

RENTOKIL INITIAL PLC / CANNON HYGIENE LIMITED

RESPONSE TO PHASE 1 DECISION

1. Introduction and Executive summary

- 1.1 The Parties agree with the description of washroom services in the Phase 1 decision (the *Decision*) as consisting of, essentially, seven services that are supplied to maintain a typical washroom.¹ These are hand drying, hand washing, odour remediation, other toilet cubicle hygiene, toilet tissue, vending & other and waste disposal.
- 1.2 In addition, the Parties agree with the Decision's description of the array of supply options available to customers for each service. These options include self-supply, supply from a product manufacturer or distributor / wholesaler, supply from a washrooms services provider (including either directly or through a facilities manager (*FM*) or cleaning company), and supply from a provider specialised in a different field (e.g. healthcare waste) that nonetheless offers one or more washroom services.
- 1.3 As acknowledged in the Decision, the vast majority of customers procure only one or two services from any one provider. Transaction sizes are small. In 2017, Rentokil serviced approximately [X] washroom customers, covering approximately [X] sites at an average transaction value of c.£[X] (average contract value of circa. £[X] pcm).²
- 1.4 Washroom services themselves are commodities. The provision of these services is fragmented and there are numerous different ways to meet customer requirements. There is a range of business models from which customers can procure their preferred method of service. This is consistent with the recent European Commission's approach in Case M.8399 – *CWS-boco / Rentokil Initial Target Businesses* (2017), which correctly applied the frame of reference of “all washroom products and services”.³ The markets examined in that decision are in all material respects the same as in the UK.
- 1.5 The Decision, however, disregards the available evidence with its artificial focus on the supply of all washroom services by full-service washroom specialists. It is correct that most customers require most washroom product and service lines, and, it is true that some suppliers will offer all or a number of these lines. However, it does not follow that each customer looks for a “full service offering” let alone from a “washroom services specialist”. On the contrary, this is self-evidently inconsistent with the evidence – accepted by the CMA – that customers multi-source: not only do customers use a range of

¹ Paragraph 4 of the Decision.

² A customer is identified on the basis of a unique account name or, in the case of larger customers, a unique group account name, which is consistent with the group account names that were provided in Appendix 2 of the Response to the Issues Letter. Previous references to [X] customers were based on the number of unique premises names, which is not comparable to the method used to identify customers in Appendix 2 of the Response to the Issues Letter. In the case of sites, a site is identified on the basis of a unique combination of the account name, contract number and premises number.

³ The European Commission, at paragraph 43, applying the frame of reference of “a wide variety of washroom equipment and consumables, together with their subsequent servicing and restocking”.

suppliers to meet their washroom service requirements across different sites, but they also use a mix of suppliers *at the same site*.

- 1.6 There are 2.67 million businesses in the UK registered for VAT / PAYE and they are legally obliged to provide washroom facilities.⁴ The Parties estimate over 55% of customers self-supply the products and services necessary to maintain their washrooms and around 45% are taking one or more washroom services from either FMs, cleaning companies or washroom service providers.
- 1.7 The vast majority (99.5% according to ONS data) of customers are not 'national' customers by any definition.⁵ Remarkably, the Decision fails to address the supply of services to the overwhelming majority of customers at all, adopting instead its national framework of competition, rather than considering the multiplicity of options available to customers in each location. This lack of analysis entirely undermines any asserted concern at a regional or local level.
- 1.8 A proper analysis reveals the significant range of competitive options available to customers. The vast majority of customers and potential customers across the UK can choose from a multitude of suppliers – the Parties have identified over 100 providers of washroom services.⁶ With regards to regional and local conditions, the few paragraphs of the Decision which are devoted to this theory of harm contain absolutely no substantive analysis. As such, no case meeting the reference test for Phase 2 has been advanced at all in the Decision.
- 1.9 Nor is there a lessening of competition at the 'national' level. The 'national' customer category identified in the Decision is an arbitrary and undefined concept not recognised by the Parties or by the market in general. National account management is a sales management technique, not a market definition. In the absence of a clear definition of 'national' customers either during the Phase 1 process or the Decision, the Parties have identified large, national or multi-regional, multi-site customers (*LNMM*) as a proxy for the Decision's focus on customers with 100 or more sites. To put this in context, using this proxy Rentokil's 'national' customers account for less than [0-5]% of its customer base. The competitive overlap arising from the Transaction is therefore minimal.
- 1.10 There is a broader range of effective competitors at the national level than was acknowledged at Phase 1. In particular, the key role played by FMs in shaping the market dynamics was significantly understated. FMs are not only customers with significant buyer power due to their role as aggregators, offering bundled products to end customers, but they also provide a significant competitive threat as competitors to the Parties. FM companies can (and do) self-supply, contract with product manufacturers or distributors / wholesalers

⁴ See *Workplace (Health, Safety and Welfare) Regulations 1992*.

⁵ Based on ONS data and based the assumption that a VAT-registered business with <5 sites would not be considered a national customer <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/bulletins/ukbusinessactivitysizeandlocation/2017#local-unit-site-information>

⁶ As submitted to the CMA in response to Q15 of the s109 initial request for information dated 4 July 2018.

or they can sub-contract to washroom services companies on a regional or multi-regional basis. In addition, the Decision was wrong to overlook the national competition provided by Cathedral, Mayflower, Elis (Berendsen) and others.

- 1.11 For the element of washrooms services that is most purchased from the Parties, namely waste disposal (including feminine hygiene and nappy waste), the *status quo* is now being significantly and rapidly disrupted by the move away from a traditional bin replacement service to an on-site service (*OSS*) where the bin remains *in situ* and just the full plastic bin liner is taken away. The reduced need for physical premises and the lower capital inputs required for OSS reduces barriers to entry and therefore significantly broadens the number of players able to offer this service, including a customer's existing cleaning contractors. Moreover, established providers of other forms of waste disposal (e.g. healthcare waste) are moving into nappy disposal and feminine hygiene waste disposal services.
- 1.12 Against this backdrop, the Decision has materially understated the competitive dynamics at play within the CMA's 'national' account segment.
- (a) The Parties' combined market share on a properly characterised market is low at around [5-10]%. The Decision has understated the number of alternative suppliers for sites distributed nationally, including from other "full service" washroom services providers that compete on a national basis. Even on the narrow market focus in the Decision, the Parties' combined share is not such as to be cause of concern.
 - (b) The Parties face serious competition not only for all seven individual services but also for permutations of bundles of services. This includes from product manufacturers (e.g. SCA Tork, Kimberly Clark), distributors / wholesalers (e.g. Bunzl)⁷ and from washroom service providers either directly or via an FM or a cleaning company. And in relation to washroom service providers, PHS – which will remain by some way the largest full service supplier of washroom services – will continue to impose a very material competitive constraint.
 - (c) The Parties are not each other's closest competitors and, by misinterpreting the win-loss data, the Decision overstated the degree to which the Parties compete and understated the number of alternative suppliers.
 - (d) The Parties face significant countervailing buyer power – particularly from FMs, who are procurement specialists very adept at handling a number of suppliers. Similarly, those 'national' customers which source on a national / multiple site basis, are typically large and sophisticated buyers with highly experienced procurement teams (e.g. Alliance Boots, grocery chains and fast food chains). Customers can

⁷ As set out in paragraph 5.50, the Parties note that Liberty Hygiene ("market leaders in washroom service") has announced that it has formed a partnership with UK market leading cleaning and hygiene supplier Bunzl Cleaning & Hygiene Supplies.

also form strong buying groups, negotiating sophisticated framework agreements.

- (e) Barriers to entry and expansion are low and decreasing – particularly in light of recent market developments and innovations. Most notably, the provision of washroom services has recently undergone a significant change as waste disposal has become increasingly OSS. Significant market entry has also occurred, with Berendsen’s acquisition in June 2017 by Elis - the largest washroom service provider in France and market “*leader in most of the 28 countries in which [it] operate[s].*”⁸ These are both significant developments that were not adequately taken into account in the Decision.

1.13 Accordingly, there is no reasonable basis on which the Transaction will result in a substantial lessening in competition in the supply of washroom services, either in relation to the CMA’s ‘national’ segment or to regional / local customers. No case at all has been advanced in the Decision in relation to local / regional customers accounting for the overwhelming majority of the Parties’ sales. The Decision’s ‘national’ construct is artificial and contradicts the available evidence, including that cited in the Decision.

1.14 On the contrary, the aim of the Transaction is to [✂].

2. The Parties and the Transaction Rationale

2.1 Through Rentokil Initial UK Limited, Rentokil Initial (***Rentokil***) provides route-based services in the UK, predominantly in commercial pest control, hygiene, mats and property care. Trading as Initial Washroom Hygiene, it provides washroom and mats solutions in the UK to customers that operate washrooms for employees, customers and the general public.⁹

2.2 Cannon Hygiene (***Cannon***) was formed as a subsidiary of the OCS Group on October 2017 for the purposes of the Transaction and provides washroom solutions, mats solutions and healthcare waste management solutions in the UK and elsewhere. The business provides services to customers ranging from large multi-site service requirements to single site services, including health service providers, accommodation and food and beverage providers, as well as aged care, corporates and airlines.

2.3 The Rentokil group’s acquisition of Cannon UK, which completed on 1 January 2018, was the result of an auction sales process of OCS Group’s entire Cannon washroom, mats and healthcare waste businesses in nine countries. Rentokil saw the acquisition as [✂].

3. Market Dynamics

3.1 Servicing a washroom is entirely straightforward. There are three categories of task – of which only the latter two tend to be provided on a regular basis:

⁸ <http://www.corporate-elis.com/en/about-us>

⁹ An immaterial amount of Rentokil’s relevant waste disposal services are provided through Initial Medical Services Limited, which provides healthcare waste management solutions for businesses and organisations associated with the provision of healthcare within the UK, including but not limited to hospitals, medical and dental surgeries, nursing homes, laboratories and tattoo parlours.

- (a) the supply and fitting of various dispensers (if required) – this is a simple matter of fixing a dispenser to a wall;
 - (b) the replenishing of commodity products – this entails toilet paper, hand towels, soaps, etc. being dropped off at the customer’s premises (the customer usually arranges for the dispensers to be refilled, e.g. by its cleaners¹⁰); and
 - (c) waste disposal (feminine hygiene and nappies). This entails the washroom service provider removing the bag, cleaning the units, replacing the bag and then disposing of the waste.
- 3.2 An analysis of the market dynamics at play in this sector reveals a large number of providers with different models competing to fulfil these tasks and to provide customers with some or all of their washroom services needs. The Transaction will not change those dynamics, nor will it undermine the competitive constraints imposed by that variety of business models and by the ready ability of customers to multi-source and to change their procurement practices.
- (a) ***The frame of reference of “all washroom products and services” bears little resemblance to the actual market dynamics***
- 3.3 The European Commission recently applied, in an analysis of a merger between washroom service providers, the frame of reference of “*a wide variety of washroom equipment and consumables, together with their subsequent servicing and restocking*”.¹¹ This is ultimately consistent with the Phase 1 frame of reference of “all washroom products and services”.
- 3.4 However, when looking at it from a supply-side perspective, the Decision veers sharply away from the European precedent in a way that bears little relation to actual market dynamics. Whereas the European Commission took into account the competitive constraints provided by suppliers of a wide variety of washroom services, the Decision actively excluded all suppliers other than full service providers such as the Parties. As a result, the Decision fundamentally fails to grasp the reality of the market dynamics at play.
- (b) ***For each washroom service, customers have an array of supply options available to them***
- 3.5 This clear tension between the Decision’s focus on national full service washroom specialists and the available evidence on the nature of competition is apparent early in the Decision:

“There are many types of supplier from whom customers can procure all or some of these services and consumables. However, suppliers differ on: (i) the range of services or consumables they offer; and (ii)

¹⁰ An exception is odour remediation; these dispensers are usually refilled by the washroom service provider (e.g. every 6-8 weeks).

¹¹ Case M.8399 – CWS-boco / Rentokil Initial Target Businesses (2017) at paragraph 43.

their resources to serve customers at a local, regional or national level.”¹²

3.6 This quote not only acknowledges the breadth of potential suppliers that exist, but it also effectively recognises that suppliers with a variety of business models can all compete for that part of a customer’s budget allocated to servicing its washroom(s). The supply options available to customers for some or all of their needs include:

- (a) self-supply;
- (b) supply from a product manufacturer or distributor / wholesaler;
- (c) supply by a provider of a particular service e.g. waste disposal; and
- (d) supply from a washroom services provider (including either directly or through a FM or cleaning company).

3.7 In other words, having a “full service offering” is just one of a number of competing business models. The type of business model does not conveniently map onto the type of customer: rather, customers adopt different models for meeting their washroom needs. All types of customer can move between these supplier models at minimal cost.

(c) ***The vast majority of customers multi-source and procure only one or two services from any one provider***

3.8 The Decision adheres to a frame of reference of “*all washroom products and services*”,¹³ although suggesting that “*certain product or service lines, in particular waste disposal, could be considered a separate frame of reference*”.¹⁴ The Decision also rightly observes that the vast majority of customers procure only one or two services from any one provider:

*“customers do not typically purchase a full range of washroom services from the same supplier - the average customer purchases [1-3] product or service lines from Rentokil, and [1-3] product or services lines from Cannon”.*¹⁵

3.9 The Decision then fails to address the implications of this evidence and the self-evident contradiction with the Decision’s focus only on “national washroom specialists”.

3.10 It is correct that most customers require most washroom product and service lines, and, it is true that some suppliers will offer all or a number of these lines. However, it does not follow that each customer looks for a “full service offering” let alone from a “washroom services specialist”. On the contrary, the appropriate conclusion from the evidence above is that customers multi-source in order to find the most cost effective solution to their washroom requirements.

¹² Paragraph 7 of the Decision.

¹³ Paragraph 48 of the Decision.

¹⁴ Paragraph 43 of the Decision.

¹⁵ Paragraph 43(c) of the Decision.

3.11 There is some recognition of this in the Decision, which acknowledges that there is competition for certain service lines:

*“Most third parties (customers and competitors) told the CMA that office materials suppliers and wholesalers or manufacturers of specific items used in the washroom environment (eg paper towels or soap dispensers) represent an effective alternative to washroom specialists in relation to the supply of a limited range of products (eg the replacement of paper towels and some other cleaning products)”.*¹⁶

3.12 However, the Decision fails to draw the logical conclusion that the Parties compete not just against other full service providers, but also against suppliers of individual product lines.

3.13 Customers’ willingness to multi-source is even starker when looking at LNMM customers. By way of context, Rentokil’s LNMM customers account for less than [0-5]% of its total customer base. These customers procure on average only approximately [1-3] services from Rentokil at each of their sites. Only approximately one third of these ‘national’ customers take all seven service lines from Rentokil across their entire estate; the vast majority use different suppliers both across their national estates and within one and the same washroom.¹⁷ Many of these customers in fact take certain service lines from Rentokil at only a very small proportion of their sites: for Rentokil’s LNMM customers, approximately [80-100]% of all customer premises are supplied with waste disposal services and approximately [20-30]% are supplied with odour remediation services. Of their sites to which Rentokil is providing services, these ‘national’ customers use Rentokil for less than [10-20]% on average for each of the five remaining services (being hand drying, hand washing, toilet tissue, other toilet cubicle hygiene and vending & other).

3.14 In other words, in each of its premises that are serviced by Rentokil, the LNMM ‘national’ customer will on average source more than [30-40]% of the seven product and service lines (i.e. more than [60-70]% of washroom service lines) from another supplier or suppliers, or will self-supply.

3.15 Even in relation to odour remediation, being the second most-purchased service line, Rentokil supplies this service to only approximately [20-30]% of sites allocated by their LNMM customers to them. This is unsurprising, given the ease with which any provider can supply, install, provide consumables for and service odour remediation equipment, including at the premises of the Parties’ ‘national’ customers. The Parties understand that supply by competing providers, or self-supply by customers, accounts for approximately [60-70]% of odour remediation to these ‘national’ customers.

3.16 For the element of washrooms services that is most purchased from the Parties, namely waste disposal (including feminine hygiene and nappy waste),

¹⁶ Paragraph 62 of the Decision.

¹⁷ In the case of Cannon, its ‘national’ customers procure on average approximately [1-3] services from Cannon at each of their sites. Less than [10-20%] of these ‘national’ customers take all seven service lines across their entire estate and the vast majority use different suppliers both across their national estates and within the same washroom. Similarly, these ‘national’ customers use Cannon for less than [30-40%] (of their sites that Cannon is providing services to) on average for [30-40%] of the seven services.

the *status quo* is now being significantly disrupted by the move away from a traditional bin replacement service to OSS where the bin remains *in situ* and just the full plastic bin liner is taken away. Around [70-80]% of Rentokil's feminine hygiene services are now delivered in this way, a proportion which has grown exponentially from [0-5%] in 2016 and is expected to reach [80-100]% by the end of 2018. This reflects the experience of other markets around the world that have experienced this transformational shift, such as Australia and Ireland. The OSS is a substantially more straightforward model. Rather than removing the entire unit (to be washed off-site) and replacing it with a clean unit, the unit is cleaned on-site. As such, there is no requirement to have a branch with capability to wash feminine hygiene or nappy units and the cost of transporting units from a site to the branch and then back to another site are avoided.

- 3.17 This transformation has reshaped the supply of feminine hygiene and nappy disposal services, significantly broadening the number of players able to offer this service, including a customer's existing cleaning contractors. The Parties are aware of over 60 washroom specialists that offer feminine hygiene services – these were listed and described in a presentation at Appendix 1 of the Parties' Response to the Issues Letter of 21 May 2018. One additional development, described in greater detail at paragraph 5.29 below, has been the entry into the provision of feminine hygiene and nappy waste disposal services of players active in other forms of waste disposal, such as healthcare waste. Providers of other forms of waste disposal services are easily able then to supply other washroom product lines although, given customer multi-sourcing, they do not need to do so in order to compete effectively for this segment of the overall washroom services offering. One such example is the Healthcare Environmental Group (*HEG*) [✂].¹⁸
- 3.18 Multi-sourcing takes place not just across the full range of products and services, but also across different sites in a customer's estate. Customers vary significantly in the number of on-site facilities that require management and will take this into account when choosing from the various business models available to them for the supply of washroom services (washrooms specialists being just one of them). Even those customers who seek to procure nationally can either make a central decision to source from more than one provider across different parts of its estate, or will allow local discretion to site managers to procure washroom services. Hence the Decision is correct to note that "*Rentokil is not used by its national customers for all of their sites*".¹⁹
- 3.19 Finally, customers can self-supply. As acknowledged by the European Commission in *CWS-boco*, customers can readily purchase the relevant commodity products and have their own staff service the washrooms.²⁰ Indeed, the majority of businesses in the UK do just that. In other words, customers can and do take a 'make or buy' decision in the event they are not getting the service they demand at a price they are prepared to pay.

¹⁸ HEG is a complete waste collection and washroom services to over 35,000 customers, operating from 8 locations across the UK, with a workforce of over 200 and circa £26m revenues p.a. See <https://www.healthcareenv.com/>. [✂].

¹⁹ Paragraph 83 of the Decision.

²⁰ Case M.8399 – *CWS-boco / Rentokil Initial Target Businesses* (2017) at paragraph 101.

3.20 In fact, self-supply is becoming an increasingly attractive option for many customers even in relation to waste disposal. This is because of the trend towards OSS: where the waste does not exceed 7kg (per collection) customers can simply dispose of it alongside their other general waste or, for volumes above 7kg, in dedicated waste storage at their site.

3.21 All the evidence described above shows that customers do not typically buy a “bundled” product from the Parties, but instead multi-source across the seven services. The low number of services taken by LNMM customers, both per site and across their entire estate, demonstrates that these customers can, and do, engage alternative washroom service suppliers, even when contracting with the Parties. Competitive constraints are imposed not only by other full service providers, but also by specialist providers of a more limited number of products or services, including waste disposal, where the Decision incorrectly concluded that customers had little choice.

4. The Decision’s approach to the geographic dimension of competition does not withstand scrutiny

(a) *The vast majority of customers for “all washroom products and services” are local / regional – these were not addressed at Phase 1*

4.1 Remarkably, the Decision fails to address the supply of services to regional and local customers, adopting instead its national framework, rather than considering the multiplicity of regional / local options available to customers. This is based on the assertion that, “*the competitive situation may be similar for ‘regional and local’ customers across the UK*”²¹ (emphasis added).

4.2 No analysis is provided in support of this conclusion:

*“it was not feasible for the CMA, ... to gather detailed evidence on all of the local/regional suppliers competing in each region of the UK. For this reason, the CMA has not assessed the effect of the Merger on competition on a region by region basis”.*²²

4.3 Had an analysis actually been conducted, it would have shown a large number of suppliers able to compete with the Parties in any given location. Suppliers have incentives to service customers of all sizes as, in so doing, the business generates operational efficiencies by increasing route density. Given this, regional and local customers have an abundance of choice from a multitude of other washroom service suppliers, including those that operate local routes, as well as alternative suppliers such as FMs, cleaners and waste companies. The Parties have identified over 100 national and regional providers of washroom services.²³

²¹ Paragraph 10 of the Decision.

²² Paragraph 93 of the Decision.

²³ As submitted to the CMA in response to Q15 of the s109 initial request for information dated 4 July 2018.

4.4 **Table 1** provides an overview of Rentokil branches and competitors with branches in each region.²⁴ This overview has been conducted only for the subset of washroom specialist competitors and those competitors where branch location information is publicly available. Therefore, it will understate the coverage of Rentokil's competitors. The evidence indicates that, even on this conservative basis, there are at least six other large competing washroom specialists with a branch in every region where Rentokil operates a branch (and usually over ten providers). That is, each customer in a region would have at least five alternative washroom specialist providers to choose from when procuring washroom servicing.

²⁴ Regions have been defined using the standard ONS regions for the UK, and branches have been allocated to regions according to the ONS Postcode Directory for May 2017 where postal codes are available. In those few cases where no postal code is available, regions have been assigned using desktop research.

Table 1: Regional presence of competitors

UK Region	Number of RI Branches in Region	Competing Washroom Specialists with Branches in Region	Competing Washroom Specialists Operating in more than 3 Regions with Branches in Region
East Midlands	1	13	Berendsen Sunlight, Cathedral Hygiene, Healthcare Environmental, Mayflower Washroom Solutions, PHS Group
East of England	1	22	Berendsen Sunlight, Cathedral Hygiene, Greenworks Solutions, PHS Group, Zenith Hygiene Group
London	2	15	Berendsen Sunlight, Cathedral Hygiene, Healthcare Environmental, Mayflower Washroom Solutions, PHS Group
North East	1	7	Berendsen Sunlight, Cathedral Hygiene, Healthcare Environmental, PHS Group
North West	1	15	Berendsen Sunlight, Cathedral Hygiene, Greenworks Solutions, Healthcare Environmental, Mayflower Washroom Solutions, PHS Group, Zenith Hygiene Group
Northern Ireland	1	6	Cathedral Hygiene, PHS Group, Zenith Hygiene Group
Scotland	3	13	Berendsen Sunlight, Cathedral Hygiene, Healthcare Environmental, Mayflower Washroom Solutions, PHS Group, Zenith Hygiene Group
South East	2	22	Berendsen Sunlight, Cathedral Hygiene, Greenworks Solutions, PHS Group, Zenith Hygiene Group
South West	2	16	Berendsen Sunlight, Cathedral Hygiene, Mayflower Washroom Solutions, PHS Group, Zenith Hygiene Group
Wales	1	8	Berendsen Sunlight, Cathedral Hygiene, PHS Group
West Midlands	1	16	Berendsen Sunlight, Cathedral Hygiene, Greenworks Solutions, PHS Group, Zenith Hygiene Group
Yorkshire and The Humber	1	16	Cathedral Hygiene, Healthcare Environmental, PHS Group, Zenith Hygiene Group

- 4.5 **Table 1** illustrates which of the competitors operating branches in more than three regions in the UK have branches in a given region. The evidence shows that there are at least three, and typically around four, of these multi-regional competitors with a branch in any region where Rentokil owns branches.
- 4.6 Figure 1 of the Decision, which shows the closest competitors at branch level according to Rentokil’s regional sales staff, shows that PHS is consistently Rentokil’s closest competitor, being identified the most frequently, as well as being listed first by over [60-70]% of respondents. On the other hand, Cannon is never listed first. In contrast, each of Cathedral, Shorrock Trichem and Greenleaf were listed first by some respondents.²⁵ However, the Decision nonetheless fails to take into account these players that were cited ahead of Cannon. Not only has no case meeting the reference test for Phase 2 been advanced in the Decision, but the decision even goes so far as to suggest that customer concern over the regional overlap is likely to be low:
- “The majority of customers who replied to the CMA questionnaire did not raise concerns about the Merger. [Of those that did]...These customers were generally the larger, national customers of the Parties...”*²⁶
- 4.7 It is not clear to the Parties, therefore, why the Decision referred to local and regional competition as a potential area of concern.
- (b) ***‘National’ customers is an arbitrary concept***
- 4.8 According to the Office of National Statistics, there are 2.67 million businesses in the UK that are registered for VAT/PAYE purposes,²⁷ and which will therefore be obliged to provide washrooms for their employees. The Parties’ entire customer base occupies only a fraction of the total number of businesses in the UK. Rentokil served approximately [⌘] customers in 2017, less than [0-5]% of which meet the CMA’s ‘national’ customer criteria.
- 4.9 No further logic or reasoning is provided as to why this particular customer category can be isolated from the rest of the market.²⁸
- 4.10 It cannot be said that the number of sites serviced for a customer necessarily correlates to the size or geographic spread of that customer – there is a whole continuum of customers that vary by site size, number of sites and geographic spread, with no clear delineation between customer ‘categories’. For example, compare a large single site (such as [⌘]) that has a contract value equivalent to [⌘] (a so-called ‘national’ customer), to a local authority contract with no

²⁵ While Rentokil submitted that the survey question did not explicitly ask the respondents to rank the competitors, the Decision considered that a ranking was implied.

²⁶ Paragraph 154 of the Decision.

²⁷ UK business; activity, size and location 2017, ONS, 3 October 2017, Table 7. <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/bulletins/ukbusinessactivitysizeandlocation/2017#local-unit-site-information>

²⁸ The origin of a ‘national’ customer being “over 100 sites” comes from a CMA reference to large national/multi-regional customers with multiple (often hundreds or thousands) of sites made in the Phase 1 issues letter (LNMM).

regional or national dimension but with hundreds of sites, to [redacted] that has ‘national’ geographic spread but relatively fewer sites.²⁹

4.11 **Table 2** below breaks down Rentokil’s customers in terms of number and portfolio value according to the number of regions from which that customer is served (e.g. where a customer obtains washroom services from Rentokil’s branches that are in two different regions, its number and portfolio value are included under two below). This evidence indicates that the majority of customers in terms of both revenue and number are served from branches in only one region. Indeed, Rentokil serves only [redacted] ‘national customers’ from branches in all 12 regions of the UK, with most customers limited to one or a small number of regions. Those customers have considerable buyer power in line with their disproportionately large impact on Rentokil’s portfolio value.

Table 2: Regional presence of Rentokil customers by value and number

Number of regions from which a Customer is served	Portfolio Value (2017)	Proportion of Portfolio Value (%)	Number of Customers	Proportion of Customers (%)
1	[redacted]	[50-75]%	[redacted]	[75-100]%
2	[redacted]	[0-25]%	[redacted]	[0-25]%
3	[redacted]	[0-25]%	[redacted]	[0-25]%
4	[redacted]	[0-25]%	[redacted]	[0-25]%
5	[redacted]	[0-25]%	[redacted]	[0-25]%
6	[redacted]	[0-25]%	[redacted]	[0-25]%
7	[redacted]	[0-25]%	[redacted]	[0-25]%
8	[redacted]	[0-25]%	[redacted]	[0-25]%
9	[redacted]	[0-25]%	[redacted]	[75-100]%
10	[redacted]	[0-25]%	[redacted]	[0-25]%
11	[redacted]	[0-25]%	[redacted]	[0-25]%
12	[redacted]	[25-50]%	[redacted]	[0-25]%

4.12 Notably, Rentokil does not have an internal classification that distinguishes between ‘national’ accounts and other accounts. While it does classify certain accounts as “key accounts”, this classification is not dependent on the number of sites that a customer has, or the number of regions that it is serviced in. National account management is a sales management technique, not a market definition. For instance, customers such as [redacted], which all have more than 1,000 sites that are, together, serviced by all of Rentokil’s branches, are [redacted], which are served at only one site by a single Rentokil branch.

4.13 Indeed, even within the ‘LNMM’ customers that were identified by Rentokil on the basis that they were served at 100 or more sites, in 2017 many were served by comparatively few branches:

- (a) [redacted] was served by only three Rentokil branches;
- (b) [redacted] was served by only three Rentokil branches;

²⁹ [redacted] is served from 14 branches and only has 30 sites.

- (c) [REDACTED] was served by only four Rentokil branches;
- (d) [REDACTED] was served by only five Rentokil branches; and
- (e) [REDACTED] was served by only six Rentokil branches.

4.14 Given the continuum of customers' size, seeking to define a cut off between customers is necessarily arbitrary, and undermines the analysis in the Decision.

5. **There will be no unilateral effects arising from the Merger**

5.1 As described above, the vast majority of customers and potential customers are not 'national' on the approach taken in the Decision and have a huge array of supply alternatives. Customers across the UK can choose from a multitude of suppliers – the Parties have identified over 100 providers of washroom services.

5.2 Even if an arbitrary national segment were to be considered on a standalone basis, the Merger will not result in a substantial lessening of competition, given the competition from other full service washroom specialists capable of providing a national service; competition from FMs / cleaning companies; competition from players targeting particular products or services out of the total 'bundle'; the buyer power skilfully deployed by FMs and large customers; and the low barriers to entry in the sector. Market developments including the move to OSS of waste disposal and ongoing new entry – most notably in the shape of Elis' acquisition of Berendsen – demonstrate and will ensure that the market remains highly competitive.

(a) ***The Parties' combined shares of a properly characterised market are low***

5.3 The Decision advances no basis for divergence from the approach taken by the European Commission in *CWS-boco* by assessing supply by 'national washroom specialists' rather than by 'all types of supplier'.

5.4 A consequence of this is that the Decision understates the number of alternative suppliers for sites distributed nationally, limiting its focus instead to other 'full service' washroom services providers that compete on a national basis. Had it taken the same approach as the European Commission, then the merged entity's market share would be around [5-10]%, clearly below a level that could give rise to any unilateral effect concerns.

5.5 However, even on the CMA's Phase 1 frame of reference, combined market shares at a national level are just [30-40]%.³⁰ The CMA's Merger Assessment guidelines indicate that, in relation to a Phase I assessment, in non-differentiated markets (such as this one where washroom services are commodity based):

"...market shares of less than 40 per cent will not often give the [CMA] cause for concern over unilateral effects".³¹

³⁰ Table 2 of the Decision.

³¹ CMA's Merger Assessment guidelines paragraph 5.3.5.

5.6 It is remarkable that such low combined shares in a commodity market could give rise to a reference to Phase 2. This can only reflect the CMA assertion that the Transaction amounts to a “3 to 2”. However, the “3 to 2” claim cannot be substantiated for the following reasons.

(b) *Effective competitors for each washroom service and service bundles*

5.7 First, there are several national players, which have either themselves told the CMA that they have national coverage (Cathedral and Elis (Berendsen)³²) or which state in their marketing material that they have national coverage (15 of these were listed and described at Annex 2 of the Parties’ Response to the Issues Letter of 21 May 2018). These rivals are discussed further below at paragraph 5.15 et seq.

5.8 Second, the analysis of Rentokil’s customers in paragraph 4.11 demonstrates that only a tiny percentage of Rentokil customers have a presence in all (or all but one) regions, and these represent only one third of Rentokil’s portfolio value. Moreover, **Table 1** shows that those Rentokil customers taking its services in more than one region have a choice of several suppliers that cover those regions as there exist 17 alternative washroom specialists with branches in at least 2 regions, even before other competitors, such as cleaning companies, and supply across regions has been considered.³³

5.9 Third, even where a customer does not have a choice of supplier that covers all regions, it is straightforward to multi-source to obtain coverage. This is consistent with the CMA’s own finding that:

“Most national customers did not rule out switching to regional suppliers in the event of a 5% price increase by national suppliers. Most said that they could switch, but they also highlighted many conditions which would have to be met to make this switch, including competitive prices, equally high service levels, and the ability to achieve national coverage using only a limited number of regional suppliers. Currently, most of these customers did not use any regional washroom services suppliers.”³⁴

5.10 For each service, customers have an array of supply options including self-supply; supply from a washrooms service provider (including either directly or through a facilities manager or cleaning company); supply from consumables manufacturers (such as SCA Tork and Kimberly Clark (cubicle paper, hand drying solutions focused on the washroom), Dyson Airblade and Airdri (electrical) and Ecolab (soap)); and supply from specialist distributors (such as Bunzl and Brakes) that offer a delivery service comparable to that offered by the Parties.

5.11 For example, for odour remediation the choice includes:

- (a) self-supply via an aerosol spray can;

³² Paragraphs 159 and 160 of the Decision.

³³ Based on evidence submitted to the CMA in response to Q15 of the s109 initial request for information dated 4 July 2018.

³⁴ Paragraph 74 of the Decision.

- (b) self-supply via a unit that the customer buys and has free standing or fixed to the wall;
- (c) supply of the aerosol unit and refills from a product manufacturer;
- (d) supply of the aerosol unit and refills from a distributor / wholesaler; or
- (e) supply of the aerosol unit and refills from a washroom service provider either directly or via an FM or a cleaning company.

5.12 There are therefore a large number of options for customers to ‘buy around’ any reduced service provision or attempted price increase.

5.13 Moreover, the Decision has substantially overstated the costs of increased management time associated with multi-sourcing. Customers clearly do routinely multi-source both at a particular site and across sites so as to procure in the most cost effective way. Indeed, this is the norm across the customer base of the Parties. Moreover, the incremental costs of dealing with an additional supplier are very small, estimated to be less than [0-5]% of the value of a contract, depending on the size of the contract and the number of providers it is to be split between.³⁵

5.14 The conditions for multi-sourcing in the manner contemplated in paragraph 5.9 therefore exist:

- (a) Given the strength of regional competition and the many players operating in each region (as demonstrated in **Table 1**), there is no reason to assume that regional providers offer high prices or low service; and
- (b) **Table 1** demonstrates that there are many suppliers with multi-regional coverage. Indeed, comprehensive coverage is provided by larger competitors such as (i) PHS, which has branches in all 12 regions, (ii) Cathedral, which serves national customers, has branches in several regions, and employs targeted marketing in all regions where it has no branch presence, (iii) Berendsen, which has branches in 10 of the 12 regions, and (iv) Zenith Hygiene Group which owns branches across 8 of the 12 regions in the UK.³⁶ This is in addition to the national coverage that can be supplied by numerous combinations of suppliers, such as Healthcare Environmental Group, Mayflower Washroom Solutions, Greenworks Solutions and Eurocare Washroom & Waste Solutions, which together have branches in every region of mainland Britain.
 - (i) *By asserting that the Merger will result in a reduction from three to two national players, the Decision has overlooked a number of effective competitors*

³⁵ [X]

³⁶ In all cases, this may understate the coverage of branches for these competitors as Rentokil does not maintain information on competitor locations in the ordinary course of business, and this is based on publicly available sources.

- 5.15 Even within the CMA’s Phase 1 narrow segment of ‘full service washroom services’ providers, the number of players able to provide the full suite of products and services is understated.
- 5.16 In addition to the Parties, other national washroom providers include PHS (the clear market leader), Berendsen (a national competitor that is significantly strengthened by the recent investment of Elis), Cathedral (with already half the revenues of Cannon plus significantly stronger growth), Mayflower (with [70-80]% of Cannon’s revenues and significantly stronger growth), as well as a host of other providers including Greenworks and Zenith (both of which have a network of distribution centres strategically located across the UK) and B Hygienic (identified as a national player by the CMA with a revenue of over £7 million).³⁷ This is in addition to a further four who have the capacity to expand their networks to become national.³⁸
- 5.17 In the Decision, the CMA acknowledges that Cathedral and Berendsen and, to some extent, Mayflower and Healthcare Washroom each considers or advertises itself as a national provider and / or has won national accounts.³⁹ However, it does not then develop this to reach the logical conclusion that these providers are all options available to customers if they are not satisfied with their existing provision. For example, an internal Rentokil survey notes the significance of Cathedral as a national competitor (and Cathedral is cited more often than Cannon as Rentokil’s main competitor).⁴⁰
- 5.18 Moreover, this is a market where ‘national is the sum of local’. The Decision failed to grasp the extent to which ‘national’ customers, can and do procure on a local or regional basis. The Decision conceded that procuring locally is, in fact, a realistic option as “*some national customers might procure on a local basis*”⁴¹. Importantly, although this point was not pursued in the Decision, “*Most national customers did not rule out switching to regional suppliers in the event of a 5% price increase by national suppliers*”.⁴² As explained above, there is considerable opportunity to do so at a limited cost.
- (ii) *The key role of FMs was ignored at Phase 1*
- 5.19 The role of FMs is of critical importance in properly understanding the market dynamics – the key role played by FMs in shaping these market dynamics has been significantly understated in the Decision.
- 5.20 An FM manages all of the services into a customer’s building: for example, it may provide catering, security, maintenance, concierge, landscaping, pest

³⁷ 15 of these national washroom providers were listed and described at Annex 2 of the Parties’ Response to the Issues Letter of 21 May 2018.

³⁸ These are Inspire Healthcare, City Hygiene Services, Dirty Harry’s Washrooms and Shorrock Trichem, which are all estimated by Rentokil to generate revenues in excess of £4 million from the supply of washroom services in the UK.

³⁹ Paragraphs 159-162 of the Decision.

⁴⁰ Paragraph 145 of the Decision.

⁴¹ Paragraph 85 of the Decision.

⁴² So long as they could get national coverage and competitive prices with a limited number of regional suppliers. Paragraph 74 of the Decision.

control, air conditioning, lift services, mechanical and electrical services, alongside cleaning and washroom services. By bundling washroom services with other facilities management services, the business model of FMs is to win customers from suppliers of individual services, including washroom services suppliers.

- 5.21 FMs are major national, multinational and global businesses (e.g. Compass, CBRE, InterServe, Serco, Mitie, Sodexo, ISS and OCS); and the Parties understand that their revenues are growing at a faster rate than those of washroom specialists. FMs are not only customers with significant buyer power due to their role as aggregators, offering bundled products to end customers, but they also provide a significant competitive threat as competitors to the Parties. FMs are a very real choice for ‘national’ customers and have become increasingly so in the last five to ten years.
- 5.22 FM companies compete aggressively for total FM contracts and pricing is typically set as an aggregate bundle price, not priced per service. As regards washroom services, FMs have a number of options available to them:
- (a) they can self-deliver, as they are already on-site and it is relatively straightforward to either source and replace the commodity products or empty the bins (for example getting the cleaners to do the on-site servicing of feminine hygiene bins). Their ability to self-supply a feminine hygiene service has further increased with the emergence of OSS as a means of delivery, as they already have both cleaners on site and an experience of managing waste;
 - (b) they can contract with the product manufacturers or distributors / wholesalers for the supply of particular products; and
 - (c) they can sub-contract to washroom services companies, either by using a number of different regional washroom service providers or by using a company that has a national footprint. FMs are uniquely placed to combine several (regional or local) washroom specialists into a nationwide service. An integral part of an FM’s offering to its customers is its ability to combine and manage several subcontractors, and multi-sourcing across its estate is therefore a straightforward option.
- 5.23 FMs are therefore well-placed to maximise the commercial benefit of a multi-sourcing strategy as they exist for the purpose of handling multiple suppliers. The breadth of services offered and volume procured give them a significant advantage over washroom specialists and they are ideally placed to target larger customers. FMs therefore provide a significant competitive threat as actual and potential competitors to the Parties.
- 5.24 That FMs are a credible alternative is apparent when comparing the types of ‘national’ customers currently using FM providers and those using the Parties – they are in essence the same. In fashion retail, for example, [X] is a direct customer of Rentokil whereas [X] has outsourced to an FM, making the choice of washroom services supplier the FM’s decision. By way of further examples, [X] uses an FM whilst [X] obtains washroom services from Rentokil; one division of the [X] uses an FM and the other contracts directly for washroom services (also an example of multi-sourcing across an estate);

and whilst part of the [X] uses an FM, [X] obtain washroom services directly from Rentokil. In other words, similar customers are choosing between different and competing business models to fulfil their washroom services needs.

5.25 It is striking to note that the European Commission found in its investigation that:⁴³

- (a) a non-negligible proportion of customers considered suppliers other than washroom solution specialists a credible alternative, including FM companies;
- (b) some customers indicated that they would not only consider switching their outsourced washroom solution services to FM companies, but also to office supply companies or wholesalers in case of a 5-10% increase in the current price; and
- (c) a majority of competitors submitted that some of their customers have switched to FM companies or office supply companies and wholesalers during the course of 2016.

5.26 The position in the UK is no different. For example, [X] elected in 2017 to outsource all FM activities to [X] and Rentokil lost £[X] of washroom work. Prior to this, [X] had been Rentokil's customer for over [X] years.

(iii) *The use of 'specialists' to disaggregate the bundle*

5.27 As described in detail in the market dynamics section above, some providers focus primarily on a reduced number of washroom product and service lines. For the bulk of these lines, there is significant competition both from full-service washroom services providers, but also from manufacturers and suppliers that have a narrower product offering.

5.28 Even in relation to waste disposal (feminine hygiene and nappy disposal), customers have a large and growing range of options available to them. The Decision did not give adequate consideration to the competitive constraint provided by specialists in waste disposal and / or odour remediation: activities "*which together account for about [60-70]% of each Parties' total washroom sales*".⁴⁴

5.29 At the very least, the competitive set should include waste disposal suppliers, as established providers of other forms of waste disposal (e.g. healthcare waste) move into nappy disposal and feminine hygiene waste disposal services. By way of illustration, the competitive set should include the following in order properly to recognise the competitive options available to customers:

- (a) Other washroom specialists that provide feminine hygiene units (*FHUs*). There are over 60 suppliers of FHUs in the UK, in addition

⁴³ Case M.8399 – *CWS-boco / Rentokil Initial Target Businesses* (2017) at paragraph 105.

⁴⁴ Paragraph 40 of the Decision.

to the Parties and PHS, from which customers could source the services.⁴⁵

- (b) Waste collection companies, many of which also provide feminine hygiene services (such as Healthcare Environmental and Tradebe). It is straightforward for the more general, or medical, waste collection companies to expand into washroom waste disposal (as Healthcare Environmental and Stericycle have already done).
- (c) Cleaning companies, which already clean the washrooms and provide other washroom services. By way of non-exhaustive example, according to their websites, the following cleaning companies provide feminine hygiene services: Exclusive Contract Services;⁴⁶ Burke Clemens;⁴⁷ Procure Cleaning;⁴⁸ Cleanology;⁴⁹ CLD Group,⁵⁰ and there is no reason to think this cannot be replicated by other cleaning contractors.⁵¹ Indeed, the fact that these cleaning companies do offer waste disposal indicates that other cleaning companies (including those employed by FMs) can extend their traditional reach into waste disposal (or could be induced to do so if the Parties increased price post-merger). This is particularly the case given the key role played by FMs (described above at paragraph 5.19 et seq.) and the fact that waste disposal has undergone a transformation to an OSS service model described above.

5.30 Not only can these providers compete for the waste disposal element of a customer's needs, but it is wrong for the Decision to ignore the fact that these providers are able then to expand into the full range of washroom services. Given the fundamentals of waste disposal to the washroom offering, and given the ease of supplying all the other products and services required by customers, companies active in waste disposal can and do enter the broader washroom services market. One such example is the Healthcare Environmental Group.⁵²

(iv) *PHS is a competitor of significant strength*

⁴⁵ These were listed and described in a presentation at Appendix 1 of the Parties' Response to the Issues Letter of 21 May 2018.

⁴⁶ <http://www.exclusivecontracts.co.uk/> - advertising national coverage servicing clients such as John Lewis.

⁴⁷ <https://www.burke-clemens.co.uk/>

⁴⁸ <http://www.procurecleaning.co.uk/>

⁴⁹ <https://www.cleanology.com/>

⁵⁰ <http://www.cld-services.co.uk/>

⁵¹ Other companies such as Andron Facilities and Future Cleaning services have multiple physical premises already and specifically advertise washrooms services and are included in the over 100 washroom providers identified by the Parties.

⁵² The Healthcare Environmental Group started out in 1997 as Smart Sharps Limited, a small sharps waste collection company. Today Healthcare provides complete waste collection and washroom services to over 35,000 customers, operating from 8 locations across the UK, with a workforce of over 200 and circa £26m revenues p.a. (<https://www.healthcareenv.com/>).

- 5.31 Finally, a significant competitive constraint that cannot be ignored is that the Parties, post-Merger, will face a formidable competitor in the form of PHS, which:
- (a) has % 30-40% market share when including regional suppliers and 50-60% for national washroom specialists;⁵³
 - (b) “*is each parties’ closest competitor*”,⁵⁴ and
 - (c) “*is preferred alternative for almost all of the Parties’ customers*”.⁵⁵
- 5.32 Therefore, as well as being a significant driver of competition, PHS will continue to operate to constrain any attempt by the Parties to increase price or reduce quality, as it has all the attributes and resources required to offer an alternative service nation-wide and will continue to compete hard in order to maintain its existing market position.
- 5.33 The importance of PHS as a competitor of significant strength is also consistently highlighted in Rentokil’s internal documents as well as the tender data. Figure 1 of the Decision shows that PHS is consistently identified as a close competitor to Rentokil, as well as being listed first by over [70-80]% of respondents to Rentokil’s internal survey. In particular, the survey highlights that PHS is a significantly more important rival to Rentokil than Cannon, which is mentioned far less frequently and is never listed first. The evidence of this survey is consistent with the results of the tender data analysis presented in Table 7 of the Decision, which equally demonstrated that PHS was by far the most important competitive constraint on Rentokil, winning [40-50]% of all tenders lost by Rentokil, more than [☒] (and more than [☒] by value) when compared to Cannon.⁵⁶ Likewise, Table 8 of the Decision shows that when Cannon loses tenders, [10-20]% are lost to PHS ([30-40]% in value terms) versus [0-10]% to Rentokil ([10-20]% in value terms). Again, PHS is by far the strongest constraint
- 5.34 PHS is an especially important competitive constraint when it comes to contracts with FMs, i.e. some of the largest contracts for washroom services. In particular the larger, so-called Tier 1, FMs frequently do not consider Cannon as a potential supplier, but instead chose only between PHS and potentially Rentokil. PHS is likely to win a share of these large FM contracts that even exceeds its overall market share, and competition for these large FM customers is unlikely to be affected adversely by the Transaction.
- (c) ***The win-loss data shows that the Parties are not each other’s closest competitors, and that this is not a “3-to-2” case***
- 5.35 The Parties are not each other’s closest competitors. As noted above, the Decision correctly recognised that PHS is each of the Parties’ closest competitor.

⁵³ Table 1 and Table 2 of the Decision.

⁵⁴ Paragraph 130a of the Decision.

⁵⁵ Paragraph 153 of the Decision.

⁵⁶ In other words, losses to Cannon are [☒], consistent with Cannon placing only a limited constraint on Rentokil; this is explained further at paragraph 5.35 et seq.

- 5.36 Of greater concern is that, by misinterpreting the win-loss data, the Decision nonetheless overstated the degree to which the Parties compete and understated the number of alternative suppliers. The CMA at Phase 1 interpreted the Parties' tender data in an inconsistent and inappropriate manner. The CMA found that it can provide "*helpful inferences*"⁵⁷ in relation to the Parties' participation in the same tenders⁵⁸ but – without good reason for the different approach – concluded that it was not reliable in relation to diversion ratios.⁵⁹
- 5.37 Diversion between the Parties is low or very low based on the CMA's own win/loss analysis ([0-10]% from Rentokil to Cannon and [10-20]% from Cannon to Rentokil) and the evidence presented in Tables 5 and 6 of the Decision. The implication of these results is that Cannon is not an important constraint on Rentokil: if Rentokil were to lose a portion of its sales in the event of a price increase above pre-Merger levels or a reduction of the quality of its offering, less than [10-20]% of these lost sales would go to Cannon. The remaining [80-100]% of sales lost by Rentokil would go to competitors other than Cannon, demonstrating that the competitive constraint would remain effective post-Transaction. It, therefore, cannot be appropriate to view the Transaction as a "3-to-2" or "4-to-3" merger in terms of the magnitude of effect.⁶⁰
- 5.38 The Decision notes that smaller competitors do not appear in the Parties' tender data. But this supports the Parties' view that the tender data understate non-PHS competition given the lack of data on competing bidders. As the Parties have explained, they are confident that they have been able to identify cases where they have bid against each other (in most cases they did not). The Parties do not have good visibility of rivals to whom contracts are lost, although sometimes they are able to recognise the products of the winner when they can access the washrooms of the customer for which they tendered. However, the pertinent conclusion is that competitors other than the Parties and PHS (whose products are very distinctive) are winning tenders against the Parties.
- 5.39 This applies in particular to competitors such as Cathedral and Elis (Berendsen), who have explicitly told the CMA that they, as in the case of Cathedral, supply national customers and participate in tenders for public sector framework agreements or, as in the case of Elis (Berendsen), cover the whole of the UK and supply national customers.⁶¹ The fact that neither of these competitors can be identified in the tender data, notwithstanding that some of their customers are likely to fall within the group covered by the tender data, supports the Parties' view that the "unknown" winners are likely to consist of, at least in part, competitors other than PHS. In any event, given

⁵⁷ Paragraph 124 of the Decision.

⁵⁸ Paragraph 126 of the Decision.

⁵⁹ Paragraphs 135-136 of the Decision.

⁶⁰ Assuming symmetric firms with no outside goods, a "3-to-2" merger implies a diversion ratio of 50%, a "4-to-3" merger a diversion ratio of 33%, a "5-to-4" merger a diversion ratio of 25% and a "6-to-5" merger a diversion ratio of 20%.

⁶¹ Paragraphs 159-160 of the Decision.

that the tender data covers less than [0-5]% of the Parties' turnover, the fact that neither Cathedral and Elis (Berendsen) can be identified in the tender data cannot rightfully be used to conclude that they do not compete with the Parties for 'national' customers.

(d) ***The Parties face significant countervailing buyer power***

- 5.40 Rentokil's typical customer contract provides little by way of barriers to customer switching. The typical term of contract is [X].⁶² [X].
- 5.41 Competition takes place not only at the point of retendering or renegotiation but also on a regular basis throughout the term of a contract. Specifically, providers frequently try to increase their range with their existing customers, e.g. during catch-up and review meetings or simply by cold-calling. This is because a providers that do not supply the entire needs of a site have a low incremental cost of providing an additional service line at that same site. Since few providers offer all seven service lines, they are strongly incentivised to extend their current range with their existing customers.
- 5.42 Turning to the largest customers, in line with their buying strength, this group generally obtains highly competitive terms from the Parties as evidenced by the low margins that the Parties earn when serving these customers.
- 5.43 As described in paragraphs 5.19 et seq., the Parties face significant countervailing buyer power from FMs. In addition to being competitors for the provision of washroom services, FMs are also some of the Parties' largest customers on those occasions where they are looking to outsource the provision of washroom services to washroom specialists. In this role, FMs are sophisticated professional procurers that are adept at handling a number of suppliers. FMs procure large volumes and are able to command very competitive prices, which allow them to present a competitive offering to their clients. They are incentivised to negotiate hard and usually contract on a non-exclusive basis on their own standard terms which offer them considerable flexibility including as regards changing suppliers.
- 5.44 The Parties also face significant countervailing buyer power from so-called 'national' customers. These 'national' customers are some of the biggest companies in the UK, e.g. [X]. These customers are sophisticated buyers, with large and experienced procurement teams and they exert significant buyer power. Similar to FMs, these customers can be expected to negotiate hard, using their large volumes to command competitive prices. In some cases,⁶³ these 'national' customers may have sufficient volume to either sponsor entry or otherwise expansion of local/regional players to a national level. [X], for example, is understood to have sponsored growth by Mayflower to offer national coverage.
- 5.45 Buying groups (who negotiate framework agreements on behalf of their customers) are another source of material buyer power. Buying groups exist for the purpose of handling multiple suppliers and so do not need to use a

⁶² [X]

⁶³ Rentokil understands that this was the case for [X], which awarded its nation-wide contract to Mayflower, thereby allowing Mayflower to expand its geographical coverage.

single national provider – indeed they frequently mandate both larger and smaller suppliers in their guidelines.⁶⁴ These groups aggregate demand from a number of members that for the most part are not themselves ‘national’ customers.

5.46 It is doubtless this backdrop that that resulted in a notable lack of customer concern, the Decision noting that the “majority of customers” that responded said it “did not raise concerns”.⁶⁵

(e) ***Barriers to entry and expansion are low and decreasing – particularly in light of recent market developments and innovations***

5.47 The Decision overestimated barriers to entry and expansion which are low and decreasing – particularly in light of the recent market developments and innovations. Most notably:

- (a) the provision of washroom services has recently undergone a significant change as waste disposal has become on-site serviced; and
- (b) significant market entry has also occurred, with Berendsen’s acquisition in June 2017 by Elis, the largest washroom service provider in France. Berendsen has since been rebranded as Elis “to reflect that we are part of a strong, international business and to further develop our services and solutions”⁶⁶. According to Elis’ customer communications:

“Elis is an international multi-service provider, offering textile, hygiene and facilities solutions. Throughout Europe and Latin America, we are a leader in the majority of countries in which we operate, employing 45,000 professionals at 440 production plants and service centres in 28 countries.”

“[Elis is] Dedicated to our customers, we imagine, develop and deliver bespoke solutions within a wide range of industries”

“This change from Berendsen to Elis will bring added benefits for you and your organisation thanks to best practices and solutions across the Elis group.”⁶⁷

5.48 These are both significant developments that were not adequately taken into account in the Decision. Specifically, Elis has a very successful model across the markets they operate in and that model involves the in-house delivery of washroom services. The stated purpose of the acquisition was to extend its model and reach into the UK; it is therefore logical to conclude that the

⁶⁴ For example, framework partnerships such as ESPO <https://www.espo.org/Frameworks/Buildings/239-Washroom-Services>

⁶⁵ Paragraph 154 of the Decision.

⁶⁶ <https://uk.elis.com/insights/news/uk/berendsen-is-now-elis/>

⁶⁷ <https://uk.elis.com/globalassets/3.-insights/news/uk/uk---customer-leaflet---low>

previous outsourcing arrangements of Berendsen will be internalised within the Elis model.⁶⁸

- 5.49 OSS has significantly reduced the capital requirements for providing washroom waste disposal services. As described in paragraph 3.16, rather than taking FHUs in a van back to a central depot to be cleaned in an industrial washing machine, providers can now simply remove and dispose the full bin liner, clean the FHU on site, and insert a new bin liner. Given the ease of this process, this service can be provided by a much broader range of providers, including a customer's existing cleaning contractors.
- 5.50 One such notable recent development is the fact that Liberty Hygiene (*"market leaders in washroom service"*) has announced that it has formed a partnership with UK market leading cleaning and hygiene supplier Bunzl Cleaning & Hygiene Supplies (**BCHS**). The aim of the partnership is to develop and maintain *"the Gold Standard Washroom Service Provision soon to be included as an extension in the BCHS portfolio of products and services"* and *"with country-wide service available soon"*.⁶⁹
- 5.51 More generally, in order to be able to compete for the provision of washroom services, a provider need only have:
- (a) access to washroom equipment, either manufactured by the firm or purchased manufacturers and distributors;
 - (b) access to washroom consumables, which are commodity products, again either manufactured by the firm or purchased from third parties;
 - (c) access to delivery and collection services, using either employed drivers and owned/leased vehicles or delivery/collection services purchased from third parties;
 - (d) leased premises;
 - (e) front-line sales and administrative staff;
 - (f) access to marketing and business development channels (such access being facilitated by the growth in online marketing channels); and
 - (g) in the case of the provision of waste disposal services, an Upper Tier Waste Carrier Licence is required, but this is quick and straightforward to obtain, costing only £154 in the first instance, and a further £105 to renew every three years.
- 5.52 Expansion to a national footprint does not require significant capital, technology or capability. Moreover, the requirement for depots is reducing as more work becomes on-site serviced and frontline staff are better able to store

⁶⁸ In June 2017 Moody's Investors Service predicted a weaker cash flow for 18-24 months due to a *"higher level of capital expenditures required to upgrade Berendsen's plants and machinery in the United Kingdom following a period of under-investment"*. Moody's outlook was based on *"Berendsen's leading position in its key markets of operations, [and] the good liquidity position supported by Elis' undrawn EUR500 million revolving credit facility"*. See https://www.moodys.com/research/Moodys-confirms-Elis-Ba2-CFR-with-a-stable-outlook-following--PR_368414

⁶⁹ <http://www.libertyhygiene.com/news/liberty-works-with-bunzl-cleaning-hygiene-supplies/>

their consumables in their van which, in turn, remains at their residence rather than at a depot. The need for these staff to visit a depot is becoming increasingly infrequent and, as a result, service providers can cover geographies farther afield. Rentokil estimates that [X] branches would be sufficient to form a national network of depots and that the total investment cost across premises, vans, equipment and staff would be in the region of £[X] per branch.

6. Conclusion

- 6.1 The Decision has assessed the Transaction against a frame of reference that does not reflect the real market dynamics at play. It has not analysed the strength of regional competition at all, and – in an artificial and undefined segment of ‘national’ accounts – has concluded that customers’ requirements can be met only by full-service washroom services providers. In reality, customers multi-source, there is a wealth of competitive options available to them, and the market is characterised by low barriers to entry.
- 6.2 The Parties remain firmly of the view that there is no reasonable basis on which the Merger will result in a substantial lessening in competition in the supply of washroom services.