Completed Acquisition by JLA Limited of Washstation Limited

Response to Phase 1 Decision

4 May 2018

1. Introduction

1.1 The purpose of this submission is to set out JLA's views on the CMA's Phase 1 Decision of 3 April 2018 (the "**Decision**") relating to the completed acquisition by JLA Limited ("**JLA**") of Washstation Limited ("**Washstation**", and together with JLA the "**Parties**") (the "**Transaction**").

1.2 JLA believes that on the balance of probabilities, there cannot be – on any plausible basis – a substantial lessening of competition ("**SLC**") or harm to consumers as a consequence of the Transaction.

1.3 JLA believes that the Phase 2 investigation will enable the CMA to gain a greater understanding of the competitive dynamic in the market for the supply of commercial laundry services and will demonstrate that the Decision is flawed in the following respects:

- The Decision fails to recognise the simplicity of the business model for managed laundry services. It requires only laundry equipment (i.e. washing machines and dryers), payment systems and engineers. There is little financial risk, demand is predictable and there is low capital investment. The Decision fails to recognise that any business with laundry equipment and engineers can compete for managed laundry contracts with customers of any type. As a result, the Decision adopts an unduly narrow frame of reference and market definition and is overly cautious in those respects.

- The Decision overplays the strength of competition offered by Washstation. At the time of the merger, Washstation was in financial difficulty and it would have struggled to have retained its existing contracts let alone successfully compete for new ones. The CMA's assessment failed to take into account the weakened state of Washstation and the competitive constraint it would have imposed in the future. An assessment based on the pre-Transaction situation does not reflect the reality that the competitive strength of Washstation would have diminished over time.

- The Decision does not consider that in most cases demand is local, so any local supplier can effectively compete for local tenders, even if it does not have a national footprint (e.g. Thain Commercial). The CMA unduly focuses on national providers of manged laundry services, hence understating the competitive constraints the Parties face post-Transaction. For those customers who do operate on a wider geographic basis (essentially private sector accommodation providers) they have strong buyer power and can sponsor entry.

- The Decision erroneously finds that the removal of Washstation was likely to allow JLA to increase prices, reduce the range of services and service quality and reduce innovation. However, variable rental agreements create strong incentives for suppliers to offer rapid and effective service because their income depends on it. Moreover, the Transaction will lead to better servicing for Washstation customers and has already delivered faster payment of commissions compared to the counterfactual. Furthermore, Washstation was not innovating – there is no overlap in that regard and so no lessening of competition in that sphere.

- The Decision significantly overplays the costs of entry or expansion. In fact, barriers to entry and growth are very low. The Decision acknowledges that demand is growing significantly, particularly amongst higher education ("**HE**") customers. However, this was not reflected in the CMA's substantive assessment. Such growth provides entry and expansion opportunities, of a size comparable and – most likely – exceeding the competition lost as a consequence of the Transaction (which is, in any event, not substantial).
- The Decision fails to give due consideration to the recent acquisition of Armstrongs by Hughes and how this combined entity has already become a more aggressive competitor.
- The Decision places overreliance on the results of the CMA survey conducted with HE customers, with which there were a number of issues as recognised by the CMA during the Issues Meeting.
- The Decision fails to give due consideration to the fact that the "customers" in this case are large public and private sector institutions with considerable buying and negotiating power which they can and do exercise.

1.4 These points are expanded upon further in this submission and will also be covered in detail in response to the Issues Statement once published.

1.5 JLA considers that these factors will be confirmed in Phase 2, and that they should lead the CMA to clear the Transaction.

2. Simplicity of the business model

2.1 Whilst many HE customers use variable rental agreements, the business model for managed laundry services is very simple, requiring only laundry equipment and engineers to service and maintain the installed machines. Any ancillary services (such as online services or cashless payment solutions) are widely available at low cost and easy to implement.

2.2 The Decision is premised on the hypothesis that the supply of managed laundry services to HE customers is sufficiently different from the supply of such services to other customers. The Parties believe that this segmentation is artificial and does not reflect how the market operates. For example, JLA is agnostic as to the type of customer it serves: it deploys laundry equipment to a range of different customer types; its service centre takes calls from all customer types; and its engineers do not specialise in any particular customer type. This is natural as, from a technical point of view, there are no differences between an HE customer and – say – a leisure customer, care home customer, hotel customer or a key-worker site.

2.3 The Decision itself acknowledges that other types of customer do in fact use variable rental agreements, in particular customers in the leisure sector. Indeed, the Decision states that [✂]% of JLA's revenues from leisure customers are from variable rental agreements (para 36(a)(ii)). This strongly suggests that variable rental is not specific to HE customers.

2.4 Consequently, the frame of reference is unduly narrow, and the approach taken in the Decision was too rigid and structuralist. Managed laundry service providers are able to supply services to any customer type because the core demands are the same: laundry machines and engineers. In short, supply side substitution is straightforward.

2.5 The Decision also erroneously concludes that HE customers have different needs in that they require "*bespoke ancillary services*", such as refurbishment of laundry rooms and online services. Whilst these are features of arrangements with HE customers, they are services that are simple and inexpensive to provide and merely enhance the service offered rather than being integral to it. JLA considers all these points are more relevant to the supply-side and whether other suppliers could provide these services. They are therefore addressed below in the context of supply-side constraints.

3. The Decision overplays Washstation's strength

3.1 It is important to put the Washstation business in context when considering the effects of the Transaction. Washstation was a small business set up by Alistair Copley which began operations in 2008. By the time of the Transaction it had 10 employees (including Mr Copley), 6 of whom were engineers servicing Washstation contracts around the UK. Mr Copley was the only salesperson in the business, negotiating and concluding agreements with customers. It was to all intents and purposes a "one-man band" with the limitations and behaviours that such a business would have. Its revenues net of commission were only £ [✂].

3.2 [✂]

3.3 These financial issues raise material doubts as to whether Washstation could have continued to operate in the market, let alone maintain any substantial competitive pressure. Various customers had become increasingy dissatisfied with Washstation and it is unclear whether Washstation would have been in a position to have credibly bid in future contract tenders, or have been seen as credible by the vast majority of customers.

3.4 Despite these issues, JLA saw an opportunity to acquire Washstation's contracts and remove the overheads by eliminating Washstation's central costs associated with a separate head office and warehouse, and deploying its own field service engineer team of approximately 170 engineers, thus achieving both a much more timely and efficient service delivery outcome for customers. JLA estimated cost synergies of c. £ [✂], which have largely been achieved.

3.5 From a customer perspective the Transaction also brought a number of benefits, [✂]. In addition, customers are now receiving a superior service and business proposition from JLA (see further Section 9 below).

4. Demand is predominantly local

4.1 Demand is predominantly local, and local suppliers can readily compete for such contracts. This is evident from the example of Thain Commercial (a distributor in Scotland) cited in the Decision.

4.2 Most HE customers are universities that operate in a specific area (e.g. University of Leeds, University of Southampton, etc.) for whom a local supplier able to provide managed laundry services will be more than capable of servicing their requirements.

4.3 There are few national customers, and the ability to offer national coverage is not necessary to compete effectively for local contracts.

4.4 The assessment of market shares on a national basis is an unreliable guide to a supplier's competitive strength for such customers (and is also unreliable when competition takes place via tenders as it invariably does for such customers).

4.5 For customers whose demand is more geographically diverse (essentially private sector accommodation providers such as UPP) a supplier can compete with only a small number of engineers. This is exactly what Washstation did. In addition, OEMs usually operate through a distributor network and can offer national coverage in that way.

5. Findings on SLC

5.1 The Decision erroneously finds that the removal of Washstation is likely to allow JLA to increase prices (i.e. reduce commissions), reduce the range of services and service quality and reduce innovation.

5.2 This is fundamentally wrong. Under a variable rental model it is in both of the Parties' interests to ensure that rapid and effective service is provided because having all the machines in good working order generates revenue for both Parties.

5.3 If – which is denied – JLA could reduce commissions it would lose business to other suppliers, both to those which the Decision recognises already provide variable rental agreements to HE customers, as well as to new entrants (e.g. from adjacent markets) who would see an opportunity to profitably grow.

5.4 Entry and expansion is easy (see Section 6 below), and there is more than sufficient demand (both from expiring contracts and new shared accommodation projects) for existing competitors and new entrants to replicate the constraint from Washstation. Customers will have sufficient choice when their contracts come up for renewal. Customers with existing contracts are wholly unaffected by the Transaction as they are protected by their contractual terms which cannot be varied unilaterally mid contract (other than in very limited circumstances, such as closure of a site); by the time their contracts come up for renewal third parties will have had further opportunity to grow and offer meaningful competition.

5.5 As for service, it is not in JLA's interest to reduce service delivery such that machines are out of action at customer sites – a broken machine does not generate revenue. [✂].

5.6 JLA has no incentive to damage long term contractual relationships with its customers through reduced service delivery or unjustified price increases at contract renewal. On the contrary, JLA has a strong incentive to maintain a positive relationship, or risk other bidders being preferred at contract renewal. In other words, it is not in JLA's long-term interest to jeopardise its relationships with its customers, and the possibility of winning the contract tender at renewal, for short-term financial gain.

5.7 The Transaction will not reduce innovation. JLA introduced the app following discussions with its supplier of card payment solutions who had already commenced web development and approached JLA by way of a joint "experiment" to see whether there was an appetite for an app in the customer space. It is important to understand that Washstation was not innovating. It did not have an app and had no plans to develop one.

5.8 In terms of changes to payment methods, as with many vend-based services, cashless payment solutions are becoming more and more popular and as such numerous third party, "off-the-shelf" products and services are freely available and only require very limited, if any, investment. It should also be noted that cashless payment solutions are not developed by those supplying machines on a variable rental basis. Neither JLA nor Washstation (nor any other competitor) have their own proprietary systems.

5.9 The acquisition of Armstrong (one of those competitors) by Hughes materially changes the outlook and the likelihood of Hughes/Armstrong being a much stronger competitor in the future, [✀].

5.10 Alongside Goodman Sparks and others, Hughes/Armstrong is now competing more aggressively across all areas of the commercial laundry market, including in the supply of managed laundry services to HE customers under variable rental agreements.

5.11 In any event, notwithstanding the above, the Decision's finding is largely predicated on the basis that there were barriers to entry and expansion, which is not the case.

6. Low barriers to entry and expansion

6.1 The Decision overplays the costs of entry or expansion. The costs of entry or expansion are low.

6.2 The Decision is internally inconsistent. On the one hand, the Decision relies heavily on assertions made by competitors and their alleged difficulty to enter or expand (see, e.g., para 43), but on the other notes "*plans to enter or expand in this sector*" (para. 118). These comments were dismissed on the basis that "*[n]one provided internal documents showing how they would enter, over what period, and how successful they would be*", even though it is the very fact that they might enter that is relevant. The threat of entry (or expansion) as well as actual entry (or expansion) is itself sufficient to constrain JLA.

6.3 Regardless of the type of contract, other suppliers of commercial laundry services who do not currently supply HE customers could easily expand into the HE sector, at little cost. Replicating any competitive constraint imposed by Washstation is simple, inexpensive and achievable within a short period of time, even for a new entrant. This is supported by the finding in the Decision that various third parties might enter or expand. The fact that some third parties have such plans means that there is no reason they would not do so.

6.4 As the Decision acknowledges, a number of suppliers are already active in the supply of commercial laundry services to HE customers on a variable rental basis. This includes, Hughes/Armstrong, Goodman Sparks and Thain Commercial. Along with every other commercial laundry distributor, each of them can very easily expand.

6.5 Other suppliers of commercial laundry services, who do not currently supply HE customers, could easily expand into the HE sector. This is supported by the finding in the Decision that various third parties "*indicating that they might have plans to enter*" (as well as existing suppliers indicating they might expand). In addition, there are suppliers (as noted in the Decision) who already supply HE customers, but not on a variable rental basis; they could easily expand. Effective competitors include a mixture of OEMs, usually through a distributor network (e.g. Thain), and regional players.

6.6 The same commercial laundry machines are used across the entire commercial laundry market, regardless of type of customer (e.g. HE or other), or type of agreement (e.g. fixed rental, variable rental or outright sale of equipment). There is no difference between machines or the cashless payment systems used in the HE and others sectors; and the latter can be easily fitted (by the OEM or the supplier) at minimal cost.

6.7 The supposed greater financial risk associated with variable rental is misconceived, especially as regards the HE sector. In fact, revenues in the HE sector are predictable with a high degree of accuracy because HE customers invariably provide details of the revenues generated by existing machines, and can also make a number of calculated assumptions based upon the number of beds per machine and average usage which would well inform any new supplier with regard to expectations of the revenues that will be generated.

6.8 An investment in providing a variable rental contract (including in machines installed) will typically be recouped within a short period of time (c. [✂] years), with the knowledge that the contract will continue for several years thereafter – at vend prices set by the customer for the duration of the contract – and therefore guaranteed to be profitable. This visibility on revenues removes any risk or uncertainty for prospective suppliers.

6.9 The costs of refurbishing a laundry room are so insignificant that they are rarely separately costed. On average, JLA spends less than £ [✂]when refurbishing a laundry room.

6.10 The presence of long-term contracts does not mean there are limited growth opportunities. The number of HE and other shared accommodation sites is growing. In any given year a material number of contracts are due for renewal.

6.11 Customers have buyer power. In variable rental agreements, the average commission paid to customers is c. [✂]%. Of the [✂]% retained by JLA, it only earns c. [✂]% after costs. HE customers in particular who are experienced procurers of services dictate the terms and so have the ability and incentive to sponsor entry if (which is denied) JLA sought to raise prices or lower service quality post-Transaction.

6.12 The specific points relating to the alleged supply-side constraints mentioned in the Decision are addressed in more detail below.

(a) *<u>“Lack of opportunity”</u>*

6.13 The Decision states that barriers to entry may exist due to the lack of opportunities resulting from long-term contracts, the financial risks associated with variable rental agreements and the need to build a reputation.

6.14 JLA considers that each of these points are unsupported by the evidence and that there are, in fact, clear and identifiable opportunities for supplying managed laundry services to HE customers on a variable rental basis.

6.15 The CMA itself has recognised in its discussion on de minimis that the market is expected to grow by around £2m, which is sufficient to restore the competition lost from Washstation.

6.16 The hypothesis – set out in the Decision – that there is some risk associated with providing a variable rental model is fundamentally flawed. Whilst a supplier offering a variable rental model will not know precisely how much revenue a contract will generate, supplying machines to HE customers in particular does not involve much risk.

6.17 **First**, student accommodation blocks are invariably almost always fully occupied, and the number of beds is clearly identifiable. As a general rule of thumb, in an academic year most students will run around 25 washing cycles and on that basis, by knowing the number of beds the accommodation block has and the customer's proposed vend price, any prospective supplier can easily estimate revenues.

6.18 **Secondly**, in a tender process, an HE customer often provides details of the revenues generated by machines, which can inform a new supplier of the revenue it can be expected to generate, depending on its proposed commission. Invitations to tender ("**ITTs**") issued by HE customers usually show the revenue generated by each site, per year[1]. The revenue does not significantly vary from one year to the next which further helps prospective suppliers to estimate the revenues that can be expected to be earned over the lifetime of a contract. In addition, ITTs always permit clarificatory questions to be put to the customer, so any prospective supplier could always ask for such information in the unlikely scenario that the details are not included in the ITT.

6.19 The vast majority of customers go out to tender (whether formally or informally). Those HE customers running a formal tender process (which tends to be for the lager contracts) will typically post details of potential contract awards on the In-Tend portal (https://in-tendhost.co.uk/he/aspx/Home), a website that is described as "*e-tendering for HE universities*". Any supplier can register on the In-Tend portal to receive alerts of such potential contract awards.

6.20 Another way in which prospective suppliers can have access to potential customers is via the ESPO framework. ESPO is a "*public sector owned professional buying organisation*" which assists public bodies across a range of sectors with their procurement needs. It has a section devoted to education describing itself as having "*decades of experience working with, and buying on behalf of, education providers".* ESPO publishes frameworks to support public sector organisations which are *"free to access and easy to use; offering significant reductions in procurement time and costs*". One framework covers commercial laundry equipment and "*offers both a purchase and rental option*"[2]. On its homepage (updated since the acquisition by Hughes) Armstrong refers to ESPO and provides further details stating "*ESPO is a purchasing organisation owned by several Local Authorities and is compliant with OJEU (the Official Journal of the European Union). The organisation is available to any Public Sector body for purchasing solutions so making tendering and budgets easier to manage. Further, ESPO is committed to helping all SME's (Small Medium Enterprises) by simplifying the tendering process. Armstrong Commercial Laundry Systems are a supplier for ESPO under tender Framework 24 and cover all regions with the exception of Northern Ireland."*

6.21 **Thirdly**, an investment in providing a variable rental contract (including in machines installed) will typically be recouped within a short period of time (c. 2.5 years), with

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1 See, for example, [✂].

2 https://www.espo.org/Frameworks/Buildings/24-Laundry-Equipment-Commercial. The fact that the framework offers both a purchase and rental option is also clear evidence of: (i) the ability for customers to switch between the options; and (ii) awareness of this.

the knowledge that the contract will continue for several years thereafter – and therefore guaranteed to be profitable.

6.22 **Fourthly**, long-term contracts are not a barrier to entry. They give a high degree of certainty over the revenue streams, in particular because they set out the vend prices – determined solely by the customer – for the duration of the contract. This visibility on revenues removes any risk or uncertainty for prospective suppliers.

6.23 Although contracts tend to be medium to long-term each year a material amount of new business is tendered, either because an existing contract is coming to an end or because new accommodation blocks are opening (as noted by many independent third party reports).

6.24 [✂][3], and is contestable within the two-year timeframe referred to in the CMA's own guidance. This provides any supplier ample opportunity to enter or expand into the HE sector. Entry or expansion is viable through winning just one contract, which can then be leveraged to target other HE customers.

(b) *Cashless payment solutions*

6.25 The Decision states that third parties claimed that non coin-operated machines were expensive to purchase and install (para. 36(d)). The evidence clearly shows that this is not the case.

6.26 There is no material difference in the cost of buying a machine with a coin-operated mechanism compared to buying or upgrading to one with a cashless payment mechanism. The cost price of the machine most regularly installed on HE customers' premises (the JLA98[4]) is almost identical for a coin-operated model and one one with a cashless payment mechanism.

JLA98	Coin operated (£)	Card-operated (£)
Washer	[✂]	[✂]
Dryer	[✂]	[✂]
Washer/Dryer stack	[✂]	[✂]
Dryer/Dryer stack	[✂]	[✂]

6.27 It therefore cannot be said that costs of a cashless machine is a barrier to entry. Furthermore, the administrative costs of supplying a cashless machine are lower. That is because the supplier does not need to send people to multiple sites on a regular basis to collect and then process and bank coins; rather the top-ups for cards are paid straight into the supplier's bank account.

3 In addition to the opportunities from these existing contracts, there are further opportunities in the supply of commercial laundry to the HE sector because of the growth in student accommodation. According to various sources, there is clear evidence of a material number of new student bedrooms that are due to be built in the UK in the next few years.

4 The JLA98, is manufactured by Alliance and accounts for [✂]% of all machines supplied by JLA (whether through fixed rental, variable rental or sales agreements) and is available in the UK under four other brand names: Primus, Speedqueen, Domus and Huebsch. It is therefore available to any other actual or potential supplier. Most JLA98 machines are supplied to non-HE customers (as HE customers only account for just over [✂]% of all machines supplied by JLA).

6.28 It should also be noted that cashless payment solutions are not developed by those supplying machines on a variable rental basis. Neither JLA nor Washstation (nor any other competitor) have their own proprietary systems.

6.29 There are a number of providers of cashless payment solutions, which are available at minimal cost. JLA spends c. £ [✂] per pocket (i.e. single washer or dryer) to install a cashless payment solution and on average a contract will comprise c. 8 pockets. In other words, a cashless payment solution costs less than £ [✂] for an entire laundry room, spread over the lifetime of the contract (which is generally 6-8 years). Neither is this a large amount nor is it a cost that would apply only to new entrants – incumbents must incur the same cost. This cannot therefore be viewed as a barrier to entry for a new supplier.

6.30 The mechanisms for cashless payment solutions can be added by the OEMs to the machine at the factory, or be retrofitted. It is very simple to switch from a coin-operated payment system to a cashless one. This is evident from information provided by [✂], in which it states that it currently switches between both systems at different times of the year: cashless during the academic year and coin-operated during vacation time for the university's conferencing business. The simple fact that it is possible to switch several times a year, clearly shows the ease (both technical and financial) with which a payment system can be changed.

6.31 It should also be noted that the various payment systems can be used with any machine. There are no machines which are designed for use with particular payment systems. For example, Electrolux has a laundry solution and offers machines compatible with a mix of payment systems, stating "*On demand, our washers and dryers are ready for connection with the vast majority of payment systems available today globally*" (see https://professional.electrolux.com/commercial-laundry equipment/paymentsystems/).

6.32 The evidence above clearly undermines, indeed disproves, the comment in the Decision that "*[non-cash] payment options are expensive to purchase and install*" (para. 36(d)), and on which the CMA relied in part to find an SLC based on limited supply-side constraints.

(c) *Online services*

6.33 The Decision also states (at para. 43) that the cost of "online services" added to the cost of supplying managed laundry services to HE customers. Here too, the evidence shows that not to be the case.

6.34 "Online services" are, as the Decision notes, monitoring systems which allow the user to check machine availability and progress of a load remotely. There are a number of options available "off-the-shelf" for a minimal hosting fee (JLA pays c. £ [✂] per year). The system requires hardware to be installed on each machine for a total cost of £ [✂] per site (not per machine); on the basis that there are an average of 6-8 machines per site, that translates into c. £ [✂]per machine, or c. £ [✂] per machine per year. That is hardly a material or prohibitive cost.

6.35 It should also be noted that both Hughes/Armstrong and Goodman Sparks already offer online services, and others could easily do so if they so wished. There are a variety of providers of "online services" which are readily available (at minimal cost as noted above) to any other actual or prospective supplier of managed laundry services. They include Lutrons, Greenwald, Laundry Alert and Maytag Clothespin amongst others.

6.36 If a supplier wanted to offer own-brand "online services", the costs are essentially the same as those to develop a website, which can be done in-house or by one of any number of providers.

6.37 An app/monitoring system can also be developed in-house. The ease with which this can be done is illustrated by several students developing apps to monitor JLA machines (as they did not find JLA's LaundryView service very helpful). One example – which has a review score of 2.9 compared to 1.2 for JLA/Circuit's own system which includes the machine-monitoring function – can be found at:

https://play.google.com/store/apps/details?id=com.quinny898.app.laundryview&hl=en ;

which states that *"[t]his app or its developer are not affiliated with Circuit in any way"* and *"is unofficial front end to Circuit's LaundryView, allowing you to view the status of washing machines and dryers at any compatible UK location, such as university halls or student unions"*. For comparison, details of the JLA system can be found at:

https://play.google.com/store/apps/details?id=com.greenwald.circuit&hl=en.

(d) Costs of entry (including laundry room refurbishment)

6.38 The Decision states several times that third parties cite the need to refurbish laundry rooms at HE establishments as a cost that raises barriers to entry (e.g. para. 43), as other customers tend not to require such services.

6.39 That argument is simply incorrect and not sustainable. The evidence firmly rebuts this assertion and shows that such costs cannot be a barrier to entry either. The Decision refers to refurbishment costs as having been mentioned by some third parties as a barrier to entry. The costs of refurbishing a laundry are so minimal that they are rarely even costed. The refurbishment works typically involve painting the room, supplying clip frames for posters, and some seating (the standard is three Ikea chairs or occasionally a sofa). In some cases a TV will be installed. In any event, on average the total cost to JLA is less than £ [✂] per site, a cost which amounts to less than £ [✂] per year over the lifetime of the contract[5].

6.40 On any basis, the costs of refurbishing a laundry room are low. They cannot be considered a barrier to entry, or a reason why a third party would not expand if it wanted to do so. The fact that this point was even raised by third parties must raise doubts as to the credibility of other comments raised by them concerning barriers to entry and expansion and alleged concerns about the Transaction.

6.41 Furthermore, the fact that costs are not a barrier to entry more generally is clear given that machines do not need to be acquired unless and until a contract is won – and once a contract is won machines can be purchased on hire purchase (as Washstation often did). In addition, as a variable rental contract will usually generate sufficient revenue after [✂] years the financing costs of machines can be covered in a short period of time.

6.42 Indeed, the Decision (para. 120) notes that one competitor stated that "*the estimated cost of entry was not substantial [and] estimated that an upfront investment of £50,000 was necessary to enter this sector, and it would take 1 to 2 years to set up the necessary contract agreements and marketing activities*". Given that this competitor stated it was "*actively looking into tender opportunities with higher education customers*" its comments must be given far greater weight than those of

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5 Evidence previously provided to the CMA showed a rare example of separate costings for refurbishing a laundry room, showing the cost at less than £ [✂] for three laundry rooms at the [✂].

others who said it might take five years or cost £200,000 (which even in itself is not substantial)[6].

6.43 These comments strongly suggest that new entry or expansion is not expensive and, importantly, could occur (and would occur if customers were not satisfied with JLA's post-Transaction conduct) within the two year period referred to in the CMA's guidance. In any event, as noted above, Hughes/Armstrong has become a significantly stronger and more aggressive competitor since the Transaction[7]. In February 2018, Armstrong was acquired by Hughes. As a result of that transaction, the combined entity has c. 70 employees dedicated to the commercial laundry business and is present across the UK, as Armstrong has bases in Glasgow and Newbury. They offer managed laundry services within and outside the HE sector, as well as cashless payment solutions, apps and other "online services". Hughes is part of a larger group, Hughes Electrical, which is a business with over a thousand employees and is the second largest renter of electrical items in the UK. Its turnover is c. £120 million (approximately the same size as JLA). Overall, Hughes has over 100 engineers across all its business segments, including at least 8 ex-JLA engineers.

(e) *Other comments on barriers to entry*

6.44 In addition to the points noted above, which form the basis for the Decision, there are other points to note which support the view that barriers to entry and expansion are low.

6.45 **First**, the minimum efficient scale to operate successfully in the supply of managed laundry services – including to HE customers – is small. Washstation operated from a single location with only 10 employees (including 6 engineers), and Thain Commercial (a supplier mentioned in the Decision which beat JLA in a tender) is successful with a small operation – focussed on Scotland – with only 9 engineers. This small scale is sufficient for suppliers to operate nationally as Washstation did, with a combination of its 6 engineers spread around the UK and the ability (which it marketed to customers but rarely, if ever, used) to call on other engineers across the UK on a sub-contracting basis as and when required[8].

6.46 The Decision fails to appreciate that the evidence shows it is possible to be a credible supplier without a large engineer network – and in particular to replicate the constraint imposed by Washstation, whose owner was the only customer-facing sales person in the business, yet was able to win a material number of contracts, some of which were relatively large.

6.47 **Secondly**, the Decision does not address the ability of suppliers of other commercial equipment (such as catering or heating) to HE customers to expand into laundry. JLA supplies many HE customers with other equipment and has itself moved from laundry into these other areas. Suppliers of such equipment to HE customers could similarly move into laundry.

6.48 **Thirdly**, the supply of commercial laundry to the HE sector is not regulated. Contrary to certain other customer segments, e.g. in the healthcare sector where customers' obligations relating to laundry practices are more stringent, there are no such obligations or regulatory requirements in the HE sector. No licences or regulatory

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6 JLA also notes that the Issues Letter referred to a third party as saying "*it would take <u>12 months</u> to effectively expand in the higher education sector*".

7 [✄].

8 There was no cost to Washstation (and no cost to any other supplier) in having a list of sub-contractors available if required for an emergency.

approvals are required to provide commercial laundry services. Regulation does not, therefore, create a barrier to entry or expansion. Anyone supplying to one customer group can easily also supply others, including in the HE sector.

6.49 **Fourthly**, there are no licences, patents or know-how necessary to provide a commercial laundry service, including the supply of managed laundry services through variable rental agreements. The relevant patents and know how relate to the machines (which are supplied by third parties and readily available from multiple sources), and to any payment systems that may be used in providing the service (which are owned by the suppliers of such systems – see 6.25 to 6.32 above – and not the party providing the managed laundry services to customers).

6.50 **Fifthly**, the Decision (para. 44) states that [✄] supports the view that HE customers are somehow a distinct customer group. That interpretation fails to understand that the non-compete was properly limited to the main focus of the Washstation business and, more importantly, necessary to protect the assets (i.e. contracts) JLA had acquired precisely because entry is easy (as Mr Copley had previously demonstrated when he established Washstation).

6.51 **Finally**, for completeness, barriers to exit are very low. Should a business want to exit the HE sector, it could easily either: (i) sell its ongoing contracts to any player active in the commercial laundry market or to a de novo entrant; or (ii) use the machines to supply other customers (e.g. in a different sector and/or on a fixed rental basis), or (iii) simply sell the machines.

6.52 All these factors support the view that barriers to entry are low and there are no material risks in any party seeking to enter or expand in the market for the supply of manage laundry services on a variable rental basis.

7. The CMA survey

7.1 The Decision relies in part on the results of a customer survey, but they are not probative as a number of relevant questions were poorly phrased such that little weight should be attached to them, especially in light of the evidence of supply-side constraints. The flaws in the survey were recognised by the decision maker in the Issues Meeting.

7.2 In essence, the survey questions prompted the respondents to focus on the Parties and understated the options available to customers. As a result, when identifying competitors during tenders and negotiations, respondents are likely to have overstated competition between the Parties and understated the competitive importance of rivals. Nonetheless a majority of respondents said they were not concerned by the Transaction.

7.3 It is, however, not necessary to set out in detail a critique of the survey as the CMA will be undertaking another survey which should address the shortcomings previously identified to the CMA. JLA looks forward to providing input to the CMA on the design of its customer survey in Phase 2.

8. Buyer power

8.1 The Decision dismisses arguments about buyer power. In this context it is also relevant to note that following completion of the Transaction in May 2017 there were no customer complaints until October 2017. All customers, bar one [✄], were happy, and many Washstation customers have noted the improvements in service since the Transaction.

8.2 Universities run competitive tender processes and dictate the terms on which they seek managed laundry services. They have sophisticated procurement departments dealing with all their procurement needs covering millions of pounds and use that experience and power when procuring managed laundry services.

8.3 Private sector accommodation providers have leverage as contracts cover potentially thousands of students' beds, which suppliers such as JLA, Hughes/Armstrong, Goodman Sparks, Brewer & Bunney and others compete for aggressively.

8.4 As noted above, in variable rental agreements, the average commission paid to customers is c. [✂]%. Of the [✂]% retained by JLA, it only earns c. [✂]% after costs. HE customers in particular, who are experienced procurers of services, dictate the terms.

9. Benefits of the Transaction

9.1 Furthermore, Washstation customers have benefitted from JLA's broader network of engineers which means they are receiving a better and speedier maintenance and repair function. This is because, whereas Washstation engineers visited sites on a "milk round" basis (which certainly provided a regular engineer site presence), JLA's service function (covering its entire business) is able to dispatch engineers much more quickly as and when needed and prioritises calls received from its fixed and variable rental customers.

9.2 This means that machines are repaired more quickly than would have been the case with Washstation. This has a knock-on effect in that end-users are better off (as more machines are in working order), and customers are also better off (as the machine will begin to generate revenue again after a fault). In other words, following the Transaction, repairs and maintenance to Washstation customers has improved considerably as a result of JLA's operational systems[9]. These customer benefits have been Transaction-specific, immediate and are verifiable[10].

9.3 It is also logical that JLA should want to ensure that its service proposition is rapid and effective (and has no incentive to reduce this post-Transaction). Indeed, every supplier has an incentive to make sure its machines are properly serviced and maintained, and offer a strong service proposition, because failing to do so would mean that the machines are not in use and therefore not producing any revenue (for the customer or the supplier). Failing to properly service and maintain the machines will also lead to higher repair costs (in terms of extra engineer visits and/or parts), all of which are borne by the supplier in the fixed and variable rental model. These incentives to maintain, indeed enhance, excellent service undermine the credibility of third parties who claimed (as noted in the Decision, see para. 106) that the Transaction would likely lead to customers obtaining a worse quality of service.

10. Conclusion

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9 [✂]

10 Washstation did not systematically log customer fault calls and response times, but anecdotal evidence clearly shows that repair times and service calls for Washstation customers have materially improved since the Transaction. That is hardly surprising given that JLA has 170 laundry engineers who service all its fixed and variable rental contracts as well as servicing third-party owned machines.

10.1 JLA considers that the frame of reference used in the Decision is overly narrow and, most notably, fails to take into account the strong supply-side constraints that exist.

10.2 Any existing (or prospective) supplier of managed laundry services can expand to provide HE customers with commercial laundry services on a variable rental basis. The costs of doing so are low, and concerns about lack of opportunity, uncertainty of opportunity and the costs of providing the services that HE customers typically require are not borne out by the evidence.

10.3 Demand for variable rental agreements is growing providing ample opportunity for existing suppliers to grow, and others to enter – or be sponsored given customer buyer power.

10.4 In addition, the Decision failed to take account of the weakening constraint imposed by Washstation, and materially overstated its importance. The Decision does not reflect the correct counterfactual.

10.5 For these reasons, JLA believes that – measured against the Phase 2 standard of proof – there is no basis on which to find that an SLC has arisen, or is likely to arise. It therefore considers that the CMA should unconditionally clear the Transaction.