally, we note that in some of the cases reviewed, the Authorities may not have based their decisions principally or solely on a prediction that entry and/or expansion would prevent an SLC. For example, a clearance could be based on evidence about existing competitive constraints, as well as evidence of planned entry by new providers. Our assessment of the Authorities' decisions in each case reviewed, therefore, will be against the specific conclusions made by the Authorities and the evidence that the Authorities cited in their merger decision.

1.3 Formulating recommendations

1.3.1 For each case that we reviewed, we set out a number of research questions relevant to testing the assessment of entry and expansion in each decision. From the review of these specific cases, we then sought to formulate recommendations for future merger cases, including in relation to:

- the types of evidence gathered for assessing entry and exit in merger cases;
- the weight placed on different pieces/ types of evidence that might be reviewed as part of an assessment of entry and expansion in merger cases;
- the types of analysis that might be conducted in assessing entry and expansion, or competition more generally, in the context of merger cases;
- the way evidence is collected or stored in the context of merger cases; and
- the conduct of future ex-post evaluation studies.

1.4 Evidence reviewed in our study

1.4.1 Our review of the eight merger cases has been based on a range of evidence.

1.4.2 In conducting the ex-post evaluation, we reviewed the Authorities' original decision, as well as key supporting evidence from the case file. In particular, we understand that the CMA is required by the Enterprise Act 2002 to ensure that it has sufficient information to take informed decisions and to carry out its other functions effectively, including by conducting ex-post evaluations and learning lessons from past cases. In order to discharge this function, we understand that the CMA is permitted to disclose certain information to third parties and was therefore able to disclose certain aspects of the casefile to us for the purposes of conducting this report only. The information consisted of the full text of the decisions, together with some key additional information which included archived data, internal notes, particular third party evidence and some market reports.

1.4.3 We then gathered a range of evidence in order to assess the evolution of each of the markets affected by the eight merger clearances. This included:

- industry reports and other publicly available information, such as media reports;
- interviews with merger parties;
- interviews with competitors;
- interviews with other stakeholders including local authorities, trade associations, etc.; and
- quantitative data on, for example, market shares or prices.

1.4.4 The availability and quality of evidence varied across each of the markets we reviewed, which in some cases impacted on the degree to which we could draw conclusions about a particular case. In setting out our findings below on each case that we reviewed, we describe the information we have gathered for that case, and any limitations to the evidence we have been able to obtain.

1.5 Structure of this report

1.5.1 The rest of this report proceeds as follows:

- In sections 2 - 9, we set out our review of and findings on each of the cases we reviewed (beginning with the most recent case).
- In section 10, we draw together our findings from our review of these eight cases.
- In section 11, we then use these findings to formulate some recommendations for future merger cases.

A. Case-by-case review

A1 In this section, we set out our review of each of the selected cases beginning with the most recent case. For each case, we start by summarising the relevant aspects of the Authorities' decision and then set out the research questions we sought to address and the evidence that was available for our review. We then present the evidence gathered and the results of any analysis conducted in order to address the research questions for each case.

2 Sheffield City Taxis/ Mercury Taxis

2.1 Summary of the CMA's decision

2.1.1 In June 2015, Sheffield City Taxis Limited acquired certain assets and business of Mercury Taxis Limited. The CMA reviewed this merger and cleared it unconditionally in October 2015.

2.1.2 The CMA defined two separate relevant product markets, including the provision of private hire and hackney transport services (typically referred to as 'taxis' or, in some areas, 'black cabs') to cash and account customers; and ii) the provision of private hire and hackney transport services to tender customers (e.g., NHS).[9] Further, though the CMA defined the geographic frame of reference to include overlapping areas in Sheffield only, it looked at competitive constraints from outside the relevant market, including as part of its competitive assessment.[10]

2.1.3 For tender customers, the CMA had competition concerns but decided to make the de minimis exception owing to the insufficient importance of this market.[11] In what follows, therefore, we will focus exclusively on the market for the provision of private hire services to cash and account customers.

2.1.4 In relation to the provision of private hire services to cash and account customers, the CMA concluded that the parties were likely to be subject to competitive constraints from mid-size private hire operators and hackneys transport services, as well as recent entrants like Uber and Gett, who were looking to expand their presence in the Sheffield market.[12]

2.1.5 The CMA was also of the view that the implementation of the Deregulation Act, which would allow private hire operators to sub-contract bookings to private hire operators licensed by other licensing authorities, was likely to facilitate expansion of private hire operators across licensing areas. However, the CMA was unsure whether the effect of the Deregulation Act would be significant and the extent to which it would increase competition in Sheffield, so in the end it "*did not place much weight on new competition*

[9] Final Report, para. 59.
[10] Final Report, para. 58.
[11] Final Report, para. 122.
[12] Final Report, para. 95.

arising in Sheffield from operators based outside Sheffield as a result of the Deregulation Act".[13]

2.1.6 Overall, the CMA concluded that the merger did not lead to a realistic prospect of an SLC in the market for cash and account customers in Sheffield.[14]

2.2 Research questions and evidence gathering

2.2.1 In light of the CMA's conclusions above, our ex-post evaluation sought to assess a number of research questions. In particular, we examined whether:

- Expansion by Uber and Gett occurred after the merger, and the rationale behind this?
- Expansion was sufficient and timely to replace loss of competitive constraint arising from the merger?
- Any other entry and/or expansion occurred that was not identified by the CMA at the time of the merger review, and if so by what firm(s)?
- Operators entered and/or expanded from neighbouring areas under the Deregulation Act, as well as whether there have been any other regulatory developments which have had an impact on entry and/or expansion or other aspects of the market?

2.2.2 To conduct our assessment we have collected a range of evidence. We have reviewed the evidence contained in the documents gathered by the CMA at the time of the merger review. We have conducted in-depth interviews with significant market players, namely, Sheffield City Taxis (SCT), Uber and Veezu, and the Sheffield City Council (SCC). Finally, we gathered data on fares from publicly available information on a number of market players' price lists.

2.2.3 It is worth noting that, as this merger was cleared just over one year ago, it is reasonable that more limited direct evidence is available on how this market has evolved since the merger compared to some of the less recent cases discussed below. However, a combination of in-depth stakeholder interviews as well as publicly available data has been sufficient to answer most of the research questions set out above.

2.3 Findings on entry/ expansion in Sheffield post-merger from our ex-post review

The CMA's conclusions and the evidence received during the case

2.3.1 The CMA concluded that recent entrants, Uber and Gett, were likely to expand further and compete closely with the merger parties for customers for whom scale, fast response times and geographic coverage are important. Uber and Gett may not be a credible alternative to the merged entity for customers that are reluctant to use apps for their bookings but, overall, particularly as these firms look to expand, they are likely to impose a significant constraint on the merger parties.[15]

[13] Final Report, para. 94.
[14] Final Report, para. 95.
[15] Final Report, para. 89.

2.3.2 The CMA's conclusion above was based on a range of evidence on the degree of competitive constraint that app-based operators like Uber and Gett would impose on the merger parties. In particular, the CMA assessed Uber against several service features like geographic coverage and response times, service quality and pricing, and noted that [✂]. The CMA also stated that Uber's low prices were suggestive of its strong competitive constraint, particularly as they were not associated with any lowering of service quality.[16] In addition, the CMA thought that Uber's strong brand recognition would have allowed it to overcome the typical barriers to switching which new entrants face due to the uncertainty surrounding their brand. The CMA's conclusions were further bolstered by Uber's historical success in the other UK cities it had entered.[17]

2.3.3 Similarly, the CMA examined the extent to which Gett would act as a competitive constraint on the parties. [✂].[18][✂].[19]

Our assessment

2.3.4 During the interview we conducted with SCT, it told us that Uber is reportedly completing around 20,000 jobs per week.[20] Assuming that the evidence gathered from SCT is an actual reflection of Uber's weekly number of jobs, our analysis shows growth of 286 per cent since the time when the merger was reviewed.[21] This is consistent with the anecdotal evidence received from Uber, who told us that its entry and expansion in Sheffield has followed a similar – although slightly flatter – trajectory to that seen in other UK cities.

2.3.5 In SCT's view, Uber's growth has mostly been driven by the provision of large monetary and non-monetary incentives (e.g., support through the process of obtaining a private hire driver's licence) to drivers and consumers to join its platform, accompanied by marketing campaigns. SCT thought that drivers are also attracted to Uber due to its dynamic surge pricing model, under which fares increase during peak periods, and the flexible charges that drivers need to pay to Uber. Finally, SCT told us that, in its view, Uber's uptake by consumers has also been driven by its strong brand recognition, reliability, and the ease of use of its app.

2.3.6 We sought to gather data on market shares for different suppliers to assess in more detail how Uber's expansion since the merger has compared relative to other suppliers, in particular SCT. SCC provided us with data on the number of licensed vehicles currently present in Sheffield. These data are not comparable with the market share data presented by the CMA in the Final Report as the CMA presented market shares by number of licensed drivers, and no further information on operators' current numbers of licensed drivers was available.[22] We cannot therefore compare pre-merger market shares across suppliers with current market shares. However the data we have received showed that

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[16] Final Report, para. 85.
[17] Final Report, para. 86.
[18] Final report, para. 88.
[19] *Ibid.*
[20] According to SCT, 20,000 jobs per week comes from a public statement SCT reported hearing at an SCC meeting.
[21] This growth estimate is based on the number of actual weekly rider trips submitted by Uber to the CMA at the time of the merger, i.e. [✂].
[22] According to the data received from SCC, the number of private hire drivers (i.e., [✂]) is higher than the number of private hire vehicles (i.e., [✂]) and hackney carriage vehicles (i.e., [✂]).

[✂].[23] Given that Uber entered the Sheffield market only four days after the merger was completed,[24] this provides further clear evidence of Uber's rapid expansion.

2.3.7 We also sought to assess whether Gett expanded as predicted by the CMA. Based on our in-depth interviews with SCC, SCT, and Uber, we understand that Gett does not currently operate in the Sheffield market. Uber told us that it is unclear whether Gett entered the market at all, SCC informed us that it had never heard of Gett, and SCT told us that it did not enter in Sheffield. This was confirmed by our own desk research that revealed that at the time of the merger Gett operated in 25 UK cities, whereas according to its website it is currently active in only nine UK cities.[25] We have not been able to find any evidence on the reasons for Gett's failure to meaningfully enter or expand in Sheffield.

2.3.8 Overall therefore, the planned expansion of Uber cited by the CMA in its clearance decision has largely materialised. Gett's expansion, however, did not occur as predicted.

2.3.9 In addition to assessing whether Uber and Gett have expanded as hypothesised by the CMA at the time of the merger case, we also examined whether there has been any other entry and/or expansion that was not identified by the CMA during the merger review that was timely and sufficient. We were told by SCT that very small scale operators have been providing services, but that this is a constant feature of the local taxi market, and has a very minimal impact on the larger providers.

2.4 Findings on timeliness and sufficiency of entry / expansion in Sheffield post-merger

2.4.1 In section 2.3, we sought to understand whether the entry / expansion which at the time of the merger the CMA considered likely to occur, has indeed materialised. In this section, instead, we set out the evidence on whether the expansion by Uber was timely and sufficient to prevent an SLC, as predicted by the CMA.

2.4.2 In relation to timeliness of entry by Uber, we note that as the merger was cleared just over a year ago, and given the evidence around the scale of Uber's expansion discussed in section 2.3, it seems correct to conclude that expansion by Uber was timely.[26]

2.4.3 In relation to sufficiency, we note that the evidence set out in section 2.3 also shows that Uber has already achieved some scale. We have also sought to assess how prices have changed since the merger, in order to provide some evidence to test whether the CMA was correct to conclude that Uber's expansion would be sufficient to prevent an SLC.

2.4.4 We compared fares per mile charged by SCT, Uber (without accounting for surcharges), and hackney transport services (day and night fares) before and after the merger using historical fares collected by the CMA at the time of the original merger case, and publicly available information on current fares.

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[23] [✂]
[24] Final Report, para. 24.
[25] See: https://gett.com/uk/ (last access 3rd March 2017).
[26] CMA Merger Guidelines, para. 5.8.11.

2.4.5 The inclusion of hackney transport services in our price comparison analysis is consistent with the CMA's conclusions at the time of the merger. The CMA included hackney transport services in the relevant product market,[27] considering that they were likely to be an alternative for customers whose journeys originate in the city centre and do not require pre-booking.[28]

2.4.6 Our analysis shows that, since the merger, fares charged by SCT have decreased for distances less than two miles and have remained unchanged for distances equal to or exceeding two miles. Table 1 shows the results of our analysis. This evidence is consistent with competitive constraints on SCT not having reduced following the merger. We note that Uber's published fares have increased since the time of the acquisition but the prices actually charged for an Uber vehicle also depend on surge pricing and we have no information on how that may have developed since the merger. Hackney transport services fares have also increased, but we have not been able to find any evidence on the reasons why these prices might have increased.

Table 1 – Change in prices since the merger

Sheffield City Taxis	Uber	Hackney transport services (day and night fares)
• Fares for distances < 2 miles lowered (by £1.20, from £5.00 to £3.80) • Fares for distances ≥ 2 miles not changed	• Fares have increased (by between £0.05 to £2.75 depending on distance)	• Fares for distances < 1 mile not changed • Fares for distances 1 to 27 miles increased (between £0.20 and £0.90 depending on distance) • Fares for distances > 27 have decreased (by £0.10)

Sources: KPMG analysis based on historic fares received from the CMA and current fares sourced from http://www.citytaxis.com/fares/ for SCT, https://www.uber.com/en-GB/fare-estimate/ for Uber (manually selecting two postcodes in Sheffield to obtain a fare estimate), https://www.sheffield.gov.uk/business-economy/licensing/general-licensing/taxi-licensing.html (Hackney Carriage Fares Chart 2016.pdf) for Hackney Cabs.

2.4.7 Although we have not performed a full review of the impact of the merger and Uber's expansion on SCT's output, the evidence suggests that their output has not contracted. Specifically, SCT told us that it had increased its number of licensed drivers, and that its number of journeys had not noticeably declined.[29] We were also told by SCT that it is currently developing an app in order to match Uber's app-based offering. This is consistent with the merger not being anti-competitive, and with SCT competing against Uber (and other remaining operators).

2.4.8 Thus, while we have not done a complete assessment of competition following the merger (for example, in relation to quality) the evidence gathered is consistent with the CMA being right to conclude that expansion would be timely and sufficient to replace the loss of competitive constraint from the merger.

[27] Final Report, para. 49.
[28] Final Report, para. 82.
[29] In particular, SCC told us that the merger has only resulted in SCT's increased market share (see footnote 23 for current market shares) but that there has been no increase in prices charged or deterioration in the quality of service following the merger.

2.5 Findings on the impact of regulation

2.5.1 As noted in paragraph 2.1.5, the CMA concluded that the Deregulation Act might facilitate the expansion of private hire operators across licensing areas, including in Sheffield. However, noting conflicting evidence it received from main and third parties on the impact of the Deregulation Act,[30] overall, the CMA was unclear whether this effect would be significant and the extent to which it would increase competition in Sheffield. For this reason, the CMA did not place much weight on new competition arising in Sheffield from operators based outside Sheffield as a result of the Deregulation Act.[31]

2.5.2 We sought to assess the CMA's conclusion above on the impact of the Deregulation Act on competition during our in-depth interviews with a number of key stakeholders. We note that:

- The CMA had received some evidence that Veezu would be able to enter the market following the Deregulation Act, but Veezu told us that this entry has not occurred.
- SCC told us that the Deregulation Act has largely facilitated the operation of vehicles licensed by authorities other than SCC.[32]
- SCT told us that the timing of the Deregulation Act was advantageous for Uber as it allowed it to source drivers from outside Sheffield.

2.5.3 In conclusion, based on the evidence above and mindful of the fact that this is a fairly recent case and therefore less evidence has been produced on how this market has evolved since the merger, it is difficult to conclude whether the Deregulation Act has facilitated entry. In fact, there is evidence suggesting that it seems to have helped Uber's expansion and allowed other drivers to come from other cities. However, we have also received evidence that the specific entry flagged by the merger parties at the time of the case (i.e., by Veezu) did not materialise.

2.5.4 We have also considered the role of SCC as the local licensing authority. In September 2016, around one year after the merger was cleared by the CMA, SCC proposed a number of local regulatory changes. These included:

- prohibiting drivers from working for more than one operator;
- ensuring that private hire operators have the ability to take bookings up to seven days in advance;
- ensuring that passengers could speak to someone other than the driver in the event of a problem, and that the licensing authority could speak to someone at the operator at all times of operation; and

[30] The CMA noted the conflicting evidence it received on the likely impact of the Deregulation Act from the main parties and third parties. See Final Report, paras. 92-93. For instance, while the main parties were of the view that the Deregulation Act would result in greater competition from operators in immediately adjacent geographic areas, e.g., Rotherham, Barnsley, Chesterfield and North Derbyshire, and from national private hire operators such as Addison Lee and Veezu, a third party did not consider the act relevant for its expansion plans.

[31] Final Report, para. 94.

[32] In particular, SCC told us that there are currently 400 vehicles licensed in Rossendale, 130 licensed in North East Derbyshire, 100 licensed in Bolsover, 50 licensed by Transport for London, 30 licensed in Wakefield and 12 licensed in Leeds that are currently operating in Sheffield. Further, 400 such vehicles are operated by Uber drivers alone. However, it is not clear whether vehicles coming from other areas work for one of the existing firms or other firms operating in Sheffield.

- a requirement for taxi operators to maintain office premises and for these to be staffed at all times the business is open.

2.5.5 These proposals were put out to consultation, during which process, Uber opposed the changes. Uber also notified the CMA of the proposed changes, and the CMA wrote a letter to SCC highlighting its concerns that some of the proposed changes could harm competition in Sheffield. The proposed regulatory changes were later withdrawn in full.[33]

2.5.6 We understand from Uber that the consulted-upon local regulatory changes would have had a significant impact on its ability to compete. In particular, Uber told us that it likely would have exited Sheffield if these had gone ahead. It therefore appears from our review that the CMA's predictions about entry and expansion would likely not have been realised had this regulation proceeded. We note that there is no evidence from the information available that the CMA considered the potential for local regulation in Sheffield to change, in its assessment of the likelihood of entry and expansion. During our in-depth interview with Uber, we understood that similar regulatory changes had been discussed in London prior to the Sheffield City Taxis/ Mercury Taxis merger, and that there were other towns and cities where regulation had hampered Uber's ability to enter, expand and compete. Before the CMA cleared the merger, it became aware of the regulatory changes on which Transport for London was consulting and expressed concerns that "*some of the proposals […] would impose regulation that excessively and unnecessarily weakens competition, to the overall detriment of users of taxi and private hire services in London*", though did not refer to these issues in this case.[34]

2.6 The impact of Uber in different local markets

2.6.1 While we have set out above the significant growth of Uber in Sheffield, and the competitive constraint this appears to have imposed on the merger parties, it is worth noting that we have received some evidence that Uber's growth in Sheffield was somewhat lower than in some other UK cities.

2.6.2 [✂].[35] In both SCT's and Uber's view, this has primarily been due to greater market concentration and the presence of a strong incumbent (SCT) in the Sheffield market. Uber also flagged the length of the licencing process as an additional factor.

2.7 Sheffield City Taxis/ Mercury Taxis: conclusions from the ex-post analysis

2.7.1 In this Phase I case, the CMA concluded that expansion by Uber and Gett would likely be sufficient to prevent a realistic prospect of an SLC.

2.7.2 We have found that while Gett has not expanded in (and has either exited or never entered in the first place) the Sheffield market, Uber has expanded significantly in the year following the merger in line with the CMA's prediction around the likelihood of this expansion. The evidence points to this expansion having been timely and sufficient to

[33] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556330/lonnia-sheffield-city-council-28-09-16.pdf.
[34] See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481450/CMA_response_to_TfL.pdf
[35] Please see file "2015 Sheffield Forecast and Targets" submitted by Uber to the CMA at the time of the merger.

replace any loss of competition that arose from the merger. Our analysis has shown that, since the merger, fares charged by SCT have decreased or remained unchanged. Anecdotal evidence also suggests that since the merger, SCT has increased its number of licensed drivers, that its number of journeys has not noticeably declined, and that it is currently developing an app in order to better compete with Uber. This is consistent with competitive constraints on SCT not having reduced following the merger, and with SCT competing strongly against Uber.

2.7.3 The CMA considered the potential for the Deregulation Act to further reduce barriers to entry / expansion. The anecdotal evidence we have reviewed is consistent with the Deregulation Act reducing barriers to entry. This included evidence suggesting that the Deregulation Act seems to have helped Uber's expansion and allowed other drivers to come from other cities. However, as with the CMA's conclusion at the time of the merger, the evidence we have gathered is not sufficient to draw a firm conclusion on how significant a reduction in barriers to entry this represents due to the relatively short amount of time elapsed between our ex-post evaluation and when the Deregulation Act has come into force.

2.7.4 Finally, there is no evidence to suggest that the CMA considered the potential for local regulation to act as a barrier to entry/expansion. In this case, local regulation was proposed which might have limited Uber's (and potential other operators') ability to expand, and evidence was available to the CMA that similar regulation was being proposed in other areas (in particular London). While this regulation was ultimately dropped by the local council (in part following intervention by the CMA), our review suggests that it would have had a significant impact had it gone ahead, and would have meant that the CMA's predictions were not realised.

3 CooperVision/ Sauflon

3.1 Summary of the CMA's decision

3.1.1 In August 2014, CooperVision acquired the entire issued share capital of Sauflon Pharmaceuticals Limited. The CMA reviewed this transaction and cleared it at Phase I in December 2014.

3.1.2 The parties were found to overlap in the manufacture and distribution to retailers of soft contact lenses and contact lens solution.[36] The CMA segmented the market by the material of the lens (i.e., hydrogel vs silicone hydrogel), modality (i.e., daily disposable (DD), soft frequent replacement products (FRP), soft traditional) and type (i.e., spherical, toric and multifocal), and assessed the merger with separate product "frames of reference". In particular, the CMA defined nine frames of reference for contact lenses, namely DD spheres, DD torics, DD multifocals, FRP spheres, FRP torics, FRP multifocals, soft traditional spheres, soft traditional torics, and soft traditional multifocals. Each of the DD and FRP frames of reference were further segmented into branded and private label

[36] Final Report, para. 25.

products.[37] In addition, the CMA also defined a separate product market for multi-purpose contact lens solution as the latter was deemed different from other lens care products.[38]

3.1.3 In relation to multipurpose contact lens solutions, the CMA noted that the merger resulted in a very small market share increment and, therefore, did not consider that the merger resulted in a realistic prospect of an SLC. As such, it did not need to consider the role played by countervailing factors like market entry and expansion.[39] In what follows, therefore, we will focus solely on the nine markets for soft contact lenses.

3.1.4 The CMA defined the geographic frame of reference to include the UK only but also considered the competitive constraint posed by suppliers outside of the UK, particularly for private label products, in its competitive assessment.[40]

3.1.5 The CMA noted the parties' high combined and incremental market share in i) private label DD and FRP products – both of which include torics, spheres and multifocals, and ii) branded and private label DD multifocal products. Though the CMA recognised that high market shares are not necessarily indicative of market power, nevertheless, it decided to assess competition in the segments above in more detail.

3.1.6 The CMA concluded that the merger was unlikely to result in a SLC in the supply of private label products for all types of DD and FRP lenses due to the presence of alternative strong players in the market (e.g., Alcon), buyer power of large retailers who purchase private labels from suppliers outside the UK, and lack of concerns from customers of private label products regarding the merger.[41]

3.1.7 As for the supply of DD multifocals (branded products only), the CMA could not rule out a realistic prospect of a SLC due to the limited competitive constraint posed by alternative suppliers, and decided to examine whether entry or expansion could act as a countervailing factor.[42] The CMA noted that Bausch and Lomb ("B&L") had already entered the market about seven months prior to its final decision. The CMA also noted that entry by Johnson & Johnson ("J&J") was expected to occur [✂]. In the CMA's view, these examples of entry and expansion, together with entry by smaller suppliers such as [✂] and [✂] would be sufficient to mitigate the realistic prospect of a SLC.[43]

3.2 Research questions and evidence gathering

3.2.1 In light of the CMA's conclusions above, we have focused on the market for DD multifocals (branded products only) segment. Our ex-post evaluation sought to assess a number of research questions. In particular, we examined whether:

- Entry by J&J and smaller suppliers like [✂], [✂] and expansion by B&L occurred? If entry occurred, we sought to assess the rationale for/ driver of that entry. And if entry failed to occur, we sought to assess why not.

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[37] Final Report, para. 65-66.
[38] Final Report, para. 68-69.
[39] Final Report, para. 143.
[40] Final Report, para. 74.
[41] Final Report, para. 112-113.
[42] Final Report, para. 121.
[43] Final Report, para. 134.

- Available evidence suggests that the entry and/or expansion was timely and sufficient to replace any competition lost as a result of the merger?
- Any other entry and/or expansion occurred that was not identified by the CMA in the Final Report? If yes, by what firm(s) and what was the driver of such entry/ expansion?
- The market was correctly defined in the context of entry and/or expansion? For example, did international suppliers play a greater role than envisaged by the CMA in its Final Report?

3.2.2 To conduct our assessment we collected a range of evidence. We have reviewed the evidence contained in the documents gathered by the CMA at the time of the merger review. We have conducted an in-depth interview with CooperVision. We also reviewed industry reports from Euromonitor International[44] and Mintel, and performed desktop research. Finally, we collected quantitative data on the value and volume of sales of contact lenses in the UK from Euromonitor International.

3.2.3 This merger was cleared just over two years ago, so it is reasonable that more limited evidence is available on how this market has evolved since the merger, compared to the less recent cases discussed below. In addition, we note that some of the evidence we gathered on this market is not sufficiently granular to allow us to directly assess the DD multifocal segment. We sought to gather evidence directly from stakeholders, which would provide more direct evidence on the market of interest, including existing competitors, new entrants and contact lens retailers. However, it was difficult to obtain interviews with many of the key market players. This issue has been taken into account when drawing our conclusions on this case and extrapolating any case-specific findings to make more general recommendations.

3.3 Findings on entry/ expansion

The CMA's conclusions and the evidence received during the case

3.3.1 As mentioned in paragraph 3.1.7, the CMA noted that B&L had already launched a DD multifocal product, and that J&J's imminent entry in this segment would be both timely and likely as it was expected to occur [✂]. The CMA was also of the view that entry by [✂].[45]

3.3.2 The CC's conclusions above were based on [✂]. In addition, the CMA noted that B&L had launched its DD multifocal product in June 2014 and [✂].[46]

3.3.3 The CMA received a large body of evidence suggesting that entry and/or expansion other than that identified in its decision was unlikely. This included, for instance, submissions that suggested that: limited supply-side substitution and capacity constraints would limit the possibility of expansion; that the combined market share of the merger parties and economies of scale would enable them to offer prices that competitors would be unable

[44] Euromonitor International noted that this research was conducted in the spring of 2016, and that new research will be made available in the spring of 2017.
[45] Final Report, paras. 127-128.
[46] Final Report, paras. 126-127.

to match; and that capital and operational costs, critical order volumes, regulatory barriers and small size of the market act as potential barriers to entry and expansion.

3.3.4 The CMA did, however, receive some evidence to the contrary. In particular, the merger parties submitted that they competed with a number of smaller but emerging competitors including Pegavision, St. Shine Optical, and mark'ennovy.[✂].

Our assessment

3.3.5 In relation to likelihood of entry, we have collected a range of evidence to test whether entry by J&J and smaller suppliers like [✂], [✂], and expansion by B&L occurred since the merger.

3.3.6 We analysed market share data gathered by Euromonitor International. This data presented information for DD lenses overall (and other main types of lenses) and did not present information specifically for DD multifocal lenses. According to Euromonitor International, DD multifocal represents the smallest market within DD lenses (see Appendix 1), and in 2016, these accounted for around 9 per cent of the broader DD segment (or £36 million).

3.3.7 Inspection of market share data from Euromonitor International indicates that DD lenses _as a whole_ have grown in both volume and value since the merger, registering growth rates of 9.0 per cent and 9.4 per cent respectively (see Appendix 1). We also found that Valeant Pharmaceuticals, who acquired B&L in August 2013,[47] has displayed the most significant growth in the share of supply of DD lenses since the merger, while the combined market share of the merger parties has largely remained the same (see Appendix 1). The same exercise has been done for market shares, by brand, which revealed that the combined market share of the merger parties has increased, and J&J's Acuvue brand has displayed the most significant growth (see Appendix 1).

3.3.8 According to qualitative evidence we gathered from Euromonitor International, Vistakon (J&J) – which was expected to enter the DD multifocal market – has retained its leading position due to its Acuvue brand, and B&L is investing in R&D to position themselves with regard to sales and innovation.[48]

3.3.9 In discussions with CooperVision, they told us that J&J has a strong presence in the premium hydrogel segment in the DD multifocals market, and that J&J's multifocal product is its main competitor. CooperVision also referred to Alcon as a strong competitor in this segment. However, CooperVision was of the view that B&L had not witnessed much expansion and was a less significant player in the UK market.

3.3.10 Finally, we were told by CooperVision that Safilens entered the market and Visco Vision is working with Specsavers to expand its private labels business.

3.3.11 Our desktop research seems to confirm that J&J currently supplies a DD multifocal product.[49] We also found that B&L continues to supply the same DD multifocal product

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[47] http://www.valeant.com/about/acquisition-faqs.
[48] Passport, Contact Lenses in the United Kingdom, Euromonitor International, July 2016, pages 1, 3.
[49] According to J&J's website, its DD multifocal product is called 1-DAY ACUVUE MOIST MULTIFOCAL. See: https://www.jnjvisioncare.co.uk/multifocal (last access on 28th February 2017).

provided at the time of the merger.[50] As for [✂] and [✂], it is unclear whether they supply DD multifocal products in the UK. In the case of [✂].[51]

3.3.12 Overall, therefore, while the evidence available does not allow us to accurately measure the growth of J&J, B&L, [✂] and [✂] in the DD multifocal segment, there is nothing to suggest that the CMA was wrong in its assessment of the likelihood of their entry and expansion.

3.3.13 In addition to examining entry by J&J and smaller players and expansion by B&L, we also sought to assess whether there had been any timely and sufficient entry by any other firms that the CMA had not anticipated at the time of the merger review. To the extent that such entry/ expansion was from international suppliers, we also examined whether the CMA's market definition, that was national in scope, was appropriate.

3.3.14 The only evidence we gathered on this point comes from our in-depth interview with CooperVision, during which we were told that a number of smaller suppliers have made an effort to enter or expand their presence in the market, though we do not have any evidence on the scale of these suppliers. These include:

- Clearlab, a Korean company, which has entered the market drawing from the pool of employees who left the merged firm after the transaction between CooperVision and Sauflon. We were also told that it has had limited success due to some service and supply issues.
- Pegavision, which has expanded its activities in the UK.
- Some players from the electronics market like Pegtronic and BenQ that are also looking to enter the market.

3.3.15 While we checked and found that there is no publicly available information which is inconsistent with the evidence received from CooperVision, we have not been able to corroborate it.

3.4 Findings on timeliness and sufficiency of entry / expansion

3.4.1 In section 3.3 above, we sought to understand whether the entry / expansion, which at the time of the merger the CMA considered likely to occur, has indeed materialised. In this section, instead, we set out the evidence on whether such entry that has occurred has been timely and sufficient to prevent an SLC.

The CMA's conclusions and the evidence received during the case

3.4.2 The CMA concluded that the entry and expansion discussed above was likely to be timely and sufficient. It concluded that entry by J&J and B&L, in particular, but also the ability of other smaller suppliers to enter (such as [✂] and [✂]) will be timely and sufficient to mitigate the realistic prospect of an SLC in DD multifocal.

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[50] [✂]
[51] [✂]

3.4.3 This was based on evidence it received relating to [✂].[52][✂].[53]However, some third party responses suggested that B&L was a much weaker supplier than the merger parties, Alcon, and J&J.[54] [✂].

Our assessment

3.4.4 The data we gathered on this market is not sufficiently granular to allow us to directly assess the impact of the merger on prices for DD multifocal products, and we have not been able to obtain data on other aspects such as quality. However, we set out below the information we have obtained that is relevant to the assessment of our research questions.

3.4.5 In relation to timeliness of entry and expansion, we note that the merger was cleared by the CMA in January 2015, therefore the two-year window under which entry and expansion is usually deemed timely has just lapsed. The limited evidence discussed in section 3.3 indicates that the entry and expansion hypothesised by the CMA has already materialised, and as such that it was likely to have been timely.

3.4.6 Our assessment of the sufficiency of entry/ expansion focuses primarily on the analysis of how total volumes and values for DD, FRP, and conventional lenses, gathered from Euromonitor International, have evolved since the merger was cleared. We use the same data from Euromonitor International, as discussed in paragraph 3.3.6, to look at how prices and volumes sold of contact lenses have changed since the merger. As noted above, this data looks only at the DD lens segment overall, and does not provide information specifically on DD multifocal lenses (a small proportion of the overall DD lens market).

3.4.7 We constructed a measure of average price for each product modality by dividing total sales in value by total sales in volumes. We found that the average prices for DD, FRP and conventional lenses have increased since the merger. The increase for DD lenses, however, was the lowest (0.4 per cent) compared to the price increase observed for FRP lenses (1.1 per cent) and conventional lenses (9.1 per cent). Full details of this analysis are discussed in Appendix 1.

3.4.8 It is unclear whether these price increases were driven by increases in the cost of raw materials, or were related to other factors such as competition in the market. It is also worth stressing that the average price measure we constructed includes different product types (i.e., spherical, toric and multifocal) and materials (i.e., hydrogel and silicone hydrogel). As such, we are not in a position to draw a firm conclusion on the price increase discussed above. However, there is no evidence to suggest that prices for DD multifocals have changed in any way that is different to prices in other segments which the CMA concluded would not be affected by the merger, without relying on a likelihood of entry and expansion.

[52] Final report, para. 130.
[53] Final Report, para. 133.
[54] Final Report, para. 131.

3.5 CooperVision/ Sauflon: conclusions from the ex-post analysis

3.5.1 In this Phase I decision, the CMA concluded that entry by a number of suppliers into the DD multifocal market would be timely and sufficient to offset an SLC that might otherwise have arisen.

3.5.2 It has been difficult to obtain evidence that is specific to the niche market assessed by the CMA. However, the evidence that we have gathered from a conversation with CooperVision suggests that the entry cited by the CMA, namely by J&J and B&L, has materialised as the CMA expected. Desktop research gathered seem to corroborate the findings above.

3.5.3 Anecdotal evidence from CooperVision, supported by desktop research where possible, also suggests that [✂] and [✂], the smaller entrants named by the CMA, have entered the market and are trying to expand their private labels business respectively.

3.5.4 In relation to prices, we again have not been able to assess how prices for the particular niche market in question have changed following the merger. Although the evidence seems to suggest that prices have increased since the merger, we have not been able to assess the specific DD multifocal segment. However, there is no evidence of prices for DD multifocal lenses having increased in any way which is out of line with other types of lenses.

4 Ballyclare/ LHD

4.1 Summary of the CMA's decision

4.1.1 Ballyclare acquired the entire issued share capital of LHD UK in January 2014. The merger was cleared by the CMA unconditionally in October 2014 after a Phase I review.

4.1.2 The parties were found to overlap in the supply of firefighting personal protective equipment (PPE).[55] Contracts for supplying PPE are typically awarded on the basis of "product supply only" (i.e. supply of equipment only) and "fully managed supply" which includes, in addition to the supply of PPE, ancillary services like laundry and maintenance. The CMA defined these two different types of contract as two separate relevant markets. In relation to the geographic frame of reference, the CMA was of the view that it was national in scope, though potential constraints from suppliers active in the Republic of Ireland and, to a lesser extent, the rest of Europe were also considered.

4.1.3 In the product supply-only market, the CMA was of the view that the competitive constraint exerted by alternative suppliers was sufficient to restrict the ability of the merged firm to raise prices after the merger.

4.1.4 In the fully managed contracts market, the CMA found that there were limited competitive constraints posed by alternative suppliers and as a result the CMA examined

[55] This includes trousers, tunics, hoods, boots, gloves, and other garments.

the extent to which entry and expansion may act as a countervailing factor. It concluded that expansion by Hunter Apparel ("Hunter"), which had recently won the Dublin Fire brigade contract and had qualified to be on the Yorkshire Purchasing Organisation ("YPO") framework was likely to prevent a realistic prospect of an SLC arising from the merger. The CMA also considered other potential entrants, but given its conclusion about the likely constraint from Hunter, found it unnecessary to conclude on the likelihood of entry by other suppliers.

4.1.5 In the remainder of this section, we focus our ex-post evaluation of the merger with respect to the supply of fully managed contracts only.

4.2 Research questions and evidence gathering

4.2.1 In light of the CMA's conclusions above, our ex-post evaluation sought to assess a number of research questions. In particular, we examined whether:

- Hunter participated in competitive tenders against Ballyclare after the merger to supply fully managed contracts for firefighting PPE? If so, what were the drivers of participation? If not, why?
- The available evidence suggests that Hunter's expected participation in tenders is sufficient to constrain Ballyclare's ability to raise prices post-merger in fully managed contracts of firefighting PPE?
- Any other entry/ expansion occurred that was not identified by the CMA in the Final Report? If yes, by what firm(s) and what was the driver of such entry/ expansion?

4.2.2 To conduct our assessment, we have collected a range of evidence. We have reviewed the evidence contained in the documents gathered by the CMA at the time of the merger review. We have conducted in-depth interviews with Hunter and the Kent Fire and Rescue Service. Finally, we gathered data directly available from a number of Fire and Rescue Service authorities' websites.

4.2.3 There is limited public information available about this market. In addition, given the relatively long term contracts in this market, alongside the fact that the merger was cleared only two and a half years ago, it is more difficult to assess trends about the development of the market since the merger. We sought to gather evidence directly from stakeholders, including from the merger parties, existing competitors, and a broad range of customers. However, we were unable to obtain information from the merger parties themselves, though we did conduct detailed interviews with Hunter and with one purchaser of PPE. The limitations on the evidence we have gathered have been taken into account when drawing our conclusions on this case and extrapolating any case-specific findings to make more general recommendations for the CMA.

4.3 Findings on entry/ expansion and competition

The CMA's conclusions and the evidence received during the case

4.3.1 As described in paragraph 4.1.4 above, the CMA concluded that Hunter was likely to compete for fully managed contracts, and that its expansion was likely to be timely and sufficient to prevent a realistic prospect of a SLC in the supply of PPE through fully managed contracts.[56]

4.3.2 [✂]. [57][✂].

Our assessment

4.3.3 As set out above, relatively limited information was available on this case, but we set out below the information we have obtained that is relevant to the assessment of our research questions.

4.3.4 Hunter told us that it has been competing for fully managed contracts against Ballyclare since the merger.

4.3.5 However, it is unclear the extent to which this competition with Hunter has exerted a competitive constraint on Ballyclare. Hunter told us that it has been unable to win any contracts, and that in some instances it has chosen not to bid for a contract because it considered the likelihood of a win to be low. We have reviewed the monthly and quarterly spend reports, as well as contract registers, for a number of Fire and Rescue services.[58] We were unable to find any instance of Hunter having won a fully managed contract with any of the rescue authorities, consistent with what Hunter told us.

4.3.6 In addition, Hunter told us that being on the YPO framework has not facilitated its attempts at expansion and it has not won any fully managed PPE contracts via the framework. Similarly, Hunter thought that winning the Dublin contract has not helped it to win UK contracts, as it is not a credential that can be used to market its capabilities in the UK, due to significant differences (e.g., in contractual terms) in Ireland. [✂]. Finally, Hunter noted that there is some customer inertia in switching away from incumbent providers as fully managed PPE contracts are typically very lengthy and involve a comprehensive service platform that customers often get adapted to over time.

4.3.7 On the other hand, the Kent FRS told us that, together with Ballyclare and Bristol Uniforms, Hunter is one of the three main contractors in the market. However, this is only one of the many local fire and rescue services purchasing these fully managed contracts, and so it is difficult to draw any general conclusions from this statement.

4.3.8 As the CMA was of the view that Hunter's expansion was sufficiently timely, likely and sufficient so as to prevent a realistic prospect of a SLC in the supply of PPE through fully managed contracts, it did not consider it necessary to conclude with respect to the other possible entrants. Based on the evidence gathered, we have been unable to identify any other instances of entry.

4.3.9 As Hunter's expansion has not materialised as expected, we tried to examine the impact this has had on price outcomes.

[56] Final Report, para. 5.
[57] Final report, para. 93.
[58] These include Kent FRS, Northamptonshire FRS, Cambridgeshire FRS, Surrey FRS, Oxfordshire FRS, Essex FRS, Avon FRS, Wiltshire and Dorset FRS, Hereford and Worcester FRS, and Merseyside FRS, which the CMA engaged with at the time of the merger case.

4.3.10 Hunter told us that prices have increased since the merger. In its view, this has been primarily due to the limited competitive constraints on Ballyclare. However, we have been unable to find any concrete evidence to corroborate the anecdotal evidence above. As such, we are not in a position to conclude on how price outcomes have changed after the merger.

4.4 Ballyclare/ LHD: conclusions from the ex-post analysis

4.4.1 In this Phase I decision, the CMA concluded that timely and sufficient entry by Hunter – a supplier in a closely related market segment – was sufficient to prevent a realistic prospect of an SLC.

4.4.2 Consistent with the CMA's conclusions, the evidence we received from Hunter (as well as one local fire service) suggests that Hunter has begun competing in the particular market assessed by the CMA.

4.4.3 However, there is limited evidence on the strength of competition from Hunter following the clearance of the transaction. Our review of the monthly and quarterly spend reports, as well as contract registers for a number of Fire and Rescue services, has not identified any instance of Hunter having won a fully managed contract with any of the fire and rescue service authorities, which is consistent with what Hunter told us. [✂], Hunter cited a number of factors which in its view meant its ability to compete was limited.

4.4.4 In this case, there is very little other information available to test Hunter's claims, nor evidence on how prices have developed since the merger to provide some evidence on how competitive constraints may have evolved. According to Hunter, prices have increased since the merger, but we have been unable to find any concrete evidence to corroborate this.

5 Cineworld/ City Screen

5.1 Summary of the CC's decision

5.1.1 Cineworld acquired the entire share capital of City Screen Limited in December 2012. The transaction included the 21 cinemas operated by the latter, principally under its Picturehouse brand. In April 2013, the completed transaction was to Phase II, at the end of which – in October 2013 – the transaction was cleared with remedies.

5.1.2 The CC defined two separate product markets involving i) the supply of cinema exhibition services and ii) the supply of cinema programming services.[59] We focus solely on the market for the supply of cinema exhibition services.[60] In assessing this market, the CC focussed on catchment areas of the parties' cinemas, defined by 20 minute drive-time

[59] Final Report, para 5.21.
[60] For the supply of cinema programming services, the CC found no evidence to suggest that the merger would give rise to an SLC.

isochrones in most local areas, with the exception of areas where this approach was revealed as inappropriate by its customer survey.[61]

5.1.3 Based on results of its fascia count analysis within the various catchment areas and the list of cinemas shortlisted by the OFT for a more in depth analysis, the CC identified nine overlap local areas that it thought merited further analysis. In three of these areas, namely Aberdeen, Bury St Edmunds and Cambridge, the CC was of the view that timely entry was unlikely to occur, and that the merger was likely to result in a SLC. [62,63] In these overlap local areas the CC required the parties to divest one cinema for the merger to be cleared.[64]

5.1.4 Conversely, the CC was of the view that an SLC was unlikely to arise in Brighton, Clapham, Edinburgh, Southampton,[65] Greenwich and Stratford.[66] For Greenwich and Stratford, the CC concluded that strong competitive constraints posed by other existing competitors in these areas would prevent an SLC.

5.1.5 In Brighton, Clapham, Edinburgh and Southampton, the CC concluded that an SLC was unlikely to occur, at least in part as a result of prospective entry. The weight that the CC put on prospective entry varied across these four areas. In Brighton and Southampton, the evidence on entry was part of the evidence the CC referred to in reaching its decision to clear the merger unconditionally in those areas.[67] In Clapham and Edinburgh, the CC appeared to have relied less on entry given the strength of the evidence on existing competitive constraints.[68]

5.1.6 Finally, the CC concluded that expansion by an existing cinema exhibitor into a new location was more likely than entry by a new cinema exhibitor given the potential to achieve economies of scale through the operation of more than one cinema and the additional barriers to entry faced by a new supplier of cinema exhibition services.[69]

5.2 Research questions and evidence gathering

5.2.1 In light of the CC's conclusions above, our ex-post evaluation sought to assess a number of research questions. In particular, we examined whether:

- In Brighton, Southampton, Edinburgh and Clapham where no SLC was found, entry occurred in line with the CC's predictions?[70] In particular, in Brighton and Southampton where more weight was put on the likelihood of entry, has entry occurred as predicted by the CC?

[61] Final Report, para 5.18.
[62] Final Report, paras. 6.68, 6.82, 6.93.
[63] The CC's SLC decision was also based on its analysis of the closeness of competition between the parties, the extent to which existing competitors pose a competitive constraint and a GUPPI analysis of the parties' incentive to raise prices after the merger, as noted in section 5.3 below.
[64] Final Report, para. 20.
[65] Final Report, paras. 6.75, 6.103, 6.109, 6.122.
[66] Final Report, paras. 6.116, 6.126.
[67] Final Report, paras. 6.74 and 6.122.
[68] Final Report, paras. 6.102 and 6.108.
[69] Final Report, Appendix E, para. 50.
[70] Greenwich and Stratford (London) have not been considered in our assessment as in those two local areas the CC made no considerations around market entry and expansion.

- Entry, other than through the purchase of divested assets, occurred in Aberdeen, Bury St Edmunds, and Cambridge where an SLC was identified by the CC at the time of the merger review (and entry was thought unlikely)? Should entry and/or expansion be identified, we also sought to consider its drivers. Conversely, if entry and/or expansion did not occur, we sought to understand why that was the case.
- Any other entry and/or expansion that was not identified by the CC occurred, and if so, what was the driver for such entry / expansion?
- Expansion by existing cinema exhibitors into a new location occurred more frequently, across the UK market (not just the overlap local areas considered in the merger decision), than entry by a new exhibitor due to economies of scale in the operation of cinemas?

5.2.2 To conduct our assessment we have collected a range of evidence. We have reviewed the evidence contained in the documents gathered by the CC at the time of the merger review. We reviewed industry reports from the British Film Institute (BFI) and Mintel, and performed desktop research. We conducted in-depth interviews with significant market players, namely Odeon & UCI Cinemas and Cineworld. Finally, we collected quantitative data on market shares at the local and national levels, using BFI data, and on prices, obtaining information directly from cinema operators' websites.

5.2.3 It is worth mentioning that, in addition to the companies named above, we sought to gather further evidence from a broader range of stakeholders, including other competitors and alleged new entrants, but we were not able to get any interviews with these other operators.

5.3 Findings on entry and exit post-merger in overlap local areas

5.3.1 As mentioned in paragraph 5.1.3 above, in Southampton, Edinburgh, Clapham and Brighton ("non-SLC areas") the CC did not find an SLC, at least in part on the basis of prospective entry, and did not require divestments as a condition of clearing the transaction. On the other hand, in Aberdeen, Bury St Edmunds and Cambridge ("SLC areas"), the CC was of the view that the merger was likely to result in a SLC, and required divestments. In this section, we begin by discussing the CC's findings and the results of our research on entry and expansion in the non-SLC areas, and then do likewise for the SLC areas.

5.3.2 In this section, we will focus exclusively on market entry. Our findings on market expansion (and, to some extent, market exit) are described in section 5.4 below. Our analysis has included pre- and post-merger market shares for all overlap local areas, which are presented in full in Appendix 2, and referred to below.

Non-SLC areas

5.3.3 As set out above, the CC was of the view that an SLC was unlikely to arise in Southampton, Edinburgh, Clapham, and Brighton, at least in part, as a result of prospective entry.[71] As noted in paragraph 5.1.5, in Brighton and Southampton, the

[71] Final Report, paras. 6.74–6.75, 6.102–6.103, 6.108–6.109 and 6.122.

evidence on entry was part of the evidence the CC referred to in reaching its decision to clear the merger unconditionally,[72] while in Clapham and Edinburgh, the CC appeared to have relied less on entry in clearing the transaction.[73]

5.3.4 In what follows, we set out the basis on which the CC made its conclusions at the time of the merger, and the evidence we have gathered about how the overlap local areas have developed since the transaction was cleared, for each overlap local area in turn.

5.3.5 In Brighton, the CC concluded that the merger was unlikely to result in an SLC based on the existing competitive constraint posed by Odeon, as well as evidence it received on prospective entry in the city centre. Specifically, the CC concluded that entry would be likely to occur and would be sufficient in scope and timeliness to exercise a competitive constraint on the behaviour of the parties.[74]

5.3.6 The CC cited the development of an eight-screen multiplex cinema on the site of the Hippodrome in the city centre, scheduled to open in September 2016. Planning permission had not yet been received, though the developer submitted to the CC that it was confident that it would be received. The developer mentioned that Vue had been a catalyst for this development, [✂]. The CC's conclusions on likely entry were also bolstered by the merger parties' submission that Brighton was a destination city that could support an additional cinema.[75]

5.3.7 However, the CC also received evidence that the new development might not materialise. In particular, Brighton and Hove City Council was unable to give a definitive view on the likelihood that the cinema would be built and the developer also put the probability at 65 per cent. Further, Brighton and Hove City Council noted that there were likely to be objections from the Theatres Trust and the Regency Society. Other exhibitors like Odeon and Vue too were doubtful that the cinema would be built given the high costs of developing the site and the procedural formalities that still needed to be cleared.[76]

5.3.8 Our desktop research, corroborated by our discussion with Odeon & UCI Cinemas revealed that the plans for the new development cited by the CC in its merger decision fell apart. The reasons for its collapse are unclear. Odeon & UCI cited high costs as a possible explanation, and our desktop research indicated that the development had been sold to another landlord which did not proceed with the application.[77]

5.3.9 In conclusion, the entry cited by the CC as part of its clearance decision did not materialise.

5.3.10 In Southampton, the CC's conclusion that an SLC was unlikely was based on evidence pertaining to the probability and scale of timely entry in Southampton, as well as the strong competitive constraints posed by existing cinemas on the merger parties.[78]

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[72] Final Report, paras. 6.74 and 6.122.
[73] Final Report, paras. 6.102 and 6.108.
[74] Final Report, para. 6.74.
[75] Final Report, para 6.73.
[76] Final Report, para. 6.73.
[77] http://www.bbc.co.uk/news/uk-england-sussex-30781655 (last access on 09/02/2017).
[78] Final Report, para. 6.122.

5.3.11 Specifically, in respect of entry, the CC received evidence and noted in its final report that permission had been received to develop a brown-field site in Southampton for a ten-screen cinema operated by Showcase (subject to contract), likely to open by mid-2016. This estimated timescale for entry was conditional on detailed planning permission being obtained within 12 months. The CC also noted that it received evidence from Odeon stating that "*entry in Southampton was neither likely nor timely*".[79,80]

5.3.12 Our desktop research has found that the new development cited by the CC (operated by Showcase) opened in early February 2017. Although at the time of the merger the CC had been made aware by the developer that entry by Showcase was not going to take place before mid-2016, so almost three years from the merger, entry was further delayed to February 2017.[81] This is the only instance of entry since the merger.

5.3.13 In conclusion, while the entry cited by the CC as part of its clearance decision has materialised, this entry occurred approximately nine months later than the CC expected. This entry was outside of the two-year time frame stated in the CC's merger guidelines to assess timeliness of entry, though we recognise that this timeframe is varied on a case by case basis, and even on the CC's expected timeframe, this would have been the case.

5.3.14 In Edinburgh, the CC concluded that an SLC was unlikely[82] due to the competitive constraints from alternative cinemas already active at the time of the merger. The CC also noted evidence that Curzon was in advanced negotiations to open another cinema in the city (though the CC noted that there was some uncertainty around this entry).[83]

5.3.15 Desktop research, confirmed by our conversation with Odeon & UCI cinemas, found that entry by Curzon did not materialise.

5.3.16 We were told by Odeon & UCI Cinemas that they re-opened a cinema (that had closed in 2007) in an out of town Retail Park – which Odeon & UCI flagged at the time of the case.[84] This site, however, appears to be located more than 20 minutes away from Picturehouse Edinburgh and so, consistent with the CC's analysis at the time of the merger, is not included in our local market shares analysis presented in Appendix 2. We also understand that Everyman has plans to open a cinema in Edinburgh's city centre, though not until 2020.[85]

5.3.17 In conclusion, the entry referred to by the CC within the relevant catchment area did not materialise (though entry of a cinema, at the edge of the relevant catchment area, has occurred). As noted above, however, the CC's decision noted the uncertainty surrounding

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[79] In addition, the parties told the CC that there was an expectation that Odeon would close down within three to four years after the opening of the new cinema, but overall cinema capacity would still be higher than currently. The CC, however, considered that the timescale and likelihood of Odeon's exit were too uncertain to take it into account in our analysis.
[80] Final Report, para. 6.121.
[81] See: http://www.showcasecinemas.co.uk/locations/showcase-cinema-de-lux-southampton (last access on 09/02/2017).
[82] Final Report, para. 6.109.
[83] Final Report, para. 6.108.
[84] Final Report, Appendix G, para. 186.
[85] See http://www.ozseeker.net/2016/11/25/everyman-cinema-in-enlightened-edinburgh/?doing_wp_cron=1486633959.3561389446258544921875 (last access on 09/02/2017).

new entry, and also its clearance was based on its finding of competitive constraints posed by exhibitors active in the market at the time of the merger.[86]

5.3.18 In Clapham, the CC concluded that an SLC was unlikely based on evidence it received on consumers' willingness to travel and the number of alternative fascia available to consumers in case of a price rise following the merger.[87] In addition, the CC considered a submission by Curzon stating that it was planning to open a five-screen cinema in London Victoria by January 2014.

5.3.19 In this context, we note that Curzon submitted that planning permission had been obtained and full plans of this development were likely to be submitted in the 4-6 weeks after publication of the CC's decision. Curzon also mentioned that to the best of its knowledge, there was no opposition to the cinema.[88]

5.3.20 When reporting the list of competing cinemas in Clapham,[89] the CC focused on cinemas located within a drive-time isochrone of approximately 11 minutes from Picturehouse Clapham. While this cut-off would leave Curzon Victoria outside the list of cinemas presented in the Final Report, we note that the CC computed the reduction in fascia count arising from the merger using both a 20-minute isochrone – the CC's preferred market boundaries – and 30-minute isochrone. According to our estimates, Curzon Victoria would fall just outside a 20-minute isochrone.[90]

5.3.21 Our desktop research indicates that Curzon did open a new cinema in central London in May 2014.[91] Although this occurred three months past the expected opening date stated at the time of the merger review, it was still within two years of the Cineworld/ City Screen transaction being cleared.[92]

5.3.22 As such, it appears that the CC's conclusions on entry in Clapham were largely correct.

SLC areas

5.3.23 As set out in paragraph 5.3.1 above, in Aberdeen, Bury St Edmunds and Cambridge, the CC looked at a range of evidence, including the extent to which other cinemas in these areas exerted a competitive constraint on the merger parties and concluded that the merger may be expected to lead to an SLC.[93]

5.3.24 In each of these cases, the CC then considered whether expected loss of competition could be mitigated by the entry of a new cinema exhibitor. However, in all of these three areas, the CC considered that, on the balance of probabilities, an SLC would occur.[94]

5.3.25 In both Aberdeen and Bury St Edmunds, the CC's decision was based largely on evidence that there was insufficient local demand to support the entry of an additional cinema,[95]

[86] Final Report, para. 6.105-6.107.
[87] Final Report, para. 6.100.
[88] Final Report, para. 6.102.
[89] Final Report, Appendix G, Table 29.
[90] Drive-time distance based on Google Maps, and therefore subject to real-time traffic conditions.
[91] See: http://www.curzoncinemas.com/victoria/info (last access on 09/02/2017).
[92] CMA Merger Guidelines, para. 5.8.11.
[93] Final Report, para. 12.
[94] *Ibid.*
[95] Final Report, paras. 6.66 and 6.80.

and no evidence that timely and sufficient new entry was likely was received.[96] In Cambridge, the CC's decision was broadly based upon evidence on the infeasibility of a new cinema development, the incumbency advantage held by Cineworld, and insufficient demand to support entry.[97]

5.3.26 Using the evidence described in paragraph 5.2.2, we examined the extent to which there was any entry following the merger – other than via the acquisition of the divested assets.

5.3.27 Desktop research corroborated by conversations with Odeon & UCI confirmed that no new entry has occurred since the merger in any of the SLC areas.[98]

5.3.28 We also sought to assess whether, in the SLC areas, the reasons that the CC cited for a lack of entry being likely to occur were accurate. Relatively little evidence was available on the reasons for which entry has not occurred in the SLC areas. However, Odeon and & UCI told us that in its view, plans for a boutique cinema in the city centre of Aberdeen had failed due to a lack of demand following the downturn in oil prices, and that the market in Bury St Edmunds is too small to support an additional cinema. The evidence we have gathered, therefore, is consistent with the CC's conclusion that a lack of demand meant that entry was unlikely in these areas.

5.3.29 Thus it appears that the CC was correct in its conclusion that sufficient timely entry was unlikely in Aberdeen, Bury St Edmunds and Cambridge.

5.4 Findings on expansion by existing operators in overlap local areas

5.4.1 As noted in paragraph 5.3.2 above, we have also sought to assess the extent to which the operators already in existence at the time of the merger in the various overlap local areas (both SLC and non-SLC) have expanded or decreased their capacity. This was done by comparing, where available, the current number of screens and seats for each cinema with the respective number of screens and seats reported by the CC in the decision.

5.4.2 With regard to the non-SLC areas, our desktop research reveals that there has been no reduction in capacity by the merger parties.

5.4.3 In relation to other operators, our desktop research revealed that:

- In Brighton, Lewes Cinema – which at the time of the merger accounted for a small proportion of the Brighton market[99] – exited the market. We also note that, with the exception of the increased number of seats at the Odeon Brighton, the number of seats and screens has largely remained stable for all the other operators before and after the merger.

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[96] Final Report, paras. 6.66, 6.80 and 6.81. In Bury St Edmund, the CC noted a possible development in Newmarket, but the development was refused planning permission. See Final Report, para. 6.80.
[97] Final Report, paras. 6.66 and 6.80.
[98] Based on www.ukcinemas.org.uk, the same website used by the CC at the time of the merger case, and supplemented with data from film.list.co.uk/cinemas/ and Google.
[99] Both in number of screens and seats.

- In Southampton, while there was some increase in the number of seats and screens at Odeon & UCI Cinemas and Vue Eastleigh, overall the number of seats and screens offered by operators other than the new entrant in Southampton have largely remained unchanged since the merger.
- In Edinburgh, with the exception of Odeon, where the number of seats has slightly decreased, the number of seats and screens of all major exhibitors has remained the same, and so have their local market shares.
- In Clapham, with the exception of Odeon Streatham, where the number of seats increased, the number of seats and screens of all major exhibitors has remained the same, and so have their local market shares.[100]

5.4.4 With regard to the SLC areas, with the exception of Vue Cinemas in Cambridge, which underwent a decrease in the number of seats following a major refurbishment, our analysis suggests that there has been no change in the number of screens and seats in the three SLC areas following the merger.

5.4.5 Full results of our analysis in the form of local market shares pre- and post-merger, are presented in Appendix 2.

5.5 Findings on outcomes post-merger in overlap local areas

5.5.1 The evidence discussed above shows that, contrary to the CC's expectations, entry has not occurred in Brighton and, in the case of Southampton, it took longer than the CMA originally thought. In order to understand the implications of and the drivers behind the lack of entry, we have sought to assess how market outcomes have developed since the merger.

5.5.2 As part of its assessment of the Cineworld/ City Screen transaction, the CC gathered evidence on prices at the time of the merger review, in a range of local areas, including the overlap local areas.[101] We have gathered data on current prices in the overlap local areas, in order to test how prices have changed since the transaction was cleared by the CC. In particular, we used adult, peak time, 2D ticket prices, inclusive of booking fees, offered by exhibitors on 21st and 22nd January 2017. Full details of the data that we have used and the analysis conducted are set out in Appendix 3.

5.5.3 For each SLC and non-SLC overlap local area, we calculate the percentage change in prices, comparing current prices with the prices charged at the time of the CC's merger case. Table 2 sets out the price changes since the merger for each SLC and non-SLC area.

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[100] For the purpose of computing market shares by sites and seats in Clapham, we have not included the new Curzon's cinema in Victoria as this falls outside a 20 minute drive-time isochrone.

[101] We note that, for the purpose of conducting our analysis of market outcomes, we have not looked at Greenwich and Stratford. This is because entry was not relevant in the CC's decision, as well as because, like Clapham, it more complicated to define separate catchment areas in these areas, due to their proximity to London.

Table 2 – Average ticket prices and percentage change in prices in the local overlap areas (2013-2017)

Overlap local area	SLC/non SLC area	2013 Average Adult Standard Price (£)	2017 Average Adult Standard Price (£)	% Difference between 2013 - 2017
Aberdeen	SLC	8.47	10.92	29%
Brighton	Non SLC	8.53	11.23	32%
Bury St Edmunds	SLC	8.49	11.15	31%
Cambridge	SLC	9.15	11.65	27%
Clapham	Non SLC	11.03	13.91	26%
Edinburgh	Non SLC	8.38	10.24	22%
Southampton	Non SLC	8.80	10.99	25%

Source: KPMG analysis.
Notes: [1] 2013 prices have been adjusted for inflation. [2] 2017 prices include additional fees (e.g., booking fees).

5.5.4 Table 2 shows that prices have increased in all overlap local areas since the merger, with prices in Brighton having increased by the largest amount. On average across SLC and non-SLC areas, prices have increased by a relatively similar amount (there is no evidence, therefore, that divestment remedies in SLC areas were not sufficient).

5.5.5 These price changes could be driven by a range of factors unrelated to the merger, and these may mask or overwhelm any impact of the merger on prices. To attempt to isolate the effects of the merger on prices, we compared the price changes in each of the SLC and non-SLC areas to comparator local areas that were unaffected by the merger but where there may have been similar local factors affecting price changes. The idea is that prices in comparator local areas might be subject to similar changes as the overlap local areas, with the main difference between these areas being the impact of the merger. By comparing the price change in each overlap local area with the price change in each comparator group, therefore, the analysis might be more informative of the impact of the merger on prices.

5.5.6 We have used the CC's econometric analysis,[102] conducted at the time of the merger to inform our selection of comparator local areas. That analysis found that a range of demographic factors influenced prices, and also that there were significant differences in prices across geographic regions. We therefore identify comparator local areas that have similar demographic or geographic characteristics, in order to isolate the impact of the merger on prices in the overlap areas. Specifically, we chose one set of comparator local areas based on demographic factors, and another set based on region. Demographic comparator local areas were chosen on the basis of a range of demographic characteristics: population, unemployment rate, hourly wage, proportion of the population under the age of 35, and population density. We recognise that some of these comparators might, on the face of it, look quite different from the relevant overlap area (for example Stoke on Trent in relation to Brighton). The selection of these comparator groups is set out in more detail in Appendix 3.[103] The regional comparator local areas were chosen as areas which intuitively appeared 'similar' to the overlap local areas. The comparators chosen are set out in Table 3.

[102] Final Report, Appendix C.
[103] Note that three of the five variables used to choose the comparator groups, namely, unemployment rate, median hourly wage and proportion of population under age of 35, were used by the CC in its price-concentration analysis.

Table 3 – List of overlap local areas and corresponding comparator local areas, based on both demographic factors and region

Overlap local areas (SLC/Non-SLC area)	Comparator local areas based on demographic factors	Comparator local areas based on demographic factors
Aberdeen (SLC)	Bath; Exeter	Dundee; Inverness
Brighton (No-SLC)	Bolton; Stoke-on-Trent	Guildford, Portsmouth
Bury St Edmund's (SLC)	Taunton; Norwich	Ipswich; Norwich
Cambridge (SLC)	Reading; Sough	Oxford; Norwich
Edinburgh (No-SLC)	Cardiff; Derby	Glasgow; Stirling
Southampton (No-SLC)	Portsmouth; Enfield	Portsmouth; Bournemouth

Source: KPMG analysis.
Notes: SLC areas have been highlighted in red.

5.5.7 For each overlap area, we then compared the change in prices in the overlap area, with the change in prices, on average, in the comparator local areas. Table 4 presents our analysis using comparator areas chosen on the basis of demographics, while Table 5 presents our analysis using comparator areas chosen on the basis of geographic region.

Table 4 – Demographics-based comparator areas, including additional fees

Overlap area	Comparator areas	Price change 2013-2017		
		Overlap area	Comparator areas	Percentage point difference
Aberdeen	Bath, Exeter	29%	39%	-10%
Brighton	Bolton, Stoke-on-Trent	32%	13%	19%
Bury St Edmund's	Taunton, Norwich	31%	33%	-2%
Cambridge	Reading, Slough	27%	29%	-1%
Edinburgh	Cardiff, Derby	22%	23%	-1%
Southampton	Portsmouth, Enfield	25%	24%	1%
Average price change		28%	27%	1%
Average for non-SLC areas		26%	20%	6%
Average for SLC areas		29%	33%	-4%
Difference between SLC and non-SLC areas		-3%	-	11%

Source: KPMG analysis
Notes: [1] Small sample sizes do not allow for reliable statistical testing of differences. [2] The analysis for the Southampton area does not include the ticket prices of Showcase Cinema de Lux Southampton as it opened on 10 February 2017, so shortly after this analysis was performed. [3] 2013 prices have been adjusted for inflation using the CPI for recreational goods from November 2013 (the date of the decision) and December 2016, sourced from the Office for National Statistics. [4] Any discrepancies in totals / averages above are due to rounding.

Table 5 – Region-based comparator areas, including additional fees

Overlap area	Comparator areas	Price change 2013-2017 Overlap area	Comparator areas	Percentage point difference
Aberdeen	Dundee, Inverness	29%	18%	11%
Brighton	Guildford, Portsmouth	32%	26%	6%
Bury St Edmund's	Ipswich, Norwich	31%	33%	-2%
Cambridge	Oxford, Norwich	27%	25%	2%
Edinburgh	Glasgow, Stirling	22%	20%	3%
Southampton	Portsmouth, Bournemouth	25%	21%	4%
Average price change		28%	24%	4%
Average for non-SLC areas		26%	22%	4%
Average for SLC areas		29%	25%	4%
Difference between SLC and non-SLC areas		-3%	-	0%

Source: KPMG analysis
Notes: [1] Small sample sizes do not allow for reliable statistical testing of differences. [2] The analysis for the Southampton area does not include the tickets' prices of Showcase Cinema de Lux Southampton as it opened on 10 February 2017, so shortly after this analysis was performed. [3] 2013 prices have been adjusted for inflation using the CPI for recreational goods from November 2013 (the date of the decision) and December 2016, sourced from the Office for National Statistics.

5.5.8 Using comparator areas based on demographic characteristics, we find that only in Brighton has there been a materially higher increase in prices than in the comparator areas (19 percentage points difference). When comparators based on regional characteristics are used, prices in Brighton have also increased more than in the comparator local areas (six percentage point difference) – though this is also the case for some other overlap areas.

5.5.9 We also looked at whether, on average, prices in non-SLC and SLC areas on average have increased by more than their comparator local areas. Using demographic-based comparators, as set out in Table 4, we find that in non-SLC areas (where no remedies were imposed), prices have on average increased more than in comparator local areas (by six percentage points), but that in SLC areas (where divestment remedies were imposed) prices have increased more slowly than comparator local areas (by 4 percentage points) (i.e., an 11 percentage point difference). Using region-based comparators, as set out in Table 5, the results are reversed in the SLC areas, and prices for both the SLC and non-SLC areas appear to have increased by the same percentage compared to their respective comparator local areas (i.e., 4 percentage points).

5.5.10 Overall, this analysis shows that the results are sensitive to the comparator local areas chosen. It is difficult, therefore, to conclude on whether the clearance of the merger in the non-SLC areas is likely to have led to increases in prices in those areas. In Brighton, we note that regardless of the basis on which comparator groups were chosen, prices have increased by more than in the comparator local areas. However, the magnitude of this difference varies significantly depending on the comparator groups chosen.

5.6 Findings on other national trends

5.6.1 As noted in paragraph 5.2.1 above, we have also sought to assess the accuracy of the CC's conclusion that expansion by existing cinema exhibitors into a new location was more likely than entry by a new exhibitor due to economies of scale in the operation of cinemas.

5.6.2 To understand whether the CC's conclusion above was correct, we have considered recent trends that affected the cinema industry in the UK as a whole, as opposed to just the local areas where the merger parties overlapped.

5.6.3 We have looked at national market shares based on number of sites and screens using BFI data, and also reviewed Mintel reports.

5.6.4 In light of the evidence above, it is difficult to form a firm conclusion on the extent to which economies of scale are important in cinema exhibition. While there has been some expansion of small scale chains, and some new entry of small cinema chains – which is consistent with the evidence received by the CC at the time of the merger review[104] – this has been relatively limited and has not to date had a significant impact on the share of the larger operators.

5.7 Cineworld/ City Screen: conclusions from the ex-post analysis

5.7.1 In this case, the CC assessed a number of overlap local areas as part of its Phase II review of the transaction. The CC imposed remedies on a number of these overlap local markets, but in a number of others, cleared the transaction unconditionally, at least in part, on the basis of an expectation of entry or expansion.

5.7.2 We have assessed whether such entry / expansion predicted by the CC materialised. In doing so, we have considered the weight placed by the CC on evidence on entry when drawing its conclusions for each overlap local area under scrutiny. In particular, we noted that, while in Brighton and Southampton, the CC put more weight on the evidence on entry, in Clapham and Edinburgh, it appeared to have relied less on the evidence on entry given the strength of the evidence on existing competitive constraints.[105]

5.7.3 We found that in Brighton, no entry occurred, contrary to the CC's predictions. We found that the development that the CC had cited had not received planning permission at the time of the merger, and that the CC had received mixed views on the likelihood of the entry occurring from a range of stakeholders including the entrant itself, the merger parties and the local Council. We found that prices in Brighton increased since the merger, including in relation to comparator local areas.

5.7.4 In Southampton, we found that entry has occurred, though around eight months later than the CC predicted. This entry was outside of the usual two-year time frame for considering timely entry – though the CC had already expected entry to be outside of this window. The development cited by the CC in Southampton had not received detailed planning permission (though it had received permission in principle for the development). There is no clear evidence that prices in Southampton have increased materially since the merger compared to other comparative areas.

[104] [✂].
[105] Final Report, paras. 6.103 and 6.109.

5.7.5 In Clapham (where planning permission had already been received), we found that entry occurred, while in Edinburgh, entry occurred only outside of the relevant catchment area. However, as noted above, the CC put less weight on entry occurring in these areas.

5.7.6 In general, failure to obtain (or delays in obtaining) planning permission appeared to be an important factor behind a lack of entry in Brighton, and a cause of significant delays to entry in Southampton. In Brighton the developer of the cinema that was expected to enter the market was confident of obtaining planning permissions, potentially showing some over optimism about the planning process (though attached a 65 per cent probability to the cinema to be built).[106] Despite the uncertainty around the outcome of such planning permissions, the CC cleared the merger in both Brighton and Southampton. In Cambridge, the CC took a more cautious approach and judged that a potential development was not timely, likely and sufficient enough to offset an SLC.

5.7.7 We have also sought to assess the CC's conclusions that, in general, it would expect new entry in local cinema markets to come from the expansion of existing cinema chains, rather than de novo entry. We have seen a few examples of de novo entry, though these are relatively limited. We have also seen several examples of expansion by small chains, rather than the large operators, though the impact of this expansion on larger operators is unclear. From this evidence, it is difficult to draw firm conclusions on the extent to which economies of scale are important, and which types of operators are likely to drive future entry in local markets in this industry. Instead, a case by case assessment of the potential entrants and likelihood of entry in individual local markets would be required in any future merger assessment in this case.

6 WRI/ Hostelbookers

6.1 Summary of the OFT's decision

6.1.1 In April 2013, Web Reservations International (now Hostelworld Group) acquired the majority of shares in Hostelbookers.com Limited. The OFT reviewed and cleared the merger in August 2013.

6.1.2 The merger parties overlap in the provision of hostel accommodation services in the UK.[107] The OFT defined the product market to include only the provision of online hostel accommodation services to consumers and hostel owners, leaving outside of its product frame reference other non-hostel budget accommodation services (e.g., Airbnb) and traditional brick and mortar travel agents.[108] The OFT also noted that owing to the differentiated nature of the market – evident in the varied nature of accommodation listings, commission levels, quality of websites, etc. – the closeness of competition

[106] Final Report, para. 6.73.
[107] Final Report, para. 4.
[108] Final Report, para. 27 and 41.

between the parties and their competitors may be a better indicator of the competitive effects of the merger than market definition and market shares.[109]

6.1.3 In relation to the geographic frame of reference, the OFT primarily focused on the UK but also considered the constraint posed by accommodation service providers based outside the UK in its competitive assessment.[110]

6.1.4 The OFT had competition concerns owing to the high market share and closeness of competition between the merger parties, as well as the lack of significant alternative players in the market.[111] The OFT, therefore, examined whether entry and/or expansion may prevent there being a realistic prospect of an SLC. In that context, the OFT noted:

- the interest displayed by other online travel agencies (OTAs) like Expedia and Booking.com in expanding their hostel booking services – with the latter significantly growing in a short span of time;[112]
- that barriers to expansion by such existing providers would be low;[113]
- that there was no evidence to suggest that the market had reached a "*tipping point*", whereby one firm gains an unassailable advantage such that entry or expansion by other firms becomes unlikely. Indeed, the OFT noted, in this context, the recent strong growth of Booking.com in the hostel booking space, as well as low switching costs for consumers, and indications that the market was expanding.[114]

6.1.5 As a result of all of this evidence, the OFT concluded that the merger did not raise a realistic prospect of an SLC.[115]

6.1.6 Finally, the OFT noted that entry and/or expansion by firms with other business models, such as Airbnb, may also impose a competitive constraint, but it was of the view that it was not necessary for it to conclude on this point given the timely, likely, and sufficient entry and expansion by established OTAs such as Expedia and further expansion by Booking.com.[116]

6.2 Research questions and evidence gathering

6.2.1 In light of the OFT's conclusions above, our ex-post evaluation sought to assess a number of research questions. In particular, we examined whether:

- Expansion by Booking.com and/or Expedia occurred in recent years after the merger, as referenced by the OFT, and considered its rationale?
- Entry and/or expansion was timely and sufficient to replace any loss of competitive constraint that arose as a result of the merger?

[109] Final Report, para. 42.
[110] Final Report, para. 46.
[111] Final Report, para. 100.
[112] Final Report, para. 122.
[113] *Ibid.*
[114] Final Report, para. 123.
[115] Final Report, para. 124.
[116] Final Report, para. 124.

- Airbnb expanded and posed a competitive constraint on the merger parties, and if so whether this would have any implications for the OFT's conclusion on market definition?
- Evidence suggests that the market has reached a tipping point post-merger?

6.2.2 To conduct our assessment we have collected a range of evidence. We have reviewed the evidence contained in the documents gathered by the OFT at the time of the merger review. We conducted desktop research and interviews with key market players, namely Hostelworld Group and Booking.com. Finally, we gathered quantitative data on market coverage using the websites of the key industry players, and on booking and commission fees charged by Hostelworld Group to users and hostel owners respectively, obtaining information directly from Hostelworld Group.

6.2.3 In addition to the companies named above, we sought to gather further evidence from a broad range of stakeholders, including other competitors and companies with a different business model, but were not able to obtain any further interviews. However, the evidence we gathered enabled us to address the research questions set out above.

6.3 Findings on entry/ expansion of established OTAs

6.3.1 As mentioned in paragraph 6.1.4, the OFT was of the view that expansion of established OTAs was likely. In particular, the OFT concluded that both Booking.com and Expedia had already entered and had the ability and incentive to expand.

6.3.2 We have sought to assess whether the market expansion hypothesised by the OFT has taken place. Sales data for Booking.com and Expedia was not available, so we could not test directly the degree to which they have expanded their presence in the online hostel booking market. However, we gathered a number of alternative pieces of evidence in order to understand the degree to which Booking.com and Expedia compete in the online hostel booking market.

6.3.3 We collected data on the number of hostels listed for various holiday destinations for a number of online booking platforms, for a certain fixed time period. This included the three brands owned by Hostelworld Group – namely Hostelworld.com, Hostelbookers.com, and Hostels.com – as well as Booking.com, Expedia, and several others.[117] The logic behind this analysis is to compare the market coverage of other OTAs, including Booking.com and Expedia, with that of Hostelworld Group.

6.3.4 We considered nine destinations: Barcelona, Stockholm, Paris, New York, San Francisco, Granada, Toulouse, Bologna, and Cork.[118] We then recorded the number of available hostels listed on each online booking platform for a trip occurring between 1st – 4th July 2017. For ease of comparison, we constructed an index that measures the number of hostels listed on each online booking platform for a given location relative to the number of hostels listed for the same location by Hostelworld.com – Hostelworld Group's core brand. For example, we found that 77 hostels were available on Booking.com for Barcelona for the above-mentioned period, compared to 78 hostels listed on

[117] Laterooms.com, Hihostels.com, Budgetplaces.com and Hotels.com.
[118] These destinations were not chosen according to any particular set of criteria but we generally aimed to get a range of sizes of destinations.

Hostelworld.com for the same destination and period of time. To construct our index, we took the ratio between 77 and 78 (i.e., 0.99). Values of the index larger than 1.0 indicate instances where the online booking platform has a higher number of listed hostels than Hostelworld.com.

Table 6 – Simple average market coverage index across destinations, by online booking platform

Online booking platform	Simple Average Market Coverage Index
Hostelworld.com	1.0
Hostelbookers.com	1.0
Hostels.com	1.0
Booking.com	0.8
Expedia.co.uk	1.3
Laterooms.com	1.1
Hihostels.com	0.1
Budgetplaces.com	0.8
Hotels.com	0.6

Source: KPMG analysis of publicly available information available on the online booking platforms above.

6.3.5 Table 6 indicates that Booking.com, Expedia and a number of other OTAs offer a similar number of hostels to the number listed on the three brands owned by Hostelworld Group. Full results of our analysis are presented in Appendix 4. While we do not know the pre-merger level of market coverage for Hostelworld Group and other OTAs, we understand that the latter's was lower than the former's.[119] As such, the results of our analysis seem to indicate that Booking.com, Expedia, as well as a number of other OTAs, have expanded substantially their coverage in the hostel-booking market given that they now have very comparable levels of coverage to the Hostelworld Group brands. We recognise, however, that this analysis looks only at one aspect of coverage – the number of hostels – and does not, for example, show whether the different provider offer a similar range of rooms at each hostel.

6.3.6 We also conducted an in-depth interview with Hostelworld Group, who told us that Priceline Group (owner of the Booking.com and Agoda platforms), Expedia, as well as a number of other online platforms[120] now account for a large share of the market. In Hostelworld Group's view, Booking.com's growth has been driven, in part, by its access to large resources that have helped finance its aggressive advertising strategy and high pay-per-click ("PPC") advertising spend, as well as by its advance booking and free cancellation system that has proved to be a large incentive for consumers to use the site. Indeed, [✂]. Hostelworld Group also told us that, according to StayWise,[121] Booking.com has likely increased its market share.

6.3.7 We also conducted an in-depth interview with Booking.com, who told us that it has expanded its range of accommodation across all types of accommodation in the time

[119] Final Report, para. 61.
[120] These include Trip Advisor, Airbnb and Ctrip in China.
[121] StayWise is a not-for-profit industry panel representing the entire global youth travel accommodation sector.

period since the merger. Booking.com also told us that accommodation owners always choose to advertise their properties on multiple platforms to reach more end users.

6.3.8 Thus, it appears that the expansion of Booking.com and Expedia, cited by the OFT as part of the evidence base on which the merger was cleared, did materialise.

6.4 Findings on timeliness and sufficiency of entry and expansion post-merger

6.4.1 In section 6.3 above, we sought to understand whether the entry / expansion, which at the time of the merger the OFT considered likely to occur, has indeed materialised. This section, instead, sets out the evidence on whether such entry has been timely and sufficient to offset an SLC.

6.4.2 In relation to timeliness of expansion by Booking.com and Expedia, we have not assessed exactly when that took place. However, we know that the merger was cleared in August 2013, and there is no evidence to suggest that the market expansion has been confined to only the last year to 18 months. Thus, it seems correct to assume that such market expansion occurred on a timely basis since the merger was cleared.

6.4.3 In order to try to test whether this expansion was sufficient to prevent a realistic prospect of an SLC, we gathered a range of evidence.

6.4.4 We have gathered from Hostelworld Group information on the level of booking and commission fees charged to end users and hostel owners respectively, both at the time of our ex-post merger evaluation and at the time of the OFT's merger review. We therefore seek to understand whether booking and commission fees charged by Hostelworld Group have increased after the merger. If they have not, such evidence would be consistent with the expansion of other OTAs (including Booking.com and Expedia) being sufficient to have prevented an SLC arising from the merger.

6.4.5 Our analysis of the booking fees charged by the Hostelworld Group to end users indicates that these have not increased since the merger,[122] and in fact, have been gradually phased out on Hostelworld.com, the core brand used by Hostelworld Group.[123] In contrast, the commission fee charged to both existing and new hostel owners was gradually increased.[124]

6.4.6 Assessing the overall change in Hostelworld Group's prices is, therefore, not straightforward given that prices have increased to one side of the market (hostels) and decreased to the other (consumers). In a market like the one in question, where firms need to attract two groups of customers (i.e., accommodation owners and end users),

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[122] Hostelbookers.com did not charge a booking fee at the time of the merger and this has remained unchanged. A flat fee of $2 was charged on Hostels.com at the time of the merger though this could be waived if a customer chose to sign up for the SmartSavers membership. This pricing strategy has remained unchanged too.

[123] In particular, a flat booking fee of USD$2/£1/€1.50 (depending on the currency chosen by the customer to make the transaction) charged on the Hostelworld.com at the time of the merger, was gradually phased out by the Hostelworld Group.

[124] Commission fees for existing hostel owners increased from 10 per cent prior to the merger to 12 per cent since March 2014, whereas commission fees charged to new hostel owners increased to 15 per cent between June 2013 and September 2014. In addition, Hostelworld Group also told us that it offers the "Elevate" product whereby hostel owners can chose to pay a higher commission fee to get better positioning of their hostel in the search results on the platform.

the overall pricing structure is likely to be chosen so as to encourage maximum usage, which may involve charging more to one group than the other. In this context, the relevant issue is therefore whether the changes in charges following the merger overall are 'revenue neutral' (or even lead to lower overall revenue being generated).

6.4.7 We have therefore calculated the value of a booking necessary to offset the savings that an end user would make due to the reduction in booking fees (or the lost revenue for Hostelworld.com) with the additional cost that a hostel owner advertising its property on Hostelworld.com would incur due the increase in commission fees (or the increase in revenue for Hostelworld.com). We found that a total booking size of £50 would imply that the price changes described above are revenue neutral. In the case of a total booking size of £30, Hostelworld Group would make £0.4 (or c.1 per cent of the booking size) less than it used to at the time of the merger. Conversely, in the case of a total booking size of £70, it would make £0.4 more compared to pre-merger revenue.

6.4.8 While we do not have information on the average spend for consumers on the Hostelworld Group sites, overall, our analysis seems to indicate that prices have not increased since the merger. Full details of our analysis are presented in Appendix 4.

6.4.9 We have also explored changes in market outcomes during the in-depth interview with Hostelworld Group. In particular, we were told that such a change in booking and commission fees was largely in response to competition from Booking.com. In particular, the reduction in booking fees was implemented to match the offering of Booking.com (as well as Hostelbookers.com at the time of the merger), since we understand from our in-depth interview with Booking.com that Booking.com did not charge any booking fees at the time of the merger, and that is still the case. This reduction in booking fees was offset by increased commission fees (so that overall sufficient revenue was generated). As such, the price changes described above appear to be consistent with close competition from other OTAs, like Booking.com.

6.4.10 In summary, there is no evidence to suggest that entry and expansion of OTAs such as Booking.com and Expedia has not been timely and sufficient to prevent an SLC from arising as a result of the merger.

6.5 Findings on competition with suppliers with different business models

The OFT's conclusions and the evidence received during the case

6.5.1 In addition to expansion by OTAs like Booking.com and Expedia, the OFT also assessed whether entry and/or expansion by firms with other business models, such as Airbnb, may also pose a competitive constraint on Hostelworld Group. In particular, the CMA received evidence that Airbnb was likely to expand its offering in the event of a price rise following the merger. This was based on submissions by the parties that:

- they faced stiff competition from the exponential growth of consumer-to-consumer sites like Airbnb;
- Airbnb increased its pay-per-click (PPC) spend on "hostel" search terms;

- there was a strong overlap in their and Airbnb's consumer base in demographic characteristics; and
- they were concerned that the regulatory pressure on Airbnb's business model (i.e., the fact that consumer-to-consumer bookings had been declared illegal in certain jurisdictions) would drive it to expand its hostel offering.

6.5.2 However, the OFT was unsure as to the timelines and sufficiency of Airbnb's expansion. Overall, as set out in paragraph 6.1.6, the OFT did not need to conclude on the likely impact of Airbnb owing to the definitive evidence it received on the timeliness, likelihood and sufficiency of expansion by Booking.com and Expedia, although it did not rule out that this was an additional competitive constraint.

Our assessment

6.5.3 We sought to test the available evidence on whether suppliers with a different business model like Airbnb have competed with Hostelworld Group since the merger, though we note that we have not conducted a full assessment of this issue. Instead, we received individual pieces of largely anecdotal evidence from Hostelworld Group showing that competition from suppliers with a different business model has grown significantly in recent years. These include:

- Airbnb's use of "hostel" keywords on Google search as an indication of its growing significance;
- [✂];[125] and
- Airbnb's strong appeal to the "millennials", which is the key target demographic for Hostelworld Group.

6.5.4 The competitive constraint posed by Airbnb on other online booking platforms was also noted by Booking.com during our in-depth interview.

6.5.5 Consistent with Hostelworld Group competing with suppliers characterised by different business models, we have also received some anecdotal evidence that consumers may be more willing to substitute between different accommodation types. In particular, Hostelworld Group told us that:

- A study by Phocuswright shows that only one out of five hostel travellers did not consider options other than hostels.
- There has been a recent trend towards the opening of budget chains by large hotel chains (e.g., the Tru hotels by Hilton, the Moxy hotels by Marriott, and the Jo and Joe hotels by Accor). These budget chains differ from earlier budget offerings by large hotel chains, e.g., Ibis, Hilton Garden Inn, as they have a specific focus on social interactions, similar to that provided by hostels. Hostelworld Group also thought that these new budget chains would benefit from the significant resources provided by the larger groups to which they belong, which may allow them to build their own brand, and be less reliant on listings on OTAs such as Hostelworld.com or Booking.com.

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[125] This is a significant increase in comparison to figures reported at the time of the merger when only [✂] per cent of WRI customers and [✂] per cent of Hostelbookers.com customers had previously used Airbnb.

- Hostels are increasingly advertising single rooms for users who value the social interactions made possible in a hostel-like setting but prefer the privacy of a private room as offered by a hotel.

6.5.6 Overall, we were unable to directly assess the degree of competition between Hostelworld Group and providers with different business models like Airbnb. The anecdotal evidence gathered from Hostelworld Group and Booking.com appears to indicate that there may be increasing competition between these different types of operators. This is coupled with changes on the supply side by which both hotels and hostels may be broadening the range of options made available to consumers and also competing more closely. However, overall, we cannot form a conclusion on the extent to which the merger parties compete with suppliers offering non-hostel accommodation.

6.6 Findings on whether the market has reached a 'tipping point'

6.6.1 As noted in paragraph 6.1.4, the OFT ruled out the possibility that the market had reached a tipping point where a single firm gains an unassailable advantage, such that entry and/or expansion by other firms might become unlikely.

6.6.2 To assess whether the OFT's conclusion was right, we have relied upon the evidence on market coverage discussed on section 6.3 and the anecdotal evidence received from Hostelworld Group and reported in sections 6.3 and 6.6. In particular, our analysis of market coverage shows significant multi-homing by hostel owners, which appears to have increased since the merger. Similarly, internal research conducted by Hostelworld Group appears to indicate that end users use more than one booking platform. This demonstrates that both hostel owners and end users multi-home when looking where to book and advertise accommodations.

6.6.3 In addition, as part of our in-depth interviews with stakeholders, we have not received any evidence of switching costs being high in this market, which is consistent with the evidence on multi-homing.

6.6.4 As such, we conclude that the market has not reached a tipping point since the merger, consistent with the OFT's conclusion on this issue. If anything, the evidence gathered appears to indicate that the market for online hostel booking services is becoming more fragmented because of the broader range of suppliers offering hostel booking services.

6.7 Other impacts on the merger parties of competition with OTAs

6.7.1 We have also received some more general anecdotal evidence on Hostelworld Group altering other elements of its strategy since the merger, in response to competition. In particular, we were told by Hostelworld Group that it had to focus its resources on growing its Hostelworld.com brand at the expense of its other two "non-core/supporting" brands that have consequently seen a drop in market share since the acquisition.

6.7.2 This change in strategy was driven by a number of factors, including focussing on one brand to better maximise marketing presence in Google search results, and focussing investment on developing the functionality of only one website. The additional evidence described in this section is anecdotal, but consistent with competition from other OTAs and technological developments having had a bearing on the merged entity's business strategy since the merger.

6.8 WRI/ Hostelbookers.com: conclusions from the ex-post analysis

6.8.1 In this Phase I case, the OFT cleared the transaction largely on the basis of timely, likely, and sufficient expansion by OTAs other than the merger parties – in particular Booking.com and Expedia. The OFT received a range of evidence on these other OTAs' success to date, as well as them likely facing low barriers to further expansion.

6.8.2 The evidence we have gathered suggests that the expansion predicted by the OFT by these other OTAs has occurred and has been timely. In particular, the results of our analysis of market coverage seem to indicate that Booking.com, Expedia, as well as a number of other OTAs, have expanded and achieved very comparable levels of coverage to the Hostelworld Group brands. Anecdotal evidence received from the merger parties and Booking.com is consistent with both having expanded significantly. The evidence we have gathered also appears to be consistent with this expansion having been sufficient to offset any loss of competition arising from the merger, and would suggest that the merger parties compete closely with these other OTAs. This includes an analysis of booking and commission fees charged by the merger parties, which indicate that prices do not appear to have increased since the merger.

6.8.3 As part of its assessment of barriers to expansion for these other OTAs, the OFT assessed whether the market had or was likely to reach a tipping point whereby one platform gains an unassailable advantage, giving rise to barriers for other suppliers. The OFT concluded that this was not the case, and the evidence we have gathered confirms that this has not changed since the merger – with, if anything, the market for online hostel booking services becoming more, rather than less, fragmented.

6.8.4 Given its conclusion about other OTAs such as Booking.com and Expedia, the OFT did not need to reach a firm view on the constraint that might be imposed on the merger parties by operators with different business models (for example, operators that focus on different types of accommodation than hostels, such as Airbnb). A full analysis of the extent of competition between these different providers is beyond the scope of our review. We have obtained some anecdotal evidence, however, that suggests competition might occur between a range of online accommodation booking services, not only those offering hostels.

7 Zipcar/ Streetcar

7.1 Summary of the CC's decision

7.1.1 In April 2010, Zipcar acquired the entire issued share capital of Streetcar. The completed transaction was referred to Phase II, at the end of which – in December 2010 – the CC cleared the merger unconditionally.

7.1.2 In relation to product market definition, the parties were found to overlap in the provision of car club services in London, and the CC assessed the competitive effects of the merger on this overlap market,[126] though it also took note of the potential substitution from car club services to alternative transport options, including car rentals and public transport.[127] In relation to the geographic frame of reference, the CC was of the view that this included Streetcar and Zipcar UK company-wide markets (e.g. London, in the case of Zipcar), London boroughs in which both parties were operating, and small local markets around car clubs defined by customers' willingness to walk in order to access alternatives.[128]

7.1.3 The CC concluded that, while it expected that price rises were likely in the short term owing to the loss of competition between the parties and barriers to entry (largely in the form of access to on street parking),[129] entry by operators like Greenwheels, Sixt, [✂], and [✂], and expansion by operators like Hertz and City Car Club, in conjunction with the attractiveness of the London market and prospects of rapid growth, would mitigate any possibility of a SLC.[130]

7.1.4 In particular, the CC noted that Greenwheels and [✂] had well-developed plans to enter. As for Sixt and [✂], the CC noted that [✂].[131] Finally, the CC noted that expansion plans for Hertz and City Car Club were limited by restricted access to on-street parking.[132]

7.2 Research questions and evidence gathering

7.2.1 In light of the CC's conclusions above, our ex-post evaluation has assessed the extent to which the CC's conclusions on entry and expansion, drivers of and barriers to entry, and market growth actually materialised. In particular, we examined whether:

- Potential entry referenced by the CC occurred after the merger? Specifically, we looked at entry by Greenwheels, [✂], Sixt, and [✂], and the rationale behind any such entry that materialised. We also looked at whether entry by Hertz and City Car Club into the car club market, existing car club operators, occurred.
- Any other entry and/or expansion has occurred that was not identified by the CC at the time of the merger review?
- Available evidence suggests that entry and/or expansion was timely and sufficient to replace any loss of competitive constraint that arose as a result of the merger?
- The market has grown to the extent predicted by the CC?
- Entry and/or expansion was driven by operators' ability/ inability to obtain on-street parking spots?

7.2.2 To conduct our assessment we have collected a range of evidence. We have reviewed the evidence contained in the documents gathered by the CC at the time of the merger review. We conducted in-depth interviews with a new entrant, namely, DriveNow – a

[126] Final Report, para. 4.11.
[127] *Ibid.*
[128] Final Report, para. 4.19.
[129] Final Report, para. 7.54 and 7.57.
[130] *Ibid.*
[131] Fina Report, paras. 7.45-7.46.
[132] Final Report, para. 7.53.

joint venture between Sixt Group and BMW – the London Borough of Lambeth, and Carplus – a not-for-profit NGO working for accessible shared mobility. Finally, we collected quantitative data on prices, obtaining information directly from car clubs' websites, [✂].

7.2.3 In addition to the companies and organisations named above, we sought to gather further evidence from a broad range of stakeholders, including other existing car club operators and alleged new entrants, but this proved quite difficult. However, we believe that the evidence we gathered during our in-depth interviews with the two key stakeholders above, coupled with the industry reports, publicly available data and [✂], helped us answer most of the research questions set out above.

7.3 Findings on entry/ expansion

The CC's conclusions and the evidence received during the case

7.3.1 As mentioned in paragraph 7.1.3 above, the CC concluded that entry by operators like Greenwheels, Sixt, [✂], and [✂], and expansion by operators like Hertz and City Car Club, was likely to occur.

7.3.2 The CC's conclusion above was based on evidence indicating that Greenwheels had bid for on-street parking in the [✂], and that [✂] was highly likely to allocate on-street parking to Greenwheels when the council next made more spaces available. [✂].

7.3.3 In addition to entry, the CC considered expansion by Hertz and City Car Club to be likely. This was based on Hertz's expansion plans, though these were contingent on the availability of on-street parking.[133] City Car Club too stated that it intended to continue to grow its network density in boroughs where it had on-street parking, though it was of the view that the chances for growth in London were limited by the manner in which on-street parking spaces were allocated by London boroughs.[134]

7.3.4 However, during the merger case the CC also received evidence suggesting that entry by the operators listed above was less likely. This included, evidence submitted by [✂].[135] Sixt and [✂] told the CC they were considering entry though no decision had been taken yet nor entry plans developed in either case.[136]

Our assessment

7.3.5 First, we examined whether entry by Greenwheels, [✂], Sixt, and [✂] occurred as envisaged by the CC. Our findings are based on the evidence gathered from our desktop research and the anecdotal evidence gathered during in-depth interviews with DriveNow and Carplus. In particular:

- Based on a discussion with DriveNow, we found that Sixt entered the market two years ago via the DriveNow brand – a joint venture with BMW - and currently has 310

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[133] Final Report, para 7.48.
[134] Final Report, para 7.49.
[135] Final Report, para. 7.45.
[136] Final Report, para 7.46.

vehicles and 25,000 customers, estimated to be roughly 15 per cent of the London car club market. Our desktop research revealed that DriveNow has experienced growth since it entered.[137] We understand from DriveNow that it operates a "floating car sharing model" – whereby a customer can pick up a car and drop it anywhere across different London boroughs. This model is different to that of Zipcar/ Streetcar, where cars have to be returned to the same place they were picked up. It is currently present in four north east London boroughs but has plans to increase its fleet and expand in more boroughs in 2017-2018. However, DriveNow noted that this was largely dependent on the political support it receives for its innovative car sharing model.

- According to DriveNow, Greenwheels entered the market on a small scale but subsequently exited due to its inability to win contracts with boroughs. Our desktop research revealed that Greenwheels entered the London market (i.e., Borough of Lambeth and Wandsworth) in December 2011, after the merger, but exited in March 2013 due to limited take up locally.[138] It is unclear what business model it had while it was active in the London market. According to Carplus, Greenwheels decided to focus on overseas markets where it is already present. In DriveNow's view, this may have been due to Zipcar having obtained, via its acquisition of Streetcar, single operator licences (whereby Zipcar is the sole licensed car club provider in certain London boroughs).
- In addition, DriveNow told us that [✂], was launched in [✂] but closed down after a year due to its inability to expand. We understand that [✂] had a free-floating model, similar to DriveNow. Our desktop research revealed that a combination of competition from other car clubs (i.e., Zipcar and City Car Club) as well as the UK's car ownership culture were thought to be the reasons why [✂] failed.[139] Its market exit was confirmed by Carplus, who told us that [✂] stayed in the market for only about [✂] months. Carplus told us that [✂] was not able to attract enough members, so it decided to exit, and as far as it is aware, has not had any formal representation in the UK since [✂].
- Our desktop research revealed that [✂] does not currently operate in the market. This was also confirmed by Carplus, who told us that [✂] has never entered the UK market.
- Based on our desktop research, Hertz does seem to offer a car club service called Hertz 24/7, but this appears to be open only to corporate customers as opposed to private individuals (contrary to the CC's predictions).[140] This was also confirmed by Carplus and DriveNow.

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[137] Since launching in London in December 2014, DriveNow had accumulated 12,000 customers – around 10 per cent of the London's car-sharing market by March 2016, and as of September 2016, it had 20,000 members in London, representing 12 per cent of the capital's market. Since the launch in December 2014, the scheme has grown to a fleet of 290 vehicles. See: http://www.fleetnews.co.uk/fleet-management/case-studies/industry-profiles/drivenow-bmw-brings-flexibility-to-car-share-market and http://www.carplus.org.uk/drive-now-achieves-20000-userssepsmn16/ and http://www.carplus.org.uk/?s=drivenow (last access on 28th February 2017).
[138] See: http://www.carplus.org.uk/greenwheels-retreat-smn-0313/ and http://www.carplus.org.uk/car-club-operators-news-2/.
[139] See: https://www.contracthireandleasing.com/car-leasing-news/car2go-car-club-withdraws-from-the-uk/
[140] See: http://www.autorentalnews.com/channel/rental-operations/article/story/2009/01/hertz-goes-big-with-car-sharing.aspx (last access 1st March 2017).

- We were told by DriveNow that City Car Club was eventually bought by Enterprise Rent-A-Car, and this was confirmed by our desktop research.[141] DriveNow also told us that City Car Club struggled to win contracts within London boroughs. Our desktop research suggests that this entity now trades under the Enterprise Car Club brand. We also understand from Carplus that Enterprise Car Club is expanding more rapidly outside than within London.

7.3.6 The evidence above suggests that, although some of the car club operators the CC expected to enter did enter, namely Greenwheels, [✂],[✂] and Sixt, only the latter is currently active in the market via DriveNow with the others all having exited the market fairly quickly following their entry. Other entrants cited by the CC do not appear to have entered.

7.3.7 DriveNow also told us that a number of other companies, not cited by the CC in its Final Report, entered the London market after the merger:

- There are a large number of operators who attempted to enter the market but were forced to exit. These include Whipcar and Ford GoDrive. Carplus told us that Ford launched an experimental point-to-point service in 2015 but decided not to proceed further with this initiative in late 2016.
- E-Car Club was bought by Europcar. Carplus confirmed that E-Car Club is a small car club with some presence in London, launched in 2014 across the UK. It also confirmed that E-Car Club was acquired by Europcar last year.
- Europcar has also launched a service, Ubeeqo, in some parts of London. However, the success of this small scale venture has been limited, largely due to the inability to win borough contracts according to DriveNow. Carplus confirmed that, together with E-Car Club, it is a subsidiary of Europcar and has a relatively small scale of operations.
- Co-wheels Car Club is another car club operator currently present in London which entered last year.
- Bollore' Bluecar/ Autolib' (which operates in Paris as a large city-wide, point-to-point provider[142]) is now piloting services in London with the idea of launching this year on a large scale.

7.3.8 To corroborate the anecdotal evidence discussed above, we sought to compare the market shares of car club operators before and after the merger. This would allow us to assess whether the entry and/or expansion hypothesised by the CC has materialised, as well as to test whether the firms that entered the market after the merger are still active and whether they have expanded their market presence.

7.3.9 To do so, we gathered data from [✂] on the number of on-street and off-street bays, numbers of cars and members for the period 2010 – February 2017, broken down (to the extent possible) by London borough.[143] Due to a number of limitations observed in the data, [✂], we decided to conduct our analysis looking at the London market as a whole

[141] See: http://www.telegraph.co.uk/finance/newsbysector/transport/11508736/Enterprise-drives-off-with-City-Car-Club.html (last access 2nd March 2017).
[142] A "point-to-point car sharing model" allows a customer to pick and drop a vehicle in any number of designated stations.
[143] [✂].

as opposed to borough by borough. Similarly, we decided to focus on fleet data (total cars), as this appears to be the most complete data.[144] Further, we have excluded Hertz from the analysis as our understanding is that it offers car club services to corporate users only, whereas our analysis focused on car club services offered to individuals. As we compared 2010 with 2017 data, our analysis does not capture those car club operators that entered and exited the market at some point during this time frame.[145]

7.3.10 The results of our analysis,[146] are presented in Table 7 below. There are a number of limitations to this analysis due to the incompleteness of the data collected by [✂]. As such, any conclusions drawn from this analysis should be interpreted with caution.[147]

Table 7-- Market shares for car club operators in London, by fleet (2010 – 2017)

	2010		Feb 2017		
	Total cars	**% share**	**Total cars**	**% share**	**Difference in % share (2010–2017)**
Zipcar	[✂]	[✂]	[✂]	[✂]	[✂]
Streetcar	[✂]	[✂]	[✂]	[✂]	[✂]
Merger parties combined	[✂]	[✂]	[✂]	[✂]	[✂]
Enterprise Car Club/ City Car Club	[✂]	[✂]	[✂]	[✂]	[✂]
DriveNow	[✂]	[✂]	[✂]	[✂]	[✂]
Matcha	[✂]	[✂]	[✂]	[✂]	[✂]
E-Car Club	[✂]	[✂]	[✂]	[✂]	[✂]
Co-wheels	[✂]	[✂]	[✂]	[✂]	[✂]
Total	[✂]	[✂]	[✂]	[✂]	[✂]

Source: KPMG analysis of [✂]
Notes: [1] Hertz has not been included in the analysis as we our understanding is that this offers car club services to corporate users only, whereas in our analysis focused on car club services offered to individuals. [2] Enterprise Car Club acquired City Car Club in April 2015. As such, its shares have been combined with those of City Car Club.

7.3.11 The results show that the combined market share of the merger parties has decreased by nearly 19 percentage points since the merger (more than the market share increment obtained as a result of the merger in 2010) with Enterprise Car Club and DriveNow having increased their market share.

7.3.12 In light of the evidence above, there appears to have been some entry in the London car club market with a combined market share of around 25 per cent. Significantly fewer entrants than predicted by the CC entered successfully, however. We have been able to obtain evidence only from DriveNow and Carplus on the reasons for which entry and expansion by other providers has not been successful, but the key factor highlighted was the difficulty in obtaining licenses and parking spaces in London boroughs.

[144] [✂].
[145] Operators like Greenwheels and Go-Drive entered the market but exited shortly.
[146] Final report, Appendix D, Tables 1 and 2.
[147] Given the limitations discussed above, we compared the market shares that we computed for 2010 with the market shares presented by the CC in its Final Report (Appendix D, Table 2), and found that these are comparable. [✂].

7.4 Findings on the timeliness and sufficiency of entry and expansion

7.4.1 In section 7.3 above, we sought to understand whether the entry / expansion, which at the time of the merger the CC considered likely to occur, has indeed materialised. This section sets out the evidence on whether such entry has been timely and sufficient to offset an SLC.

7.4.2 As noted in paragraph 7.1.3 above, in particular, the CC concluded that entry and expansion would be timely and sufficient to prevent an SLC. In this section we set out the evidence and our assessment on whether the entry and expansion that did occur was timely and sufficient.

7.4.3 In relation to timeliness, there is one instance of entry occurring within two years of the merger (Greenwheels), however this entrant subsequently exited after a relatively short period in the market.

7.4.4 For some other entrants, the timing of their entry is not clear.

7.4.5 However, for DriveNow – [✂] – entry occurred only in December 2014, four years after the merger was cleared. Overall therefore, evidence suggests that the main entry that has occurred since the merger was not timely.

7.4.6 In relation to the extent to which entry influenced competition in the market, the evidence set out in the previous section shows that most new entrants subsequently exited the market. Furthermore, we have seen that the only entry of any significant scale, by DriveNow, has not occurred on a timely basis. This evidence, in itself suggests that entry and expansion following the merger was unlikely to have been sufficient.

7.4.7 We have also sought to assess evidence on prices, to further examine the sufficiency of entry and expansion, which we set out in the next paragraphs.

Assessment of prices

7.4.8 We compared annual membership fees and the lowest hourly and daily rates (lowest weekday and weekend hourly rates) for Zipcar and Enterprise Car Club (previously City Car Club) before and after the merger. The current fees were obtained from the operators' websites, while prices at the time of the merger are based on the analysis done by the CC during the case to conduct a price comparison analysis presented in the Final Report.[148,149] Further details of our analysis are discussed in Appendix 5.

7.4.9 The comparisons presented below need to be treated with some degree of caution since we had only limited information on how rates had been recorded by the CC at the time of the merger case, and, in particular, whether these refer to the same type of car plans for which current prices have been recorded. Indeed, the exact same plan as the CC used

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[148] We note that, at the time of the merger, the CC compared prices for four operators, namely Zipcar, Streetcar, Connect by Hertz, and City Car Club. As Streetcar ceased to exist as a result of the merger with Zipcar, and Hertz only offers car club services to corporate customers (via its Hertz 24/7 service), we could only use data on Zipcar and City Car Club (now operating under the Enterprise Car Club brand) to conduct our price comparison.

[149] Final Report, Appendix H, Tables 5 and 8.

at the time of the merger may not be currently available.[150] Finally, as the CC noted at the time of the merger, the comparison between Zipcar and Enterprise Car Club is also complicated by the fact that their vehicle charges vary according to the model of car, time of week and whether hourly or daily rental is considered.[151] What is included in the prices also differs between Zipcar and Enterprise Car Club.

7.4.10 To attempt to conduct a like-for-like comparison, we have selected rates for the 'lowest' plan currently available on Zipcar and Enterprise Car Club websites, which appear to be quite similar to what the CC recorded at the time of the merger. In particular, for Zipcar we used rates associated to the plan including Ford Fiesta and Toyota Yaris Hybrid, which appears to be the cheapest plan,[152] whereas for Enterprise Car Club we used rates for the 'small vehicle type' category. In the case of Zipcar, the plan we selected includes 60 miles of fuel per day, the congestion charge, and insurance. According to the data received by the CC, these services were also offered by Zipcar at the time of the merger. However overall we note that we have not been able to assess in full whether the quality of the product offered by Zipcar has changed over time. While some features of the product are relatively similar over time – such as the type of vehicle – there may in principle be some other aspects of quality which have changed over time, and may have also influenced prices.

7.4.11 While this analysis provides some evidence of prices having increased since the merger, it is important to exercise caution in attaching weight to this result. The change in prices has been recorded more than six years since the merger. Over that time period, a number of other factors are likely to have influenced how prices have evolved. We have presented price changes for Enterprise Car Club alongside changes in prices at Zipcar, in order to provide some information on how Zipcar's prices have compared to those of another provider who might be subject to similar cost pressures or exogenous demand fluctuations. However, given the limitations noted in paragraph 7.4.9, it is not possible to compare more systematically the price changes at Zipcar with the price changes at Enterprise Car Club (in the same manner we did for Cineworld/ City Screen and NBTY/ Julian Graves– which is discussed below).

[150] We understand that the CC used the 'lowest' rates available at the time. For Zipcar, the CC appeared to have used the rates for VW Polo. We note that this vehicle is not currently available on Zipcar or Enterprise Car Club.
[151] Final Report, Appendix H, para. 19.
[152] We note that Zipcar currently offers a pay-per-mile plan whereby users can use the same car models as above, namely Ford Fiesta and Toyota Yaris Hybrid. When considering annual membership fee, and hourly and daily fees, this plan appears to be cheaper than the one we used to conduct our analysis, although it does not allow customers to use cars for 24 hours or longer during weekends and no petrol allowance is included – petrol is charged at 29p per mile starting from the first mile.

Table 8 – Analysis of price outcomes before and after the merger

Car club operator	Annual membership fee (£)	Hourly: Lowest weekday rate (£)	Hourly: Lowest weekend rate (£)	Daily: Lowest weekday rate (£)	Daily: Lowest weekend rate (£)	Included in the service
Zipcar	**Decreased** from £63.90 to £59.50	**Increased** from £5.00 to £6.00	**Increased** from £6.30 to £7.50	**Increased** from £37.00 to £54.00	**Increased** from £57.50 to £65.00	**2010**: Congestion charge, insurance, 60 miles worth of petrol **2017**: London congestion charge, insurance, 24/7 breakdown assistance, includes 60 miles, and fuel charged at £0.25 per mile
Enterprise Car Club (previously City Car Club)	**Decreased** from £63.90 to £60.00	**Decreased** from £6.30 to £4.95	**Decreased** from £6.30 to £4.95	**Decreased** from £63.20 to £39.95	**Decreased** from £63.20 to £39.95	**2010**: Half of congestion charge, insurance, fuel charged at £0.19 per mile **2017**: Insurance (a damage waiver excess of £750), mileage rates starting from £0.21 per mile, breakdown cover and 24/7 Clubhouse support

Sources: KPMG analysis of rates and additional terms and conditions gathered by the CC at the time of the merger review and current rates available on http://www.zipcar.co.uk/check-rates/london and https://www.enterprisecarclub.co.uk/locations/south-east-england/london/
Notes: 2010 rates have been adjusted for inflation using CPI (other vehicle services) sourced from the Office for National Statistics.

7.4.12 Table 8 above shows that, with the exception of the annual membership fee – which has decreased for both car club operators – hourly and daily rates (both weekday and weekend) for Zipcar have increased since the merger, while prices for Enterprise Car Club have decreased.[153] In relation to hourly weekday rates, we found that customers who used the service for less than around 4.6 hours a year are made better off by this change, whilst those with heavier usage are made worse off. Similarly, in relation to daily weekday and daily weekend rates, we calculated that customers that used the services for less than 0.3 and 0.6 days respectively per year would be better off, and those with heavier usage would be worse off.[154]

7.4.13 While we don't have evidence on current frequency of usage of Zipcar services by their customers, it seems reasonable to expect that most users are likely to use Zipcar's services sufficiently frequently that they would be worse off now compared to the time of the merger. According to the data submitted by the merger parties at the time of the

[153] While some aspects of quality are captured in the analysis above and do not appear to have changed significantly since the merger (e.g., type of car, insurance coverage), we have not sought to assess other aspects which might drive quality (e.g., cleanliness of the cars).

[154] It is unclear whether users need to decide in advance whether they want to pay the hourly or daily rates. However, if users were required to choose their rates ahead of using the service, we note that users deciding to pay the daily rate would always be made worse off compared to the pre-merger situation as they would get charged the full day rate even if they used the car for less than 24 hours.

decision,[155] 48 per cent of Zipcar users hire vehicles for more than 4 hours in one session. If we assumed that usage has not changed since the merger, this would be consistent with most Zipcar users being worse off compared to what they used to pay before the merger.

Other recent trends in the car club market

7.4.14 In addition to prices, we also examined whether there are any recent trends in the car club market that suggest that competition has increased or decreased since the merger.

7.4.15 In particular, we were told by from DriveNow and an industry report commissioned by Zipcar that a number of new innovative business models have emerged in addition to the "traditional car sharing" or "back-to-base" model (i.e., which requires a customer to reserve a vehicle in advance, and pick and drop it in the same location after use). These include a "point-to-point car sharing model" (which allows a customer to pick and drop a vehicle in any number of designated stations), a "floating car sharing model" (which we discussed above and is used by DriveNow), and a "peer-to-peer model" (where car owners rent out their cars to others during periods when they would otherwise not be used).[156]

7.4.16 We were also told by the London Borough of Lambeth that when Zipcar learned that DriveNow had approached the Council with its proposal of entering the Lambeth market, it showed interest in also offering a floating car sharing model. Zipcar, in particular, highlighted to the Borough that its presence in Lambeth would benefit customers as it already operates a fleet of cars via its traditional car club model and therefore already has a large membership base. Zipcar also claimed that its traditional car club and floating car services would be complementary. Zipcar's interest in offering a floating car service in London was also confirmed by Carplus.

7.5 Findings on barriers to entry and expansion

7.5.1 As mentioned in paragraph 7.1.3 above, the CC noted that access to on-street parking could act as a barrier to entry at a local level. The CC concluded, however, that it expected new entry to be focused on a small number of boroughs initially.[157] The CC also noted that entry and expansion was supported by the attractiveness of the London market and prospects for rapid growth.[158]

7.5.2 Our assessment in previous that timely and sufficient entry may not have been as likely the CC predicted provides an indication that barriers to entry or expansion were more significant than the CC predicted. In this section, we describe the types of barriers considered by the CC, and set out our assessment of what barriers appear to have had an impact on entry and/ or expansion following the merger.

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[155] Final Report, Appendix H, Table 9.
[156] Zicar, Car Lite London – How car clubs will help more Londoners drive less, page 17. See: http://dru-cdn.zipcar.com/sites/default/files/pdfs/carlite_final_jan27.pdf?_ga=1.63519338.493302207.1480694320
[157] Final Report, para. 7.55.
[158] Final Report, para. 20.

The CC's conclusions in relation to barriers to entry

7.5.3 The CC considered that there were notable barriers to entry in this market. This included considerations that access to on-street parking in single-operator boroughs was restricted and that in such boroughs, operators who did not have exclusive access to on-street parking must use off-street spaces.[159]

7.5.4 The CC also noted that there advantages to scale and having a wide network of vehicles, as well as advantages to density, all of which could constitute a barrier to entry.

7.5.5 The CC concluded, however, that such barriers to entry were not so significant as to prevent entry and/or expansion. To reach this conclusion, the CC relied upon the evidence on prospective entry and expansion.

7.5.6 In relation to initial scale of entry, the CC noted that a new entrant would have an opportunity to expand into other boroughs as it built up its reputation and membership base in London.[160] In relation to density, the CC noted that operators could concentrate on a small geographic area to achieve density.[161] The CC concluded that a new entrant could broadly replicate the pre-merger constraint of Streetcar within a few years.[162] This was based on evidence suggesting that Zipcar had grown rapidly in the London car club market and in some North American markets.[163] In addition, the CC noted that a single-operator borough could at any time decide to sponsor further new entrants by allocating its on-street parking accordingly.

7.5.7 The CC's conclusion that barriers would not prevent entry and expansion was also supported by the attractiveness of the London market and prospects for rapid growth.

7.5.8 The CC, in particular, noted that the car club market had grown rapidly since its inception in the late 1990s, and that this growth was likely to continue.[164] This conclusion was based on submissions by Carplus, City Car Club and Greenwheels, and research done by the London boroughs of Islington and Camden and the consulting firm Frost and Sullivan. In particular:

- Carplus stated that there was likely to be an eight fold increase in membership by 2020.
- City Car Club and Greenwheels stated that current car club penetration in London was at 10 per cent of its true potential and that London had greater growth potential than other large UK cities.
- Finally, the CC's conclusion was also based on research by the London boroughs of Islington and Camden and the consulting firm Frost and Sullivan that also highlighted the car club market potential in the two London boroughs and the UK respectively.

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[159] Final Report, para. 7.42.
[160] Final Report, para. 7.55.
[161] Final Report, para. 7.16.
[162] Final Report, para. 7.56.
[163] *Ibid.*
[164] Final Report, para 7.5.

7.5.9 At the time of the merger case, the CC did however receive evidence against its conclusion above. In particular, Greenwheels, Mobility, [✂], Hertz, [✂], [✂], Carplus, and [✂] told the CC that there were high barriers to entry in London. They argued that barriers to entry, in particular scale advantages, economies of density, marketing, access to funding, and access to on-street parking may stifle entry and expansion and mean that the potential demand was not served.

7.5.10 In particular, the CC received evidence from Hertz, Avis and [✂] on the existence of a first-mover advantage:

- Hertz noted that "*the merger […] would tip the market in favour of the merged firm because it would have a dominant network of both members and car club spaces […], and this would reduce the likelihood that other car club operators would be successful in tendering for on-street spaces from local authorities in future.*"[165] Hertz also argued that "*when local authority on-street parking contracts came up for renewal, the merged firm would have an advantage over its competitors by virtue of its larger network and by being an incumbent operator in single-operator boroughs which in itself would improve its competitive position with local authorities.*"[166]
- Avis told the CC that there was a first-mover advantage in being able to get good parking sites.[167]
- Nexus Car told the CC that local councils were reluctant to allocate parking spaces to a new entrant and considered that the current environment did not support entry.[168]

7.5.11 The CC also noted that one of the criteria to award on-street parking to a car club operator was 'performance', and a number of London boroughs explicitly stated that membership numbers were a dimension of the performance criterion. In addition, other London boroughs stated that they used membership as one of their criteria to award on-street parking. Finally, the CC noted that other London boroughs used the ability to provide references as a criteria to award on-street parking, and stressed that this could also favour larger or more established operators.[169]

7.5.12 We also note that the CC received evidence from the parties suggesting that car club operators needed to incur substantial management costs when bidding for the local authority contracts and negotiating contract terms.[170]

Our findings about barriers to entry and expansion from our review

7.5.13 We have obtained only a limited amount of evidence which specifically relates to the extent to which access to on-street parking acts as a barrier to entry.

7.5.14 However, DriveNow told us that it understood that a number of operators have struggled to stay in the market due to their inability to win contracts for on-street parking with a sufficiently large number of London boroughs, and as a result were forced to exit. To the extent that economies of scale are necessary for an operator to be viable – and our

[165] Final Report, para. 6.81.
[166] Final Report, para. 6.82.
[167] Final Report, Appendix J, para. 24.
[168] *Ibid.*
[169] Final Report, para. 6.85.
[170] Final Report, para. 7.27.

discussions with DriveNow and Carplus indicate that they may be – this necessitates entry in a number of boroughs. However, limited access to parking, particularly in single operator boroughs, can limit the ability to reach a sufficient scale, and thereby have an adverse effect on viability of entry.

7.5.15 In particular, DriveNow told us that a minimum of 300-400 vehicles are needed in a city for the model to work, with the number significantly higher for London (around 1,000 vehicles). DriveNow noted that in some cases, market exit may have been due to Zipcar having acquired single operator licences in some London boroughs.[171] In this context, both DriveNow and Carplus also noted that the floating car sharing model is incompatible with single operator licences as cars cannot be dropped off in different boroughs from where they were collected.

7.5.16 Similarly, Carplus noted that the fragmented nature of the London licencing system (i.e., the large number of boroughs, each of which has different licencing policies, the lack of an overarching London-wide framework for the development of shared car networks and the limits and inconsistencies regarding the access to on-street parking) coupled with the existence of single operator licences represents a significant barrier to expansion. This is also confirmed by Zipcar in an industry report which suggests that "*[C]ar club provision is currently patchy across London due to significant variations in policy stances between London boroughs.*"[172] Zipcar also noted that "*whilst a good percentage of boroughs have now adopted a positive policy towards car club provision, this has not always resulted in the kind of practical, joined up action that will ensure the club's success*".[173] In particular, Zipcar referred to the "*huge variation in the extent to which boroughs offer favourable permit rates to car clubs relative to the standard business permit cost*".[174]

7.5.17 Thus, the evidence we have received about barriers to entry and expansion is consistent with our observations in the previous sections that entry occurred but that many of the new entrants subsequently exited. Specifically, access to parking appears to have been a significant barrier to achieving the required scale to operate successfully and remain in the market.

7.5.18 In relation to market growth, there is limited concrete evidence to assess whether the CC's conclusion above is correct, but we set out below the relevant information we have obtained from our conversations with DriveNow and Carplus, and our review of the Frost & Sullivan report prepared for Zipcar in 2014, i.e., after the merger was cleared. In DriveNow's view, growth in the UK and London has been quite flat, compared to other European cities (e.g. Berlin). This was also confirmed by Carplus, who told us that the London market has not grown as much as anticipated. Comparing the 2013 number of car club member in London provided by Frost & Sullivan (i.e., 140,000)[175] with the 2010 number of car club members in London presented by the CC in the Final Report (i.e.,

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[171] We note that, according to an industry report prepared by Zipcar in January 2014, 13 out of 33 London boroughs appear to be served only by Zipcar. As eight London boroughs did not have any car club involvement, this would amount to around 50 per cent of the London market. Zipcar, Car Lite London – How car clubs will help more Londoners drive less, Table 1. See: http://dru-cdn.zipcar.com/sites/default/files/pdfs/carlite_final_jan27.pdf?_ga=1.63519338.493302207.1480694320
[172] Zicar, Car Lite London – How car clubs will help more Londoners drive less, page 5.
[173] *Ibid.* page 30.
[174] *Ibid.*
[175] Frost & Sullivan, Car-sharing in London – Vision 2020, page 5. See: http://dru-cdn.zipcar.com/sites/default/files/pdfs/car-sharing_in_london_-_vision_2020_-_final.pdf?_ga=1.1824244.493302207.1480694320

around 130,000)[176] confirms that the market has not grown as rapidly as the CC expected at the time of the merger review.

7.5.19 In relation to the reasons behind slower than expected growth, DriveNow told us that, in London, the strength of the incumbent operators had impacted the slower than expected growth, as well as operators having to navigate lengthy negotiating procedures with the boroughs without any strong guidance or political support from Transport for London. However, we do not have any further information on the reasons for slower than expected growth, and hence are not able to draw any further conclusions. In this regard, it is also difficult to conclude whether this slower growth might have been foreseen by the CC – although we do note that the CC received a large body of evidence on the speed of growth, which might suggest that the slower growth we have observed would have been difficult to predict.

7.6 Zipcar/ Streetcar: conclusions from the ex-post analysis

7.6.1 In this Phase II case, the CC cited likely entry and expansion, as well as a conclusion that a growing market would support expansion, as its basis for clearing this transaction. This was despite the CC having concerns that there was scope for price increases in the short term owing to a loss of competition between the merger parties and barriers to entry.

7.6.2 Our assessment of entry and expansion since this merger was cleared has shown that while a number of operators have entered the market, most of these have subsequently exited, rather than expanding. The only entry of any significant scale occurred with a different business model, and occurred four years after the merger, which was not predicted by the CC. Our analysis shows that prices are likely to have increased materially (in real terms) for Zipcar users since the merger, though we can't draw conclusions on the extent to which these price increases were as a result of the merger.

7.6.3 Overall, therefore, timely, likely and sufficient entry does not appear to have occurred in this market. In particular, while entry was more likely and timely, it did not reach a sufficient scale and most entrants exited

7.6.4 We understand that the key reason for the exit of a number of these firms was a lack of access to on-street parking, which limited their ability to achieve scale and operate successfully. We also understand that another reason why these entrants failed to stay in the market was due to the large number of London boroughs these companies needed to negotiate with in order to reach a sufficient scale, but each borough appeared to have different terms and conditions. The CC did not conduct a full assessment of the impact of different policies in different boroughs at the time of the merger, instead concluding that growth in the market would offset any difficulties.

7.6.5 The CC put significant weight in its decision on forecasted growth in this market, which it concluded would facilitate successful entry and expansion. While the CC received a range of evidence supporting the likely growth in the market, it also received some evidence that growth might not be as strong as expected. Overall, the evidence suggests

[176] Final Report, Figure 1.

that growth has been weaker than the CC expected and was not strong enough to overcome the other barriers facing new entrants in this market.

8 Cartonplast/ Demes

8.1 Summary of the OFT's decision

8.1.1 Cartonplast acquired certain assets of the Demes business unit of DS Smith PLC in January 2010. The merger was cleared unconditionally by the OFT in March 2010 at Phase I.

8.1.2 The merger parties were found to overlap in the supply of plastic layer pads (PLPs) and ancillary logistical and washing services to the glass industry,[177] and the OFT assessed the impact of the merger on this product market. However, the OFT did not consider it necessary to conclude on the precise product market definition as it found no SLC in this narrowest frame of reference.[178] In relation to the geographic frame of reference, the OFT concluded that it was national in scope.[179]

8.1.3 The OFT concluded that the merger was unlikely to result in a SLC due to the "*persuasive evidence*" that PLS, a supplier that at the time of the merger rented PLPs to the can industry only, was entering the market and its entry was considered to be timely and sufficient to restore the pre-merger rivalry provided by Demes.[180] The OFT's decision above was further corroborated by the existence of Loadhog, a competitor whose PLPs were different in design from those supplied by the merger parties. Although a third party was not sure about the suitability of Loadhog's product, another third party considered it as a viable alternative to the merger parties' PLPs. The OFT also noted PLP24's proposal to enter the market, though the OFT placed relatively less weight on this in its competitive assessment.[181]

8.1.4 Finally, the OFT concluded that de-novo entry, by a supplier not currently supplying similar products albeit to different customers, did not seem to be timely, likely, or sufficient. According to the OFT, however, the same conclusion would not apply in the case of an entrant that was building on existing capabilities and was being supported by customers (i.e., glass manufacturers and fillers) to enter the market.[182]

8.2 Research questions and evidence gathering

8.2.1 In light of the OFT's conclusions above, our ex-post evaluation sought to assess a number of research questions. In particular, we examined whether:

[177] Final Report, paras. 4 and 14.
[178] Final Report, para. 23.
[179] Final Report, para. 26.
[180] Final Report, para. 50.
[181] Final Report, paras. 49-50.
[182] Final Report, para. 42.

- Potential entry and/or expansion referenced by the OFT occurred after the merger, specifically, was there entry by PLS and PLP24? We also sought to understand the rationale for any such entry, or the reasons for a lack of entry where it failed to materialise.
- The available evidence suggests that the entry and/or expansion by PLS and PLP24 was sufficient and timely to replace any competition lost as a result of the merger? Was the existence of Loadhog sufficient to exert a competitive constraint on the merged entity (given the differences in Loadhog's product)?
- Any other entry and/or expansion occurred that was not identified by the OFT in the Final Report? If yes, by what firm(s)? For example, has there been entry (or supply-side substitution) from suppliers of rental PLPs to other industries, e.g., the plastic and can industry, into the glass industry? To what extent have glass manufacturers entered the industry themselves or sponsored the entry of other PLP suppliers after the merger took place?

8.2.2 To conduct our assessment we have reviewed the evidence contained in the documents gathered by the OFT at the time of the merger review. We have also conducted an in-depth interview with Loadhog.

8.2.3 It is worth noting that, in addition to Loadhog, we sought to gather further evidence from a broad range of stakeholders, including the merger parties, other competitors and alleged new entrants, but did not manage to arrange interviews with these firms. This problem, coupled with the lack of data on market outcomes, has been taken into account when drawing our conclusions on this case and extrapolating any case-specific findings to make more general recommendations for the CMA.

8.3 Findings on entry/ expansion and competition

8.3.1 In what follows, we consider three companies mentioned in the OFT decision as potential new entrants / expanding firms: PLS, Loadhog and PLP24.

PLS: the OFT's findings and our assessment

8.3.2 The OFT concluded that entry by PLS, a firm that supplied rental PLPs to the can industry, would be timely, likely and sufficient to restore the pre-merger rivalry provided by Demes.

8.3.3 This conclusion was based on evidence suggesting that, although PLS supplied the can industry on a [✂], it had spare capacity and [✂].[183] [✂].[184] [✂].[185]

8.3.4 As set out above, very limited information was available on this case. Loadhog told us that PLS does not supply rental PLPs to the glass industry. We have not found any evidence through desk research that would contradict what Loadhog told us.

[183] Final report, para. 44 and 47.
[184] Final report, para 45.
[185] Final Report, para. 44 and 46.

Loadhog: the OFT's findings and our assessment

8.3.5 The OFT also noted the potential expansion by Loadhog, an existing supplier.

8.3.6 The OFT noted that Loadhog was looking to expand its services and that, even though its PLPs were different in design, it had one customer and its PLP was being trialled by other glass manufacturers.[186]

8.3.7 Loadhog told us that, since the merger, it has expanded its market presence. [✂]. Loadhog told us that Cartonplast has been unable to raise prices due to the lengthy nature of the contracts with glass manufacturers and fillers, the presence of alternative suppliers of PLPs in the market, and the buyer power of glass manufacturers and fillers. However, we have been unable to find any further evidence (e.g., from glass manufacturers and fillers) to corroborate or contradict the anecdotal evidence received from Loadhog.

PLP24: the OFT's findings and our assessment

8.3.8 Finally, the OFT was told that another company, PLP24, had already approached a glass manufacturer, [✂]. While the OFT noted that with the support of one or more glass manufacturers PLP24 might enter and expand, it also noted that the evidence around this possibility was weaker than that in relation to PLS's entry. The OFT, therefore, did not place strong reliance on PLP24's entry.[187]

8.3.9 In relation to entry by PLP24, Loadhog told us that PLP24 has not entered the market. Our desktop research did not yield any concrete evidence to corroborate or contradict what we heard from Loadhog, although we note that PLP24's website is very limited and the only contact details are in Germany.

The role of glass manufacturers and fillers in the context of entry/ expansion

8.3.10 According to the OFT, entry by an operator that was building on existing capabilities (e.g., by way of supply-side substitution from suppliers of rental PLPs to other industries) and was being supported by glass manufacturers was considered timely, likely, and sufficient to deter any attempts by the parties to relax competition.[188]

8.3.11 We have not been able to explore the role of glass manufacturers and fillers with parties other than Loadhog, including with glass manufacturers themselves.

8.3.12 Loadhog told us that vertical integration by glass manufacturers and fillers is extremely rare due to the large capital outlays involved. Conversely, according to Loadhog, glass manufacturers and fillers have the balance of power in dictating the PLPs that will be used, and it is far more common for them to encourage entry and/or expansion of suppliers of PLPs in a market if they find that the latter's pad design has reduced breakage in other markets in which they also operate.

[186] Final Report, para. 37.
[187] Final Report, para. 49.
[188] Final Report, para. 42.

8.3.13 We also understand from Loadhog that customers do not switch between suppliers of PLPs on a regular basis, though glass manufacturers may consider other alternatives every 3-4 years.

8.4 Cartonplast/ Demes: conclusions from the ex-post analysis

8.4.1 In this Phase I decision, the OFT concluded that entry by PLS – a firm that supplied rental PLPs to the can industry – was likely to be timely and sufficient to prevent a realistic prospect of an SLC. The OFT's decision above was further corroborated by the competitive constraint posed by Loadhog, an existing competitor and a proposal by PLP24 to enter the market, though it placed relatively little weight on this.

8.4.2 In contrast with the OFT's conclusions, the evidence we received from Loadhog suggests that entry by PLS and PLP24 did not materialise.

8.4.3 Consistently with what the OFT noted during the merger case, the evidence we received from Loadhog suggests that its business has grown since the merger. The OFT, however, did not investigate in as much detail the potential impact of Loadhog's expansion on the merger parties, and focussed instead on the specific example of a named potential entrant (PLS).

8.4.4 In this case, there is very little other information available to test Loadhog's views, nor evidence on how outcomes, and prices more specifically, have developed since the merger to provide some evidence on how competitive constraints may have evolved. Loadhog did tell us, however, that in its view, prices have not increased since the time of the merger.

9 NBTY/ Julian Graves

9.1 Summary of the CC's decision

9.1.1 In September 2008, NBTY (owner of Holland & Barrett) acquired the entire share capital of Julian Graves. Both Holland & Barrett and Julian Graves supplied nuts, seeds and dried fruit (NSF), among other things. In March 2009, the completed transaction was referred to Phase II, at the end of which – in August 2009 – the CC cleared the merger unconditionally.

9.1.2 In relation to product market definition, the merger parties were found to overlap in the supply of NSF, and the CC decided to include in the relevant product market all supermarkets and other retailers, including independent health food stores, that sell a sufficiently large range of such products at similar prices.[189] The CC assessed the

[189] Final Report, para. 5.61.

geographic dimension of the relevant market at the local level as it noted that the ability of consumers to switch between various suppliers of NSF was limited to a local area.[190,191]

9.1.3 At the time of the merger, Holland & Barrett had 535 stores across the UK.[192,193] The CC assessed the number of competing fascia in the overlap markets, and found no competition concerns in all but 17 of them.[194]For these 17 overlap markets, the CC found that:

- The reduction in the number of retailers in the 17 locations above would not be sufficient for the parties to raise prices or decrease their range on a national basis.[195]
- It would be unlikely that the merger parties would find it profitable to raise price substantially or to reduce the range or quality of their offering in any local market. In particular, the CC considered that barriers to entry by specialist retailers were low, and that there had been some entry by small specialist retailers. In addition, the CC considered a number of other factors, including the existence of other retailers selling a narrower range of NSF, the negative impact that a deterioration in quality or service would have on the merger parties' business, and the conditions under which the competitive constraint provided by supermarkets was likely to be greater.[196]

9.1.4 On this basis, the CC cleared the merger unconditionally.

9.2 Research questions and evidence gathering

9.2.1 In light of the CC's conclusions above, our ex-post evaluation assessed the extent to which the CC's conclusions on entry and expansion materialised. In particular, we examined whether:

- Small scale entry on a local level occurred in recent years after the merger, as referenced by the CC? We also sought to understand the rationale for any such entry, or the reasons for a lack of entry where it failed to materialise.
- Entry and/or expansion by stores not selling NSF, and/or expansion by suppliers or online suppliers into the NSF market occurred after the merger? Should such entry have occurred, we sought to try to understand the rationale behind it (e.g., whether that was driven by product innovation or changes in consumer preferences).

9.2.2 To conduct our assessment we have collected a range of evidence. We have reviewed the evidence contained in the documents gathered by the CC at the time of the merger. We reviewed industry reports from Mintel, and conducted a range of desktop research. We conducted an in-depth interview with Tesco, specifically in relation to their NSF

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190 Final Report, para. 5.62 and 7.4.
191 The CC, however, did not conclude on the precise size of the local area as it was of the view that the latter would depend on the nature of the store (i.e., large retailers vs smaller independent health stores) and the geography of the area (i.e., rural vs urban areas). See Final Report, para. 5.63, 5.65 and 5.66.
192 Based on data provided by the CMA as part of the case file. See 'Q17.xsl'.
193 Final Report, para. 2.9.
194 Final Report, para. 14 and 15.
195 Final Report, para. 14.
196 Final Report, para. 15.

offering. Finally, we gathered quantitative data on prices, obtaining publicly available information on a number of market players' prices.

9.2.3 It is worth noting that, in addition to Tesco, we sought to gather further evidence from a broad range of stakeholders, including the merger parties and other supermarkets, but were not successful. However, we believe that the evidence we gathered during our in-depth interview with Tesco, coupled with the industry reports, the quantitative evidence we gathered and other desktop research, allowed us to answer most of the research questions set out above.

9.3 Findings on entry and exit post-merger

9.3.1 As discussed in paragraph 9.1.3, the CC concluded that barriers to entry for specialist retailers were low, and there had been some entry by small specialist retailers. The CC also noted that existing retailers selling other products and online stores were unlikely to expand their range of NSF and pose a greater competitive constraint on the merger parties.

Entry of small scale specialists in local areas

9.3.2 According to the CC, barriers to entry by specialist retailers were low, and there had been some entry by small specialist retailers.

9.3.3 The CC's conclusion above was based on its finding that an independent retailer could easily source small quantities of NSF – on similar terms as offered to Holland & Barrett and Julian Graves – and that it was not costly to establish a few small stores or market stalls.[197] The CC also noted instances of recent entry in the form of small retail outlets. Hence, it concluded that it would be relatively easy for these recent new entrants to expand their businesses into new locations, or for other new entrants to begin selling NSF on a similar basis in different locations.[198]

9.3.4 A review of the documents gathered by the CC at the time of merger shows that the CC received evidence from the [✂].

9.3.5 We assessed the extent to which health food stores opened since the merger in the overlap catchment areas. Our analysis indicates that, of the 17 overlap areas examined, only two small health food shops appear to have opened, one in Lewes and the other in Ely.

9.3.6 In conclusion, as noted in the paragraph above, we found no significant evidence of small scale entry at a local level. The CC's conclusions in this context pertained to low barriers to entry only rather than specific instances of entry, and we have not done an assessment of barriers to entry for small scale entry at a local level.

[197] Final Report, para. 6.5.
[198] *Ibid.*

Entry and/or expansion by other retailers

9.3.7 According to the CC, existing retailers selling NSF and other products and online stores were unlikely to expand their range of NSF and pose a greater competitive constraint on the merger parties.

9.3.8 This conclusion was based on the finding that existing retailers of NSF did not monitor the price and range of NSF available at the merger parties' stores and had no expansion plans in this segment. The CC was also of the view that entry into the market by existing sellers currently selling other products was unlikely, owing to the lack of growth in consumer demand for NSF and the availability of NSF in all large supermarkets. Online sale of NSF was also, in the CC's view, unlikely given the large postage costs involved in comparison to the relatively low value of the product.

9.3.9 A review of the documents gathered by the CC at the time of merger shows that the CC received some evidence to suggest that the supermarkets might expand or pose a greater competitive constraint on the merger parties. For example, [✂].

9.3.10 We understand that Tesco has significantly increased its range and sale of NSF products. Tesco also told us that it understood that this was also the case for the other supermarket retailers, including discounters.[199] This increase, in Tesco's view, has been driven in part by a surge in demand for NSF products. Legislation that prohibits the sale of unhealthy products near the consumer check out area has led many retailers to stock these areas with NSF products, which has contributed to the growth in sales of NSF by the supermarkets.

9.3.11 Tesco also told us that online sales by supermarkets have increased. In particular, the proportion of NSF sold by Tesco through online channels has approximately doubled since the merger.

9.3.12 In summary, it appears that since the merger, existing supermarket retailers of NSF have expanded their range, and that online sales have also increased. However, our analysis is based on the current offering of the supermarkets, and it is unclear how quickly after the merger this expansion took place.

9.4 Findings on outcomes post-merger

9.4.1 As discussed in section 9.3, the CC concluded that in most local areas, existing competitive constraints were sufficient to constrain the merger parties, but that in 17 local areas the CC also relied, amongst other things, on low barriers to entry at the local level by specialist retailers. As set out in the previous section, specialist local entry that the CC deemed likely and timely to occur did not materialise. However, the lack of such entry is not inconsistent with the CC's conclusion that barriers to such entry are low. One way to further test this conclusion, therefore, would be to test how the merger impacted outcomes for consumers (e.g., prices). If prices remained constant, or fell, as a result of the merger, this might be consistent with barriers to entry being low (even if entry did not occur).

[199] Tesco also told us that Asda is not performing as well as Aldi and Lidl in NSF.

9.4.2 In light of the above, we conducted a quantitative analysis to examine how price outcomes have changed since the merger, and have attempted to isolate the impact of the merger in prices.

9.4.3 Retail prices for NSF are set at the national level by Holland & Barrett and by supermarket retailers (and this was also the case at the time of the merger). We have therefore analysed how national prices have changed since the merger. As explained further below, we have not performed a full econometric analysis, and we are not able to conclude firmly on the extent to which the merger caused a change in prices since it was cleared. We note, however, that even if we found that prices at Holland & Barrett changed as a result of the merger, this does not necessarily allow us to draw conclusions about the CC's predictions on barriers to entry in this case. As noted above, Holland & Barrett at the time of the merger had 562 stores, of which a "*large number*" overlapped with Julian Graves. The CC concluded that only 17 raised concerns, given the constraint on Holland & Barrett from other retailers, including supermarkets, in other local areas. If we were to find, for example, that prices at Holland & Barrett increased as a result of the merger, in principle it could be because a lack of entry in these 17 local areas gave Holland & Barrett an incentive to raise prices at the national level. However, it is potentially more likely that any increase in prices as a result of the merger is not because of effects in these 17 local areas – but rather because there were in fact a larger number of local areas where competition declined as a result of the merger. In other words, that the constraint from the other general retailers, including the supermarkets, was weaker than predicted by the CC.

9.4.4 This analysis of prices, therefore, might provide more evidence on the extent to which the CC's findings on market definition and competitive constraints were accurate, than it does about the CC's conclusions on entry.

9.4.5 Nevertheless, we considered the pricing data available to carry out this exercise. As part of its assessment of the NBTY/ Julian Graves transaction, the CC received evidence from the merger parties on prices at the time of the merger review for a sample of products sold by the merger parties and a number of other supermarket retailers, including by Tesco and Waitrose.[200,201] We have gathered data on current prices[202] for those products where prices were available for both of Holland & Barrett and Tesco, the majority of which were also available for Waitrose, at the time of the merger. Full details of how we have assembled this data, and the analysis conducted are set out in Appendix 6.

9.4.6 For each product, we calculate the percentage price difference between current prices and the prices the parties submitted to the CC at the time of the merger review. First, we focus solely on Holland & Barrett.

9.4.7 This analysis indicates that, since the merger, prices at Holland & Barrett have increased for all the products in our sub-sample. We note, however, that price changes could be driven by a range of factors unrelated to the merger. Such other factors can mask the

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[200] The data submitted by the merger parties also included prices at Sainsbury's and Julian Graves. However, we decided to use prices for Tesco and Waitrose.

[201] It is worth stressing that we did not receive information from the CMA as to how the merger parties gathered these data. In particular, we do not know on what basis the products were chosen by the parties. As such, it is unclear whether this is a representative sample. Similarly, it is not clear whether prices reflect in-store as opposed to online prices, or whether prices incorporate any temporary discount. Therefore, the results of our analysis would need to be treated with caution.

[202] Current prices have been collected online and no discounts have been considered.

effect of the merger on prices, and therefore simply looking at how prices have evolved at Holland & Barrett following the acquisition of Julian Graves does not allow for any conclusions on the impact of this transaction on prices.

9.4.8 To attempt to isolate the effects of the merger on prices, we then compared the price changes for the products we are analysing at Holland & Barrett with the price changes for the same products[203] at Tesco and, separately, at Waitrose.[204] The idea is that by comparing price changes at Holland & Barrett with price changes at the comparator stores, we might strip out the effect of factors other than the merger on prices, and thus better isolate the effect of the merger on prices. This rests on an assumption that at Holland & Barrett, Tesco and Waitrose similar factors – other than the impact of the merger – drive changes in price over time, for the products we are assessing (e.g., commodity prices, trends in consumer demand).

9.4.9 Our results indicate that prices at Holland & Barrett have increased more than prices at Tesco and Waitrose for 17 out of 21 and 13 out of 18 products respectively. Tables 9 and 10 below show the results of our analysis. Although not shown in the tables below, for almost all of these products, this means that Holland & Barrett is becoming more expensive than Waitrose and Tesco (rather than Holland & Barrett's prices converging with those of the supermarkets, if they were lower than the supermarkets' prices at the time of the merger).

[203] We have recorded all brands of the same product and all package sizes. Of these brands, we have then selected those items that were most comparable in package size within the same provider. Finally, we standardised the package size across providers in order to compare prices across providers.
[204] We have also conducted our analysis combining Tesco and Waitrose together.

Table 9 – Analysis of national prices comparing Holland & Barrett with Tesco

Holland & Barrett		Tesco		
Product	**% price change**	**Product**	**% price change**	**% point difference**
Brown Rice	125.04	Whole Grain Rice	111.81	13.24
Soup mix	20.08	Soup and Broth Mix	58.89	-38.81
Dried fruit salad	87.35	Wholefood Dried Fruit Selection	5.05	82.29
Pitted dates	57.39	Wholefood Stoned Dates	197.52	-140.14
Apricots	223.15	Wholefood Blanched Apricots	63.97	159.18
Pecans	87.26	Pecan Nuts	24.47	62.79
Cashews	124.05	Cashew Nuts	2.16	121.89
Californian pistachios	215.37	Pistachio Nuts	-12.64	228.01
Brazil nuts	59.70	Brazil Nuts	19.74	39.96
Walnuts	94.90	Walnut Halves	43.53	51.37
Pumpkin seeds	205.06	Pumpkin Seeds	25.44	179.61
Granovita Organic Quinoa	138.70	Quinoa	41.64	97.05
Whole almonds	92.26	Whole Sweet Almonds	-8.17	100.42
Mixed nuts & raisins	95.46	Wholefood Fruit & Nut Mix	6.06	89.40
Bulgar wheat	35.16	Bulgar Wheat	43.44	-8.28
Chick Peas	125.88	Chick Peas	49.68	76.20
Red kidney beans	NA	Red Kidney Beans	34.14	NA
Whole green lentils	116.81	Lentilles Vertes	37.70	79.10
Split Red Lentils	166.70	Red Split Lentils	67.03	99.67
Cous Cous	35.95	Cous Cous	-23.34	59.28
Golden linseed	23.26	Golden Linseed	-67.28	90.54
Soya mince	46.49	Wholefood Soya Mince	72.36	-25.87
Pinto beans	NA	Wholefood Pinto Beans	16.04	NA

Source: KPMG elaboration of 2009 prices provided by the CMA as part of the case file, and current online prices.
Notes: [1] Instances where the percentage price increase at Holland & Barrett is higher than the percentage price change at Tesco are reported in red. [2] Instances where prices have decreased since the merger was cleared by the CC are reported in green.

Table 10 – Analysis of national prices comparing Holland & Barrett with Waitrose

Holland & Barrett		Waitrose		
Product	**% price change**	**Product**	**% price change**	**% point difference**
Brown Rice	125.04	Uncle Ben's Whole Grain Rice	120.49	4.55
Soup mix	20.08	Telma Soup Mix Tub	10.00	10.07
Dried fruit salad	87.35	Tropical Medley Dried Fruit	178.17	-90.83
Pitted dates	57.39	Sun Dried Stoned Dates	83.84	-26.45
Apricots	223.15	-	NA	NA
Pecans	87.26	Pecan Nuts	84.88	2.38
Cashews	124.05	Cashew Nuts	65.10	58.95
Californian pistachios	215.37	Roasted Pistachio Nuts	28.41	186.97
Brazil nuts	59.70	Brazil Nuts	91.41	-31.70
Walnuts	94.90	Walnut Pieces	82.71	12.19
Pumpkin seeds	205.06	Pumpkin Seeds	42.71	162.35
Granovita Organic Quinoa	138.70	Granovita Organic Quinoa	140.09	-1.39
Whole almonds	92.26	-	NA	NA
Mixed nuts & raisins	95.46	Fruit & Nut Selection	22.23	73.23
Bulgar wheat	35.16	Bulghur Wheat	31.72	3.45
Chick Peas	125.88	Chick Peas	31.72	94.16
Red kidney beans	NA	Red Kidney Beans	11.00	NA
Whole green lentils	116.81	-	NA	NA
Split Red Lentils	166.70	Split Red Lentils	23.61	143.09
Cous Cous	35.95	Cous Cous	-9.65	45.59
Golden linseed	23.26	Linusit Gold Golden Linseed	-65.04	88.30
Soya mince	46.49	Realeat Vege Mince	75.62	-29.13
Pinto beans	NA	-	NA	NA

Source: KPMG elaboration of 2009 prices provided by the CMA as part of the case file, and current online prices
Notes: [1] Instances where the percentage price increase at Holland & Barrett is higher than the percentage price change at Waitrose are reported in red. [2] Instances where prices have decreased since the merger was cleared by the CC are reported in green.

9.4.10 We recognise that this analysis is not a full econometric analysis and does not control for all relevant factors, e.g., differences in costs, which might drive different price changes at Holland & Barrett compared to Tesco / Waitrose.

9.4.11 In our view, overall, the pattern in Holland & Barrett's pricing, coupled with the evidence received from Tesco that supermarket ranges have increased, casts some doubt on the degree to which Holland & Barrett competes with supermarkets.

9.4.12 It is worth noting that these findings are largely consistent with the results of the CC's econometric analysis, conducted at the time of the merger review. That analysis examined the effect of different potential NSF competitors opening new stores in the vicinity of an incumbent Holland & Barrett store. The CC found that Julian Graves appeared to be Holland & Barrett's closest competitor, particularly when the stores were located sufficiently close together, and that while supermarkets also posed a competitive constraint, this was to a lesser extent than Julian Graves.[205]

[205] Final Report, para. 8.

9.4.13 Our results are also consistent with further anecdotal evidence we gathered from Tesco. In particular, Tesco told us that it has recently partnered up with a number of different retailers, including Holland & Barrett, to fill the empty space in larger stores. The addition of these concession stores, according to Tesco, constitutes a complementary and non-cannibalistic product offering to Tesco's existing range.

9.5 NBTY/ Julian Graves: conclusions from the ex-post analysis

9.5.1 In this case, the CC cleared this transaction unconditionally at Phase II, not requiring divestments in any of the local markets affected by the transaction. While in the large majority of these overlap local markets, this decision was based on the strength of competition that the CC believed was provided by existing competitors, in a minority, the CC was of the view that existing competitive constraints were not sufficient to constraint the merger parties following the transaction.

9.5.2 In these local areas, the CC cleared this transaction partly on the basis of a view that barriers to small scale local entry were low, and that this could be expected to constrain the merger parties. We note that, at the time of the merger, the evidence received by the CC was [✂] in relation to the ease of entry by small scale local suppliers, and the CC did not do a detailed assessment of potential barriers at a local level.

9.5.3 We have found very limited examples of small scale local entry having occurred in any local markets. We recognise that this in itself is not necessarily inconsistent with the CC's conclusion – if barriers to entry are low, entry need not actually occur in order to constrain the merger parties.

9.5.4 In order to test the CC's conclusions further, we therefore assessed how prices developed since the merger. While this analysis needs to be treated with caution, the evidence suggests that prices at Holland & Barrett have increased more than other stores since the merger.

9.5.5 At the same time, we have received evidence that supermarkets in particular have significantly expanded their sales of NSF, and that online sales have increased.

9.5.6 Taken together, this evidence is suggestive of Holland & Barrett competing less closely with the supermarkets than the CC had found.

9.5.7 It is not clear when this potential divergence in prices occurred, and therefore it is difficult to draw conclusions on the extent to which this has implications for the CC's conclusion at the time of the merger that supermarkets compete with Holland & Barrett. However, we note that the CC's econometric analysis, conducted as part of the merger assessment, did suggest that the supermarkets posed a weaker competitive constraint than the other merger party.[206]

[206] Final Report, para. 5.51.

B. Conclusions from the ex-post analysis

10 Findings on the Authorities' decisions

10.1 Introduction

10.1.1 In the previous section we set out our analysis of the eight merger cases we have reviewed. In this section, we summarise our findings from our review of the Authorities' decisions across these cases. These findings form the basis for the recommendations for future cases, which we set out in section 11.

10.1.2 We recognise that our review has the benefit of hindsight, something which is obviously not available to decision-makers at the time of the case. In addition, we recognise that the Authorities have fixed timescales in order to gather evidence and make decisions. In the report, we look at whether predictions that were made by the Authorities were realised, but this is not the same as assessing whether the decisions or the decision-making process was correct. Our review is aimed at facilitating a consideration of these issues, and ultimately providing recommendations for future cases (in the next section).

10.1.3 As set out in section 1.2, as well as assessing the accuracy of the Authorities' predictions, we also assess whether this varied across Phase I and Phase II cases, whether the market developments could have been better foreseen; and any information on why predictions made by the Authorities about entry or expansion were not realised.

10.2 Were the Authorities' predictions on entry and expansion realised?

10.2.1 In a number of the cases reviewed, the Authorities made specific predictions that entry or expansion would be timely, likely and sufficient to prevent an SLC.

10.2.2 As set out in paragraph 1.2.8, in some cases the Authorities' decisions were not based principally or solely on the expectation of entry or expansion actually materialising. In these cases, an observation that entry did not occur might be consistent with the Authorities' decision, if the Authorities' decision was based largely, for example, on a view that barriers to entry or expansion were low rather than relying more heavily on specific examples of entry and expansion. We take into account these differences in considering the accuracy of the Authorities' predictions in this section.

10.2.3 In our conclusions below, we refer to evidence we have collected on how prices have developed in certain markets since the mergers were cleared by the Authorities. As set out above[207], these analyses need to be treated with caution as they do not control for all relevant factors that may have influenced how prices have developed since the Authorities' decisions. They do not, therefore, allow for firm conclusions to be drawn about the impact of each merger on prices. Rather, they should be seen as an indicator

[207] In sections 9.4, 7.4, 6.4, 5.5, 3.4, and 2.4.

of how prices have developed, and used in conjunction with the range of other evidence gathered.

10.2.4 In a number of merger decisions we reviewed, the evidence that we have gathered suggests that the Authorities' predictions of likely, timely and sufficient entry and/ or expansion were realised:

- In Sheffield City Taxi/ Mercury Taxis, the expansion of Uber occurred in the year following the merger, as the CMA had predicted, and the evidence shows that SCT's prices have not risen since the merger (and in some cases have declined).
- In WRI/ Hostelbookers, the evidence shows that Booking.com and Expedia have expanded their offerings in approximately the three years since the merger was cleared, as predicted by the OFT. Booking fees to final consumers of the merger parties have been removed since the merger was cleared, while prices to hostel owners have increased. Overall, netting off these two effects, the evidence does not suggest that prices have increased materially since the merger.
- In CooperVision/ Sauflon, while there is limited evidence about the particular niche market in question, interviews with stakeholders (in particular the merger parties) suggest that entry has occurred in a timely manner as predicted by the CMA. The broader evidence base is consistent with this view, and there is no evidence that prices in this market have changed in any way that is out of line with markets unaffected by the merger.

10.2.5 In a number of other cases, it appears that sufficient and timely entry or expansion did not occur as predicted by the Authorities. The degree to which market developments differ from the Authorities' predictions varies across cases – in some cases, the divergence from the Authorities' predictions is less clear cut than in others. We summarise our conclusions on these cases in the following paragraphs.

10.2.6 There is one clear example of no entry having occurred, in clear contrast to the CC's predictions. Namely, in the Cineworld / City Screen case, predicted entry was a significant factor in the CC's unconditional clearance in Brighton at Phase II, but none materialised. Prices have risen materially in Brighton since the merger, including in comparison to price changes in other local areas. We recognise, however, that since a full analysis of all factors that might have influenced prices has not been completed, it is not possible to draw a firm conclusion on the extent to which these prices increased as a result of the merger.

10.2.7 In one other local market (Southampton) in the Cineworld/ City Screen decision, the CC put significant weight on entry as part of its decision. In this case, entry materialised, but approximately nine months after the CC's estimated time frame.

10.2.8 In Zipcar/ Streetcar, the CC concluded that new entry and expansion would be sufficient to constrain the prices and prevent any deterioration in service levels within a few years following the merger. This was based on evidence of entry plans by new operators, as well as a view that despite there being barriers to entry or expansion, these could be overcome. We found that while several firms appear to have entered this market, most of those firms appear to have subsequently exited – in contrast to the CC's prediction that they would be able to expand. More recently (four years after the merger) one operator appears to have had relatively more success ([✂]), entering and expanding with an innovative product. We found that prices for Zipcar have increased since the merger, while prices at one other car club operator have declined.

10.2.9 In NBTY / Julian Graves, the CC's decision to clear the merger unconditionally in all local areas was based, in part, on an expectation that barriers to entry or barriers to expansion were low for small scale independent retailers, rather than on specific examples of planned entry. In this case, nevertheless, entry or expansion of small scale independent retailers does not appear to have occurred following the merger. By contrast, expansion of the supermarkets' range of NSF has occurred. We found evidence that prices at Holland & Barrett have increased than at other retailers since the merger, which may suggest that the supermarkets posed less of a competitive constraint than the CC had thought.

10.2.10 In Cartonplast / Demes, the named entrant predicted by the OFT did not enter, but an alternative supplier appears to have expanded with an innovative product and anecdotal evidence suggests this has constrained the merger parties. In this case, the OFT did not investigate in as much detail the potential impact of expansion on the merger parties, and focussed instead on the specific example of named potential entrants. In this regard it is also worth noting that Gett failed to expand following the Sheffield City Taxis/ Mercury Taxis decision, contrary to the CMA's prediction. However, Uber's expansion appears to have been very significant and posed an effective constraint on the merger parties to prevent an SLC, as predicted by the CMA.

10.2.11 In Ballyclare/ LHD, unlike in all the other cases reviewed, we are unable to conclude on whether or not the OFT's predictions were realised. Specifically, in Ballyclare/ LHD, the CMA concluded that expansion by Hunter would have been timely, likely, and sufficient to prevent an SLC. We find that Hunter has bid against the merger parties but has not won any contracts. Overall, we are unable to conclude on whether the presence of Hunter as an additional bidder has constrained the merger parties.

10.2.12 We also sought to assess whether any entry or expansion occurred that was of a different form to that predicted by the Authorities, including whether competition developed among a broader set of competitors than anticipated by the Authorities. We have not done a full assessment of this issue, but have a few observations:

- In WRI/ Hostelbookers, there is some evidence that competition may have begun to take place amongst a broader group of suppliers, operating across what the OFT defined as separate relevant markets. Specifically, while we have not conducted a full or robust assessment of competition, there is some evidence that online hostel-booking services might compete with aggregators of different types of accommodation (in particular Airbnb), and similarly there is some evidence that hostels might compete with a broader range of accommodation types.
- It is possible that a similar phenomenon took place in the car club market, assessed as part of our review of the Zipcar/ Streetcar merger. In that market, the growth in car sharing services that was predicted and reported by the CC, appears not to have materialised. We have not done any analysis to test this hypothesis, but one possible explanation for this is customers being served by a broader range of transport options than might have been predicted by the CC's market definition – such as Uber for short journeys and traditional car hire for longer ones.

- By contrast, in the NSF market, assessed as part of our review of the NBTY/ Julian Graves decision, we found that while the supermarkets expanded their range of NSF these retailers don't appear to exert as strong a competitive constraint on Holland & Barret, a more specialist provider, as the CC had envisaged. In this case, competition may occur among a narrower set of providers than the CC predicted.

10.3 Was there a difference across Phase I and Phase II decisions?

10.3.1 The CMA has a different legal test for its decision-making in Phase I compared to Phase II decisions. Namely, in Phase I the CMA intervenes if there is a realistic prospect of an SLC, while in Phase II cases, the CMA intervenes if it expects an SLC on the balance of probabilities.

10.3.2 This implies that where the CMA cites entry or expansion as a reason for clearing a merger in Phase I, it should (all else being equal) have received clear, compelling evidence on this entry/ expansion being timely, likely and sufficient, whereas for Phase II, less compelling evidence may have been sufficient for a clearance.

10.3.3 We have therefore analysed the extent to which the Authorities' predictions were realised across Phase I versus Phase II cases.

10.3.4 We have found that in all of the three Phase II decisions we have reviewed (Cineworld/ City Screen, NBTY/ Julian Graves and Zipcar/ Streetcar), the CC's predictions have to some extent failed to materialise, as set out in paragraphs 10.2.6 - 10.2.9.

10.3.5 By contrast, in the Phase I decisions, the CMA / OFT's predictions on entry and expansion either appear to have been largely accurate (WRI/ Hostelbookers.com, CooperVision / Sauflon, Sheffield City Taxi/ Mercury Taxis) or, while the specific named entrants identified by the CMA/ OFT did not enter, other firms appear to have expanded to compete with the merger parties (Cartonplast/ Demes). The possible exception is Ballyclare/ LHD, but as noted above, we have not been able to conclude on the extent to which Hunter poses a significant competitive constraint on the merger parties.

10.3.6 Overall, therefore, the fact that the CMA/ OFT's predictions were more often realised in its Phase I decisions is consistent with the different legal tests relevant at each phase. It is difficult to draw general conclusions about Phase II decision-making from only the three cases we have reviewed. In all three of the Phase II cases we reviewed, however, entry did not occur in the way the CC predicted and there is some evidence to suggest prices have increased as a result of the merger though we cannot draw a firm conclusion in this respect. The consistency in our findings on the Phase II cases might suggest that some lessons can be learned.

10.4 Where the Authorities' predictions were not realised, was this 'foreseeable'?

10.4.1 Here, we evaluate, for those cases where the Authorities' predictions were not fully realised, whether this might have been anticipated by the Authorities at the time of the merger. As set out in paragraph 1.2.5, it is more instructive for drawing lessons for future analysis to understand where the Authorities might have foreseen that the market would develop in a way that was different from its predictions, compared to those cases where market developments appear to have been unpredictable.

10.4.2 There are cases where evidence was available to the Authorities which suggested a degree of uncertainty around the specific examples of entry that the Authorities predicted:

- In Cineworld/ City Screen, in several of the local markets considered, evidence was provided to the CC which recognised the uncertainty surrounding potential new entry, in particular, as a result of uncertainties around the planning process and new developments getting off the ground. This included the Brighton and Southampton local markets, where the CC put more weight on the likelihood of new entry in order to clear the merger (compared to other local markets).
- In Cartonplast/ Demes, [✂].
- In Ballyclare/ LHD, we have not been able to conclude on whether or not the CMA's predictions were accurate as set out in paragraph 4.4.3 above. [✂].
- In NBTY/ Julian Graves, the CC did not undertake a detailed assessment of the likelihood of entry by small scale local suppliers. [✂].
- In Zipcar/ Streetcar, the CC received evidence on factors that might make it difficult for a small scale entrant to expand, and even agreed that these factors were likely to be barriers to entry or expansion. However, the CC ultimately concluded that these barriers could be overcome, based largely on the evidence about future market growth.

10.4.3 We recognise that there is always likely to be some degree of uncertainty around entry or expansion, and the Authorities need to reach an expectation in the face of such uncertainty. In some of these cases, it is not clear exactly how this uncertainty was factored in to the Authorities' decision. In particular, in several cases, the evidence on the existence of uncertainty is reported by the Authorities in their decision, though there is no specific explanation of how an expectation of entry or expansion was reached in the face of such uncertainty (Cineworld/ City Screen (Brighton and Southampton), NBTY/ Julian Graves, Ballyclare/ LHD). In some other cases, the Authorities more clearly set out that they recognised such uncertainty but, nevertheless, formed an expectation that entry or expansion would occur (Cartonplast/ Demes and Zipcar/ Streetcar).

10.4.4 In some other cases, our review suggests the CMA/ CC might have sought to gather further evidence at the time of the case, which might have allowed it to better predict certain outcomes. Specifically:

- In Sheffield City Taxis/ Mercury Taxis, the CMA could have gathered evidence on ongoing or future regulatory changes in the market affected by the merger, as well as the evidence it did gather in relation to ongoing or recent regulatory changes implemented in other similar/ influential local areas (e.g., London). Gathering such evidence would have allowed the CMA to take into account the potential negative impact of such change on Uber's expansion in particular.
- In Zipcar/ Streetcar, the CC could have gathered evidence on the contractual terms imposed by each London borough, including single operator provisions. Gathering this evidence might have given the CC a clearer view that such local policies could act as a significant barrier.

10.5 Where the Authorities' predictions were not realised, are there patterns in why that was the case?

10.5.1 Our review has also considered the evidence on the reasons why the entry or expansion predicted by the Authorities did not occur. One pattern that emerges is the influence that local policy or regulation can have on the ease or likelihood of entry or expansion:

- In Cineworld/ City Screen, we observed that failure to obtain (or delays in obtaining) planning permission appeared to be an important factor behind a lack of entry in Brighton, and a cause of significant delays to entry in Southampton. In Clapham, by contrast, the potential new entrant had already obtained planning permission at the time of the merger, and this entry did occur on a timely basis.
- In Zipcar/ Streetcar, we also received evidence that local policy made it difficult to obtain car parking spaces, and that this was a key reason behind a failure of new entrants to expand and their subsequent exit from the market.
- We note that local regulatory issues were also relevant in Sheffield City Taxis/ Mercury Taxis. In this case, local regulation was proposed following the merger, which we were told by participants would have significantly negatively impacted the expansion of Uber. While in this case, regulation was not pursued (following, amongst other things, CMA intervention), it highlights the potential for similar issues to impact the ease of entry into taxi markets in other local areas.

10.5.2 There is some evidence that the CC's approach to the treatment of local regulation and planning permission was not always consistent across local areas in the Cineworld/ City Screen decision. Specifically, in Cambridge, an SLC was found and divestments required, while in Brighton the transaction was cleared unconditionally. In its assessment of Cambridge, the CC noted a potential new development, but put significant weight on the uncertainty surrounding the feasibility of this development, and the CC was also uncertain that demand could support a new cinema. In Brighton, by contrast, while some uncertainty around the new development was flagged to the CC, more weight was put on this potential new entry, alongside evidence that demand would support new entry.

10.5.3 A related point is the ability of potential entrants to accurately gauge the impact local regulation and policy might have on their ability to enter or expand successfully. Some of the evidence we have reviewed may indicate a tendency by entrants to provide a description of the market which over-estimates their likely success in some of these cases where local regulation / policy was important. For example:

- In Sheffield City Taxis/ Mercury Taxis, the CMA received evidence from Gett suggesting that [✂].
- In Zipcar/ Streetcar, Greenwheels told the CC that it had bid for on-street parking in the [✂] told the CC it was highly likely to allocate on-street parking to Greenwheels when the council next made more spaces available). Greenwheels also told the CC that [✂].
- In Cineworld/ City Screen, and in particular in relation to Brighton, the CC received evidence from the developer of the cinema that was expected to enter the market,

which noted its confidence in obtaining planning permission to develop the site, and attached a 65 per cent probability to the cinema to be built.[208]

10.5.4 We note that this is not a general trend, and in some cases potential entrants expressed more uncertainty about the impact local regulation and policy would have on their ability and incentive to enter or expand, for example.

11 Recommendations

11.1 Introduction

11.1.1 In the previous section, we summarised the findings from our ex-post assessment of the Authorities' merger decisions. Here, we build on those findings to draw out some recommendations for future merger assessments.

11.1.2 In this study, we have reviewed only a relatively small number of decisions, and so drawing any general recommendations necessarily requires caution. We explain in this section the limitations of any conclusions we make, and aim to identify recommendations that are both helpful in addressing the issues identified and yet not dependent on any specific finding or on the facts relative to a specific decision. However, where our conclusions are particularly dependent on only one or two cases, we highlight that clearly below.

11.1.3 Some of these recommendations may be easier to implement or more applicable to Phase II, rather than Phase I cases, given the differences in timescales and ability to gather evidence at these different Phases.[209] We have not sought to tailor specific recommendations for Phase I or Phase II cases, but this is likely to be something that the CMA will need to develop in more detail, as it considers the results of this study and the recommendations.

11.2 Recommendations on assessing likely forms of entry or expansion

11.2.1 There are various ways to categorise the characteristics of new entry or expansion – for example, de novo entry versus expansion from existing firms, or entry with differentiated versus similar products to existing suppliers.

11.2.2 Across the cases we have reviewed in this study, we have seen entry and expansion with a number of different features and characteristics. We have sought to identify the characteristics of entry or expansion that have appeared most frequently in the cases we reviewed, as this may be informative of the sorts of characteristics that of entry or expansion that may appear in other cases.

[208] Final Report, para. 6.73.
[209] We also note that the CMA's powers to gather information in Phase I have changed compared to its powers in the OFT Phase I decisions we reviewed, which might already have had an impact on evidence gathering. This is not an issue we have considered or reviewed in our ex-post study.

11.2.3 We have identified the following occurring in a number of the cases we reviewed: i) entry by suppliers that already operate in closely related markets; ii) entry or expansion by suppliers with new or innovative products. These two sets of characteristics are not mutually exclusive. By contrast, we have not observed any examples of de novo entry by suppliers who offer very similar products to existing firms in the market.

11.2.4 In this section, we set out some recommendations in relation to the assessment of entry or expansion with the characteristics we observe most frequently. These recommendations are drawn from our assessment of how successfully the Authorities were able to analyse these forms of entry in the decisions we have reviewed.

Entry or expansion by existing suppliers in closely related markets

11.2.5 We have seen examples of entry from existing suppliers in closely-related markets, where firms have started supplying in the particular market under review. This appears to have been the case in CooperVision/ Sauflon (where existing suppliers of DD lenses have expanded to serve the DD multifocal lens market) and WRI/ Hostelbookers (where online hotel-booking services have expanded their coverage in the online hostel-booking market). (Though we note that Ballyclare/ LHD may be an exception to this pattern). In these cases, the CMA / OFT used certain categories of evidence which appears to have helped in accurately predicting entry/ expansion.

11.2.6 **Recommendation 1**: Overall, the CMA/ OFT appears to have correctly predicted these specific examples of entry/ expansion from closely related markets. We recommend that the CMA continue to seek evidence on the factors which make such entry or expansion more likely. Specific examples of evidence that was particularly important in predicting entry of this form could be maintained, and circulated internally or built into an internal checklist, to help maintain consistency across cases. In particular, the following factors appeared to be important predictors of sufficient and timely entry or expansion in one or other of these cases:

- Costs that might be required for firms in closely related markets to expand or enter. This included an assessment of whether there are reasons to think costs would be relatively low for firms in closely related markets, such as firms already having developed the relevant technology, which required minimal modifications to adapt for the specific market in question.[210]
- Consumer preferences and demand patterns which might support entry from closely related markets.[211]
- Evidence that competitors in closely related markets have already shown some commitment to entering or repositioning their offering. For example, alternative suppliers already appearing in online search results for hostels showing that they were likely to have invested in PPC advertising in this market (in WRI/ Hostelbookers),[212] or internal documents showing trial sales and the success of sales during launch periods (Coopervision/ Sauflon).[213]

[210] WRI/ Hostelbookers Final Report, para. 109.
[211] WRI/ Hostelbookers Final Report, para. 105.
[212] Final report, para. 106.
[213] Final Report, para. 131.

- Evidence that existing competitors are already actively monitoring the threat from suppliers in closely related markets.[214]

11.2.7 It is also worth noting that in WRI/ Hostelbookers, there is some evidence that competition appears to have developed across the boundaries of the market which had been identified by the OFT. This is consistent with entry into online hostel booking having occurred from existing suppliers of other booking services, as well competition possibly now occurring between providers who offer different types of accommodation. This may suggest that in some markets – such as this one – the competitive process may be characterised by more frequent or easier "product repositioning". Where barriers to entry are particularly low and economies of scope significant, a full consideration of supply side substitution becomes more important as part of the competitive assessment.

11.2.8 We note that in some other cases where entry or expansion did not occur in line with the CMA's predictions, the Authorities did not have a similar evidence base to that set out under Recommendation 1 (for example, in NBTY/ Julian Graves, in relation to small scale entry by independent retailers). Therefore, assessing these factors on a more consistent basis would seem to be helpful. However, it is also possible that even in spite of there being similar evidence to that listed under Recommendation 1, entry or expansion may nevertheless fail to materialise (for example, in Cartonplast/ Demes). This could be for a variety of reasons, including that existing competitors were sufficient to maintain competition, such that there was less profitable opportunity for entry. This highlights that gathering the evidence set out under Recommendation 1 is not a sufficient condition for correctly predicting entry, but rather appears to be one important component.

Entry or expansion with new or innovative products

11.2.9 We have seen several examples of entry / expansion occurring with new or innovative products or services:

- In Sheffield City Taxis/ Mercury Taxis, Uber entered the market and subsequently expanded, with an innovative app-based service, compared to the traditional taxi operating model of Sheffield City Taxis (and Hackney Cabs).
- In Cartonplast/ Demes, a provider with an innovative, patent-protected product, has expanded.
- In Zipcar/ Streetcar, the more successful entry that has occurred has been by a provider (DriveNow) with an innovative product.

11.2.10 The extent to which the Authorities were able to correctly predict this entry, or put weight on evidence indicating this would happen varied across these cases. There is evidently a difficulty in predicting the likelihood, timeliness and effects of entry with products that are different from those already in the market – and successful innovation is inherently difficult to predict. However, our review suggests that this is an aspect that could helpfully be analysed closely in future cases.

11.2.11 Recommendation 2: There is some evidence from our review that the Authorities could have sought to understand in more detail the likely success of existing competitors with

[214] E.g., paragraphs 106 and 108, WRI decision; paragraphs 125 – 126, CooperVision decision.

innovative products, when assessing how successful their expansion might be. We, therefore, recommend that the CMA assesses such entry in a more systematic way across cases, and performs a fuller assessment of the potential for such entry or expansion where this appears to be a possibility. Similar factors as assessed in those cases discussed in the previous recommendation are likely to be relevant – costs, consumer preferences, and specific evidence of innovative entry having gained a foothold in the market – and we found that in some of the cases we reviewed where expansion by innovative providers was relevant, these factors were not assessed in detail. In addition, specifically in relation to innovation, looking consistently across cases at evidence on factors such as patterns of innovation and product take-up of innovative products in other geographic markets and identifying the innovation pipeline for potential new entrants, might also help the CMA to assess the likelihood of entry or expansion by innovative providers.

11.2.12 For Phase II decisions, it may even be helpful to formalise the process of assessing the propensity for innovation to occur and pose a competitive constraint. In particular, while the CMA Merger Guidelines refer to gathering of evidence on the effect of technological change and innovation on barriers to entry,[215] they do not set out the evidence that might be gathered to assess the extent to which firms with innovative products might successfully enter the market.

11.3 Lessons and recommendations on the treatment of the likelihood of expansion compared to entry

11.3.1 Our review has highlighted the importance of expansion of existing competitors – not only entry of new ones – in a number of cases. In this section, we set out a number of recommendations about the assessment of expansion, as opposed to entry.

11.3.2 Our review suggests that there are some inconsistencies in the degree to which the Authorities conducted a full assessment of the likely degree of expansion, as opposed to entry. Specifically:

- In Cartonplast/ Demes, the OFT's focus was on planned entry, whereas expansion has materialised following the decision.
- In Zipcar/ Streetcar, the CC's assessment of whether certain barriers would limit expansion appeared to be inadequate, and there is limited information or evidence provided to support the CC's view that small scale new entrants could expand (despite the existence of advantages to scale and density.[216] Our review found that there were barriers to firms being able to build a sustainable network and expand, and that as a result a number of new entrants subsequently exited or have remained at a small scale.
- In WRI/ Hostelworld, on the other hand, the OFT gathered a range of evidence on the potential for expansion from existing suppliers, as set out in paragraph 11.2.6.

[215] CMA Merger Guidelines, para. 12.2.4.
[216] Final Report, para. 7.55.

- In Ballyclare/ LHD, we understand that Hunter has entered the market, since it is bidding for contracts, but has not so far successfully expanded by winning any contracts.

11.3.3 Recommendation 3: Our findings suggest that the CMA should look to assess the likelihood of and ease of expansion more systematically across cases. This should include, as a matter of course, assessing whether entry is likely to be successful and pose a sufficient constraint even if it does materialise, assessing whether certain existing suppliers may expand to pose a greater competitive constraint, and considering whether there are specific barriers to expansion (in addition to entry).

11.3.4 It is also worth noting that the OFT's assessment of barriers to expansion and entry in WRI/ Hostelbookers included an assessment of whether the market had reached a 'tipping' point whereby one platform gains an unassailable advantage, giving rise to barriers for other suppliers. Our review has suggested that the OFT was correct to conclude that a tipping point had not been reached in this market, and that factors such as multi-homing and low switching costs were important to that assessment. While we have not done a detailed review of these issues (given the limited number of cases where this issue arose), consistent with emerging consensus in economic literature such issues would seem relevant to assess in other cases where markets might be characterised by tipping points.

11.4 Recommendations on local regulation as a barrier to entry or expansion

11.4.1 As set out in section 10.5, our review has found that in a number of cases, local regulation or policy has had an impact or could have had an impact on whether entry went ahead or the success of expansion.

11.4.2 Recommendation 4: Overall, local regulatory or policy restrictions need to be assessed on a case-by-case – and in some instances a local market by local market – basis. However, we have set out in section 10.5 that in the cases we reviewed, the Authorities were aware that local regulation or policy issues in existence or in contemplation at the time of the merger made entry or expansion less certain. We therefore recommend that in cases where there are local regulatory or policy issues, the CMA should ensure these are given appropriate weight and treated consistently across different areas.

11.4.3 Recommendation 5: We also set out in paragraphs 10.5.3 above that potential entrants or firms looking to expand might, in their interactions with the CC/CMA, in some instances have tended towards being optimistic about their ability to enter or expand in spite of potential uncertainty created by regulatory or policy issues (for example, potential entrants into the London car club market in Zipcar/ Streetcar, and Gett in Sheffield City Taxis/ Mercury Taxis). In this context, we recommend that the CMA continues to seek the views from local authorities on the potential impact of their regulatory decisions on new entry or expansion, as it did in the cases we reviewed. In addition, we recommend that the CMA should test the views expressed by the potential new entrants against some of the factors discussed in recommendations 1 and 2, such as costs and demand in order better to assess the extent to which such entry plans are realistic, and whether the entrants have anticipated the right challenges that they would need to overcome.

11.4.4 It is worth noting that role of local regulation / policy in the Sheffield City Taxis/ Mercury Taxis case is a bit different from the other two cases where this was a relevant issue (Cineworld/ City Screen and Zipcar/ Streetcar). Specifically, in the Sheffield City Taxis/ Mercury Taxis case, it was the potential for the introduction of new local regulations, rather than regulations that were already in place that might have hampered expansion. In this case, the CMA did not investigate the potential for such changes to local regulations – though once they were opened for consultation after the merger was cleared, the CMA intervened to highlight the potential impact of the changes on competition.

11.4.5 Recommendation 6: In the taxi industry in particular, our review has suggested that local regulations can and do change rapidly. We recommend that the CMA should look at potential local regulatory changes in specific markets – like taxis – where such change is possible, and the impact of such changes on the ability for operators to enter and expand, when considering any further consolidation. In addition, if markets are identified where regulatory change has the potential to have a particularly strong impact on entry and expansion, and ultimately competition, this is likely to be relevant information for the CMA's ongoing programme of competition advocacy work.

11.5 Recommendations for future ex-post analysis

11.5.1 In the course of conducting this study, we have reflected not only on lessons learned for future merger cases, but also on whether there are any recommendations for future ex-post evaluation studies of this type. We highlight two points.

11.5.2 First, our research has highlighted that evidence is far more readily available to conduct an ex-post evaluation of some cases, than for others. In particular, we would highlight three characteristics of industries / markets where information is generally more difficult to obtain (and markets to which all of these characteristics apply are likely to be particularly challenging):

- Intermediate markets: publicly available reports containing quantitative data (such as revenue data or market shares) are more commonly available for final consumer markets (for example, there was significant information available in industry reports on the cinema industry). In addition, we were able to assemble useful data (for example on prices) from desktop research in a number of consumer markets (such as nuts, seeds and dried fruit retail, taxis, car sharing, online hostel booking), and such information was not available for the intermediate markets we sought to assess.
- Niche markets: we assessed a number of niche markets, often operating within broader market segments (for example, DD multifocal lenses, and plastic layer pads for the glass industry). Industry reports and public data was not readily available for these segments (while there was information for the contact lens or packaging market more broadly).
- Small markets: the fire-fighting protective equipment case is an example of a relatively small market, about which there is very little public information available.

11.5.3 It is important that ex-post evaluation does not occur only in those types of markets where information is most readily available, as issues that are perhaps more specific to small, niche or intermediate markets would not be picked up. However, in seeking to evaluate decisions in industries with little publicly available information, it is important to consider early in the process what other evidence might be obtained. In particular, our experience in this case has shown that interviews with key stakeholders (customers, suppliers, etc.) are often the main source of evidence that is available. The time taken to arrange such interviews also has implications for the timing and conduct of the evaluation study, since interviews are time-consuming to arrange and conduct, so enough time needs to be allowed.

11.5.4 We do not have any specific recommendations in relation to this issue, but highlight it as a lesson we have learned from our review.

11.5.5 Second, our ex-post evaluation has also shown that there is significant value in updating certain pieces of (largely quantitative) evidence/ analysis that were provided or conducted during the original merger case. For example, updating market shares to show how they have developed since a merger, or updating prices to test whether they have changed since a merger was cleared.

11.5.6 While we have been able to conduct a number of such pre- and post-merger comparisons in this study, in some instances the robustness of our conclusions was to some extent weakened by there being limitations to the information available about the analysis conducted at the time of the merger. For example:

- In the Cineworld/ City Screen case, the CC obtained information on a large number of local cinema prices. However, information was not retained on exactly how these prices were constructed – for example, whether booking fees were included. This limits the extent to which we can be confident that the prices we gathered during the course of our research were constructed on a like-for-like basis[217].
- In the NBTY/ Julian Graves case, the merger parties provided the CC with a list of prices for a sample of NSF products. However, at the time of conducting the ex-post analysis, limited information was available on the basis on which the sample was chosen, or any other assumptions used. To some extent, this limited the extent to which firm conclusions could be drawn from our pre- and post-merger comparisons.
- In the Zipcar/ Streetcar case, the CC appears to have gathered information on the rates charged by a number of car clubs operators active in the market. However, at the time of conducting the ex-post analysis, limited information was available on the plans those rates referred to (e.g., what vehicle was included in the plan).

11.5.7 Recommendation 7: We recommend that the CMA archives information relevant for ex-post evaluation more carefully following the closure of cases, and in particular stores relevant assumptions and data that might be useful for such evaluations. This includes not only evidence that was used in the decision, but also data and assumptions made in analyses that was gathered and not relied on, but which might, nevertheless, be useful for ex-post evaluation purposes. It might also be that the CMA needs to do more to ensure that it has gathered all relevant assumptions on data that is submitted by parties, where such data is not relied on in the decision (and hence which may not have received as much scrutiny in the course of the original case). This recommendation is, therefore,

[217] Though, as noted in Appendix 3, our analysis to some extent circumvents this issue as we have sought to assess how price changes vary across areas, rather than looking solely at how prices have changed.

for an additional focus when archiving information which may be helpful specifically for the purpose of ex-post evaluation.

Appendixes

1 CooperVision/ Sauflon

1.1 Analysis of market entry and expansion

1.1.1 We have gathered data from Euromonitor International on the UK contact lens market.

1.1.2 Table 1.1 presents information on the retail value of daily disposable (DD) lenses between 2011 and 2016, split between different conditions and different materials of lenses. 2014 has been highlighted as that is the year in which the CooperVision/ Sauflon merger was approved.

Table 1.1– Background on the market of interest

DD Lenses by Condition, Retail Value, £ million						
DD Lenses by Condition	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Spherical	210.1	214.6	221.2	226.9	232.9	244.1
Toric	100	103.8	110.6	117.2	126.3	133.6
Multifocal	23.3	27.7	30.8	34	35.5	36
Total	***333.5***	***346.1***	***362.6***	***378.1***	***394.7***	***413.7***

Source: ©Euromonitor International
Notes: 2014 data have been highlighted to flag the year when the merger occurred.

1.1.3 Table 1.2 provides information on the retail value and volume of DD lenses sold in the UK, between 2011 and 2016, as well as the percentage change in the pre- and post-merger periods.

Table 1.2 – Sales, by volume and value, of UK DD lenses

Sales of DD Contact Lenses: Volume and Value 2011-2016								
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**% change (2011-2014)**	**% change (2014-2016)**
Daily Disposable lenses (DD) ('000 units)	458,387.1	474,809.8	487,488.3	502,305.5	523,904.7	547,480.4	9.6	9.0
Daily Disposable lenses (DD) (GBP million)	333.5	346.1	362.6	378.1	394.7	413.7	13.4	9.4

Source: ©Euromonitor International
Notes: 2014 data have been highlighted to flag the year when the merger occurred.

1.1.4 Table 1.3 presents company-level shares of UK DD lenses by retail value for 2010 to 2015.

Table 1.3 – UK DD market shares, by retail value, by company

% shares of supply for DD lenses, by retail value, by company						
Companies	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
Cooper Cos Inc, The	4.6	4.7	4.7	4.8	10.6	10.7
Sauflon Pharmaceuticals Ltd	6.1	6.1	5.9	5.7	-	-
Merger parties combined	***10.7***	***10.8***	***10.6***	***10.5***	***10.6***	***10.7***
Bausch & Lomb Inc	6.2	6.2	6.2	-	-	-
Valeant Pharmaceuticals International Inc	-	-	-	6.2	6.3	6.4
Valeant Pharmaceuticals and Bausch & Lomb combined	6.2	6.2	6.2	6.2	6.3	6.4
Johnson & Johnson Inc	32.4	33.8	34.6	35.6	36.5	36.6
Novartis AG	16.4	17.4	17.5	17.1	17.1	17.2
Private Label	24.4	24.7	24.6	24.1	24.2	24.3
Others	9.8	7.1	6.6	6.5	5.3	5.0
Total	***100.0***	***100.0***	***100.0***	***100.0***	***100.0***	***100.0***

Source: ©Euromonitor International
Notes: 2014 data have been highlighted to flag the year when the merger occurred.

1.1.5 Table 1.4 presents brand-level shares of supply of UK DD lenses by value for 2010 to 2015.

Table 1.4 – Daily Disposable shares of supply, by value, by brand

Market shares for DD lenses, by retail value, by brand							
Brand	**Company name**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
CooperVision	Cooper Cos Inc, The	14.4	15.7	16.3	17.4	18.3	19.1
Clariti	Cooper Cos Inc, The	-	-	-	-	22	23.1
Clariti	Sauflon Pharmaceuticals Ltd	19.1	20.3	20.3	20.6	-	-
Merger parties combined		***33.5***	***36***	***36.6***	***38***	***40.3***	***42.2***
Bausch & Lomb	Bausch & Lomb Inc	19.6	20.7	21.5	-	-	-
Bausch & Lomb	Valeant Pharmaceuticals International	-	-	-	22.3	23.2	24.1
Bio True	Valeant Pharmaceuticals International	-	-	-	-	0.5	1
Valeant Pharmaceuticals and Bausch & Lomb combined		19.6	20.7	21.5	22.3	23.7	24.2
Acuvue	Johnson & Johnson Inc	102.1	112.8	119.8	129.2	138.1	144.3
Dailies	Novartis AG	51.7	58.1	60.5	62.1	64.8	67.8
Private label	Private Label	76.9	82.4	85	87.4	91.4	95.8
Others	Others	30.9	23.5	22.7	23.6	19.9	19.6
Total		***314.7***	***333.5***	***346.1***	***362.6***	***378.1***	***394.7***

Source: ©Euromonitor International
Notes: 2014 data have been highlighted to flag the year when the merger occurred.

1.2 Analysis of price outcomes

1.2.1 We have sought to assess how prices for DD multifocal lenses have changed since the CooperVision/ Sauflon merger.

1.2.2 Using Euromonitor International data on total volumes and values for DD, frequent replacement products (FRP), and conventional lenses, we have computed a measure of average price for each product modality by dividing total sales in value by total sales in volumes. These average prices are presented in Table 1.5. This average price measure includes different product types (i.e., spherical, toric and multifocal) and materials (i.e., hydrogel and silicone hydrogel). Average prices for DD, FRP and conventional lenses have increased since the merger, with the price increase for DD lenses being the lowest (0.4

per cent) compared to the price increase observed for FRP lenses (1.1 per cent) and conventional lenses (9.1 per cent).

Table 1.5 – Price outcomes

Sales of Contact Lenses by Category: Volume and Value 2011-2016								
	2011	2012	2013	2014	2015	2016	% change (2011-2014)	% change (2014-2016)
Daily Disposable lenses (DD) ('000 units)	458,387.1	474,809.8	487,488.3	502,305.5	523,904.7	547,480.4	9.6	9.0
Frequent Replacement lenses (FRP) ('000 units)	31,874.6	31,231.7	30,676.7	30,126.7	30,488.2	30,976.0	-5.5	2.8
Conventional lenses ('000 units)	93.9	90.7	88.2	86.1	80.0	72.8	-8.3	-15.4
Daily Disposable lenses (DD) (GBP million)	333.5	346.1	362.6	378.1	394.7	413.7	13.4	9.4
Frequent Replacement lenses (FRP) (GBP million)	237.7	235.6	252.4	255.5	259.9	265.6	7.5	4.0
Conventional lenses (£million)	9.6	9.3	9.1	9.0	8.7	8.3	-6.3	-7.8
Average price for DD lenses (£)	0.7	0.7	0.7	0.8	0.8	0.8	3.5	0.4
Average price for FRP lenses (£)	7.5	7.5	8.2	8.5	8.5	8.6	13.7	1.1
Average price for conventional lenses (£)	102.2	102.5	103.2	104.5	108.8	114.0	2.2	9.1

Source: ©Euromonitor International
Notes: 2014 data have been highlighted to flag the year when the merger occurred.

2 Cineworld/ City Screen

2.1 Market shares for local areas of interest

2.1.1 In Tables 2.1 to 2.5 below, we present the market shares of cinema exhibitors in the local markets which might be impacted by the merger ("local overlap areas"), by number of seats and screens. We present this information for before and after the Cineworld/ City Screen merger. These local overlap areas are as follows:

- areas where the CC found an SLC, namely, Aberdeen, Bury St Edmunds and Cambridge ("SLC areas") (see Table 2.1); and

- areas where the CC found no-SLC, namely, Brighton, Clapham, Edinburgh and Southampton ("non-SLC areas") (see Tables 2.2 – 2.5).

2.1.2 The local market shares for 2013 have been obtained from the CC Final Report, Appendix G, while the local market shares for 2017 have been computed based on data obtained from the websites of the various cinema exhibitors that are in operation. We conducted some desktop research to assess whether there has been any new exhibitor entering into the local areas under scrutiny, as well as to check whether any exhibitor has exited the market since the merger, in order to come up with an accurate list of the current operators in each local overlap area. As indicated in Tables 2.1 to 2.5 below, for a small number of cinemas we were unable to gather data on its current number of screens or seats. In those cases we have assumed them to be equal to the earlier 2013 figures.

Table 2.1 – Local market shares pre- and post-merger for SLC areas

		SCREENS				SEATS			
		2013		2017		2013		2017	
SLC Area	**Cinemas within 20-minute isochrones**	**Number**	**Share (%)**	**Number**	**Share (%)**	**Number**	**Share (%)**	**Number**	**Share (%)**
Aberdeen	Picturehouse *(divested)*	3	10	3*	10	469	7	469*	7
	Cineworld	19	66	19	66	4,536	70	4,536*	70
	Vue	7	24	7	24	1,520	23	1,520	23
	Total	***29***	***100***	***29***	***100***	***6,525***	***100***	***6,525***	***100***
Bury St Edmunds	Picturehouse *(divested)*	2	18	2*	18	186	10	186*	10
	Cineworld Bury St Edmunds	8	73	8	73	1,472	79	1,472*	79
	Regal Theatre Stowmarket	1	9	1*	9	200	11	200*	11
	Total	***11***	***100***	***11***	***100***	***1,858***	***100***	***1,858***	***100***
Cambridge	Picturehouse	3	15	3*	15	505	13	505*	19
	Cineworld *(divested)*	9	45	9	45	1,700	43	1,700*	63
	Vue	8	40	8	40	1,718	44	515	19
	Total	***20***	***100***	***20***	***100***	***3,923***	***100***	***2,720***	***100***

Source: KPMG elaboration of data provided by the CMA and publicly available data.
Notes: [1] 2013 numbers based CC Final Report, Appendix G, Tables 1, 15, 22. [2] 2017 numbers based on cinema websites and KPMG analysis. Number of screens and seats are reported with * when not available on cinema website so assumed to be equal to 2013 figures.

Table 2.2 – Local market shares pre- and post-merger in Brighton

	SCREENS				SEATS			
	2013		2017		2013		2017	
Cinemas within 20-minute isochrones	**Number**	**Share (%)**	**Number**	**Share (%)**	**Number**	**Share (%)**	**Number**	**Share (%)**
Picturehouse	3	15	3*	16	531	12	531*	11
Cineworld Brighton Marina	8	40	8	42	2,020	44	2,020*	42
Merged parties combined	***11***	***55***	***11***	***58***	***2,551***	***56***	***2,551***	***54***
Odeon Brighton	8	40	8	42	1,990	44	2,217	46
Lewes Cinema	1	5	Exited	Exited	NA	NA	Exited	Exited
Total	***20***	***100***	***19***	***100***	***4,541***	***100***	***2,551***	***100***

Source: KPMG elaboration of data provided by the CMA and publicly available data.
Notes: [1] 2013 numbers based CC Final Report, Appendix G, Table 8. [2] 2017 numbers based on cinema websites and KPMG analysis. Number of screens and seats are reported with * when not available on cinema website so assumed to be equal to 2013 figures.

Table 2.3 – Local market shares pre- and post-merger in Southampton

	SCREENS				SEATS			
	2013		2017		2013		2017	
Cinemas within 20-minute isochrones	Number	Share (%)	Number	Share (%)	Number	Share (%)	Number	Share (%)
Picturehouse	2	7	2*	7	463	7	463*	7
Cineworld	5	17	5	17	1,651	27	1,651*	24
Merged parties combined	***7***	***23***	***7***	***23***	***2,114***	***34***	***2,114***	***31***
Odeon	13	43	13	43	2,549	41	3,102	46
Berry Theatre Southampton	1	3	1*	3	NA	NA	NA	NA
Vue Eastleigh	9	30	9	30	1,565	25	1,578	23
Showcase Cinema de Lux Southampton	NA	NA	10	24	NA	NA	NA	NA
Total	***30***	***100***	***40***	***100***	***6,228***	***100***	***6,794***	***100***

Source: KPMG elaboration of data provided by the CMA and publicly available data.
Notes: [1] 2013 numbers based CC Final Report, Appendix G, Table 49. [2] 2017 numbers based on cinema websites and KPMG analysis. Number of screens and seats are reported with * when not available on cinema website so assumed to be equal to 2013 figures.

Table 2.4 – Local market shares pre- and post-merger in Edinburgh

	SCREENS				SEATS			
	2013		2017		2013		2017	
Cinemas within 20-minute isochrones	Number	Share (%)	Number	Share (%)	Number	Share (%)	Number	Share (%)
Picturehouse	3	5	3*	5	394	3	394*	3
Cineworld	13	22	13	22	3,003	25	3,003*	25
Merged parties combined	***16***	***27***	***16***	***27***	***3,397***	***28***	***3,397***	***28***
Odeon	12	20	12	20	2,833	24	2,797	23
Filmhouse	3	5	3	5	451	4	451*	4
Dominion	4	7	4*	7	574	5	574*	5
Vue	24	41	24	41	4,780	40	4,790	40
Total	***59***	***100***	***59***	***100***	***12,035***	***100***	***12,009***	***100***

Source: KPMG elaboration of data provided by the CMA and publicly available data.
Notes: [1] 2013 numbers based CC Final Report, Appendix G, Table 38. [2] 2017 numbers based on cinema websites and KPMG analysis. Number of screens and seats are reported with * when not available on cinema website so assumed to be equal to 2013 figures.

Table 2.5 – Local market shares pre- and post-merger in Clapham

	SCREENS				SEATS			
	2013		2017		2013		2017	
Cinemas within 20-minute isochrones	Number	Share (%)	Number	Share (%)	Number	Share (%)	Number	Share (%)
Picturehouse	9	21	9*	21	1,366	17	1,366*	16
Cineworld	24	57	24	57	4,827	58	4,827*	58
Merged parties combined	***33***	***79***	***33***	***79***	***6,193***	***75***	***6,193***	***74***
Curzon Chelsea	1	2	1	2	713	9	713	8
Odeon Streatham	8	19	8	19	1,356	17	1,485	18
Total	***42***	***100***	***42***	***100***	***8,262***	***100***	***8,391***	***100***

Source: KPMG elaboration of data provided by the CMA and publicly available data.
Notes: [1] 2013 numbers based CC Final Report, Appendix G, Table 29. [2] 2017 numbers based on cinema websites and KPMG analysis. Number of screens and seats are reported with * when not available on cinema website so assumed to be equal to 2013 figures.

2.2 National market shares

2.2.1 In Table 2.6 we report the shares of the total number of UK cinema sites and cinema screens for the various cinema exhibitors. Again, we report these figures before and after the merger. These have been computed based on raw data received from the British Film Institute (BFI).

Table 2.6 – National market shares pre- and post-merger

	SITES				SCREENS			
	2012		2015		2012		2015	
Cinemas	**Number**	**Share (%)**	**Number**	**Share (%)**	**Number**	**Share (%)**	**Number**	**Share (%)**
Cineworld	80	10.4	88	11.7	799	20.9	880	21.7
Picturehouse	22	2.9	24	3.2	60	1.6	72	1.8
Merger parties combined	102	13.3	112	14.9	859	22.5	952	23.5
Odeon	114	14.8	109	14.5	868	22.7	871	21.5
Vue	79	10.3	83	11.1	746	19.5	789	19.5
National Amusements	20	2.6	20	2.7	264	6.9	264	6.5
Empire Cinemas	16	2.1	18	2.4	150	3.9	183	4.5
Reel Cinemas	16	2.1	15	2.0	63	1.7	62	1.5
Movie House Cinemas	5	0.7	5	0.7	39	1.0	39	1.0
Merlin Cinemas	11	1.4	13	1.7	32	0.8	40	1.0
Scott Cinemas	8	1.0	8	1.1	19	0.5	19	0.5
AMC	1	0.1	1	0.1	16	0.4	16	0.4
Everyman Media Group	9	1.2	17	2.3	15	0.4	38	0.9
Hollywood Screen Entertainment	4	0.5	4	0.5	14	0.4	14	0.3
Parkway Entertainment	3	0.4	4	0.5	14	0.4	20	0.5
WTW Cinemas	4	0.5	4	0.5	14	0.4	14	0.3
Village Roadshow	1	0.1	1	0.1	12	0.3	12	0.3
Curzon	5	0.7	12	1.6	9	0.2	31	0.8
G1 Group	2	0.3	2	0.3	9	0.2	9	0.2
Northern Morris Associated Cinemas	6	0.8	6	0.8	9	0.2	9	0.2
Picturedrome	3	0.4	5	0.7	9	0.2	17	0.4
Light Cinemas	1	0.1	3	0.4	8	0.2	23	0.6
Eclipse Cinemas	1	0.1	1	0.1	6	0.2	6	0.1
Savoy Cinemas	1	0.1	4	0.5	6	0.2	21	0.5
West Coast Cinemas	2	0.3	2	0.3	6	0.2	6	0.1
Zeffirellis	3	0.4	3	0.4	5	0.1	5	0.1
Firmdale Hotels	3	0.4	4	0.5	4	0.1	5	0.1
Lonsdale City Cinemas	2	0.3	2	0.3	4	0.1	4	0.1
Southern Cinema Services	4	0.5	3	0.4	4	0.1	3	0.1
Silver Screen Cinemas	2	0.3	2	0.2	3	0.1	3	0.1
Anderson	11	1.4	NA	NA	88	2.3	NA	NA
Ward	1	0.1	NA	NA	7	0.2	NA	NA
Omniplex	NA	NA	11	1.5	NA	NA	90	2.2
PDJ Cinemas	NA	NA	5	0.7	NA	NA	22	0.5
Irish Multiplex Cinemas	NA	NA	3	0.4	NA	NA	21	0.5
Mundin	NA	NA	3	0.4	NA	NA	3	0.1
Centre for the Moving image	NA	NA	2	0.3	NA	NA	6	0.1
Kino Digital	NA	NA	2	0.3	NA	NA	3	0.1
Kino Cinemas	NA	NA	2	0.3	NA	NA	3	0.1
Soho House	NA	NA	2	0.3	NA	NA	2	0.0
Independent cinemas	329	42.8	258	34.4	515	13.5	421	10.4
Total	***769***	***100***	***751***	***100***	***3817***	***100***	***4046***	***100***

Source: KPMG elaboration of data received from the BFI.

3 Cineworld/ City Screen: analysis of price outcomes

3.1 Introduction

3.1.1 We have sought to test how prices have changed since the merger in both SLC and non-SLC areas, seeking, if possible, to understand how the merger itself might have impacted prices.

3.1.2 This appendix proceeds as follows:

- First, we set out an overview of the methodology we use, and the analyses conducted.
- Second, we describe in more detail the methodology for our analysis with comparator local areas.
- Third, we describe in detail how we have gathered the data we have used to conduct our analysis.
- Finally, we present the results of our analysis.

3.2 Methodology overview

3.2.1 In the Final Report, the CC reported the pre-merger prices charged by the cinemas located in the overlap areas, both SLC and non-SLC, listed above.[218] The CMA also provided us with pre-merger prices for a large number of cinemas in other local areas across the UK. We have collected current prices for the cinemas currently trading in the local overlap areas above, as well as for most of the cinemas included in the dataset provided by the CMA.

Comparison 1: price changes in SLC vs non-SLC areas

3.2.2 In Appendix 2, we listed those local overlap areas where the CC conducted a more in-depth assessment at Phase II, which we grouped into SLC and non-SLC areas. We compared the price changes for cinemas in the SLC areas with the price changes for cinemas in the non-SLC areas as per the definition set out in Appendix 2.

3.2.3 We estimate the pre- and post-merger price for each cinema in each of the SLC areas (i.e., Aberdeen, Bury St Edmunds and Cambridge) in 2013 and in 2017. For each area, we then calculate the unweighted average price across cinemas to obtain an average price for each area, one for 2013 and one for 2017. We then calculate, for each area, the percentage change in average prices between 2013 and 2017. Finally, we calculate an unweighted average of the percentage price changes across the three areas. The same steps are taken for the non-SLC areas. In the case of Brighton, this would be:

[218] See, for example, Final Report, Appending G, Table 8, which shows the average 'adult standard ticket price' for the various cinema exhibitors trading in Brighton at the time of the merger.

$$\% \, price\ change\ for\ Brighton = \frac{(unweighted\ average\ price\ in\ 2017) - (unweighted\ average\ price\ in\ 2013)}{unweighted\ average\ price\ in\ 2013}$$

3.2.4 Finally, we calculate the difference between the average for the SLC and the non-SLC areas.

Comparison 2: price changes using 'comparator' local areas

3.2.5 We note that price changes in the overlap areas, both SLC and non-SLC, could be driven by a range of factors unrelated to the merger, and these may mask or overwhelm the impact of the merger on prices. To attempt to isolate the effects of the merger on prices, we compared the price changes in each of the SLC and non-SLC areas to comparator local areas that were unaffected by the merger but where there may have been similar local factors affecting price changes.

3.2.6 Having selected comparator local areas (two per overlap area), we calculate the percentage change in prices in the comparator local areas, and compare this to the percentage change in prices in the corresponding overlap areas.

3.2.7 The idea is that prices in comparator local areas might be subject to similar changes as the overlap areas, with the main difference between these areas being the impact of the merger. By comparing the price change in each overlap local area with the price change in each comparator group, therefore, the analysis might be more informative of the impact of the merger on prices.

3.2.8 In the next section we set out in more detail how we have selected comparator local areas and conducted this analysis.

Exclusions

3.2.9 We have excluded the overlap areas of Clapham, Greenwich, and Stratford from the analyses.

3.2.10 While the CC defined 20-minute drive-time catchment areas,[219] it recognised in its Final Report that travel patterns in London may differ from those outside of London as customers rely more on means of transport other than the car to go to the cinema. As such, drive-time isochrones may be less appropriate in London than in other parts of the UK.[220] As a result, there is a risk that cinemas outside the CC's catchment area may nevertheless pose a competitive constraint on the cinemas of interest in Clapham, Greenwich, and Stratford.

3.2.11 In the case of Clapham, for example, our methodology for identifying comparator areas based on demographic characteristics, described in paragraph 3.3.4, did not yield any suitable comparator areas that were clearly outside of a potential catchment area.

3.2.12 Finally, we note that the CC's filtering process did not capture Clapham and Stratford as areas to be shortlisted for further analysis. The reason why the CC decided to add them

[219] Final Report, paras. 5.16 and 5.21.
[220] Final Report, para. 5.17.

back into its shortlist is because Clapham and Stratford had been shortlisted by the OFT for a more in-depth investigation during the Phase I case because of the results of its survey. As such, the CC considered it to be prudent to carry out further analysis on these areas.[221]

3.3 Methodology for analysis with comparator local areas

3.3.1 As set out above, we are seeking to better isolate the effects of the merger on price outcomes by attempting to remove the impact on prices of a range of other factors not specific to the merger. In order to do this, we have selected a number of comparator areas.

Identifying comparator areas

3.3.2 We require comparator areas where the CC did not identify an overlap between the merger parties in the Cineworld/ City Screen merger.

3.3.3 For each SLC and each non-SLC area, we select a number of 'comparator' local areas. Ideal comparators would be identical to the overlap area in every way bar the fact that the latter has been affected by the merger. We have identified local areas that are similar to each local overlap area on the basis of demographic characteristics and geography.

3.3.4 Table 3.1 below sets out the two different sets of comparator areas for each overlap area. The first set ("Specification 1") consists of areas that we have selected based on similarities with the corresponding overlap area in a number of demographic characteristics. Specifically, for a given overlap area, we have chosen comparator areas where the unemployment rate[222], median hourly wage[223], and proportion of the population under the age of 35[224] were within 10 per cent of the value in the overlap area, for the most up to date demographic information available. We chose these demographic factors since these were some of the explanatory variables used by the CC to conduct its price-concentration analysis during the merger case.[225] We then separately ranked the resulting set of candidate comparator local areas by how close population[226] and population density[227] were to that of the corresponding overlap area (again using the most recent

[221] Final Report, para. 6.49.
[222] Nomisweb data query on unemployment rate, 16-64-years-olds, by district/unitary authority. July 2015 – June 2016 data was used to conduct our analysis. This was the most up-to-date data available when the analysis was performed. See: https://www.nomisweb.co.uk/query/construct/summary.asp?mode=construct&version=0&dataset=17 To download the data, the following filters need to be applied: i) for geography, select "All" in the drop-down menu for "local authorities: district / unitary (prior to April 2015)"; ii) for date select "12 months to Jun" and "2016"; and iii) for variables select "Unemployment rate – aged 16-64".
[223] ONS annual survey of hours and earnings, 2016 yearly data, Table 7.5a, worksheet 'Full-Time'. Version updated on 26th October 2016 was used to conduct our analysis. See: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/placeofworkbylocalauthorityashetable7
[224] ONS population estimates by single year of age and sex for local authorities in the UK, mid-2015 data, Table MYE2, worksheet 'Persons UK'. Version updated on 23rd June 2016 was used to conduct our analysis. See: https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland
[225] Final Report, Appendix C, para. 17.
[226] *Ibid* 7.
[227] ONS population estimates and population density for the UK, mid-2015 data, Table MYE5, worksheet 'Population density', column AG. Version updated on 23 June 2016 was used to conduct our analysis. See:

information available), and chose the two comparator areas for which the sum of the two ranks was lowest.[228,229] We recognise that some of these comparators might, on the face of it, look quite different from the relevant overlap area (for example, Stoke on Trent and Bolton in relation to Brighton[230]), and for that reason have conducted the analysis using a second set of comparators, as set out in the next paragraph.

3.3.5 The second set of comparator local areas ("Specification 2") consists of areas that are geographically 'similar' to treatment areas. We have not selected these comparators using demographic characteristics.

Table 3.1- Areas for analysis

Overlap local area	SLC finding	Specification 1 (Demographics)	Specification 2 (Geography)
Aberdeen	Yes	Bath, Exeter	Dundee, Inverness
Cambridge	Yes	Reading, Slough	Oxford, Norwich
Bury St Edmund's	Yes	Taunton, Norwich	Ipswich, Norwich
Brighton	No	Bolton, Stoke-on-Trent	Portsmouth, Guildford
Edinburgh	No	Cardiff, Derby	Glasgow, Stirling
Southampton	No	Portsmouth, Enfield	Portsmouth, Bournemouth

Source: KPMG Analysis.

Calculating price differences across overlap and comparator areas

3.3.6 In order to estimate price differences, the following steps have been taken:

- First, we compute the 2013 and 2017 unweighted average prices across cinemas within each overlap area and, separately, within each pair of comparator areas. For example, in the case of Aberdeen in 2013 we have pooled all price data points for all the cinemas and movies in Aberdeen, and calculated the average in 2013 and in 2017. For the comparator areas (e.g., Bath and Exeter in Specification 1), we have pooled all price data points for all cinemas and all movies across the two areas and calculated a single average price for 2013 and a single average price for 2017.
- Second, we calculate the price change between 2013 and 2017, separately for each local overlap area and each corresponding set of comparator areas. In the case of Aberdeen, for example, this has been computed as follows:

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https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland

[228] For example, the exercise for the overlap area Aberdeen resulted in the candidate comparator areas: Bath, Exeter, Harrow, Rushmoor, Gloucester, Portsmouth, Stevenage, and Croydon. We then selected Bath and Exeter as they were closest to Aberdeen based on the combined population number and density ranking.

[229] We note that Oxford and Bath are overlap areas as per the CMA's 30-minute catchment area sensitivity during Phase I (OFT Final Report, Table 2, page 11), but were not overlap areas using the CMA's preferred 20-minute drive-time catchment area.

[230] These areas were chosen because in relation to the demographic characteristics we have used, they are the closest proxy for Brighton. However, in some instances the demographics have changed over time in a different way in Brighton to these other comparator areas – for example, while unemployment rates have declined at a similar rate across those three areas, Brighton's population has grown more quickly.

$$\% \, price \, change \, for \, Aberdeen = \frac{(unweighted \, average \, price \, in \, 2017) - (unweighted \, average \, price \, in \, 2013)}{unweighted \, average \, price \, in \, 2013}$$

- Third, we have computed the difference between the percentage price change in each overlap area with its comparator areas. We have repeated this exercise for each combination of local overlap area and set of comparator areas. For example, for Aberdeen under Specification 1 we have computed the following:

$$Difference \, in \, percentage \, price \, change \, for \, Aberdeen \, versus \, 'Specification \, 1' comparators = (\% \, price \, change \, for \, Aberdeen) - (\% \, price \, change \, across \, Bath \, and \, Exeter)$$

  This would leave us with six (unweighted) average differences in price – three for the SLC areas and three for the non-SLC areas, for each specification.

- Fourth, we have computed the unweighted average of the results obtained in step three above, first across the difference in percentage price change for the SCL areas versus their respective comparators and, separately across the non-SLC areas versus their respective comparators.
- Finally, we have subtracted the latter (i.e., unweighted average for non-SLC areas) from the former (i.e., unweighted average for SLC areas).

3.4 Data

3.4.1 In this section we describe the data we have collected.

Ticket pricing data

3.4.2 Our analyses require data on ticket prices for the local overlap areas and for our chosen comparator areas, in 2013 and 2017.

3.4.3 For 2013, we use information from the CC's Final Report and supporting case file. For 2017, we gathered information from cinema operators' websites. Table [[3.2]] sets out the process followed for local overlap areas and for comparator areas for each of 2013 and 2017. The CC reported "adult standard ticket prices" in its Final Report.[231] Since adult standard ticket prices can differ depending on when the movie is shown (Monday to Thursday vs Friday to Sunday), time (before vs after 5.00pm), and movie type (2D vs 3D), we used the price tracking databased provided by the CMA[232] to check what prices the CC presented in its Final Report. By comparing some of the prices from the Final Report with the price tracking database, we concluded that the CC used ticket prices for 2D movies shown at peak time. When gathering current prices, we have therefore focused on adult ticket prices for 2D films at peak time to facilitate a like-for-like comparison.

[231] See, for example, Appendix G to the Final Report, Table 8.
[232] 02B - Price tracking database.xlsx

Table 3.2 - Collection of price data

Year	Overlap areas	Comparator areas
2013	For each area, we have recorded the prices listed in Appendix G to the CC Final Report.[233] As noted above, these appear to be adult prices at peak time for 2D movies.	The CMA provided us with a price tracking database[234] containing 2013 prices at a large number of cinemas in the UK in sheet "Competitor". We have used the fields "Location", "EDI Location" and "Display Name" to identify cinemas located in the comparator areas, and used the field "Peak" within the category "Adult" to record prices consistently with prices for the overlap areas.
2017	We have collected prices for the same cinemas for which we have 2013 prices. In Bournemouth, one Odeon cinema ("ABC Bournemouth") closed in 2015 and a new cinema of the same chain opened in the same area. We have therefore recorded the price of the new cinema in 2017. For each cinema, we have collected the online prices for two 2D films, where available, of an adult ticket after 5.00pm on the weekend of 21-22 January 2017. We have recorded any additional booking fees separately.[235] Our baseline analysis uses prices that include these additional booking fees, while our sensitivities exclude these fees.[236]	

Source: KPMG Analysis.

3.4.4 To try to take some account of general cost changes that might have faced cinema operators, 2013 prices were adjusted for inflation using the CPI for recreational goods from November 2013 (the date of the decision) and December 2016, sourced from the Office for National Statistics.

3.4.5 Following discussions with the CMA, it is our understanding that some of the 2013 prices contain additional fees such as online booking fees, though there is no information indicating where these fees have been included or excluded. The prices used in our baseline analysis include additional booking fees. We also performed a sensitivity analysis assuming that 2013 prices excluded additional booking fees, and therefore excluding them from 2017 prices as well.

3.4.6 There are some additional limitations to the 2013 data. Specifically, there is no information on how the average price per cinema has been constructed – for example, how many different prices for different films, and which films have been included. It is also unclear whether the workbook is an exhaustive list of all cinemas in the areas that are included.

Selecting films for 2017 prices

3.4.7 Some cinemas charge different prices for different films. Following discussions with the CMA, we have collected two prices per cinema, where available, so as to reduce the chance that particularly popular films (which might command higher prices) skew the

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[233] Specifically, we recorded the values in column "Adult standard ticket price £" that were within 20 minute drive-time, listed in Tables 1, 8, 15, 22, 38, and 49.
[234] 02B - Price tracking database.xlsx
[235] Although the majority of the exhibitors charge a booking fee in addition to the ticket price, we note that some exhibitors distinguish between booking and processing/transaction fees (e.g., Shortwave Cinema). For simplicity, we will refer to such fees as 'additional booking fees'.
[236] Following discussions with the CMA on 20th December 2016, we understand that the 2013 prices are likely to be inclusive of any additional booking fees. The CMA looked into 2013 prices for Cineworld Brighton and Odeon's terms and conditions in place in 2013, and indicated that these appear to include additional booking fees.

results. We have therefore selected one price for a "popular" film, and one price for a "less popular" film.

3.4.8 We identified the popularity of films using the BFI's box office ranking for the weekend of 13-15 January 2017[237] – the weekend before the data gathering exercise was conducted – and created two lists (see Table 3.3). List 1 contains "popular" films (i.e. the top three by box office revenues), and List 2 contains "less popular" films (i.e. the fourth to eighth-ranked). We then recorded the price for the highest ranked film from each list that was being shown at each cinema. Table 3.3 further details the amount of data points we collected for each film across the overlap and both comparator area lists, i.e. how often we recorded a price for each film according to our methodology.[238,239]

Table 3.3 – Data points per film

List 1	Number of data points	List 2	Number of data points
La La Land	93	Assassin's Creed	48
Rogue One: A Star Wars Story	5	Passengers	13
Moana	0	Manchester by the Sea	21
		Live by Night	2
		Fantastic Beasts and Where to Find Them	0

Source: KPMG Analysis.

3.5 Results

3.5.1 In this section we present our baseline and sensitivity results, using the demographic and geographic comparators. For each scenario, we report the results of:

- Comparison 1, which compares the average price changes in the SLC and non-SLC areas; and
- Comparison 2, which compares the price difference between the SLC areas and their respective comparator local areas, averaged across areas, with the price difference between the non-SLC area and their respective comparator local areas, again averaged across areas.

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[237] http://www.bfi.org.uk/education-research/film-industry-statistics-research/weekend-box-office-figures
[238] In very few instances, a cinema did not show any of the films listed in Table 3.3. In these instances, we recorded the following films (frequencies in parentheses): Jackie (2), Lion (1), T2 Trainspotting (2), XXX: Return of Xander Cage (1). These were the highest-ranked available films outside the top eight.
[239] We note the underlying assumption that the BFI's box office ranking for the weekend of 13-15 January 2017 is reflective of the ranking of films' prices on the weekend of 21-22 January 2017. This is broadly the case for the films that feature in the analysis: La La Land remains in first position by a large margin. Rogue One: A Star Wars Story drops to 5th, but remains higher than Assassin's Creed (9th), Passengers (10th), Manchester by the Sea (7th) and Live by Night (unranked). Jackie, Lion, T2 Trainspotting, and XXX: Return of Xander Cage move to 6th, 4th, 77th and 3rd, respectively. Due to the very low number of data points (six) we have collected for these three films, this is unlikely to impact the analysis.

3.5.2 We note that the results for Comparison 2 when averaged across local areas are sensitive to the comparator areas chosen to conduct the analysis, namely whether these areas are selected using demographic or geographic characteristics. This appears to be the case regardless of whether booking fees are included or excluded. Similarly, these results are sensitive to the inclusion or exclusion of booking fees.

3.5.3 Some individual local areas are, however, less sensitive to these different specifications. In particular, in Brighton, prices have increased by more than the comparator local areas regardless of which comparator areas chosen, and regardless of whether or not booking fees are included.

3.5.4 Overlap areas in which the CMA found an SLC are highlighted in red.

Baseline

3.5.5 The baseline results use prices that include additional booking fees. We present results for both specifications in terms of comparator areas (i.e., demographic-based and geography based).

Table 3.4 – Demographics-based comparator areas, including additional booking fees

Overlap area	Comparator areas	Price change 2013-2017		Percentage point difference
		Overlap area	Comparator area	
Aberdeen	Bath, Exeter	29	39	-10
Brighton	Bolton, Stoke-on-Trent	32	13	19
Bury St Edmund's	Taunton, Norwich	31	33	-2
Cambridge	Reading, Slough	27	29	-1
Edinburgh	Cardiff, Derby	22	23	-1
Southampton	Portsmouth, Enfield	25	24	1
Average price change		28	27	1
Average for Non-SLC areas		26	20	6
Average for SLC areas		29	33	-4
Difference between SLC and non-SLC areas		-3	-	11

Source: KPMG analysis.
Notes: [1] Small sample sizes do not allow for reliable statistical testing of differences. [2] The analysis for the Southampton area does not include the ticket prices of Showcase Cinema de Lux Southampton as it opened on 10 February 2017, so shortly after this analysis was performed. [3] 2013 prices have been adjusted for inflation using the CPI for recreational goods from November 2013 (the date of the decision) and December 2016, sourced from the Office for National Statistics. [4] Any discrepancies in totals/ averages above are due to rounding.

Table 3.5 – Region-based comparator areas, including additional booking fees

Overlap area	Comparator areas	Price change 2013-2017		Percentage point difference
		Overlap area	Comparator area	
Aberdeen	Dundee, Inverness	29	18	11
Brighton	Guildford, Portsmouth	32	26	6
Bury St Edmund's	Ipswich, Norwich	31	33	-2
Cambridge	Oxford, Norwich	27	25	2
Edinburgh	Glasgow, Stirling	22	20	3
Southampton	Portsmouth, Bournemouth	25	21	4
Average price change		28	24	4
Average for Non-SLC areas		26	22	4
Average for SLC areas		29	25	4
Difference between SLC and non-SLC areas		-3	-	0

Source: KPMG analysis.
Notes: [1] Small sample sizes do not allow for reliable statistical testing of differences. [2] The analysis for the Southampton area does not include the tickets' prices of Showcase Cinema de Lux Southampton as it opened on 10 February 2017, so shortly after this analysis was performed. [3] 2013 prices have been adjusted for inflation using the CPI for recreational goods from November 2013 (the date of the decision) and December 2016, sourced from the Office for National Statistics.

Sensitivity

3.5.6 The sensitivity results exclude additional booking fees from the price. We present results for both specifications in terms of comparator areas.

Table 3.6 – Demographics-based comparator areas, excluding additional booking fees

Overlap area	Comparator areas	Price change 2013-2017		Percentage point difference
		Overlap area	Comparator area	
Aberdeen	**Bath, Exeter**	24	29	-5
Brighton	**Bolton, Stoke-on-Trent**	23	9	13
Bury St Edmund's	**Taunton, Norwich**	31	26	5
Cambridge	**Reading, Slough**	19	20	-1
Edinburgh	**Cardiff, Derby**	16	16	0
Southampton	**Portsmouth, Enfield**	18	21	-3
Average price change		22	20	2
Average for Non-SLC areas		19	16	3
Average for SLC areas		25	25	0
Difference between SLC and non-SLC areas		-6	-	4

Source: KPMG analysis.
Notes: [1] Small sample sizes do not allow for reliable statistical testing of differences. [2] The analysis for the Southampton area does not include the tickets' prices of Showcase Cinema de Lux Southampton as it opened on 10 February 2017, so shortly after this analysis was performed. [3] 2013 prices have been adjusted for inflation using the CPI for recreational goods from November 2013 (the date of the decision) and December 2016, sourced from the Office for National Statistics. [4] Any discrepancies in totals/ averages above are due to rounding.

Table 3.7 – Region-based comparator areas, excluding additional booking fees

Overlap area	Comparator areas	Price change 2013-2017		Percentage point difference
		Overlap area	Comparator area	
Aberdeen	**Dundee, Inverness**	24	12	13
Brighton	**Guildford, Portsmouth**	23	22	1
Bury St Edmund's	**Ipswich, Norwich**	31	24	7
Cambridge	**Oxford, Norwich**	19	18	1
Edinburgh	**Glasgow, Stirling**	16	13	3
Southampton	**Portsmouth, Bournemouth**	18	17	2
Average price change		22	18	4
Average for Non-SLC areas		19	17	2
Average for SLC areas		25	18	7
Difference between SLC and non-SLC areas		-6	-	-5

Source: KPMG analysis.
Notes: [1] Small sample sizes do not allow for reliable statistical testing of differences. [2] The analysis for the Southampton area does not include the tickets' prices of Showcase Cinema de Lux Southampton as it opened on 10 February 2017, so shortly after this analysis was performed. [3] 2013 prices have been adjusted for inflation using the CPI for recreational goods from November 2013 (the date of the decision) and December 2016, sourced from the Office for National Statistics.

4 WRI/ Hostelbookers

4.1 Analysis of market coverage

4.1.1 We collected data on the number of hostels listed for various holiday destinations for a certain fixed time period on the following websites: the three brands owned by Hostelworld Group (Hostelworld.com, Hostelbookers.com, and Hostels.com), Booking.com, Expedia, Laterooms.com, Hihostels.com, Budgetplaces.com and Hotels.com. The logic behind this analysis is to compare the market coverage of other OTAs, including Booking.com and Expedia, with that of Hostelworld Group.

4.1.2 We considered nine destinations: Barcelona, Stockholm, Paris, New York, San Francisco, Granada, Toulouse, Bologna, and Cork. These destinations were not chosen according to any particular set of criteria but we generally aimed to get a range of sizes of destinations.

4.1.3 We then recorded the number of available hostels listed on each online booking platform's website for a trip occurring between 1st – 4th July 2017. The results of our analysis are presented in Table 4.1 below. We have compared only the number of hostels listed, and not sought to compare other aspects, such as whether different room types are offered for each hostel on each website.

Table 4.1 – Market coverage of OTAs, 1st – 4th July, 2017

Booking platform	Hostels listed on accommodation services websites																		Simple Average Market Coverage Index
	Barcelona		Stockholm		Paris		New York		San Francisco		Granada		Toulouse		Bologna		Cork		
	Number	Ratio with respect to HW	Number	Ratio with respect to HW	Number	Ratio with respect to HW	Number	Ratio with respect to HW	Number	Ratio with respect to HW	Number	Ratio with respect to HW	Number	Ratio with respect to HW	Number	Ratio with respect to HW	Number	Ratio with respect to HW	
Hostelworld.com (HW)	78	1.00	24	1.00	32	1.00	19	1.00	9	1.00	14	1.00	1	1.00	1	1.00	4	1.00	1.0
Hostelbookers.com	76	0.97	24	1.00	31	0.97	19	1.00	9	1.00	14	1.00	1	1.00	1	1.00	4	1.00	1.0
Hostels.com	79	1.01	24	1.00	32	1.00	19	1.00	9	1.00	14	1.00	1	1.00	1	1.00	4	1.00	1.0
Booking.com	77	0.99	23	0.96	24	0.75	15	0.79	14	1.56	10	0.71	0	0.00	1	1.00	1	0.25	0.8
Expedia.co.uk	52	0.67	29	1.21	24	0.75	30	1.58	12	1.33	9	0.64	2	2.00	3	3.00	1	0.25	1.3
Laterooms.com	73	0.94	17	0.71	15	0.47	25	1.32	15	1.67	19	1.36	2	2.00	1	1.00	1	0.25	1.1
Hihostels.com	8	0.10	4	0.17	3	0.09	1	0.05	3	0.33	1	0.07	0	0.00	0	0.00	0	0.00	0.1
Budgetplaces.com	77	0.99	23	0.96	24	0.75	15	0.79	14	1.56	10	0.71	0	0.00	1	1.00	1	0.25	0.8
Hotels.com	57	0.72	20	0.83	20	0.63	12	0.63	9	1.00	14	1.00	0	0.00	1	1.00	- *	-*	0.6

Source: KPMG elaboration of data collected from Hostelworld.com, Hostelbookers.com, Hostels.com, Booking.com, Expedia.co.uk, Laterooms.com, Hihostels.com, Budgetplaces.com, and Hostels.com. Data gathering process carried out on 30th January 2017.
Notes: [1] * No filter available for hostels. [2] Brands owned by Hostelworld Group are highlighted in green, Booking.com and Expedia.co.uk are both highlighted in purple given the weight that the OFT put on their entry/ expansion. Other online travel agencies ("OTAs") are highlighted in yellow.

4.1.4 For ease of comparison, we constructed an index that measures the number of hostels listed on each online booking platform for a given location relative to the number of hostels listed for the same location by Hostelworld.com – Hostelworld Group's core brand. For example, Table 4.1 above shows that we found that 77 hostels were available on Booking.com for Barcelona for the above-mentioned period, compared to 78 hostels listed on Hostelworld.com for the same destination and period of time. To construct our index, we took the ratio between 77 and 78 (i.e., 0.99). Values of the index larger than 1.0 indicate instances where the online booking platform has a higher number of listed hostels than Hostelworld.com.

4.1.5 To further simplify the comparison between different online booking platforms, we have taken the simple average of the index for each platform across the nine locations listed above. Results are reported in Table 4.2 below.

Table 4.2 – Simple average market coverage index across destinations, by online booking platform

Online booking platform	Simple Average Market Coverage Index
Hostelworld.com	1.0
Hostelbookers.com	1.0
Hostels.com	1.0
Booking.com	0.8
Expedia.co.uk	1.3
Laterooms.com	1.1
Hihostels.com	0.1
Budgetplaces.com	0.8
Hotels.com	0.6

Source: KPMG analysis of publicly available information available on the online booking platforms above.

4.2 Analysis of prices pre- and post-merger

4.2.1 We have sought to assess whether the fees charged by Hostelworld Group to end users and hostel owners have increased after the WRI/ Hostelbookers merger.

4.2.2 We have gathered from Hostelworld Group information on the level of booking and commission fees charged to end users and hostel owners respectively, both at the time of our ex-post merger evaluation and at the time of the OFT's merger case. We have therefore sought to understand whether booking and commission fees charged by Hostelworld Group have increased after the merger.

4.2.3 Table 4.3 presents how booking and commission fees have changed since the WRI/ Hostelbookers merger.

Table 4.3 – Analysis of Hostelworld Group's booking and commission fees before and after the merger

Booking Platform	Booking Fees		Commission Fees	
	Pre-merger	Present	Pre-merger	Present
Hostelworld.com	Flat fee of USD$2.00/£1.00/EUR 1.50 depending on currency chosen	Gradually phased out	10% commission fee	Gradually increased to 12% in March 2014 (15% for new properties between June 2013 and September 2014) "Elevate" product whereby hostel owners can chose to pay a higher commission fee in lieu of better positioning of their hostel in the search results
Hostelbookers.com	No booking fee charged		10% commission fee	Same as Hostelworld.com except that the "Elevate" product was not introduced for the Hostelbookers.com platform until January 2015
Hostels.com	USD$2.00 – waived if customer signs up for SmartSavers membership		10% commission fee	Same as Hostelworld.com [✂]

Source: In-depth interview between KPMG and Hostelworld Group.

4.2.4 We have calculated the value of a booking necessary to offset the savings that an end user would make due to the reduction in booking fees (or the lost revenue for Hostelworld.com) and the additional cost that a hostel owner that was already advertising its property on Hostelworld.com at the time of the merger would incur due the increase in commission fees (or the increase in revenue for Hostelworld.com). We found that a total booking size of £50 would imply that the price changes described above are revenue neutral. In the case of a total booking size of £30, Hostelworld Group would make £0.4 (or 1.3 per cent of the booking size) less than it used to at the time of the merger. Conversely, in the case of a total booking size of £70, it would make £0.4 more compared to pre-merger revenue (or 0.6 per cent of the booking size).

5 Zipcar/ Streetcar

5.1 Analysis of prices pre- and post-merger

5.1.1 We have sought to assess how prices have changed since the Zipcar/ Streetcar merger. We compared annual membership fees and the lowest hourly and daily rates (lowest weekday and weekend hourly rates) for Zipcar and Enterprise Car Club (previously City Car Club) before and after the merger. The current fees were obtained from the operators' websites, while prices at the time of the merger are based on the analysis done by the CC during the case to conduct a price comparison analysis presented in the Final Report.[240,241]

5.1.2 We had only limited information on how rates had been recorded by the CC at the time of the merger case, and in particular whether these refer to the same type of products (or "plans") for which current prices have been recorded. In addition, the exact same plan as the CC used at the time of the merger may not be currently available.[242] Finally, as the CC noted at the time of the merger, the comparison between Zipcar and Enterprise Car Club is also complicated by the fact that their vehicle charges vary according to the model of car, time of week and whether hourly or daily rental is considered.[243] What is included in the prices also differs between Zipcar and Enterprise Car Club.

5.1.3 To attempt to conduct a like-for-like comparison, we have selected rates for the 'lowest' plan currently available on Zipcar and Enterprise Car Club websites, which appear to be quite similar to what the CC recorded at the time of the merger. In particular, for Zipcar we used rates associated to the plan including Ford Fiesta and Toyota Yaris Hybrid, which appears to be the cheapest plan,[244] whereas for Enterprise Car Club we used rates for the 'small vehicle type' category. In the case of Zipcar, the plan we selected includes 60 miles of fuel per day, the congestion charge, and insurance. According to the data received by the CC, these services were also offered by Zipcar at the time of the merger. Table 5.1 sets out the results.

[240] We note that, at the time of the merger, the CC compared prices for four operators, namely Zipcar, Streetcar, Connect by Hertz, and City Car Club. As Streetcar ceased to exist as a result of the merger with Zipcar, and Hertz only offers car club services to corporate customers (via its Hertz 24/7 service), we could only use data on Zipcar and City Car Club (now operating under the Enterprise Car Club brand) to conduct our price comparison.
[241] Final Report, Appendix H, Tables 5 and 8.
[242] We understand that the CC used the 'lowest' rates available at the time. For Zipcar, the CC appeared to have used the rates for VW Polo. We note that this vehicle is not currently available on Zipcar or Enterprise Car Club.
[243] Final Report, Appendix H, para. 19.
[244] We note that Zipcar currently offers a pay-per-mile plan whereby users can use the same car models as above, namely Ford Fiesta and Toyota Yaris Hybrid. When considering annual membership fee, and hourly and daily fees, this plan appears to be cheaper than the one we used to conduct our analysis, although it does not allow customers to use cars for 24 hours or longer during weekends and no petrol allowance is included – petrol is charged at 29p per mile starting from the first mile.

Table 5.1 – Prices for Zipcar and Enterprise Car Club pre- and post-merger

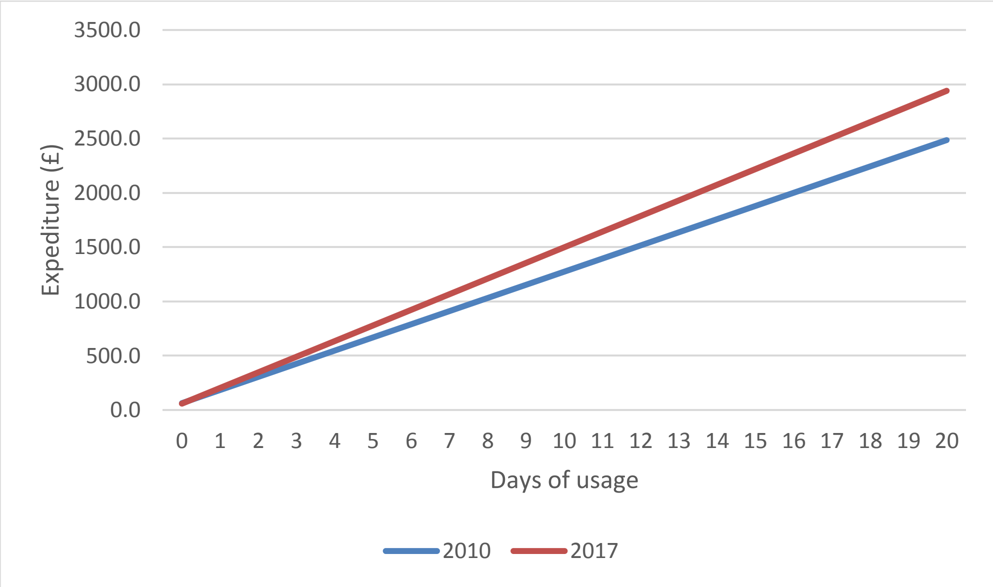
Car club operator	Annual membership fee (£)	Lowest hourly weekday rate (£)	Lowest hourly weekend rate (£)	Lowest daily weekday rate (£)	Lowest daily weekend rate (£)	Included in the service
Zipcar	**Decreased** from £63.90 to £59.50	**Increased** from £5.00 to £6.00	**Increased** from £6.30 to £7.50	**Increased** from £37.00 to £54.00	**Increased** from £57.50 to £65.00	**2010**: Congestion charge, insurance, 60 miles worth of petrol **2017**: London congestion charge, insurance, 24/7 breakdown assistance, includes 60 miles, and fuel charged at £0.25 per mile
Enterprise Car Club	**Decreased** from £63.90 to £60.00	**Decreased** from £6.30 to £4.95	**Decreased** from £6.30 to £4.95	**Decreased** from £63.20 to £39.95	**Decreased** from £63.20 to £39.95	**2010**: Half of congestion charge, insurance, fuel charged at £0.19 per mile **2017**: Insurance (a damage waiver excess of £750), mileage rates starting from £0.21 per mile, breakdown cover and 24/7 Clubhouse support

Sources: KPMG analysis of rates gathered by the OFT at the time of the merger review and current rates available on http://www.zipcar.co.uk/check-rates/london and https://www.enterprisecarclub.co.uk/locations/south-east-england/london/
Notes: 2010 rates have been adjusted for inflation using CPI (Other vehicle services) sourced from the Office for National Statistics.

5.1.4 Table 5.1 above shows that, with the exception of the annual membership fee – which has decreased for both car club operators – hourly and daily rates (both weekday and weekend) for Zipcar have increased since the merger, while prices for Enterprise Car Club have decreased. For example, if we considered hourly weekday rates, we found that customers who used the service for less than around 4.6 hours a year are made better off by this change, whilst those with heavier usage are made worse off. When considering hourly weekend rates, the tipping point would be 3.7 hours a year. Similarly, in relation to daily weekday and daily weekend rates, we calculated that customers that used the services for around 0.3 and 0.6 days respectively per year would be better off, and those with heavy usage would be worse off.

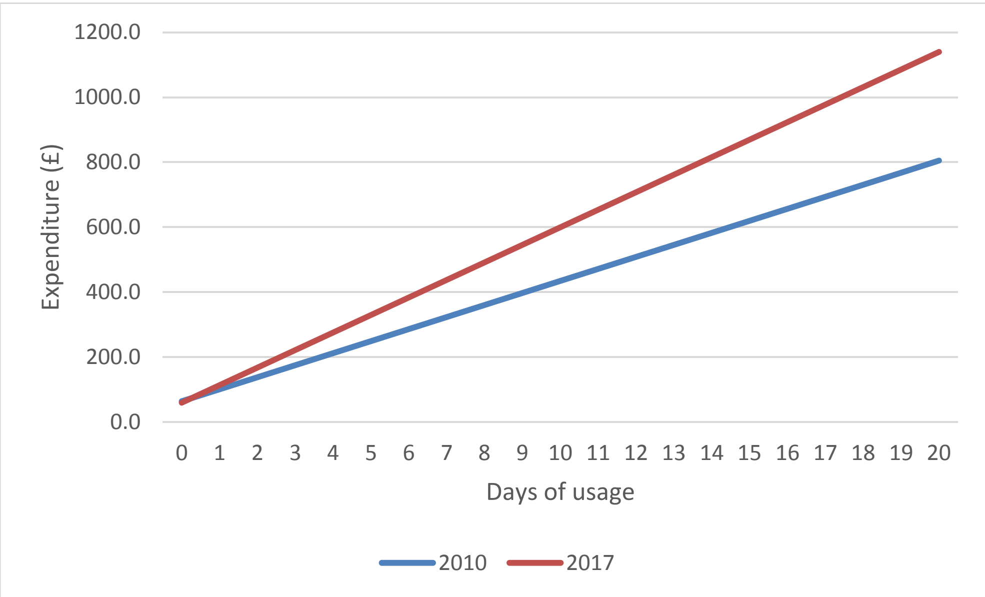
5.1.5 To illustrate the findings above, suppose that people used Zipcar only during weekdays, and rates are charged hour by hour. Figure 5.1 below shows the divergence between the price that users would pay now compared to what they paid at the time of the merger. As noted above, 4.6 hours of usage would make people indifferent between what they used to pay at the time of the merger and what they would currently pay. Figure 5.2, instead, assumes that people used Zipcar only during weekends, and rates are charged day by day. As noted above, 0.6 days of usage would make people indifferent between what they used to pay at the time of the merger and what they would currently pay. Regardless of when people use the vehicle and the rates they are charged, both figures show that the longer people use the vehicle, the worse off they would be compared to the pre-merger situation.

Figure 5.1 – Comparison between pre- and post-merger expenditure for Zipcar users, assuming that a vehicle is hired during weekdays, and hourly rate is charged



Source: KPMG Analysis.

Figure 5.2 – Comparison between pre- and post-merger expenditure for Zipcar users, assuming that a vehicle is hired during weekend days, and daily rate is charged



Source: KPMG Analysis.

5.1.6 We do not have evidence on current frequency of usage of Zipcar services by their customers. According to the data submitted by the merger parties at the time of the decision,[245] 48 per cent of Zipcar users hire vehicles for more than 4 hours in one session. If we assumed that usage has not changed since the merger, this would suggest that a

[245] Final Report, Appendix H, Table 9.

substantial proportion of Zipcar users would be worse off compared to what they used to pay before the merger.

6 NBTY/ Julian Graves

6.1 Analysis of prices pre- and post-merger

6.1.1 We have sought to assess how prices for NSF have changed since the NBTY/ Julian Graves merger.

6.1.2 This appendix proceeds as follows:

- First, we set out an overview of the methodology we use, and the analysis conducted.
- Second, we describe in detail how we have gathered the data we have used to conduct our analysis and how we have constructed prices.
- Finally, we present the results of our analysis.

6.2 Methodology

6.2.1 The CMA provided us with data submitted by the merger parties during the case on pre-merger prices charged by the merger parties and a number of supermarket competitors for a sample of NSF products. We then gathered data on current prices for the merger parties and two supermarket competitors for some of the NSF products included in that sample. The set of products for which we have gathered current prices are defined as the "sample products" (by definition, pre-merger prices were also available for these products).

Comparison 1: price changes before and after the merger at Holland & Barrett

6.2.2 We compared the percentage price change at Holland & Barrett before and after the merger for each sample product.

$$\%\, price\ change\ for\ a\ product\ at\ H\&B = \frac{(price\ charged\ by\ H\&B\ in\ 2017) - (price\ charged\ by\ H\&B\ in\ 2009)}{price\ charged\ by\ H\&B\ in\ 2009}$$

Comparison 2: price changes before and after the merger using 'comparator' supermarkets

6.2.3 We note that price changes at Holland & Barrett could be driven by a range of factors unrelated to the merger, and these may mask or overwhelm the impact of the merger on prices. To try to isolate the effects of the merger on prices charged by Holland & Barrett, we compared, for each sample product, the percentage price change since the merger at Holland & Barrett, with the percentage price change since the merger at the comparator supermarkets.

6.2.4 Specifically, we have chosen Tesco and Waitrose as comparators. Prices were available for these two supermarkets from the time of the merger, from a submission made by the merger parties. The merger parties submitted prices also for Sainsbury's (and Julian Graves, which is no longer in the market), but to keep the exercise more manageable we focussed on only two comparators.

6.2.5 Tesco and Waitrose can be considered as relevant comparator supermarkets to the extent that the prices at Tesco and Waitrose are not impacted by prices at Holland & Barrett, and therefore not in principle influenced by the NBTY/ Julian Graves merger. This is supported by the conclusions that the CC drew in its Final Report. In particular the CC found that "*most other retailers of NSF (even those retailers selling a wide range) did not monitor the prices or ranges of NSF at H&B and JG*".[246] Nevertheless, we note that this evidence is from around eight years ago and some of the competitive constraints might have changed since then. In addition, Tesco and Waitrose are relevant comparators to the extent that their prices change as a result of some of the same factors that influence prices at Holland & Barrett, with the exception of the impact of the merger – for example, costs of raw materials. We recognise, however, that prices at Tesco and Waitrose are likely to be driven by some different factors than those at Holland & Barrett, and more generally we recognise that this analysis is not a full econometric analysis and does not control for all relevant factors which might drive different price changes for NSF.

6.2.6 The analysis is conducted at the product level, using the sample of products for which prices were submitted by the merger parties during the merger case ("overlapping products"). We explain how prices were derived for each product in paragraphs 6.3.3 to 6.3.11 below.

6.2.7 In order to estimate price differences, the following steps have been taken:

- First, for each sample product we record the 2009 price (submitted at the time of the merger) and the 2017 price (found on retailers' websites) at Holland & Barrett, Tesco, and Waitrose. Details on how prices have been constructed and recorded are set out in paragraphs 6.3.3 to 6.3.11.
- Second, we compute the percentage price change between 2009 and 2017 for each sample product, at each of the three retailers under analysis.
- Finally, we calculate the difference between the percentage price change for a product at Holland & Barrett and the percentage price change for the same product at a comparator supermarket.

6.2.8 We compare price changes at Holland & Barrett to prices changes at Tesco and Waitrose individually, as well as prices across those two comparator supermarkets combined. To calculate the price for Tesco and Waitrose combined, we calculate the unweighted average product price at these supermarket retailers, separately for 2009 and 2017.

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[246] Final Report, para. 6.3.

6.3 Data

6.3.1 As the CC noted at the time of the merger, the merger parties and most of the supermarket set prices nationally.[247] The prices provided to the CC by the merger parties were therefore the national prices, and for the purpose of collecting current prices, we used online national prices available on the supermarkets websites.

6.3.2 Our analysis requires data on product-level prices for Holland & Barrett, Tesco, and Waitrose, in 2009 and 2017. In this section, we outline the sources and approach for collecting and preparing these data to facilitate a like-for-like comparison.

2009 data

6.3.3 The CMA provided us with a spreadsheet[248] containing product names, package sizes and 2009 prices for products and brands sold at five retailers: Holland & Barrett, Julian Graves, Tesco, Sainsbury's, and Waitrose. We understand this spreadsheet had been submitted by the merger parties during the case. We do not know on what basis the products were chosen by the parties. As such, it is unclear whether this is a representative sample.

6.3.4 Using the spreadsheet above, we selected the 23 unique overlapping products between Holland & Barrett and Tesco, and the 19 unique overlapping products between Holland & Barrett and Waitrose.[249] These are presented in Table 6.1 below. Some products came in various package sizes,[250] and were recorded by the merger parties with multiple prices.

[247] Final Report, para. 5.62.
[248] JG Annex 14(i) Price Range Review – Tesco.xlsx.
[249] The dataset originally contained 24 products. However, our review of the data found that "Brown linseed" at Holland & Barrett had been matched, erroneously, with "Wholefood pumpkin seed oil" at Tesco. We have dropped this product, and have therefore only considered 23 products in our analysis.
[250] E.g., a 500g bag, 1kg bag, etc.

Table 6.1 – List of pair–wise overlapping products between Holland & Barrett and Tesco, Waitrose

Product	Available at Tesco	Available at Waitrose
Brown Rice	✓	✓
Soup mix	✓	✓
Dried fruit salad	✓	✓
Pitted dates	✓	✓
Apricots	✓	×
Pecans	✓	✓
Cashews	✓	✓
Californian pistachios	✓	✓
Brazil nuts	✓	✓
Walnuts	✓	✓
Pumpkin seeds	✓	✓
Granovita Organic Quinoa	✓	✓
Whole almonds	✓	×
Mixed nuts & raisins	✓	✓
Bulgar wheat	✓	✓
Chick Peas	✓	✓
Red kidney beans	✓	✓
Whole green lentils	✓	×
Split Red Lentils	✓	✓
Couscous	✓	✓
Golden linseed	✓	✓
Brown Linseed	×	×
Soya mince	✓	✓
Pinto Beans	✓	×

Source: Data contained in the sheet "JG Annex 14(i) Price Range Review – Tesco.xlsx" received from the CMA.

2017 Data

6.3.5 To conduct our analysis, we have collected prices and package sizes for the same 23 overlapping products for which the merger parties provided 2009 data. As defined above, these are our "sample products".

Obtaining comparable prices

6.3.6 The long timeframe of our analysis – eight years since the merger was cleared by the CC – means that many of the products observed during the case are now in different package sizes or may be offered by different branded manufacturers.

6.3.7 Where possible, we have matched together a brand and package size in 2009 with the same brand and package size in 2017. However, in many cases it was not possible to obtain an exact match in relation to the package size and/or the brand.

6.3.8 Our analysis corrects for the above issues as follows:

- Where a brand has ceased to be offered at the retailer, but a substitute brand is offered instead (with the same package size), then this substitute product has been used in the comparison.
- Where the same brand (or adequate substitute brand) was found, but the package size has changed, we have adjusted the 2017 price for the relative difference in package size. For example, if a 100g package size product was recorded in 2009 but only a 150g package product is available in 2017, we record two thirds (corresponding to

100g / 150g) of the price of the 2017 product, to adjust for this difference in size. Where multiple package sizes were available in 2017, we have used the package size closest to the 2009 package size to minimise bias from non-linear pricing.[251] In a small number of instances, a product had one brand in 2009, but can be matched to multiple brands in 2017. In these instances, we calculate the percentage price change between the 2009 branded product and each branded product individually, then take the unweighted average of these percentages.

- Where there were multiple package sizes in 2009 (e.g., 500g, 1kg), but a reduced number in 2017 (e.g., 500g only), we have discarded the unmatched package sizes.

6.3.9 Finally, we note that in a few instances the products sold by the supermarkets at the time of the merger appear not to be available anymore (e.g., red kidney beans and pinto beans for Holland & Barrett). We recorded these instances as "N/A" in our results below.

6.3.10 We have also adjusted the 2009 prices for inflation, using the CPI for food[252] from August 2009 (the date of the decision) and December 2016.

6.3.11 On the basis of the information submitted by the parties, it is unclear whether 2009 data reflected list prices (as opposed to promotional prices). When collecting 2017 prices, we use online national prices available on the supermarkets' websites, and disregard any promotional pricing in place at the time.

6.4 Results

6.4.1 The baseline results compare pair-wise price changes between Holland & Barrett and Tesco (see Table 6.2), and Holland & Barrett and Waitrose (see Table 6.3).

6.4.2 Our results indicate that prices at Holland & Barrett have increased more than prices at Tesco and Waitrose for 17 out of 21 and 13 out of 18 products respectively.

6.4.3 We were also interested in whether prices at Holland & Barrett were more expensive than prices at Tesco or Waitrose, and whether they were becoming relatively more expensive since the merger (since if Holland & Barrett's prices were lower than those at Tesco and Waitrose at the time of the merger, the fact that their prices have gone up by more might reflect more of an adjustment to bring prices more in line with competitors). This depends not only on the percentage change in prices since the merger, but also on whether Holland & Barrett's prices were more or less expensive than prices at Tesco and Waitrose at the time of the merger.

6.4.4 We found that prices at Holland & Barrett have become even more expensive for 18 products, compared to Tesco, and for 12 products, compared to Waitrose, since the merger. This result is generally confirmed, both when Tesco and Waitrose are kept separate and compared with Holland & Barrett, as well as when prices are averaged across them (see Table 6.4) below.

[251] For example: assume that in 2009 the CC's record for Brown Rice listed a pack size of 500g, but that in 2017 the pack sizes are 400g (£2) and 1kg (£4.75). In this case, we have taken the 400g pack size as the closest for comparison, but have scaled up the 2017 price to match a 500g pack, i.e. $\frac{500\text{g}}{400\text{g}} * £2$.

[252] ONS Consumer Price Inflation time series dataset, ID: MM23, 17 January 2017.

Table 6.2 – Analysis of national price outcomes comparing Holland & Barrett with Tesco

Holland & Barrett		Tesco			
Product	**% price change 2009-2017**	**Product**	**% price change 2009-2017**	**% difference in price change**	**Holland & Barrett's prices diverging (i.e. becoming more expensive) than Tesco (Y/N)**
Brown Rice	125	Whole Grain Rice	112	13	Y
Soup mix	20	Soup and Broth Mix	59	-39	N
Dried fruit salad	87	Wholefood Dried Fruit Selection	5	82	Y
Pitted dates	57	Wholefood Stoned Dates	198	-140	N
Apricots	223	Wholefood Blanched Apricots	64	159	Y
Pecans	87	Pecan Nuts	24	63	Y
Cashews	124	Cashew Nuts	2	122	Y
Californian pistachios	215	Pistachio Nuts	-13	228	Y
Brazil nuts	60	Brazil Nuts	20	40	Y
Walnuts	95	Walnut Halves	44	51	Y
Pumpkin seeds	205	Pumpkin Seeds	25	180	Y
Granovita Organic Quinoa	139	Quinoa	42	97	Y
Whole almonds	92	Whole Sweet Almonds	-8	100	Y
Mixed nuts & raisins	95	Wholefood Fruit & Nut Mix	6	89	Y
Bulgar wheat	35	Bulgar Wheat	43	-8	Y
Chick Peas	126	Chick Peas	50	76	Y
Red kidney beans	NA	Red Kidney Beans	34	NA	NA
Whole green lentils	117	Lentilles Vertes	38	79	Y
Split Red Lentils	167	Red Split Lentils	67	100	Y
Cous Cous	36	Cous Cous	-23	59	Y
Golden linseed	23	Golden Linseed	-67	91	Y
Soya mince	46	Wholefood Soya Mince	72	-26	N
Pinto beans	NA	Wholefood Pinto Beans	16	NA	NA

Source: KPMG elaboration of 2009 prices provided by the CMA as part of the case file, and current online prices.
Notes: [1] Instances where the percentage price increase at Holland & Barrett is higher than the percentage price change at Tesco are reported in red. [2] Instances where prices have decreased since the merger was cleared by the CC are reported in green.

Table 6.3 – Analysis of national price outcomes comparing Holland & Barrett with Waitrose

Holland & Barrett		Waitrose			
Product	**% price change 2009-2017**	**Product**	**% price change 2009-2017**	**% difference in price change**	**Holland & Barrett's prices diverging (i.e. becoming more expensive) than Waitrose (Y/N)**
Brown Rice	125	Uncle Ben's Whole Grain Rice	120	5	N
Soup mix	20	Telma Soup Mix Tub	10	10	N
Dried fruit salad	87	Tropical Medley Dried Fruit	178	-91	N
Pitted dates	57	Sun Dried Stoned Dates	84	-26	N
Apricots	223	-	NA	NA	NA
Pecans	87	Pecan Nuts	85	2	Y
Cashews	124	Cashew Nuts	65	59	Y
Californian pistachios	215	Roasted Pistachio Nuts	28	187	Y
Brazil nuts	60	Brazil Nuts	91	-32	N
Walnuts	95	Walnut Pieces	83	12	Y
Pumpkin seeds	205	Pumpkin Seeds	43	162	Y
Granovita Organic Quinoa	139	Granovita Organic Quinoa	140	-1	Y
Whole almonds	92	-	NA	NA	NA
Mixed nuts & raisins	95	Fruit & Nut Selection	22	73	Y
Bulgar wheat	35	Bulghur Wheat	32	3	Y
Chick Peas	126	Chick Peas	32	94	Y
Red kidney beans	NA	Red Kidney Beans	11	NA	NA
Whole green lentils	117	-	NA	NA	NA
Split Red Lentils	167	Split Red Lentils	24	143	Y
Cous Cous	36	Cous Cous	-10	46	Y
Golden linseed	23	Linusit Gold Golden Linseed	-65	88	Y
Soya mince	46	Realeat Vege Mince	76	-29	N
Pinto beans	NA	-	NA	NA	NA

Source: KPMG elaboration of 2009 prices provided by the CMA as part of the case file, and current online prices
Notes: [1] Instances where the percentage price increase at Holland & Barrett is higher than the percentage price change at Waitrose are reported in red. [2] Instances where prices have decreased since the merger was cleared by the CC are reported in green.

6.4.5 In addition to treating Tesco and Waitrose separately, we have also computed the simple average of the price changes for each product at these two supermarkets, and compared these with the price changes at Holland & Barrett. Results are reported in Table 6.4 below.

Table 6.4 – Analysis of price outcomes comparing Holland & Barrett with Tesco and Waitrose combined

Holland & Barrett		Tesco & Waitrose Combined	
Product	% price change 2009 - 2017	% price change 2009 - 2017	% difference in price change
Brown Rice	125	118	7
Soup mix	20	20	0
Dried fruit salad	87	34	54
Pitted dates	57	128	-71
Apricots	223	NA	NA
Pecans	87	53	34
Cashews	124	29	95
Californian pistachios	215	-2	217
Brazil nuts	60	57	3
Walnuts	95	59	36
Pumpkin seeds	205	31	174
Granovita Organic Quinoa	139	98	41
Whole almonds	92	NA	NA
Mixed nuts & raisins	95	9	86
Bulgar wheat	35	37	-2
Chick Peas	126	40	86
Red kidney beans	NA	28	NA
Whole green lentils	117	NA	NA
Split Red Lentils	167	47	120
Cous Cous	36	-16	52
Golden linseed	23	-67	90
Soya mince	46	75	-28
Pinto beans	NA	NA	NA

Source: KPMG analysis.

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