

# Rentokil Initial and Cannon Hygiene

A report on the completed acquisition by  
Rentokil Initial plc of Cannon Hygiene Limited

25 January 2019

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# Summary

## The reference

1. On 28 June 2018, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Rentokil Initial plc (Rentokil) of Cannon Hygiene Limited (Cannon) (the Merger) for further investigation and report by a group of CMA panel members (the Group).
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom (UK) for goods or services.
3. We published our provisional findings and notice of possible remedies on 18 October 2018. The original statutory deadline for preparing and publishing our report was 12 December 2018. Following the decision by the Group to extend the reference period, under section 39(3) of the Act, we were required to publish our final report by 6 February 2019.
4. We refer to Rentokil and Cannon collectively as 'the Parties'.

## Industry background

5. The Parties overlap in:
  - (a) the supply of washroom services;
  - (b) the supply of healthcare waste collection services; and
  - (c) the supply of mats services.

## Washroom services

6. Washroom services comprise the supply of services and consumables related to washrooms in public, office and industrial buildings. These services include the supply and fitting of various dispensers (eg for odour remediation), the replenishment of commodity products (such as toilet paper, hand towels and soap) and waste collection (from feminine hygiene units and nappy bins).

7. The supply of washroom services typically involves regularly scheduled service visits to a customer, during which the supplier services equipment, replenishes consumables and collects waste from feminine hygiene units and nappy bins for disposal.
8. For some consumable products, such as soap, paper towels or toilet rolls, suppliers may provide refills in bulk for the customer to replenish these consumables themselves rather than the supplier replenishing the consumables. Items such as toilet paper dispensers and paper towel dispensers can be sourced from product manufacturers and distributors as well as from washroom service suppliers.
9. Washroom service suppliers typically operate fleets of vans that use a central depot, storage facility or warehouse from which to restock. Washroom service staff travel along a route visiting multiple customer sites each day, replenishing and servicing customer washrooms from the consumables and products stored in their vans.

### **Healthcare waste collection services and mats services**

10. The Parties also overlap in the supply of healthcare waste collection services. Healthcare waste collection services include the collection and disposal of infectious clinical waste, non-infectious clinical waste, pharmaceutical waste services, dental waste services and sharps disposal services.
11. In addition the Parties overlap in the supply of mats services, which include indoor and outdoor mats which help prevent trips and slips.

### **The Parties and other key suppliers of washroom services**

#### **Rentokil**

12. Rentokil is a global hygiene service and commercial pest control provider. In the UK, Rentokil provides washroom services, healthcare waste collection services, mats services and pest control services. Rentokil is listed on the London Stock Exchange and is a constituent of the FTSE 100 Index. The turnover of Rentokil for the year ended 31 December 2017 was approximately £2.4 billion worldwide of which £245.6 million was generated in the UK and Ireland.
13. Rentokil is the parent company of Rentokil Initial UK Limited, which is the UK entity that comprises all of Rentokil's UK washroom service business, including mats services. This business also provides some pest control

activities, but does not provide healthcare waste services. The healthcare waste business of Rentokil is in a separate company, Initial Medical Services Limited.

14. In the UK, Rentokil has [X] branches, of which [X] are used for washroom and mats services, and [X] are used for healthcare waste collection services.

## **Cannon**

15. Cannon was formerly a multinational subsidiary of the global facilities management (FM) firm OCS Group Limited (OCS Group), which sold its hygiene services business through an auction in 2017.
16. Cannon provides washroom services, healthcare waste collection services and mats services in the UK. Its UK turnover for the year ended 31 March 2017 was £[X]million. Cannon has [X]branches in the UK, all of which are used for washroom services.

## **Other suppliers**

17. PHS Group Limited (PHS) is the leading supplier of hygiene services in the UK, Ireland and Spain. In the UK, PHS is the leading supplier of washroom services. PHS's washroom revenue was £[X] million in the financial year ended 31 March 2017. PHS supplies washroom services from [X] locations in the UK.
18. Cathedral Leasing Limited (Cathedral) is a washroom hygiene specialist based in Tamworth, employing over 200 staff. Cathedral started as a regional supplier but has gradually grown to deliver services across most of the UK. In 2017, Cathedral's turnover was £13 million. Cathedral does not operate a traditional depot network, but instead uses a combination of storage units and direct supply to drivers.
19. Mayflower Washroom Solutions (Mayflower) is headquartered in Woolwich, London. Mayflower supplies across the UK from five distribution centres in the UK and one in Ireland. In the most recent financial year, Mayflower's revenue from providing washroom services was £[X] million, which represents roughly [X] % of its total turnover.
20. There are a variety of other smaller suppliers. Elis (which acquired Berendsen in 2017) currently provides washroom services in the UK on a limited scale, but is a larger supplier of these services in other European countries. Hygienic Concepts provides a range of washroom services across the UK. Zenith Hygiene Group is a manufacturer of cleaning and hygiene products active



across the UK, but outsources most of its waste disposal services to [X]. The Independent Washroom Services Association is a group of independent washroom service providers which work in partnership to provide washroom services across the UK. There are a large number of other washroom suppliers active at the regional and local level. FM companies and cleaning companies can supply washroom services, although some elements of these services are typically outsourced to washroom service suppliers. A limited number of waste collection companies transfer and dispose of waste from washrooms.

21. In the supply of washroom services other than waste disposal, a range of other suppliers are active, including distributors and product manufacturers.

## **The inquiry**

22. As part of our inquiry, we received several submissions and responses to information requests from the Parties, held in depth-hearings with the Parties and competitors and engaged extensively throughout the inquiry with customers and potential market entrants. We carried out an extensive review of internal documents held by the Parties as well as tendering data and customer loss data. We also considered the results of a customer survey that we commissioned.
23. Our inquiry focused on the supply of washroom services. We did not examine the supply of healthcare waste collection services or the supply of mats services as the phase 1 investigation found no competition concerns in relation to these overlaps and we received no submissions on healthcare waste or mats services in response to our statement of issues.

## **The transaction and the relevant merger situation**

### **The transaction**

24. On 21 December 2017, the Parties entered into a Sale and Purchase Agreement, which included the acquisition of various hygiene services in Austria, India, Ireland, Portugal, South Africa, Spain, Thailand, the UK and New Zealand. In the UK the transaction completed on 1 January 2018.
25. In the UK, Rentokil Initial UK Limited, a subsidiary of Rentokil, acquired 100% of the shares of Cannon Hygiene Limited UK from OCS Group. The sale also included Cannon Hygiene International Limited, which is responsible for development, marketing and procurement of dispensers and certain key consumables. [X].

## **The rationale for the transaction**

26. OCS Group told us that it decided to sell Cannon because it was not delivering the financial returns expected. [X]
27. Rentokil told us that the acquisition of Cannon was [X]. Rentokil also told us that the acquisition [X]
28. Rentokil said that significant synergies were forecast [X].

## **Relevant merger situation**

29. We found that, as a result of the Merger, the Parties ceased to be distinct and that the share of supply test was met. We therefore concluded that a relevant merger situation had been created based on the share of supply test.

## **Counterfactual**

30. We considered what would have been the competitive situation in the absence of the Merger (the counterfactual). We concluded that the counterfactual was the continuation of pre-Merger competitive conditions.

## **Market definition**

31. The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger.
32. We considered whether the product market should be segmented by customer type. We found that the complexity of servicing an individual customer increases with the number of regions in which the customer requires washroom services. The requirements of customers located in 11 or 12 regions of the UK (national customers) are similar to those of customers located in eight or more regions (multi-regional customers). For the purposes of market definition, we did not consider it necessary to distinguish between national and multi-regional customers. However, we drew a distinction between those customers and regional and local customers, which have simpler service requirements.
33. We considered other possible customer segmentation within the relevant product market. We concluded that separate markets should not be defined for different customer types other than the distinction between national and multi-regional customers from regional and local customers. However, we

took the view that the competitive effects of the Merger should be examined in relation to three different customer segments – namely end customers (ie those purchasing directly for their premises), FM customers and public and private framework (ie buying group) customers.

34. We therefore concluded that the impact of the Merger should be examined in relation to the following product markets:
  - (a) the supply of washroom services to national and multi-regional customers (including end customers and FM customers located in eight or more UK regions and framework customers with national or multi-regional coverage); and
  - (b) the supply of washroom services to regional and local customers.
35. We considered the supply of waste disposal services to represent a distinct segment of the market and that the competitive effects of the Merger should be considered separately in relation to the supply of waste disposal services.
36. We also considered competitive constraints from various types of direct and indirect suppliers of waste disposal (eg washroom services suppliers, healthcare waste companies, FM companies and cleaning companies) in the competitive assessment.
37. In relation to the geographic market, we found that:
  - (a) Regional and local competition is distinct from national and multi-regional competition.
  - (b) There is some overlap between regional and local competition, because the size of the areas served by the Parties' branches, as well as by their regional competitors, are reasonably wide.
38. We therefore concluded that the competitive effects of the Merger should be considered at both:
  - (a) The national and multi-regional level (in the supply to national and multi-regional customers).
  - (b) The regional and local level (in the supply to regional and local customers).

## **Competitive assessment in relation to national and multi-regional customers**

39. We assessed the competitive effects of the Merger in the supply of washroom services to national and multi-regional customers and assessed waste disposal as a separate product segment within the market.

### **The supply of waste disposal services**

40. We considered three customer segments in our assessment of the competitive effects for national and multi-regional customers in the waste disposal segment. These were end customers and FM customers, where we focused on those customers located in eight or more regions of the UK. For framework customers, we considered frameworks with national or multi-regional coverage (ie frameworks open to users in all or the majority of regions in the UK).

### ***Evidence on competition pre-Merger***

41. We assessed evidence on competition pre-Merger across the three categories of national and multi-regional customer.

#### *Level of concentration*

42. We found that the supply of waste disposal to national and multi-regional customers is concentrated. Three firms (PHS, Rentokil and Cannon) supply the largest number of and value of services provided to these customers, and the scale of other competitors is much smaller in comparison.

#### *The closeness of competition between the Parties*

43. We examined the closeness of competition between the Parties pre-Merger. We found that PHS was the closest competitor to both Rentokil and Cannon and that, after PHS, the Parties were each other's next closest competitor pre-Merger.

#### *Competition from other suppliers*

44. We considered competition from other suppliers of washroom services. We found that PHS was the closest competitor to the Parties and that both Rentokil and Cannon competed closely against PHS for national and multi-regional customers, but Rentokil more strongly than Cannon.

45. We considered competition from the next two largest suppliers after PHS and the Parties, namely Cathedral and Mayflower.
46. We found that Cathedral is able to supply national and multi-regional customers. However, we found Cathedral's current contracts with national and multi-regional customers are of relatively low value. We also note that competitive interactions between Cathedral and the Parties are limited and we note that Cathedral [§<]. We therefore found that Cathedral provided a limited constraint on the Parties.
47. We found that Mayflower is also able to supply national and multi-regional customers. However, we found that Mayflower currently acts as a limited constraint on the Parties, because its current scale is significantly smaller than that of the Parties and PHS. There have been limited competitive interactions between the Parties and Mayflower and the Parties' internal documents did not consider Mayflower as a close competitor. The evidence is also consistent with Mayflower's view that [§<].
48. We found that there are few other washroom suppliers serving national and multi-regional customers and their scale is very small. We concluded that they exert a very limited constraint on the Parties.
49. We also considered the potential for national and multi-regional customers to procure their waste disposal services from multiple regional suppliers. We found that while some end customers may have the ability to switch to regional suppliers, others prefer and currently use a single supplier for their entire estate (we discuss framework customers and FM customers further below). We found that the incentive to switch to regional suppliers was limited. We therefore concluded that there exists a significant group of customers, procuring centrally for their estates, which are unlikely to be willing to 'buy around' a single supplier (such as the Parties or PHS) by using a combination of regional suppliers.
50. We examined the constraint from other types of supplier, including FM companies, healthcare waste collectors and cleaning companies:
  - (a) We found that FM companies do not currently supply waste disposal with their own capability to customers, but outsource to washroom service suppliers. We therefore concluded that FM companies impose an indirect constraint on the Parties in relation to the supply of waste disposal services.
  - (b) We found very limited evidence that waste collection or cleaning companies competed with the Parties in the supply of washroom waste disposal services to national and multi-regional customers.

## ***Assessment of the competitive effects of the Merger***

51. We considered three customer segments in our assessment of the effect of the Merger on national and multi-regional customers in the waste disposal segment in relation to: (a) end customers procuring directly; (b) public and private frameworks; and (c) FM customers.

### *National and multi-regional end customers procuring directly*

52. We found that the supply of waste disposal to national and multi-regional end customers is concentrated, with three firms (PHS, Rentokil and Cannon) supplying the largest number of and value of services provided to these customers.
53. We found that the Parties are each other's second closest competitor after PHS.
54. We expect that PHS will continue to operate as a substantial competitor to the Parties post-Merger. However, in a concentrated market with limited credible alternatives available to national and multi-regional customers, the elimination of one of the Parties from the market reduces the already limited set of options available to national and multi-regional customers and is therefore likely to reduce the competitive constraint faced by both the merged entity and PHS.
55. We found that Cathedral and Mayflower are likely to act as only a relatively limited constraint on the Parties post-Merger.
56. We considered the constraint from other supply options post-Merger:
- (a) We found limited evidence that other individual washroom suppliers, have had competitive interaction with the Parties and no evidence that their competitive positions will change post-Merger.
  - (b) We considered whether national and multi-regional customers would be able and willing to 'buy around' the Parties (or PHS) by using a combination of regional suppliers and found that the constraints from regional suppliers are likely to remain limited post-Merger.
  - (c) We found that the constraints from FM companies will remain indirect post-Merger.
  - (d) We found limited evidence that other suppliers, such as healthcare waste companies, cleaning companies and self-supply, would enter or expand in a way that would constrain the Parties post-Merger.

57. We concluded that the aggregation of these limited individual constraints would be unlikely to offset the loss of competition as a result of the Merger.
58. Post-Merger, when national and multi-regional customers consider appointing a new supplier or negotiate with their existing suppliers, the main credible alternative options would be the merged entity and PHS, with other suppliers exercising a limited constraint. Therefore, we found that the impact of the removal of one of the Parties from the competitive process would be unlikely to be offset by competition from other suppliers. We therefore found that the Merger is likely to enable the merged entity to raise price or reduce quality profitably.
59. The Group therefore decided by a majority that that the Merger has resulted, or may be expected to result, in an SLC in relation to the supply of waste disposal services to national and multi-regional customers purchasing directly for their premises from a washroom services supplier, subject to any countervailing factors.

*The competitive effects of the Merger in relation to frameworks*

60. We examined whether the Merger would be likely to affect public or private frameworks with a national or multi-regional coverage (that is those frameworks which are open to users in a majority of regions of the UK).
61. Framework organisations negotiate prices and terms of supply with washroom services suppliers, and set up framework agreements that enable their users to procure washroom services from qualified suppliers. Frameworks can be public or private (the latter are also known as buying groups).
62. We found that competition in the supply of washroom services to framework customers takes place on two levels:
  - (a) competition between suppliers to be listed on frameworks; and
  - (b) competition between suppliers for users procuring under a framework.
63. In relation to competition to be listed on a framework, we found that:
  - (a) The Parties and PHS are the three major suppliers listed on public frameworks which generated the large majority of the revenue from contacts awarded under these frameworks. They also serve private frameworks, although Cannon is smaller than Rentokil and PHS.
  - (b) Cathedral and Mayflower are not listed on any public frameworks and Cathedral supplies only one private framework.

- (c) Regional suppliers have been successful in getting listed on frameworks but represent a limited constraint on national suppliers. FM companies are not listed on frameworks as washroom service suppliers because they offer integrated FM services, rather than washroom services on a stand-alone basis. They are therefore not a credible alternative to washroom service suppliers.
64. In respect of competition between suppliers for users procuring under a framework, we found that:
- (a) In public tenders, PHS is the closest competitor to the Parties, but the Parties and PHS together are the three main competitors. Constraints from suppliers 'off framework' are weak for both public and private framework users.
- (b) Constraints from regional suppliers 'on framework' are weak for both public and private frameworks and are likely to be limited 'off framework'.
- (c) Customer and competitor submissions indicated that it is generally cheaper and more convenient for users who have access to a framework to procure under the framework than to procure from a supplier directly.
- (d) Evidence from internal documents showed that [X]
65. Taken together, the evidence showed that the Parties and PHS are the major suppliers to framework organisations and their users, with other suppliers representing a weak constraint.
66. The Group therefore decided by a majority that that, subject to countervailing factors, the Merger has resulted, or may be expected to result, in an SLC in the supply of waste disposal services to public and private frameworks with national or multi-regional coverage due to:
- (a) a reduction in the number of credible options to framework organisations with national and multi-regional coverage; and
- (b) a reduction in the number of credible options to users that procure under a framework.

*The competitive effects of the Merger in relation to FM customers*

67. We considered the impact of the Merger on the supply of waste disposal to FM customers.
68. We found that competition in the supply of waste disposal services to FM customers differs from the direct supply to end customers in two ways.



69. First, we found that FM companies aggregate services from multiple suppliers to provide an integrated FM service to their customers and that nearly all FM customers multi-source (with some using a combination of regional and national providers). We therefore found that FM companies and thus the customers they serve would be more likely than end customers procuring directly to consider using multiple suppliers of waste disposal as an alternative to the Parties. This widens the choice of alternative suppliers to include smaller regional suppliers.
70. Second, we found that FM customers would be better placed than end customers to maintain their negotiating strength with the Parties post-Merger. FM customers have frequent and repeated interactions with multiple washroom services suppliers, compared to end customers which typically only tender or re-negotiate every few years due to the nature of their contracts. In addition, FM customers are an important channel for the Parties to reach end customers.
71. We therefore concluded that the Merger has not resulted, or may not be expected to result, in an SLC in relation to the supply of waste disposal services to FM customers.

### **The supply of washroom services other than waste disposal**

72. We found that in each of the service lines supplied by the Parties other than waste disposal, the Parties face effective competition from a number of product manufacturers and distributors, in addition to other washroom services providers. We also found that, in contrast to waste disposal services, a number of FM companies provide these washroom services in-house. In addition, we found that there are no licensing requirements for the supply of washroom services other than waste disposal.
73. We therefore concluded that the Merger has not resulted, or may not be expected to result in, an SLC in the supply of washroom services other than waste disposal.

### **Competitive assessment in relation to regional and local customers**

74. We assessed the competitive effects of the Merger in relation to the supply of washroom services, including waste disposal, to regional and local customers.
75. We examined the number of competing suppliers in the areas around each of Rentokil's and Cannon's branches. We considered the number of competitors

offering waste disposal services as well as any number of other services in each catchment area. We found that the Merger would reduce the number of suppliers from 'four to three' or fewer only at Inverness (Cannon branch) and Inverurie (Rentokil branch).

76. We considered competition in these specific areas in more detail and found that the Parties are not close competitors in either area and that each of the Parties will face competition from competitors that are closer geographically than from either Rentokil or Cannon.
77. We also examined the number of competitors in each of the UK's 12 regions. We found that the region with the lowest number of effective competitors is Northern Ireland. However, even in this region, we found that at least three competitors would remain in addition to the Parties post-Merger.
78. We concluded that the Merger has not resulted in, and may not be expected to result, in an SLC in the supply of washroom services to regional and local customers.

## **Countervailing factors**

79. We assessed whether there were any countervailing factors to prevent the SLCs from arising.

## **Countervailing buyer power**

80. We found that whilst some national and multi-regional customers appear to be able to negotiate deals with the Parties, these customers would have limited supply options for waste disposal post-Merger. We found that the Merger would remove an important supply option for national and multi-regional end customers and for frameworks (both in respect of listing on frameworks with national and multi-regional coverage and winning business from users of these frameworks).
81. We therefore concluded that countervailing buyer power was not sufficient to prevent the SLCs.

## **Barriers to entry and expansion**

82. We considered whether entry would be timely, likely and sufficient to prevent the SLCs. We found that one provider, Elis, which has historically outsourced its provision of washroom services in the UK, has plans to enter the UK washroom sector through local and regional entry pilots. However, following a

thorough review of its entry plans, we concluded that its entry would not be timely, likely and sufficient to prevent the SLCs.

83. We also considered expansion by existing suppliers of washroom services in the UK. We found that there is insufficient evidence to suggest that expansion by Cathedral, Mayflower or other suppliers would be likely to be timely or sufficient to prevent the SLCs.
84. We therefore concluded that entry or expansion would not be timely, likely or sufficient to prevent the SLCs in the supply of waste disposal services to national and multi-regional end customers and/or frameworks with national or multi-regional coverage.

## **Efficiencies**

85. We concluded that there was insufficient evidence that the Merger is rivalry enhancing or that produces relevant customer benefits.

## **Conclusion**

86. As a result of its assessment, the Group decided that:
  - (a) the acquisition by Rentokil of Cannon has created a relevant merger situation; and
  - (b) the relevant merger situation has not resulted, or may not be expected to result, in an SLC in relation to the supply of:
    - (i) Healthcare waste services.
    - (ii) Mats services.
    - (iii) Washroom services to regional and local customers.
    - (iv) Washroom services other than waste disposal services.
    - (v) Waste disposal services to FM customers.
87. The Group decided by a majority that the relevant merger situation has resulted, or may be expected to result, in an SLC in relation to the supply of waste disposal services to the following national and multi-regional customers:
  - (a) Customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier.

- (b) Public and private framework customers with national or multi-regional coverage.

## Remedies

- 88. Having concluded that the Merger has resulted, or may be expected to result, in an SLC, we considered what action should be taken to remedy, mitigate or prevent the SLC or any of the resulting adverse effects we found.
- 89. We concluded that there were two structural remedies that would be effective:
  - (a) Option 1 – a divestiture of Cannon’s UK business, Cannon UK Limited, including all customers, assets and liabilities to a purchaser approved by the CMA.
  - (b) Option 2 – a divestiture of Cannon’s customer contracts in the markets affected by the SLCs (SLC Contracts), plus any Cannon UK operations and infrastructure required by a prospective purchaser as approved by the CMA.
- 90. Whilst we concluded that both the remedy options would be effective at remedying the SLCs and the resulting adverse effects we found, we concluded that Option 2 would be less onerous and less intrusive. We therefore concluded that a divestiture of the SLC Contracts was the more proportionate solution.
- 91. Subject to the requirements of the purchaser, the divestiture package should include, but is not limited to, the following assets and operations:
  - (a) the Cannon contracts with customers in the markets affected the SLCs (i.e. SLC Contracts);
  - (b) the ‘Cannon Hygiene’ brand and the ‘Cannon’ brand, to the extent owned or controlled by the Parties in the UK. The Parties propose that Rentokil would then implement a prompt rebranding process related to the retained assets and business lines to address the risk of any confusion following the divestiture;
  - (c) all intangible assets owned or controlled by Cannon UK which are necessary to carry out washroom services for the SLC Contracts, including the relevant intellectual property rights (including trademarks, service marks and domain names);
  - (d) all Cannon employees and other personnel primarily engaged in providing or supporting the SLC Contracts, including central national account

management capability, service technicians and those with other central functions (subject to employment law restrictions). The Parties also propose to offer the prospective purchaser any other personnel who are used (exclusively or not) in servicing the SLC Contracts and who are necessary to ensure the continued viability and competitiveness of the divested SLC Contracts and related assets, or an adequate substitute;

- (e) all permits and licences in relation to waste collection and disposal of healthcare waste services, including waste carrier licences to the extent that they are transferable;
- (f) other assets:
  - (i) all Cannon UK facilities engaged in washroom services to support the SLC Contracts, including all on-site equipment related to such washroom services as well as all such leased equipment to be transferred to the purchaser to the fullest extent possible;
  - (ii) all leases for the transferred Cannon UK facilities or a sub-lease as appropriate, to the extent transferrable;
  - (iii) all Cannon vehicles currently owned or leased by Cannon UK which are used to service the SLC Contracts; and
  - (iv) any other asset which is used (exclusively or not) to service the SLC Contracts and which is considered necessary in order to ensure the continued viability and competitiveness of the SLC Contracts, or an adequate substitute.

92. In addition, we will put in place various safeguards to support effective remedy implementation. For example, we expect a transitional services agreement to be provided to the purchaser. The precise terms of the agreement for the provision of these services to be provided on a transitional basis are to be determined through negotiations between the Parties and the purchaser, which we will review as part of the approval of the terms of the divestiture.

93. We expect to implement the structural remedy by seeking suitable undertakings from the Parties. The CMA has powers to issue an Order if we are unable to obtain satisfactory undertakings from the Parties.

94. Once any potential purchaser has been identified, we will consider in more detail the divestiture package as well as the viability of any purchaser. We will consider the suitability of each potential purchaser on its own merits.

# Findings

## 1. The reference

- 1.1 On 28 June 2018, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Rentokil Initial plc (Rentokil) of Cannon Hygiene Limited (Cannon) (the Merger) for further investigation and report by a group of CMA panel members (the Group).
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
- 1.3 In answering these two questions we apply a ‘balance of probabilities’ threshold to our analysis. That is, we decide whether it is more likely than not that an SLC has resulted, or may be expected to result, from the Merger.<sup>1</sup>
- 1.1 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. The original statutory deadline to publish our final report was 12 December 2018. Following the decision by the Group to extend the reference period, under section 39(3) of the Act, we were required to publish our final report by 6 February 2019.<sup>2</sup>
- 1.4 We published our provisional findings and notice of possible remedies on 18 October 2018. This document, together with its appendices, constitutes our findings. Further information, including non-commercially-sensitive versions of the Parties’ response to the phase 1 decision and provisional findings, can be found on our webpages.<sup>3</sup>
- 1.5 Throughout this document we refer to Rentokil and Cannon collectively as ‘the Parties’.

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<sup>1</sup> [Merger Assessment Guidelines](#) (CC2/OFT1254), paragraph 2.12. The *Merger Assessment Guidelines* have been adopted by the CMA board (see [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), Annex D).

<sup>2</sup> [Notice of extension of statutory period](#), 10 December 2018.

<sup>3</sup> [Rentokil/Cannon merger inquiry case page](#).

## 2. Industry background

2.1 The Parties overlap in:

- (a) the supply of washroom services;
- (b) the supply of healthcare waste collection services; and
- (c) the supply of mats services.

### Washroom services

#### *Service lines and business models*

2.2 Washroom services comprise the supply of services and consumables related to washrooms in public, office and industrial buildings.<sup>4</sup> These services include the supply and fitting of various dispensers (eg for odour remediation), the replenishment of commodity products (such as toilet paper, hand towels and soap) and waste collection (from feminine hygiene units and nappy bins).<sup>5</sup>

2.3 Rentokil agrees with a description of washroom services as comprising of seven essential services that are supplied to maintain a typical washroom.<sup>6</sup> The seven service lines are:

- (a) cubical hygiene;
- (b) toilet tissue;
- (c) hand drying;
- (d) vending & other;
- (e) handwashing;
- (f) odour remediation; and
- (g) waste disposal.<sup>7</sup>

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<sup>4</sup> A washroom is defined as a room or space with washing and toilet facilities (also known as a bathroom, restroom or toilet).

<sup>5</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 3.1.

<sup>6</sup> Other washroom providers, such as PHS, do not define their services in the same way as Rentokil.

<sup>7</sup> There is some variation between suppliers as to how service lines are identified.

- 2.4 Rentokil and Cannon both also supply a number of washroom products, such as fragrance dispensing units. [§<]. In Rentokil's case, [§<]
- 2.5 In the UK it is a legal requirement for employers to provide washroom facilities to staff. The relevant legislation is the Workplace (Health, Safety and Welfare) Regulations 1992, Regulation 20, Sanitary conveniences.<sup>8</sup>
- 2.6 The supply of washroom services typically involves regularly scheduled service visits to a customer, during which the supplier services equipment, replenishes consumables and collects waste (from nappy or feminine hygiene units) for disposal.
- 2.7 For some consumable products, such as soap, paper towels or toilet rolls, a range of suppliers provide refills in bulk for the customer to resupply their equipment themselves, rather than the supplier replenishing the consumables. Items such as toilet paper dispensers or paper towel dispensers can be sourced from product manufacturers and distributors as well as washroom service suppliers.
- 2.8 Washroom service suppliers typically operate a branch network with fleets of vans that use a central depot or warehouse from which to restock (there are some notable exceptions to this model, described further below). Washroom service staff travel along a route visiting multiple customer sites each day, replenishing and servicing customer washrooms from the consumables and products stored in their vans (which are typically parked overnight at their home addresses).
- 2.9 In this supply model, supplier profitability is driven by maximising the number of sites visited on each route and the number of service lines provided at each site and minimising the time spent travelling between sites. This means that suppliers tend to earn higher margins if they:
- (a) sell a wide range of services to their customers;
  - (b) have a high density of customers in their areas of operation; and/or
  - (c) have branches in close proximity to their customers.
- 2.10 Rentokil told us that its service staff perform three categories of task at a client's site, with only the latter two being required on a regular basis. These categories are:<sup>9</sup>

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<sup>8</sup> [Workplace \(Health, Safety and Welfare\) Regulations 1992. Regulation 20, Sanitary conveniences](#), How many toilets should a workplace have?, Health and Safety Executive.

<sup>9</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 3.1.



- (a) the supply and fitting of various dispensers (if required);
- (b) the replenishing of commodity products (products such as toilet paper, hand towels and soap are dropped off at the customer's premises and, with the exception of odour remediation, used by cleaning staff to refill dispensers); and
- (c) waste disposal (feminine hygiene and nappies).

2.11 The Parties' approaches to the disposal of feminine hygiene products differ. Since 2016, Rentokil has provided an on-site service (OSS) whereby the service staff remove the waste bag, clean the unit and then replace the bag on the site visit.<sup>10</sup> Some suppliers refer to this method as 'liner replacement'. In contrast, Cannon predominantly provides an off-site service whereby the service staff remove the entire feminine hygiene unit for washing at the depot and exchanges it with a clean one. The Parties currently offer both types of service, but Rentokil told us that it is moving away from bin exchange. As of May 2018, approximately [X]% of Rentokil's feminine hygiene services were delivered by OSS. This was expected to reach at least [X]% by the end of 2018.

### **Customer segmentation**

2.12 We understand that there are 2.67 million businesses in the UK that are registered for VAT/PAYE purposes and which are therefore obliged to provide washrooms for their employees.<sup>11</sup> The Parties told us that their total customer base occupies only a fraction of the total number of businesses in the UK (Rentokil served [X] customers in 2017).<sup>12</sup>

2.13 In relation to customer segmentation, the Parties said that they have a continuum of customers that vary by site size, number of sites and geographic spread, with no clear delineation between customer 'categories'.<sup>13</sup> Rentokil provides washroom services in all 12 regions of the UK. [X]% of customers by value ([X]% by number) are serviced from only one branch, with the remainder served by two or more branches. [X]% of customers by value (less than [X]% by number) are served from branches in all 12 regions in the UK.<sup>14</sup>

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<sup>10</sup> [X]

<sup>11</sup> [UK business; activity, size and location 2017](#), Table 7, ONS, 3 October 2017.

<sup>12</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 4.8.

<sup>13</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 4.10. Rentokil said compare, for example, a large single site that has a contract value equivalent to a 'national' customer to a local authority contract with no regional or national dimension but with hundreds of sites, to a customer with a 'national' geographic spread but relatively fewer sites.

<sup>14</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 4.11.

Rentokil classifies certain accounts as ‘key accounts’ but said that this classification is not dependent on the number of sites that a customer has, or the number of regions that it is served in.<sup>15</sup>

- 2.14 PHS, the leading provider of washroom services in the UK by sales value and volume, told us that it serves approximately 60,000 customers of washroom services across the UK. PHS segments its customers [§<]. PHS also said that it segments its customers into industry segments [§<]. The industry segments include: [§<].<sup>16</sup>
- 2.15 Mayflower, which supplies washroom services nationally, told us that it targets certain industry segments.<sup>17</sup>

### ***Licence Requirements***

- 2.16 A washroom services supplier needs to obtain permits and licences in relation to waste collection and disposal and healthcare waste services. In England and Wales, waste policy is enforced by the Environment Agency. Hygiene waste and sanitary protection is classed as non-hazardous municipal offensive waste.<sup>18</sup>
- 2.17 Registration for a waste carrier licence with the Environment Agency is required for businesses which carry out any of the following:<sup>19</sup>
- (a) Transport waste.
  - (b) Buy, sell or dispose of waste.
  - (c) Arrange for someone else to buy, sell or dispose of waste.
- 2.18 A waste carrier licence is categorised into two tiers, upper and lower, according to criteria set out by the Environment Agency. For washroom waste disposal, washroom services suppliers need to obtain an upper tier waste carrier licence to ensure that offensive waste is collected and transported safely.<sup>20,21</sup> This requires the payment of a £154 registration fee and a further £105 to renew the licence every three years.

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<sup>15</sup> [Parties’ response to phase 1 decision](#), 30 July 2018, paragraph 4.12.

<sup>16</sup> [§<]

<sup>17</sup> [§<]

<sup>18</sup> [Classify different types of waste](#), HM Government.

<sup>19</sup> [Register or renew as a waste carrier, broker or dealer \(England\)](#), HM Government.

<sup>20</sup> [Classify different types of waste](#), HM Government.

<sup>21</sup> Non-clinical waste that is non-infectious and does not contain pharmaceutical or chemical substances, but may be unpleasant to anyone who comes into contact with it.

- 2.19 Where a washroom services supplier takes the waste back to its own premises for storage until collection for disposal, the supplier is classified as operating a waste operation and requires an additional environmental permit.<sup>22</sup> This involves a one-off cost of £7,930<sup>23</sup> for the permit, an additional £672<sup>24</sup> for the first year of operation and further annual subsistence charges.<sup>25</sup> Subsistence charges cost a few thousand pounds per site depending on associated activity and are also site-dependent based on the Environment Agency's Compliance Classification Scheme score. For example, a waste operation site with a good compliance record (band A) will pay 95% of the subsistence charge.<sup>26</sup>
- 2.20 If, however, less than 7kg of municipal offensive waste is produced (and no more than one bag in a collection period), it can be placed in a refuse sack or wheeled bin with other municipal waste.<sup>27</sup>
- 2.21 The water from cleaning vehicles and feminine hygiene units must be discharged into a sewer subject to a consent issued by the local water company. We understand the permits in relation to this typically cost less than £1,000, but are limited to the activity at the relevant location.<sup>28</sup>
- 2.22 In respect of vehicles transporting offensive waste, no particular permits are required so long as the vehicle is below a certain weight; vehicles over 3.5 tonnes must be driven by a driver with a commercial transport operating licence.<sup>29</sup>
- 2.23 The transfer and storage of medical waste is subject to more stringent regulations than washroom waste. In addition to the above licence requirements, each branch that acts as a transfer station for medical waste must have a responsible person who has obtained a Certificate of Technical Competence (CoTC) to demonstrate ability to manage risks associated with handling medical waste. The CoTC has to be renewed every two years.
- 2.24 Commercial vehicles that carry dangerous goods, which include medical waste, must also comply with the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR). Drivers carrying

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<sup>22</sup> A site where waste is recycled, stored, treated or disposed of.

<sup>23</sup> [§<]

<sup>24</sup> [Subsistence charges](#), Environmental permitting charges guidance, Environment Agency, 1 August 2018.

<sup>25</sup> The Environment Agency covers the cost of regulating an activity through annual subsistence charges

<sup>26</sup> [Subsistence charges](#), Environmental permitting charges guidance, Environment Agency, 1 August 2018.

<sup>27</sup> [Classify different types of waste](#), HM Government.

<sup>28</sup> [§<]

<sup>29</sup> [§<].

dangerous goods must obtain ADR training and licence, which costs between £300-£500 and must be renewed every five years.<sup>30</sup>

- 2.25 The licensing and permit requirements in Scotland, Wales and Northern Ireland are broadly equivalent to those outlined above.

## **Healthcare waste collection services and mats services**

- 2.26 The Parties also overlap in the supply of healthcare waste collection services and mats services.
- 2.27 Healthcare waste collection services are route-based services which include the collection and disposal of infectious clinical waste, non-infectious clinical waste, pharmaceutical waste services, dental waste services and sharps disposal services.
- 2.28 Mats services include indoor and outdoor mats which help prevent trips and slips.

## **3. The Parties and other key suppliers of washroom services**

### **Rentokil**

- 3.1 Rentokil is a global hygiene service and commercial pest control provider. In the UK, Rentokil provides washroom services, healthcare waste collection services, mats services and pest control services. Rentokil is listed on the London Stock Exchange and is a constituent of the FTSE 100 Index.
- 3.2 Rentokil currently operates in 70 countries and approximately 90% of its revenues are derived outside of the UK.<sup>31</sup> Rentokil's business has three broad operating segments: pest control; hygiene;<sup>32</sup> and protect and enhance.<sup>33</sup>
- 3.3 Rentokil is the parent company of Rentokil Initial UK Limited, which is the UK entity that comprises all of Rentokil's UK washroom services business, including mats. This business also provides some pest control activities, but

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<sup>30</sup> ADR licence [website](#).

<sup>31</sup> [About us](#), Rentokil.

<sup>32</sup> This category includes provision and maintenance of products such as air fresheners, sanitisers, feminine hygiene units, hand dryers, paper and linen towel dispensers, soap dispensers and floor protection mats.

<sup>33</sup> The four businesses which are included in this category are: Workwear (France); Ambius (Global); Property Care (UK); and Dental Services (Germany and Sweden).

does not provide healthcare waste services. The healthcare waste business of Rentokil sits in a separate company, Initial Medical Services Limited.

- 3.4 The turnover of Rentokil for the year ended 31 December 2017 was approximately £2.4 billion worldwide (£2.2 billion in 2016), of which £245.6 million was generated in the UK and Ireland (£235.8 million in 2016).<sup>34</sup> Rentokil's total operating profit for 2017 was £292 million (£232 million in 2016).
- 3.5 Rentokil's global washroom business, which is branded 'Initial Hygiene' (which includes mats) grew by 7.6% in 2017, of which 2.1% was organic growth and the remainder through acquisition. In the same year, Rentokil's UK and Ireland hygiene division reported sales of £[X] million. The UK and Ireland constitute approximately [X]% of Rentokil's global hygiene business.
- 3.6 In the UK, Rentokil has [X] branches, of which [X] are used for washroom and mats services, and [X] are used for healthcare waste collection services.
- 3.7 Table 1 below sets out the overall performance of Rentokil's UK washroom business for the 2017 financial year.

**Table 1: Rentokil financial results for UK washrooms (FY2017)**

	£'000
<b>Turnover</b>	[X]
Total processing, service and distribution costs	[X]
<b>Gross profit</b>	[X]
%	[X]
Total sales and marketing costs	[X]
Total administration and overhead costs	[X]
Other	[X]
<b>Profit before interest</b>	[X]

Source: Rentokil

- 3.8 Rentokil's largest service line by revenue is waste disposal, the majority of which is feminine hygiene. It also contributes approximately £[X] of the total gross margin for Rentokil's UK washroom services business. The second highest gross margin contribution is odour remediation, at £[X].<sup>35</sup>

<sup>34</sup> This includes revenue from discontinued operations. Continuing operational revenue was £2.1 billion.

<sup>35</sup> [X]

## Cannon

- 3.9 Cannon was formerly a multinational subsidiary of the global facilities management (FM) firm OCS Group Limited (OCS Group), which sold its hygiene services business through an auction in 2017. Cannon includes the washroom services business as well as the mats and healthcare waste business.
- 3.10 The business of Cannon UK was incorporated in October 2017 after being created by OCS Group specifically for the purpose of its sale. Cannon is yet to file any financial accounts of its own. Cannon Hygiene UK includes the Cannon washroom services business as well as its mats and healthcare waste business'
- 3.11 Cannon generated £[X] million of revenue in the year ended 31 March 2017. Its UK turnover for that year was approximately £[X] million, of which £[X] million was in hygiene services. In the UK, Cannon's washrooms business is therefore approximately half the size of Rentokil's hygiene business.
- 3.12 In the year ended 31 March 2017, Cannon Hygiene UK generated an EBITDA profit of approximately £[X]million but taking depreciation and amortisation into account made an estimated net loss of £[X].<sup>36</sup>
- 3.13 Medical waste disposal and mats services make up £[X]million of the above EBITDA (medical waste £[X]million and mat services £[X]million). The remaining £[X]million of EBITDA relates to Cannon's UK washrooms business.
- 3.14 Cannon was not able to provide an accurate analysis of service line profitability but we have been provided with an estimate of the profit and loss for Cannon's UK washrooms business, which is set out in Table 2.

**Table 2: Cannon financial results for UK washrooms (FY2017)**

	£'000
<b>Turnover</b>	[X]
Variable costs	[X]
<b>Gross margin</b>	[X]
%	[X]
Fixed operating costs	[X]
<b>Gross profit</b>	[X]
%	[X]
Total overheads	[X]

<sup>36</sup> [X].

Source: Cannon

Note: Cannon's financial results in Table 2 are presented on a different basis to Rentokil's financial results in Table 1. The two tables are therefore not comparable.

- 3.15 As for Rentokil, feminine hygiene is Cannon's largest service line. Information provided to us by Cannon shows that feminine hygiene constitutes [X]% (£[X]million out of £[X]million) of Cannon's total UK washroom services revenue in 2017. By revenue, feminine hygiene is more than three times larger than the next largest service line, air fresheners, which account for [X]% of revenue (£[X]million).<sup>37</sup>
- 3.16 Cannon has [X] branches in the UK, all of which are used for washroom services.

## Other key suppliers of washroom services

### PHS

- 3.17 PHS Group is the leading hygiene services provider in the UK, Ireland and Spain. PHS has global turnover of over £269 million<sup>38</sup> with UK turnover, not limited to washroom services being approximately £[X].<sup>39</sup> PHS has no turnover outside of Europe. In relation to washroom services, PHS's revenue was £[X] in the financial year ended 31 March 2017 (of which £[X] was in relation to waste disposal).
- 3.18 In recent years PHS has focused its strategy on its washrooms business, selling off non-core operations such as its storage business, Data Solutions, which was sold to Restore for £83 million in 2016.<sup>40</sup>
- 3.19 In the financial year ended 31 March 2017 PHS made EBITDA<sup>41</sup> of £63 million from continuing operations (2016 £56 million). Hygiene-related activities accounted for over 90% of EBITDA.<sup>42</sup> Once depreciation, amortisation and interest are taken into account, PHS is loss making. PHS made a net loss for the financial year ended 31 March 2017 of £52 million<sup>43</sup> (2016 £56 million loss).

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<sup>37</sup> [X]

<sup>38</sup> [PHS Group Annual Report 2017](#).

<sup>39</sup> [X]

<sup>40</sup> [PHS Group Annual Report 2017](#).

<sup>41</sup> Before exceptional items.

<sup>42</sup> [PHS Group Annual Report 2017](#).

<sup>43</sup> Loss from continuing operations.

- 3.20 PHS told us that it had seen a reduction in revenue.<sup>44</sup> [REDACTED].
- 3.21 In terms of washroom services, PHS operates a network of 3,000 personnel, providing services to 90,000 customers at more than 300,000 locations.<sup>45</sup> In the UK, it operates from [REDACTED] locations for washroom services.

### ***Cathedral Leasing Limited***

- 3.22 Cathedral Leasing Limited (Cathedral) is a washroom hygiene specialist based in Tamworth, employing over 200 staff. Cathedral started as a regional supplier but has gradually grown to deliver services across most of the UK.<sup>46</sup>
- 3.23 In 2017, Cathedral had a turnover of £13 million.<sup>47,48</sup> Cathedral told us that its unaudited turnover for 2018 is [REDACTED].<sup>49</sup> Cathedral's accounts show that turnover has increased 5% in both the last two financial years. It made a profit for the financial year ended 2017 of £1.2 million (£0.9 million in 2016).
- 3.24 Cathedral operates a number of regional branches,<sup>50</sup> for example [REDACTED].
- 3.25 Cathedral operates a different supply model from that of the Parties and PHS, using fewer depots and supplying many service staff directly. [REDACTED].<sup>51</sup>
- 3.26 Cathedral has customers in all 12 UK regions. Save for one UK region and a very limited number of post codes elsewhere, it serves customers directly. In areas that it does not serve directly, it subcontracts its washroom services to other washroom service providers.<sup>52,53</sup> The majority of Cathedral's subcontracting [REDACTED].<sup>54</sup>

### ***Mayflower Washroom Solutions***

- 3.27 Mayflower Washroom Solutions (Mayflower) is headquartered in Woolwich, London, and has five regional distribution centres across the UK (Woolwich,

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<sup>44</sup> [REDACTED]

<sup>45</sup> [PHS washroom hygiene website](#).

<sup>46</sup> Cathedral Leasing Holdings Limited is the parent company.

<sup>47</sup> Cathedral Leasing Limited Annual Accounts 2017.

<sup>48</sup> Includes mats and laundry services. Cathedral was unable to separate out these revenues further.

<sup>49</sup> [REDACTED]

<sup>50</sup> [REDACTED][REDACTED]

<sup>51</sup> [REDACTED]

<sup>52</sup> [REDACTED]

<sup>53</sup> [REDACTED]

<sup>54</sup> [REDACTED]



Swindon, Corby, Manchester, Motherwell) and one in Ireland. Mayflower offers services to various sectors via a fleet of over 65 liveried vehicles.<sup>55</sup>

- 3.28 In addition to the full range of washroom services, Mayflower also provides laundry services and hires out specialist cleaning equipment. In the most recent financial year, Mayflower's revenue from providing washroom services was [§<], which represents roughly [§<]% of its total turnover.<sup>56</sup>
- 3.29 Mayflower told us that it supplies across the UK. Mayflower's expansion into other regions in the UK has been achieved through a mix of acquisition of regional competitors and the opening of new regional sites. Mayflower told us that its growth had been driven by customer demand. Mayflower is currently in the process of opening a brand new site in the Birmingham area.

### ***Other main providers of washroom services***

- 3.30 Hygienic Concepts provides a range of washroom services across the UK. Zenith Hygiene Group is an independent manufacturer of cleaning and hygiene products active across the UK, but outsources most of its waste disposal services to [§<]. There are a large number of other washroom suppliers active at the regional and local level. Furthermore, some FM companies and cleaning companies can supply washroom services, although a number of elements of these services are typically outsourced to washroom service providers.
- 3.31 In relation to waste disposal from washrooms, it is possible for waste collection companies to transfer and dispose of waste. In the supply of washroom services other than waste disposal, a range of other suppliers are active, including distributors and product manufacturers.
- 3.32 We consider the range of suppliers of washroom services further in Chapters 7 and 8.

## **4. The transaction and relevant merger situation**

### **The transaction**

- 4.1 On 21 December 2017, the Parties entered into a Sale and Purchase Agreement, which included the acquisition of various hygiene services in

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<sup>55</sup> [Mayflower website](#).

<sup>56</sup> [§<]

Austria, India, Ireland, Portugal, South Africa, Spain, Thailand, the UK and New Zealand. In the UK the transaction completed on 1 January 2018.

- 4.2 Internal documents state that Rentokil valued the entire business at £[REDACTED] million but [REDACTED].
- 4.3 Rentokil paid a consideration of £[REDACTED].<sup>57</sup>
- 4.4 In the UK, Rentokil Initial UK Limited, a subsidiary of Rentokil Initial, acquired 100% of the shares of Cannon Hygiene Limited UK from OCS Group.<sup>58</sup> The sale also included Cannon Hygiene International Limited, which is responsible for development, marketing and procurement of the dispensers and certain key consumables.<sup>59</sup> [REDACTED] Rentokil did not make a formal public announcement or issue a press release in relation to the Merger as it was not required to under listing rules. Rentokil told us that the Merger had not been notified in any jurisdiction.
- 4.5 [REDACTED].<sup>60</sup> Approximately [REDACTED]% of Rentokil's UK revenue is tied to OCS Group.

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<sup>57</sup> [REDACTED]  
<sup>58</sup> [REDACTED]  
<sup>59</sup> [REDACTED].  
<sup>60</sup> [REDACTED].

**Figure 1: Post completion company structure [REDACTED]**

[REDACTED]

Source: Rentokil

## **The rationale for the transaction**

### ***OCS Group's rationale for selling Cannon***

4.6 OCS Group told us that Cannon was sold principally for the following reasons:<sup>61</sup>

- (a) Cannon was not delivering financial returns in line with what OCS Group understood its competitors were delivering.
- (b) Cannon's lack of scale in many markets where customer density is crucial to having a competitive cost base.
- (c) OCS Group [REDACTED].
- (d) OCS Group had concluded that Cannon could best be developed as a standalone business under new ownership [REDACTED].
- (e) The sale of Cannon [REDACTED].

### ***Rentokil's rationale for purchasing Cannon***

4.7 [REDACTED]:

- (a) [REDACTED].
- (b) [REDACTED].
- (c) [REDACTED]
- (d) [REDACTED].<sup>62</sup>

4.8 Rentokil estimated that the acquisition of Cannon will add around £[REDACTED] of global hygiene revenues<sup>63</sup> and, in the UK, will allow for the combination of two

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<sup>61</sup> [REDACTED]

<sup>62</sup> [REDACTED]

<sup>63</sup> [Rentokil Annual Report 2017](#).

national players.<sup>64</sup> Total synergies are expected to be around £[redacted]million over three years,<sup>65</sup> of which £[redacted]million are within the UK.<sup>66</sup>

4.9 [redacted] Rentokil expects to be able to achieve synergies by [redacted].<sup>67</sup> Rentokil also told us that significant synergies were forecast [redacted].<sup>68</sup>

## Relevant merger situation

4.10 Pursuant to section 35 of the Act and our terms of reference (see Appendix A), we are required to investigate and report on two statutory questions: whether a relevant merger situation (RMS) has been created and if so, whether the creation of that situation has resulted or may be expected to result in an SLC within any market or markets in the UK for goods or services.

4.11 Section 23 of the Act provides that a RMS has been created if two or more enterprises have ceased to be distinct within the statutory period for reference<sup>69</sup> and either the turnover test or the share of supply test is satisfied.<sup>70</sup>

4.12 We found that both Rentokil and Cannon provide washroom services on a commercial basis. We are satisfied that Rentokil and Cannon are businesses whose activities are enterprises for the purposes of the Act.<sup>71</sup>

4.13 As a result of the Merger, Rentokil and Cannon have been brought under common ownership (and control) and have thus ‘ceased to be distinct’ for the purposes of the Act.<sup>72</sup>

4.14 The Merger completed on 1 January 2018 and the CMA was first informed about the Merger on 29 January 2018.<sup>73</sup> The deadline for the CMA to announce its decision whether to refer the Merger for a Phase 2 investigation was 18 June 2018. On 18 June 2018, this deadline was extended<sup>74</sup> until 9

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<sup>64</sup> [redacted]

<sup>65</sup> [redacted]

<sup>66</sup> [redacted]

<sup>67</sup> [Rentokil Annual Report 2017](#).

<sup>68</sup> [Parties’ response to phase 1 decision](#), 30 July 2018, paragraph 2.3.

<sup>69</sup> [Section 23](#) and [section 24](#) of the Act.

<sup>70</sup> [Section 23](#) of the Act provides that the value of the turnover in the UK of the enterprise being taken over must exceed £70 million or, in relation to the supply of goods or services, at least one quarter of all such goods or services that are supplied or acquired in the UK or a substantial part of the UK are supplied by or to one and the same person.

<sup>71</sup> [Section 129\(1\)](#) and [\(3\)](#) of the Act.

<sup>72</sup> [Section 26](#) of the Act.

<sup>73</sup> [redacted]. See [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.44 on how the CMA interprets ‘material facts’ relevant for the commencement of the four-month statutory period as set out in section 24 of the Act.

<sup>74</sup> Under section 25 of the Act.

July 2018 to provide Rentokil with the opportunity to offer undertakings in lieu of a reference to Phase 2.

- 4.15 On 25 June 2018, Rentokil informed the CMA that it would not offer such undertakings and the reference for a Phase 2 investigation was made on 28 June 2018. We therefore concluded that Rentokil and Cannon ceased to be distinct within the statutory timeframe.
- 4.16 The value of the turnover in the UK of Cannon did not exceed £70 million for the year ended 31 March 2017 and the turnover test was therefore not satisfied.
- 4.17 The share of supply test is satisfied where a merger creates or enhances a share of supply of goods or services in the UK of any description of at least 25%.<sup>75</sup>
- 4.18 The Parties overlap in the supply of washroom services to customers in the UK. For the purposes of the share of supply test, we estimated the Parties' share of supply of washroom specialists in the UK that we understand to be national based on estimates provided by the Parties of actual revenue.<sup>76</sup> Using those estimates, we calculated that the Parties account for a share of supply of [X]%, with the Merger accounting for an increment of [X]%. We are therefore satisfied that the share of supply test is met.

### ***Conclusion on the relevant merger situation***

- 4.19 We concluded that the Merger has resulted in the creation of a relevant merger situation as both statutory tests were met.

## **5. The counterfactual**

- 5.1 Before we turn to the effects of the Merger we need to determine what we would expect the competitive situation to be absent the Merger. This is called the 'counterfactual'.<sup>77</sup> The counterfactual is a benchmark against which the expected effects of the merger can be assessed. The counterfactual takes events or circumstances and their consequences into account to the extent that they are foreseeable.<sup>78</sup>

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<sup>75</sup> [Section 23](#) of the Act.

<sup>76</sup> For the purpose of the share of supply test, washroom specialists are defined as suppliers offering the full range of washroom services (including, in particular, waste disposal and odour remediation). Facilities management companies, cleaning companies and office material suppliers are excluded.

<sup>77</sup> [Merger Assessment Guidelines](#), paragraph 4.3.1.

<sup>78</sup> [Merger Assessment Guidelines](#), paragraph 4.3.2.

5.2 The CMA may examine several possible scenarios against which to assess the competitive effects of a merger. One of those may be the continuation of the pre-merger situation; but ultimately only the most likely scenario will be selected as the counterfactual.<sup>79</sup>

## The views of the Parties and third parties

5.3 The CMA's phase 1 decision to refer the Merger for further investigation considered the pre-Merger conditions of competition to be the relevant counterfactual.<sup>80</sup> The phase 1 Decision noted that neither Rentokil nor third parties put forward arguments relating to the counterfactual. The Parties have not made any representations in relation to the counterfactual during our inquiry, nor have we received any representations from third parties in this regard.

## CMA assessment

5.4 OCS Group ran an auction to sell the Cannon washroom, mats and healthcare waste businesses in nine countries. Absent the sale of OCS Group' Cannon business to Rentokil, we therefore consider that OCS Group would have likely sold Cannon to another purchaser.

5.5 There were [redacted].<sup>81</sup> When considering the prospects for alternative purchasers, we take into account the prospects of alternative offers for the business above liquidation value.<sup>82</sup> We do not consider any of the alternative bids to be below liquidation value.

5.6 Of the [redacted] alternative purchasers, none have a presence in the UK washrooms sector and consequently we do not consider that any of the alternative purchasers would have given rise to competition concerns.

5.7 We reviewed the rationales of the alternative purchasers to consider if Cannon's business plans would have diverged materially from pre-merger conditions of competition under alternative ownership. We did not find that Cannon's strategic direction or operations would have been materially different from the pre-Merger scenario under any of the alternative purchasers.

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<sup>79</sup> [Merger Assessment Guidelines](#), paragraph 4.3.6.

<sup>80</sup> See paragraph 32 of the full text of the Phase 1 Decision on the [case page](#).

<sup>81</sup> [redacted]

<sup>82</sup> [Merger Assessment Guidelines](#), paragraph 4.3.17.

- 5.8 Given that none of the alternative purchasers raised competition concerns and would not, in our view, have altered Cannon’s strategic direction in the short to medium term, we do not need to specify which of the alternative bidders would have been most likely to acquire Cannon absent its sale to Rentokil.
- 5.9 In summary, we did not find any evidence to indicate that the pre-Merger competitive conditions would not prevail absent the Merger. We therefore analyse the competitive effects of the Merger against the pre-Merger conditions of competition.

## **6. Market definition**

- 6.1 The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger.<sup>83</sup> Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement.
- 6.2 The boundaries of the market do not determine the outcome of the CMA’s analysis of the competitive effects of the merger in a mechanistic way. The CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.
- 6.3 In practice, the analysis of market definition and competitive effects will overlap, with many of the factors affecting market definition being relevant to the assessment of competitive effects and vice versa. Therefore, market definition and the assessment of competitive effects should not be viewed as two distinct analyses.<sup>84</sup>
- 6.4 As described in Chapter 2, the Parties overlap in the supply of washroom services, which may be categorised into seven service lines: waste disposal; odour remediation; cubical hygiene; toilet tissue; hand drying; vending; and hand washing.
- 6.5 We examined two dimensions of market definition: the product market and the geographic market. For each, we set out our approach to the assessment, the Parties’ submissions, a summary of the evidence that we received from the Parties and from third parties and our assessment and conclusions.

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<sup>83</sup> [Merger Assessment Guidelines](#), paragraph 5.2.1-5.2.5.

<sup>84</sup> [Merger Assessment Guidelines](#), paragraph 5.1.1.

## Product market definition

### *Approach to assessing product market definition*

- 6.6 The relevant product market is identified primarily by considering the response of customers to an increase in the price of one of the products of the merger firms.<sup>85</sup> The hypothetical monopolist test provides a conceptual framework for defining relevant markets.<sup>86</sup>
- 6.7 We examined whether the product market:
- (a) included all washroom services, or if certain services were segmented (which included an assessment of the extent of competition from different types of supplier for each service); and
  - (b) whether customers were segmented according to whether they require supply across a number of regions in the UK or require supply on a local or regional basis.

### *Types of washroom products and services*

- 6.8 We considered whether the product market should be segmented by type of washroom service.

### *The views of the Parties*

- 6.9 The Parties told us that the relevant market was the supply of ‘a wide variety of washroom equipment and consumables, together with their subsequent servicing and restocking’.<sup>87,88</sup>
- 6.10 The Parties submitted it was not appropriate to define separate markets by type of washroom services, because:<sup>89</sup>
- (a) customers demand a service from washroom solutions suppliers, and this service is ‘identical’ for all types of washroom products;

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<sup>85</sup> [Merger Assessment Guidelines](#), paragraph 5.2.6-5.2.7. There are also circumstances where the CMA may aggregate several narrow relevant markets into one broader market on the basis of considerations about the response of suppliers to changes in prices.

<sup>86</sup> The hypothetical monopolist delineates a market as a set of substitute products over which a hypothetical monopolist would find it profitable to impose a small but significant non-transitory increase in prices (SSNIP). The test is described in detail in paragraphs 5.2.10–5.2.20 of the [Merger Assessment Guidelines](#).

<sup>87</sup> [Parties’ response to phase 1 decision](#), 30 July 2018, paragraphs 1.4 and 3.3.

<sup>88</sup> The Parties said that this market definition was applied by the European Commission in case M.8399, [CWS-boco/Rentokil Initial Target Business](#), European Commission, 7 June 2017.

<sup>89</sup> [3<]



- (b) some 'larger customers' may obtain a 'cost-effective solution from a single supplier', and may want a single point of contact, a single invoice to pay, and standardisation of services across multiple sites. However, most customers obtain services from multiple providers; and,
- (c) discounts are not an important incentive for customers to bundle services.

#### *Evidence on the demand for washroom services*

6.11 In order to determine the relevant product market, we looked at how customers purchased washroom services.

6.12 We assessed the following evidence:

- (a) The type of washroom services purchased by the Parties' customers.
- (b) The number of washroom services purchased by the Parties' customers.
- (c) The pricing of washroom services.
- (d) How customers purchase washroom services.

#### *The type of washroom services purchased by the Parties' customers*

6.13 We examined evidence from the Parties of the purchasing patterns of their customers and found that:

- (a) [X]% of Rentokil's customers and [X]% of Cannon's customers purchased waste disposal from each of the Parties in 2017. The second most commonly bought service is odour remediation, which was purchased by [X]% of Rentokil customers and [X]% of Cannon customers (proportions weighted by annual washroom services portfolio value).<sup>90</sup>
- (b) Waste disposal is the top service for both Rentokil and Cannon by revenue, accounting for [X]% and [X]%, respectively, of their UK washroom service revenue in 2017.<sup>91</sup>

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<sup>90</sup> [X]The proportion is similar across customer sizes and sectors, including facilities management, public and private frameworks and customers who procure directly.

<sup>91</sup> [X]

- (c) Most customers purchase waste disposal from the Parties with at least one other service.<sup>92</sup>
- (d) Most FM customers and public and private frameworks purchase waste disposal.<sup>93</sup>

6.14 This evidence showed that waste disposal is the leading service that customers purchase, and that waste disposal tends to be purchased together with one or more other washroom services.

*The number of washroom services purchased by the Parties' customers*

6.15 We examined the number of washroom services purchased by customers in order to determine whether it may be appropriate to consider competition between suppliers of a range of washroom services together or, if customers buy each service individually, whether it was appropriate to assess competition within each service as a distinct market.

6.16 The Parties' customer purchasing evidence showed that:

- (a) most of the Parties' customers purchased a number of washroom services from each merger Party<sup>94</sup> with the unweighted average number of services purchased in 2017 was [redacted] for Rentokil and [redacted] for Cannon;<sup>95</sup>
- (b) those customers who were present in a wider geography tended to purchase more services and those in a narrower geography tended to purchase fewer services;<sup>96</sup>

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<sup>92</sup> In 2017, only [redacted]% of Rentokil's customers and [redacted]% of Cannon's customers purchased waste disposal alone without other services from the same party.

<sup>93</sup> We describe these types of customer in further detail in the customer segmentation section further below.

<sup>94</sup> [redacted] Customers were identified by 'group account' name, except for framework organisations (whose end customers are typically independent local or regional users).

<sup>95</sup> These are simple averages; similarly below.

<sup>96</sup> This average appears to be driven by smaller customers, which tend to purchase fewer services. The Parties estimated that large national or multi-regional multi-site (LNMM) customers were delivered on average [redacted] services per site from Rentokil and [redacted] per site from Cannon, but we note that: (i) these estimates are based on delivery per site, rather than per customer; and (ii) the Parties' definition of LNMM customers include frameworks, buying groups or symbol stores, which are made up of a large number of small users that typically require fewer services. The Parties define 'LNMM' customers as customers identified by 'group account' with over 100 sites and served by either Party's branches in more than one region. [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 3.13.

- (c) customers with sites located in 11 or 12 regions bought three to four services on average, and local and regional customers (in a single region) bought two services on average;<sup>97,98</sup>
- (d) customers purchased a range of services – across all customer types, [X]% of Rentokil customers and [X]% of Cannon customers purchased seven services,<sup>99</sup> and [X]% and [X]%, respectively, purchased at least five services;<sup>100</sup> and
- (e) [X]% of Rentokil customers and [X]% of Cannon customers purchased one service only.

6.17 Evidence from competitors was broadly consistent with the Parties' evidence. PHS estimated that its 'key account' customers tended to buy [X] services.<sup>101</sup> [X] told us that while it was common for customers to use multiple suppliers for different services, it was more efficient to supply more than one service at a customer's site.<sup>102</sup>

#### *The pricing of washroom services*

6.18 The Parties told us that washroom services were typically priced per service, per unit and according to frequency of service. For equipment (eg hand dryers), the Parties said that there is a cost for installation and for rental or purchase. Both Rentokil and Cannon said that they offered 'package' prices for certain customers,<sup>103</sup> but that these sales are negligible.<sup>104</sup>

6.19 Third party submissions and our review of the Parties' price lists and sample contracts with their top customers<sup>105</sup> confirmed the Parties' evidence that most washroom services were priced per service, except for FM companies which supplied washroom services as part of an integrated offer.

6.20 We commissioned a customer survey from GfK, which was published alongside our provisional findings report (the GfK survey).<sup>106</sup> The GfK survey

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<sup>97</sup> There are 12 regions in the UK: North East; North West; Yorkshire and The Humber; East Midlands; West Midlands; East of England; London; South East; South West; Scotland; Wales and Northern Ireland. Considering Great Britain (GB) alone, there are 11 regions (ie 12 UK regions minus Northern Ireland). Throughout this report, we use the term 'region' to refer to these UK regions.

<sup>98</sup> Customer identified at a 'group account' level.

<sup>99</sup> Percentage by value.

<sup>100</sup> In this regard, we note that some services – for example, vending – are not essential in a washroom.

<sup>101</sup> [X]. We note that PHS's definition of services is not necessarily directly comparable to the Parties'. [X]

<sup>102</sup> [X]

<sup>103</sup> [X]

<sup>104</sup> Rentokil estimates that only [X]% of customer sites purchased based on a package price in 2017. Cannon estimates this figure to be [X]%. [X]

<sup>105</sup> [X]

<sup>106</sup> GfK survey on the [case page](#).

showed that 57% of the Parties' customers considered the price for a package of washroom services and 37% considered the price for each service individually when looking for a provider,<sup>107</sup> indicating that whilst washroom services were priced individually, some customers considered total spend across different washroom services when they chose a provider.

- 6.21 We concluded that the 'per service' pricing structure gave customers the flexibility to purchase washroom services from multiple suppliers, or a range of services from a single supplier, if they wished to benefit from any economies of scope.

#### *Customer purchasing preference*

- 6.22 We set out the evidence from customers in Appendix E. That evidence showed that customers purchased waste disposal from washroom specialists. Some customers purchased a range of washroom services directly from a single supplier as it was easier to manage a single contract and/or to receive volume discounts<sup>108</sup> and FM customers and some other customers used multiple suppliers for different washroom services. For example, they tended to purchase consumables and equipment from product distributors, usually as part of a wider contract for other non-washroom products (such as kitchen and cleaning materials).<sup>109</sup>

#### *Our assessment of the demand for washroom services*

- 6.23 We found that customers purchased waste disposal on a standalone basis, or as part of other washroom services. Evidence from the Parties showed that waste disposal is the Parties' lead service line, and most of the Parties' customers purchased waste disposal, with many purchasing waste disposal as part of other washroom services.
- 6.24 Based on this evidence we found that if the price of waste disposal services were to increase by a small amount, customers would be unlikely to switch to

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<sup>107</sup> Of customers which buy more than one service from the Parties, 57% look for one provider that offers all washroom services they need and think about the price for the package of services and 37% either look for a provider for each service individually or look for one provider that offers all services but think about the price for each service individually. GfK report, Chart 6. Similar proportions are shown for each of Rentokil, Cannon, single- and multi-site customers although the sample sizes for Cannon, single- and multi-site customers are small so these results should be treated with caution. The GfK survey primarily covers regional and local customers (see GfK report, chart 1). The sample sizes for customers buying in two regions and more than two regions are very small (In total, there were 56 customers requiring washroom services in more than one region in the survey sample. Of those, 29 required washroom services in two regions, 16 in 3-7 regions, one in 8-10 regions and 10 in 11-12 regions. Only six customers in the survey sample had more than 100 sites requiring washroom services.

<sup>108</sup> [redacted].

<sup>109</sup> [redacted].

other services, because other services are not substitutes for waste disposal. Similarly, customers would be unlikely to switch to another supplier that does not offer waste disposal services, because it would not be able to satisfy the customers' demand for waste disposal either on a standalone basis or as part of a wider washroom services.<sup>110</sup>

### *The supply of washroom services*

6.25 In this section, we consider the supply of different washroom services and their competitive conditions.<sup>111</sup>

6.26 We consider the following evidence:

- (a) Conditions of competition between washroom specialists.
- (b) Current or potential suppliers of waste disposal services.
- (c) The Parties' internal documents.

### *Conditions of competition between washroom specialists*

6.27 The Parties are washroom specialists providing a full range of washroom services using their in-house capability. Other washroom specialists also told us that they supply a full range of services.<sup>112</sup>

6.28 The Parties and other suppliers told us where they supply multiple services to a customer, they do so during a single visit using the same resources (such as the same vehicle and staff). Washroom specialists may therefore be able to quickly shift capacity between different washroom services, which may support a market definition of 'washroom services' for these suppliers.

### *Suppliers of waste disposal services*

6.29 As waste disposal is the lead service line for customers, we examined whether the conditions of competition for waste disposal might be different from other services.

6.30 In order to undertake washroom waste disposal, suppliers need to obtain an upper tier waste carrier licence and to provide a full audit trail of documentation (see paragraphs 2.16 to 2.25). The Parties told us that this

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<sup>110</sup> We further assess competition from different supplier types in the competitive assessment.

<sup>111</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.

<sup>112</sup> Submissions from PHS, Cathedral, Mayflower and eight other washroom suppliers.

licence is 'quick and straightforward to obtain'.<sup>113</sup> However, we have not identified any examples of suppliers, other than washroom specialists and a limited number of healthcare waste companies,<sup>114</sup> offering waste disposal services using their own licences.

6.31 We examined the extent to which different types of supplier currently supply, or would be able to quickly start supplying, waste disposal services for washrooms in the event of a small increase in price. We found that:

- (a) Product manufacturers and distributors deliver products and do not currently supply waste disposal. It is unlikely that they would have the ability to start supplying waste disposal services as they currently supply products rather than services and do not have the capability to transfer and dispose of waste.
- (b) FM companies currently outsource waste disposal to washroom services suppliers.<sup>115</sup> FM companies told us<sup>116</sup> that it is unlikely that they would have the ability and incentive to quickly start supplying waste disposal services. This is because waste disposal (and washroom services more generally) make up only a small part (1-3%) of their businesses and it is more efficient to outsource. Moreover, FM companies are site-based businesses and do not have a route-based infrastructure required to transfer and dispose of waste, nor do they currently have the necessary licence to do so.
- (c) There is evidence that two healthcare waste collection companies ([redacted]) currently supply waste disposal in-house.<sup>117</sup> Two other general or healthcare waste collection companies outsource the service to a washroom specialist and have told us that they have no plans to provide washroom waste disposal services.<sup>118</sup>

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<sup>113</sup> Parties' response to phase 1 decision, 30 July 2018, paragraph 5.51.

<sup>114</sup> [redacted]

<sup>115</sup> We note that AM Services, an FM company, owns a washroom service provider (Pristine Hygiene) which supplies waste disposal in the North West. Other than AM Services, we are not aware of any FM companies which self-deliver waste disposal (whether using on-site servicing or bin exchange).

<sup>116</sup> Chapter 7, section on competition from FM companies.

<sup>117</sup> [redacted] told us that it supplies washroom services in Scotland. [redacted] said it offers waste disposal to some [redacted]

<sup>118</sup> A healthcare waste company, Medisort, told us that waste disposal from washrooms is a small part of the business that it outsources to a washroom services supplier. Medisort said that the waste collected by washroom specialists is disposed of by Medisort, if required. [redacted], a waste collection company, said that it is a disposal outlet to the companies that supply washroom services rather than a supply of washroom services to customers. See Chapter 7.

(d) Cleaning companies do not self-deliver waste disposal using their own licenses but tend to outsource.<sup>119,120</sup>

(e) Self-supply by customers supplied directly by washroom service providers was unlikely because of the licencing requirements, unless they had very limited volumes of waste that could be disposed of in general refuse.<sup>121</sup>

6.32 This evidence and submissions from other suppliers showed that there are few alternatives to washroom specialists for waste disposal services other than a limited number of healthcare waste collection companies.<sup>122</sup> Whilst the fees required to obtain a licence to supply waste disposal may not be prohibitive, in light of the evidence above, we found that other suppliers were not likely to have both the ability and the incentive to quickly start providing this service.

#### *Evidence from the Parties' internal documents*

6.33 The Parties' internal documents indicated that the Parties consider waste disposal as a core category distinct from other washroom services, and competitive conditions for waste disposal to be different from those for other washroom services. The documents show that the Parties monitored competition for waste disposal services more closely than for 'general washroom services'.

(a) [REDACTED].<sup>123</sup>

(b) [REDACTED].<sup>124</sup>

(c) [REDACTED].<sup>125</sup>

(d) [REDACTED].<sup>126</sup>

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<sup>119</sup> Rentokil told us that there is 'relatively opaque outsourcing' but it 'would not necessarily know of a cleaning company deciding to self-supply'. [REDACTED]

<sup>120</sup> Cannon told us that it is 'picking up waste on behalf of over [REDACTED] cleaning companies' and cleaning companies have 'at the moment chosen to subcontract the disposal'. [REDACTED]

<sup>121</sup> Nearly all the Parties' customers active in multiple regions which responded to the CMA said they would not self-supply waste disposal services. However, the GfK customer survey commissioned by the CMA indicates that some local customers would consider self-supplying.

<sup>122</sup> We assess the competitive constraint from waste collection companies in Chapter 7.

<sup>123</sup> According to the Rentokil document, [REDACTED]

<sup>124</sup> [REDACTED]

<sup>125</sup> [REDACTED]

<sup>126</sup> [REDACTED]

### *Conclusion on alternative suppliers for waste disposal*

- 6.34 On the basis of the Parties' internal documents, and our assessment of suppliers' submissions on their ability and incentive to offer waste disposal services in-house, we considered that the set of suppliers of waste disposal is likely to be limited to washroom specialists and a limited number of healthcare waste collection companies. In contrast, we note that several other types of supplier in addition to washroom specialists are active supplying washroom services other than waste disposal, as we further explain in Chapter 7.
- 6.35 Therefore, we found that the conditions of competition in waste disposal are likely to be different to those in other washroom services.
- 6.36 We concluded, for the reasons set out above at 6.27 to 6.31, that if, hypothetically, all suppliers of waste disposal services were to increase prices by a small amount, suppliers without a current waste disposal capability would be unlikely to quickly shift capacity to start supplying waste disposal. We developed this further in Chapter 7.

### *Conclusion in relation to types of washroom products and services*

- 6.37 We found that most of the Parties' customers purchase waste disposal, and that those customers purchasing waste disposal services often purchase other washroom services. We found that washroom specialists supply a range of washroom services, but the conditions of competition in waste disposal are likely to be different from those in other services.
- 6.38 We therefore concluded that the supply of waste disposal services is a segment within a washroom services market.
- 6.39 We consider the degree of competition faced by the Parties from different supplier types, including other washroom specialists, FM companies, waste collection companies, cleaning companies, as well as self-supply, in the competitive assessment in Chapter 7.

### ***Segmentation by types of customer***

- 6.40 The CMA's Merger Assessment Guidelines provide that relevant markets can be defined for separate groups of customers 'if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers and require separate analysis'.<sup>127</sup>

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<sup>127</sup> [Merger Assessment Guidelines](#), paragraph 5.2.28.



- 6.41 We examined whether the relevant product market was segmented by type of customer. We considered the following possible segmentations:
- (a) End customers, ie customers purchasing directly from a washroom service supplier for their premises.
  - (b) FM customers, which aggregate washroom services with other facilities services to supply an integrated FM service at third party premises.
  - (c) Public framework organisations and private framework organisations (ie buying groups), which negotiate agreements on behalf of their users.
- 6.42 In considering segmentation by customer type, we examined whether customers within the three segments above should be segmented according to their geographic coverage, ie whether customers with sites across multiple regions in the UK should be distinguished from customers with sites located within a single or limited number of regions.

#### *The views of the Parties*

- 6.43 The Parties submitted that there is ‘a whole continuum of customers that vary by site size, number of sites and geographic spread, with no clear delineation’ and that ‘the majority of customers in terms of both revenue and number are serviced from branches in only one region’.<sup>128</sup>
- 6.44 The Parties told us that ‘national customer’ is an arbitrary and undefined concept and they do not consider this customer category can be isolated.<sup>129</sup> [X].<sup>130</sup>
- 6.45 The Parties said that in the absence of a clear definition of ‘national’ customers, large, national or multi-regional, multi-site (LNMM) customers was the closest proxy.<sup>131</sup>
- 6.46 The Parties also said that ‘national account management is a sales management technique not a market definition’.<sup>132</sup>

#### *Assessment of evidence*

- 6.47 As described in paragraph 6.41, customers requiring washroom services may purchase directly for their premises from a supplier, from an FM company

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<sup>128</sup> Parties’ response to phase 1 decision, 30 July 2018, paragraph 4.10

<sup>129</sup> Parties’ response to phase 1 decision, 30 July 2018, paragraph 4.8-4.14.

<sup>130</sup> [X]

<sup>131</sup> Parties’ response to phase 1 decision, 30 July 2018, paragraph 1.9.

<sup>132</sup> Parties’ response to phase 1 decision, 30 July 2018, paragraph 1.9 and 4.12.

(typically alongside other services) or through a framework organisation. In this section, we examine whether these three categories of customer should be distinguished for the purpose of market definition. In our assessment of each customer category, we examine whether customers should be segmented by their geographic coverage (for example, due to different demand characteristics or as a result of having access to different sets of suppliers).

*End customers purchasing directly for their premises (end customers)*

6.48 In our assessment, we determine if end customers located in multiple regions had different demand characteristics, and/or have access to different sets of suppliers, compared to customers located in a single or limited number of regions.

- *Demand characteristics*

6.49 We analysed the evidence from customers and found that:

- (a) Many of the Parties' end customers requiring national service or service across multiple regions cited 'national coverage' or 'nationwide capability' as a reason they chose their current supplier and/or an important criterion when choosing a supplier. These customers told us that using a single supplier for the estate confers advantages including simplicity to manage, single pricing, consistency and cost saving. We note that the customers across the three categories (end customers, FM customers and framework organisations) which told us that national coverage is important together represented over [x%] of annual spend.<sup>133</sup>
- (b) Some national customers and those served across multiple regions also considered account management capability important (for example, a dedicated account manager or helpdesk, the ability to resolve issues, project delivery and cost optimisation).<sup>134</sup>
- (c) The GfK survey showed that customers in a single or limited number of regions do not typically consider dedicated account management as an important requirement.<sup>135</sup>

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<sup>133</sup> These customers are (with annual spend in washroom services and number of sites in parenthesis): [x] In addition, three national customers of [x] which considered both Parties in a previous tender, currently use and said they preferred a single supplier with national coverage.

<sup>134</sup> Submissions from four end customers of the Parties [x] and two customers of [x]

<sup>135</sup> Only 2% of single-site customers considered good account management as a reason for choosing the Parties. See GfK Report, Chart 12.

(d) The specifications of the Parties' top private sector tender opportunities indicate that national customers and those located across multiple regions typically require service for the entire estate; set detailed service KPIs (including complaint resolution, reliability of scheduled delivery, timeliness of service, response to enquiries, emergency callouts, etc.); and demand a dedicated account manager as a point of contact on commercial and technical issues.<sup>136,137</sup>

6.50 We found that many customers requiring a national service (ie in the 12 regions of the UK or 11 regions of Great Britain) or a service across multiple regions prefer a supplier with national coverage (or at least coverage for all their entire estate), and typically require suppliers to have the capability to manage complex service requirements. These factors are typically not considered by local or smaller regional customers as important.

6.51 Based on this evidence we concluded that the complexity of servicing an individual customer increases with the size and geographic coverage of an estate in which the customer requires washroom services.

- *Choice of suppliers*

6.52 We examined the evidence of other suppliers and found that:

(a) The majority of washroom services suppliers supply from one region ([REDACTED] based on a list of competitors provided by Rentokil).<sup>138</sup> In contrast, there are only a few washroom services suppliers that serve customers across the UK or GB beyond the regions in which their depot and van infrastructure are located.<sup>139</sup>

(i) Suppliers with a national infrastructure or in multiple regions can readily serve both national and local customers. Suppliers in a single region can readily serve customers in that region but typically not customers across multiple regions.<sup>140</sup>

(ii) A customer located in a single region can choose from both national suppliers and regional suppliers serving that region, but a customer

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<sup>136</sup> We have reviewed a sample of tender opportunities submitted by the Parties, with number or regions in parenthesis: Rentokil: [REDACTED]; Cannon: [REDACTED]

<sup>137</sup> As an example of the account management requirements of national customers, Cannon told us that [REDACTED] [REDACTED]

<sup>138</sup> [REDACTED]

<sup>139</sup> PHS, Rentokil, Cannon, Mayflower directly serve customers across the UK, and Cathedral and a small number of other suppliers directly serve customers across GB. See Chapter 7.

<sup>140</sup> For example, Rentokil estimated that 'GB wide coverage can be achieved with six branches', in the centre of London, Birmingham, Leeds, Haydock, Glasgow and Bristol. [REDACTED]

located in all 12 regions could only choose from national suppliers if it prefers a single supplier.<sup>141</sup>

(b) [redacted].<sup>142</sup>

6.53 The evidence showed that the choice of supplier available to customers becomes more limited as the geographic coverage of a customer's estate increases. We found the supply options available to local and regional customers were likely to be wider than the options available to national customers and those located in multiple regions which have a more limited choice of suppliers.

- *Identification of local and regional customers*

6.54 Based on the evidence set out above, we concluded for the purpose of market definition, that competitive conditions for local and regional customers were likely to be different from national and multi-regional customers because the choice of suppliers was wider for local and regional customers. Local and regional customers therefore were a different segment from national and multi-regional customers.

- *Identification of national and multi-regional customers*

6.55 The Parties submitted that direct customers sourcing from 11 or 12 regions and generating an annual washroom services revenue in excess of £30,000 would be consistent with the CMA's focus on 'national and multi-regional'.<sup>143</sup>

6.56 Rather than using a threshold referencing revenue as submitted by the Parties, we preferred to use customer requirements and choice of supplier because in our view these were more likely to reflect the competitive conditions faced by national and multi-regional customers than annual spend.

6.57 In order to determine what might be the geographic extent of a customer's requirements to be classed as 'national or multi-regional', we analysed customer requirements and supplier capability.

6.58 We found that:

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<sup>141</sup> We discuss customer preference for a single supplier in Chapter 7.

<sup>142</sup> [redacted] See Chapter 7 for further details.

<sup>143</sup> [redacted] We note that this definition differs from the 'LNMM' customer definition suggested in the Parties' response to the phase 1 decision (see paragraph 6.45 above).

(a) Tenders requiring services in all 12 regions required the ability to respond to issues and to ensure consistency of service across sites spread around the country. Customers typically set key service requirements relating to complaint resolution, emergency callouts and timeliness.<sup>144</sup>

(b) Customers with a wide geographic footprint which usually have a greater number of sites, tended to have more complex account management requirements. For example, Cannon told us that it [redacted]

6.59 We concluded therefore that suppliers with a depot network in multiple regions were better placed to meet these service requirements than a supplier located in a limited number of regions.

- *Evidence from third parties*

6.60 Competitors also provided evidence that the requirements of national and multi-regional customers differ from those of local and regional customers in some respects.

6.61 PHS told us that Rentokil, Cannon and PHS are differentiated from other suppliers in the supply to national customers, because of their national depot and vehicle infrastructure to provide consistent scheduled and ad-hoc services, the ability to handle national account management, to provide national customer service organisation (eg a call centre), to provide large national technical installation of washroom products and to handle complex procurement processes and IT capability.<sup>145</sup>

6.62 Cathedral told us that there is no real difference between the requirements for single or multi-site customers, but noted that larger national companies (or local companies who operate many sites) often make more demands (eg to insist on bespoke invoicing methods, regular meetings with an account manager, enrolment to online portals or extended payment terms).<sup>146</sup>

- *Our assessment*

6.63 The evidence of customer requirements showed that there was greater complexity to service a national customer in all 12 regions in the UK than to service a customer in a limited number of regions.

6.64 We have found that the complexity of servicing an individual customer increases with the number of regions the customer requires services in. It is

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<sup>144</sup> See customer specifications in tendering documents described in paragraph 6.49(d)6.49(d) above.

<sup>145</sup> [redacted]

<sup>146</sup> [redacted]

difficult to draw a sharp distinction between national customers in 11 or 12 regions and multi-regional customers (eg in eight or nine regions) because the requirements of customers are similar.

- 6.65 However, for the purposes of market definition we do not consider it necessary to draw such sharp distinctions. In particular, we note that customers in, say eight or nine regions are similar to those in 10 or 11 regions, and that the complexity of service requirements will typically increase as the number of regions in which a customer is served increases, reducing the choice of suppliers available to the customer.
- 6.66 In our assessment of the competitive effects of the Merger, we identified national and multi-regional end customers procuring directly for eight or more regions as having similar service complexity and supplier choice. We recognise that any Merger effects may not be uniform within this customer category.

#### *FM customers*

- 6.67 FM companies are major customers of the Parties. They outsource washroom services and then aggregate them with other facilities services to provide an integrated offer to their customers. FM customers told us that washroom services typically account for a small proportion (1-3%) of an integrated FM contract.
- 6.68 Most FM customers source washroom services from more than one washroom supplier, and some also source different types of washroom services from different suppliers (eg waste disposal from one or more washroom specialists and consumables from product distributors). Some FM customers told us that they need at least two suppliers because they need to provide 'best fit' for clients and because washroom suppliers may be constrained by capacity.<sup>147</sup>
- 6.69 All major FM customers of the Parties are national and multi-regional in scope. We found that FM customers have broadly similar requirements to end customers. For example, in common with end customers, FM customers with national or multi-regional coverage cited 'national coverage' or 'nationwide capability' as a reason they chose their current supplier and/or an important

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<sup>147</sup> [redacted].

criterion when choosing a supplier.<sup>148</sup> Some of these FM customers also said that a supplier's account management capability was important.<sup>149</sup>

- 6.70 We found no evidence to suggest that FM customers should be a separate market. However, we found that FM companies appear to be more willing than end customers to consider multiple suppliers and may have different negotiating strength and a wider set of outside options available. We therefore consider the competitive effects of the Merger on FM customers as a separate segment in our competitive assessment. We focus on FM customers in eight or more regions in the assessment of national and multi-regional customers.

### *Framework organisations*

- 6.71 Framework organisations negotiate prices and terms of supply with washroom services suppliers. Unlike end customers and FM customers, framework organisations do not manage an estate that require washroom services. Instead, they set up framework agreements that enable their users to procure washroom services from qualified suppliers at pre-negotiated rates.

- 6.72 Framework organisations can be public or private (the latter are also known as buying groups).

- *Public framework organisations*

- 6.73 Public sector users typically procure washroom services under a public framework.<sup>150</sup> There are two levels of competition on a public framework.

- 6.74 First, washroom services suppliers bid against tender criteria to be listed on the framework through a formal open process.<sup>151</sup> In this process, the price and quality of compliant bidders are assessed,<sup>152</sup> and multiple suppliers can be listed on a framework. This takes place at least every four years for each framework.<sup>153</sup>

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<sup>148</sup> [redacted]

<sup>149</sup> [redacted].

<sup>150</sup> [redacted] The tenders for both ESPO and NWUPC, the two main public frameworks supplied by the Parties, are for complete washroom services.

<sup>151</sup> See [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. Implemented in the United Kingdom in the Public Contracts Regulations 2015 \('PCRs 2015'\)](#).

<sup>152</sup> The setting up of a framework agreement sets several stringent criteria which a supplier needs to satisfy to successfully get on the framework. For example, the ESPO agreement indicates that [redacted]

<sup>153</sup> For example, the ESPO and NWUPC invitations to tender covered a framework agreement for an initial period of three years, followed by an option to extend the agreement by a further 12 months.

- 6.75 Second, suppliers compete for users that procure under the framework. We were told that a user may either:
- (a) contract with a supplier on the framework directly and pay the framework list prices (typically for smaller contracts);<sup>154</sup> or
  - (b) issue a further competition between some/all of the suppliers on the framework in order to obtain different terms or more complex service requirements. The prices charged during these competitions must be no higher than the framework list prices.<sup>155</sup>
- 6.76 Public sector customers are not obliged to procure washrooms services under a framework.<sup>156</sup> They can contract with other suppliers not on a framework independently through an individual tender process or procure directly in accordance with the Public Contract Regulations. For this reason, a framework does not guarantee that customers will choose any given supplier listed.<sup>157</sup> However, the benefit of using a public framework organisation is that the framework organisation has already conducted a tender in accordance with UK/EU procurement rules,<sup>158</sup> and suppliers are pre-qualified to provide the services on the terms listed in the framework.
- 6.77 In terms of geographic coverage, the largest public framework organisations supplied by the Parties (ESPO and NWUPC) are open to public sector users across the UK. Some other frameworks are available to users in a specific region (eg Scotland Excel). Users of public framework organisations appear to be regional or local, including local councils, schools, NHS Trusts, and universities. National coverage is not a pre-requisite for a supplier to be qualified on a public framework.
- *Private framework organisations (buying groups)*
- 6.78 Private framework organisations are buying groups that negotiate prices and supply terms with suppliers on behalf of their users. Their users can then procure a range of services, including washroom services, under the agreed terms. The function of private frameworks is similar to public frameworks, except that private frameworks are not subject to public procurement

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<sup>154</sup> The initial call-off process for procuring services may be used by any customer if they can determine that the service provider 'provides the most economically advantageous solution'. The terms of the proposed contract are laid down in the initial framework agreement and does not require amendment or any supplementary terms and conditions. See [redacted]

<sup>155</sup> If all the terms and conditions are not laid out in the framework agreement, then a customer must follow the procedure for 'Further competitions', [redacted]

<sup>156</sup> Submissions from Mayflower, [redacted]

<sup>157</sup> See [redacted]

<sup>158</sup> [Public Contracts Regulations 2015](#).



regulations. Washroom services suppliers compete to be listed on a private framework (ie to be chosen as a qualified supplier of a buying group), and they compete for users that can procure under the framework.

6.79 Users of private frameworks are typically independent local businesses such as pubs and retailers. However, many private framework organisations have a national or multiple regional coverage and are open to users across the UK.<sup>159</sup> Some private framework organisations told us that they require suppliers with national coverage to serve their users effectively.<sup>160</sup>

- *Conclusions on framework organisations*

6.80 We found no evidence to suggest that public or private framework organisations should be a separate market from other customers. However, we found that competition for framework customers takes place on two levels: (a) competition between suppliers to be listed on a framework and (b) competition between suppliers on a framework for users that procure under a framework. We therefore consider framework customers as a separate segment from end customers and FM customers in our assessment of the competitive effects of the Merger.

6.81 We found that framework organisations do not actively manage an estate, and that users of frameworks are typically local in geographic scope. Therefore, the requirements of framework organisations are not necessarily the same as those for national and multi-regional end customers (eg due to the complexity of servicing a national estate).<sup>161</sup> However, as we further explain in Chapter 7, the choice of washroom services suppliers for framework organisations with a national and multi-regional coverage may be more limited than for regional framework organisations. We therefore consider the effects of the Merger on framework organisations with a national or multi-regional coverage as a separate segment.

6.82 We identified framework organisations with a national and multi-regional coverage as those that are open to users located in all or the majority of regions in the UK. We do not consider it is necessary to use the number of regions to draw a sharp distinction for the purpose of market definition.

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<sup>159</sup> See Appendix B for a list of framework organisations supplied by the Parties, and the number of regions they cover.

<sup>160</sup> Submissions by [redacted]

<sup>161</sup> See paragraphs 6.65 *et seq* above.

### **Conclusion on product market definition**

- 6.83 For the reasons set out above, we conclude that the impact of the Merger should be examined in relation to the following product markets:
- (a) The supply of washroom services to national and multi-regional customers (including end customers and FM customers located in eight or more UK regions and framework customers with national or multi-regional coverage).
  - (b) The supply of washroom services to regional and local customers.<sup>162</sup>
- 6.84 We consider the supply of waste disposal services to represent a distinct segment of the market and therefore consider the competitive effects of the Merger separately in relation to the supply of waste disposal services.
- 6.85 In our competitive assessment, we consider the following customer segments:
- (a) End customers (ie those purchasing directly for their premises).
  - (b) FM customers.
  - (c) Public and private framework customers.
- 6.86 We also consider the competitive constraints from various types of direct and indirect suppliers of waste disposal (eg washroom services suppliers, healthcare waste companies, FM companies and cleaning companies).

### **Geographic market definition**

- 6.87 In this section, we consider the relevant geographic market for: (a) national and multi-regional customers; and (b) regional and local customers.

### **The views of the Parties**

- 6.88 The Parties told us that the relevant geographic market is national, ie the UK.<sup>163</sup> The Parties said that customers predominantly source, and suppliers can distribute, on a national level. The Parties told us the following (which we note is not specific to any customer type):
- (a) Washroom requirements are homogeneous and customers tend to procure them on a national level. For customers, it is not important

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<sup>162</sup> The Parties did not make any representations in response to our provisional findings on product market definition.

<sup>163</sup> [redacted]

whether a provider is regional or national as long as it is able to deliver washroom requirements regularly.

- (b) Washroom services suppliers require local market knowledge and a service network, but they can operate on a national basis and with a national network that is capable of providing the frequency and promptness of service required by their customers.

6.89 The Parties also told us that ‘the dynamics in this industry [are that] national competition is the sum of local competition’. The Parties said local and regional competition covers the vast majority ([X]%) of washroom services customers.<sup>164</sup>

### ***National and multi-regional competition***

6.90 As set out in our consideration of customer types in the assessment of the relevant product market at paragraph 6.52 above, we found that the large majority of washroom services suppliers are located in a single region, and the Parties’ internal documents suggest that they monitor national and regional competition separately.

6.91 We therefore consider that the set of competitors available to customers operating nationally or across multiple regions is likely to be more limited than those available to regional and local customers. We have seen limited evidence that regional suppliers (eg those supplying from one or two regions), either individually or collectively, serve national and multi-regional customers that procure washroom services centrally across their estates.<sup>165</sup> As such, we consider that the price and service quality for national and multi-regional customers is not likely to be determined by local conditions.

6.92 We therefore consider the relevant geographic markets for these customers to be national or multi-regional. We examine this further in the competitive assessment.

### ***Regional and local competition***

6.93 We assess the geographic market for local and regional customers by reviewing the Parties’ approach to sales and marketing, delivery, and competitive monitoring documents. We also consider the views of regional suppliers.

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<sup>164</sup> [Parties’ response to the issues statement](#), 31 August 2018, paragraphs 2.1 and 3.1.

<sup>165</sup> See Chapter 7 (section on competition from regional suppliers).

## *Sales organisation*

- 6.94 The Parties deal with regional or local customers with regional sales teams.<sup>166</sup> Specifically, Cannon [REDACTED]. Rentokil has a sales manager or a sales team leader at each of their [REDACTED] branches. Rentokil told us that these local sales colleagues can also sell into a large number of key account customers.
- 6.95 The Parties assign ‘patches’ to each branch, with each patch being an aggregation of post code districts.<sup>167</sup> A branch then provides washroom services to all customer premises that are located within the patches it has been allocated. This suggests that, for the Parties, the delivery of washroom services is limited to the local areas around each branch.
- 6.96 The Parties provided estimates of the catchment area measured by the drive time to customer sites from each branch.<sup>168</sup> The size of the catchment area within which 80% of customers are located is typically around 40-50 minutes in London,<sup>169</sup> approximately 60-80 minutes in most other regions, and beyond 100 minutes in a few cases such as in north of Scotland (where Rentokil has a branch in Inverurie and Cannon a branch in Inverness).
- 6.97 The Parties often operate one branch in each region and not more than three branches in any region. Specifically, Rentokil operates [REDACTED]. Cannon operates [REDACTED]

## *The Parties’ internal documents*

- 6.98 We reviewed the Parties’ competitive monitoring documents. These documents indicate that the Parties tend to identify regional suppliers separately from national suppliers and provide insight into the Parties’ perception of the geographic scope of their rivals. For example:
- (a) A Cannon document [REDACTED].<sup>170</sup>
  - (b) Similarly, a Rentokil document [REDACTED].<sup>171</sup> [REDACTED]
- 6.99 We consider these documents in further detail when we assess evidence on the closeness of competition between the Parties and other national and regional suppliers in the competitive assessment.

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<sup>166</sup> [REDACTED]

<sup>167</sup> [REDACTED] A post code district is the first portion of a post code (eg WC1B).

<sup>168</sup> [REDACTED]

<sup>169</sup> Measured by the drive time within which 80% of sales are located.

<sup>170</sup> [REDACTED]

<sup>171</sup> [REDACTED]

### *Submissions by regional suppliers*

6.100 Regional washroom specialists told us that they supply washroom services broadly at the regional level, as summarised below:

- (a) Co-an (Scotland and North of England).
- (b) Chiltern Hygiene Services (home counties and London).
- (c) Crest Hygiene (North East and Yorkshire).
- (d) ECS Ltd (Southern home counties).
- (e) Northern Counties Cleaning Limited (North of England).
- (f) Trust Hygiene Services (the Midlands).
- (g) Wilson Washroom Services (Central Belt of Scotland).
- (h) Zenith Hygiene (South East of England; but it is also a supplier of cleaning and hygiene chemicals nationally).

### ***Conclusion on the geographic market***

6.101 Based on the evidence set out above, we found that:

- (a) Regional and local competition is distinct from national and multi-regional competition.
- (b) There is some overlap between regional and local competition, because the size of the areas served by the Parties' branches, as well as by their regional competitors, are reasonably wide.<sup>172</sup>

6.102 We therefore concluded that the competitive effects of the Merger should be considered at both:

- (a) The national and multi-regional level (in the supply to national and multi-regional customers).
- (b) The regional and local level (in the supply to regional and local customers).

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<sup>172</sup> The Parties did not make any representations in response to our provisional conclusions on geographic market definition.

## 7. Competitive effects in relation to national and multi-regional customers

### Overview

- 7.1 In this chapter, we examine the competitive effects of the Merger in the supply of washroom services to national and multi-regional customers.<sup>173</sup> We assess waste disposal as a separate product segment within the market.<sup>174</sup>
- 7.2 We have gathered a range of evidence from the Parties, competitors and customers throughout our Inquiry. Evidence from the Parties' and competitors' customer data, the Parties' internal documents, the Parties' competitive interactions with competitors, and a number of third party submissions showed the following conditions of competition in the supply of waste disposal pre-Merger.
- (a) This market segment is concentrated with three suppliers (PHS, Rentokil and Cannon) serving the largest and the majority of national and multi-regional customers.
  - (b) PHS is the closest competitor to both Parties; the Parties' are each other's second closest competitor.
  - (c) There is limited competition from other suppliers.
- 7.3 We have considered the impact of the Merger on three customer segments: customers procuring directly for their premises ('end customers'), framework customers and FM customers.<sup>175</sup> We found that:
- (a) There is a group of national and multi-regional end customers whose preference is to source waste disposal from a single supplier, and for which the Parties and PHS compete closely.
  - (b) For framework customers, the Parties and PHS compete with one another more closely than they compete with other suppliers, both in respect of

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<sup>173</sup> In our assessment of competitive effects of the Merger on national and multi-regional customers, we focus on customers located in eight or more regions for end customers and FM customers, and frameworks with national or multi-regional coverage. We examine this distinction in more detail at paragraphs 7.35 *et seq* below.

<sup>174</sup> See paragraphs 6.8 *et seq* in Chapter 6 for discussion of the differences in the competitive conditions between waste disposal and other washroom services.

<sup>175</sup> See paragraphs 6.40 *et seq* Chapter 6 for discussion of these customers and the reasons for the segmentation.

listing on frameworks with a national and multi-regional coverage, and winning business from users of these frameworks.

(c) For FM customers, there are credible alternatives to the Parties and PHS.

7.4 Based on the above, we found that the Merger would eliminate an effective competitor in the supply of waste disposal to national and multi-regional end customers and framework customers, in an already concentrated market, with alternative suppliers not being able to offset the loss of competition as a result of the Merger. The Group therefore decided by a majority that the Merger has resulted, or may be expected to result, in an SLC in these customer segments. However, the Group decided that the Merger has not resulted, or may not be expected to result, in an SLC for FM customers.

7.5 In relation to washroom services other than waste disposal, we found that customers have a wider choice of supply options available to them including, in addition to washroom services specialists, product manufacturers and distributors. The Group therefore decided that the Merger has not resulted, or may not be expected to result, in an SLC for these services.

7.6 In the following sections, we explain the basis for these conclusions. We first summarise our approach with reference to the following considerations which apply to our assessment of the supply of washroom services to national and multi-regional customers generally but are also broadly applicable to the waste disposal segment specifically:

(a) The evidence gathered during the inquiry.

(b) The nature of competition.

(c) The theory of harm and our analytical framework.

(d) Customer segments considered in the assessment.

(e) Measures of concentration.

7.7 We then assess in more detail the competitive effects of the Merger in the waste disposal segment. We examine the evidence that is general to all three customer segments (ie end customers, framework customers and FM customers). We then set out the evidence that is specific to framework customers and FM customers. We carry out the assessment by considering:

(a) The conditions of competition pre-Merger, including the closeness of competition between suppliers and the competitive constraints from other suppliers.

- (b) The impact of the Merger.
- 7.8 Finally, we assess the competitive effects of the Merger in the supply of washroom services other than waste disposal.
- 7.9 We assess the competitive effects of the Merger in relation to regional and local customers in Chapter 8, in which we found that the Merger may not be expected to result in an SLC for these customers.
- 7.10 We assess countervailing buyer power, barriers to entry and expansion, and any efficiencies arising from the Merger in Chapter 9.

## **Evidence gathered during the inquiry**

- 7.11 We gathered a range of evidence during the inquiry from a number of sources, including:
- (a) Detailed questionnaires to the Parties, competitors and customers.
  - (b) Hearings with the Parties and a number of competitors.<sup>176</sup>
  - (c) Calls with competitors and customers across market segments.
  - (d) The Parties' internal documents including strategy presentations, market overviews and competitor mapping exercises.
  - (e) Customer data, tendering data and win/loss data from the Parties and competitors.<sup>177</sup>
  - (f) A site visit to both a Rentokil depot and a Cannon depot.
- 7.12 We commissioned the GfK survey to assess competition for both national/multi-regional and regional/local customers.<sup>178</sup> However, because respondents in the survey were mostly regional and local customers and included very few national and multi-regional customers, it had limited value

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<sup>176</sup> PHS, Cathedral, Mayflower and Elis.

<sup>177</sup> Further details on customers of the Parties and their competitors are set out in Appendix B; our analysis of tendering data is set out in Appendix C; and win/loss data in Appendix D.

<sup>178</sup> See paragraphs 7.28 *et seq* below which set out the two theories of harm we have considered in the Inquiry, respectively in relation to national and multi-regional customers, and to regional and local customers. The GfK survey was published alongside our provisional findings report on the [case page](#).



for our assessment in relation to national and multi-regional customers.<sup>179,180</sup> In assessing customer views, we relied more on the direct submissions from national and multi-regional customers to the our questionnaires and calls, because these customers were substantially larger by value, and they provided detailed reasoning behind their responses which was not available from the GfK survey.<sup>181</sup>

7.13 We also took account of responses to the statement of issues and our provisional findings.

## Nature of competition

7.14 In this section, we describe the main parameters of competition in the supply of washroom services, how prices and contract terms are set, and how customers procure washroom services.<sup>182</sup>

### *Parameters of competition*

7.15 Rentokil told us that [redacted] were relevant to the effectiveness of a washroom supplier, which can be measured by [redacted]. Similarly, Cannon told us that [redacted] are important for the effectiveness of a supplier,<sup>183,184</sup> which can be measured by [redacted].

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<sup>179</sup> Telephone interviews were conducted with 369 of the Parties' customers in August 2018. Of these customers, only 11 were national and multi-regional customers with sites in eight or more regions. These customers together spent less than £74,000 in washroom services with the Parties. See Appendix E for further detail on the responses of these 11 national and multi-regional customers.

<sup>180</sup> The Parties noted that the customer survey was not designed to target national and multi-regional customers. We noted that this was not, as the Parties suggested in response to provisional findings, the result of an inadequacy of the survey design; rather it was a result of the survey being designed and commissioned at the early stages of the inquiry, at which time the focus of the assessment covered both national and multi-regional and regional and local customers. (See [Parties' response to provisional findings](#), paragraph 4.10.)

<sup>181</sup> In response to the provisional findings, the Parties said the customers the CMA has spoken to 'equates to less than 5% of those customers concerned, a minute sample' (paragraph 4.12). We note that we sent questionnaires and/or held calls with some of the largest customers of the Parties by revenue. The 12 national and multi-regional end customers who responded to our questions accounted for [redacted]million (or over [redacted]by value of end customers in eight or more regions) in washroom services revenues. In addition, the frameworks with a national and multi-regional coverage which responded to our questions accounted for over [redacted]million of revenues (or over [redacted]by value of all the Parties' frameworks with a national and multi-regional coverage). Further, we have received responses from a number of PHS customers which had considered the Parties as supply options in the past. Third party views are summarised in Appendix E.

<sup>182</sup> Given our findings (see Chapter 6) that waste disposal is the lead service demanded by most customers and accounts for the largest proportion of revenue, the nature of competition described in this section for washroom services generally are also indicative of that for waste disposal specifically.

<sup>183</sup> For example, Cannon submitted a client review it undertook for a national customer ([redacted]), which shows detailed reporting of [redacted]

<sup>184</sup> Rentokil told us that [redacted]

- 7.16 We found that national and multi-regional customers typically have customised specifications.<sup>185</sup> Tender documents indicated that these customers typically require service for the entire estate; detailed service KPIs;<sup>186</sup> and a dedicated account manager. All tenders specified waste disposal as a required service, usually together with other washroom services.
- 7.17 The Parties' national and multi-regional customers in general told us that a range of factors are important including price, cost, service quality and reliability, account management, national coverage and product quality and choice.<sup>187</sup> Public framework customers specifically told us that compliance with consortia requirements and experience of operating in the public sector, were important factors in addition to price and quality.<sup>188</sup>
- 7.18 Competitors generally identified service as the most important customer requirement, followed by price.<sup>189</sup>
- 7.19 Overall, we found that washroom service suppliers compete on a range of parameters including price and quality to satisfy the various customer service levels and quality criteria. Their service quality is likely to be differentiated.

### ***How price and contract terms are set***

- 7.20 The Parties told us that the contract and price negotiations vary depending on the size of a customer. Both Rentokil and Cannon had list prices for smaller customers with some scope for negotiated discounts,<sup>190</sup> but they [redacted]. Evidence received from large customers confirmed this.<sup>191</sup> Rentokil told us that [redacted].<sup>192</sup>
- 7.21 The Parties told us that contracts typically have an initial term of three years with provisions for annual price increases. After the initial term, contracts may be rolled-over or re-negotiated.<sup>193</sup> Competition between washroom services

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<sup>185</sup> We have reviewed a sample of tender opportunities submitted by the Parties (the number of regions of the customer in parenthesis): Rentokil: [redacted]; Cannon: [redacted].

<sup>186</sup> Examples of service KPIs include: reliability of scheduled delivery, timeliness of service, response to enquiries, emergency callouts, complaint resolution, etc.

<sup>187</sup> See Appendix E which summarises the views of customers.

<sup>188</sup> [redacted]. [redacted] states that suppliers are assessed for their financial stability, track record, experience and technical and professional ability.

<sup>189</sup> See Appendix E.

<sup>190</sup> [redacted]

<sup>191</sup> See Appendix E.

<sup>192</sup> For example, a unit can refer to a feminine hygiene bin. [redacted].

<sup>193</sup> [redacted]

suppliers therefore takes place when a customer is considering its contract options.<sup>194</sup>

### ***How customers procure washroom services***

- 7.22 We found that the terms of supply of washrooms services to national and multi-regional customers are typically customised. Customers select suppliers by bilateral negotiation, tendering with specific requirements, or by negotiating with a shortlist of suppliers that were qualified after a request for quote.<sup>195</sup>
- 7.23 The Parties told us that the tendering process is ‘confidential’ and ‘available to all national customers to enhance competition’.<sup>196</sup> Rentokil told us that [REDACTED].<sup>197</sup>
- 7.24 Our review of the tendering documents,<sup>198</sup> the tendering data submitted by the Parties,<sup>199</sup> and submissions from 14 customers which responded to our questions<sup>200</sup> confirmed the prevalence of tendering by national and multi-regional end customers.
- 7.25 In relation to framework customers, public framework organisations are required by regulation to use open tenders to appoint suppliers.<sup>201</sup> Subsequently, users of the framework can place an order directly with a pre-qualified supplier or issue a further tender to obtain quotations from several pre-qualified suppliers. Private frameworks (buying groups) told us that they negotiate with washroom service suppliers to obtain better pricing for their members. Users of private frameworks are typically small businesses or retailers.<sup>202</sup>
- 7.26 FM customers told us that they procure washroom services by quotations and pre-agreed price lists, nomination of end-customers, tenders, or a combination of all of these methods.<sup>203</sup> Cannon told us that some FM customers [REDACTED].<sup>204</sup>

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<sup>194</sup> Except for framework where competition takes place on two levels as described in paragraph 6.80.

<sup>195</sup> The Parties estimated that tenders account for [REDACTED]% of Rentokil’s and [REDACTED]% of Cannon’s new business across all customers. [REDACTED] However, we found that these estimates are likely to understate the use of tendering by national and multi-regional customers, because these estimates are aggregated with small customers who paid list prices.

<sup>196</sup> The Parties’ response to the Provisional Findings, Para. 3.6.

<sup>197</sup> [REDACTED]

<sup>198</sup> See footnote 185.

<sup>199</sup> [REDACTED] Further detail of the Parties’ tendering data is set out in Appendix C.

<sup>200</sup> Submissions to the CMA by 11 of the Parties’ customers confirmed that they use tenders to procure: [REDACTED] [REDACTED] as well as three national and multi-regional customers of PHS which considered both Parties in previous tenders: [REDACTED]

<sup>201</sup> See Chapter 6 for a description of framework customers.

<sup>202</sup> Submissions by [REDACTED]

<sup>203</sup> [REDACTED]

<sup>204</sup> [REDACTED]

## Theory of harm and analytical framework

### *Theory of harm*

- 7.27 Theories of harm describe the possible ways in which a merger could give rise to an SLC, and provide the framework for our analysis of the competitive effects of a merger.
- 7.28 Our inquiry focused on the supply of washroom services. We did not examine the supply of healthcare waste collection services or the supply of mats services as the phase 1 investigation found no competition concerns in relation to these overlaps and we received no submissions on healthcare waste or mats services in response to our statement of issues.
- 7.29 In this chapter we focused on unilateral effects arising from the loss of competition in the supply of washroom services (and in the waste disposal segment) to national and multi-regional customers.<sup>205</sup> The removal of a competitor of washroom services from the market could lead to consumer harm through higher prices and/or reduced service quality (eg loss of frequency of services).<sup>206</sup>
- 7.30 Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own.<sup>207</sup> Where products are differentiated (eg by branding or quality), unilateral effects are more likely where the merger firms' products compete closely, and where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers.<sup>208</sup>
- 7.31 The potential responses of competing suppliers are also relevant in evaluating the merged firm's pricing incentives.<sup>209</sup> Because a merger changes the market structure and eliminates a competitor from the market, it will reduce the constraints faced by both the merged entity and competing suppliers. Competing suppliers may respond to a price rise by the merged firm by raising their own prices. Therefore, the more concentrated a market is and the

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<sup>205</sup> We consider the supply of washroom services to regional and local customers in Chapter 8.

<sup>206</sup> The Parties' response to the provisional findings (paragraph 3.3) stated that 'the CMA has barely referenced or explained in the PFs the theory of harm as it relates to the Parties' ability to increase prices'. We found that price and service are two main parameters of competition (as explained further below in the nature of competition section). Therefore, unilateral effects can arise as a result of a reduction of competition in the form of degradations of these competitive parameters to customers, ie an increase in price and/or reduction in service quality.

<sup>207</sup> [Merger Assessment Guidelines](#), paragraph 5.4.1.

<sup>208</sup> [Merger Assessment Guidelines](#), paragraph 5.4.12.

<sup>209</sup> [Merger Assessment Guidelines](#), paragraph 5.4.11.

fewer effective competitors remain to constrain one another, the more likely that a merger will enable the merged entity to raise prices.

### **Analytical framework**

7.32 We found above in our assessment of the nature of competition that washroom services suppliers compete at the point when customers consider their contract options, and there is little transparency in the procurement process regardless of whether customers used tendering or bilateral negotiation to choose a supplier. Suppliers are differentiated by their service quality, and contracts and prices are typically customised and negotiated confidentially.<sup>210</sup> In light of these findings, we consider that is important to assess the strength and the number of credible options available to each customer. This is because:

- (a) Each firm does not know which other firms are competing, or the terms on which other firms compete, for a given customer. In determining how aggressively to compete, each firm has to assume the identity and likely strength of alternative options available to each customer.
- (b) The fewer the number and strength of credible options available to a given customer, the less likely a firm would expect to lose that customer to a competitor, all else being equal. Therefore, the constraint perceived by each firm decreases with the reduction of the number and strength of credible options available to that customer.
- (c) The same principle applies to a procurement process with bilateral negotiation between a firm and a customer, whether or not there is a tendering process. The bargaining strength of a customer depends (among other factors) on the number and strength of credible outside options available to the customer. The fewer outside options there are, the weaker is the customer's bargaining power. Firms are therefore less likely to compete aggressively where customers have fewer credible outside options.<sup>211</sup>

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<sup>210</sup> See paragraphs 7.21-7.20.

<sup>211</sup> [Merger Assessment Guidelines](#), paragraph 5.4.12 states that 'unilateral effects are more likely where the merger firms' products compete closely, and where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers'. The number of credible options available to a customer is also relevant in the assessment of buyer power. The [Merger Assessment Guidelines](#) state in paragraphs 5.9.2-5.9.3 that 'An individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, [...] Typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch'. Further, paragraph 5.9.5 states that: 'Where a supplier is engaged in bilateral negotiations with each of its customers, the relative bargaining strength of the supplier and each of its customers is determined by their mutual dependency.'

7.33 The Merger may reduce the competitive constraint felt by the merged entity by removing one of the Parties from the competitive process if customers tend to consider both Parties to be credible options. In addition, the Merger may reduce the competitive constraint felt by other firms in the market that compete against the Parties for the same customers.<sup>212</sup> Therefore, in assessing the Merger impact, it is relevant to consider the potential impact on both the Parties' current customers and their potential customers, ie customers that are currently served by other firms but would otherwise consider the Parties to be credible options when they re-tender or re-negotiate their contracts.

7.34 Considering the criteria set out in our Guidelines and the procurement process of washroom services specific to this Merger, we therefore examined the evidence in the following areas to assess the likely impact of the Merger:

(a) *Degree of concentration in the market*: the number of effective competitors in the market and the proportion of the supply they account for.<sup>213</sup>

(b) *Closeness of competition between the Parties*: to what extent do customers consider both Parties to be credible options. If this is the case, the Merger would remove one of the Parties from the competitive process, and hence reduce customer choice and the competitive constraint faced by the merged entity.<sup>214</sup>

(c) *Competitive constraints from other competitors*: to what extent can the loss of constraint due to the removal of a credible option be effectively replaced by other competitors post-Merger.<sup>215</sup>

## **Customer segments considered in the assessment of waste disposal**

7.35 We considered three customer segments in our assessment of the competitive effects for national and multi-regional customers in the waste

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<sup>212</sup> See [Merger Assessment Guidelines](#), paragraph 5.4.11.

<sup>213</sup> See [Merger Assessment Guidelines](#), para. 5.4.12

<sup>214</sup> See [Merger Assessment Guidelines](#), para. 5.4.9: 'If the products of the merger firms are close substitutes, unilateral effects are more likely because the merged firm will recapture a significant share of the sales lost in response to the price increase, making the price rise less costly'.

<sup>215</sup> See [Merger Assessment Guidelines](#), para. 5.4.12: 'unilateral effects resulting from the merger are more likely where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers'.

disposal segment: end customers, framework customers and FM customers.<sup>216</sup>

- 7.36 For end customers and FM customers, we focused on those customers located in eight or more regions of the UK. For framework customers, we considered frameworks with a national or multi-regional coverage (ie frameworks open to users in all or the majority of regions in the UK).

### **End customers**

- 7.37 As discussed in Chapter 6,<sup>217</sup> we found the conditions of competition for national and multi-regional customers were different from those for regional and local customers. First, the complexity of a customer's requirement increased with the geography of the estate, for example, due to the need to offer consistent service across all sites. Second, for customers which preferred a single supplier, the choice of supplier reduced as the geographic scope of an estate widens.
- 7.38 In our view, for the above reasons, there are differences in the conditions of competition between customers in a single region from those with sites in all 12 regions of the UK. However, it is difficult to draw a bright line between them.<sup>218</sup> We found that a customer procuring washroom services for an estate in eight regions could have broadly similar requirements as a customer with an estate in all 12 regions.<sup>219</sup>
- 7.39 Taking all these factors into account and for practical purposes, we identified 'national and multi-regional customers' as customers in eight or more regions in the UK for end customers, and focused on them in the competitive assessment.<sup>220</sup>

### **Framework customers**

- 7.40 As described in Chapter 6, we found no evidence to suggest that public or private frameworks should be a separate market from other customers.

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<sup>216</sup> We did not consider these customer segments separately in the assessment of washroom services other than waste disposal, given the lack of a concern in these services.

<sup>217</sup> See paragraphs 6.48-6.66.

<sup>218</sup> We recognise that any effects of this Merger may not be uniform within the category of national and multi-regional customers. In terms of revenue, there appears to be a cluster of customers served in 11 or 12 regions (ie with sites across all regions in GB or UK), but the incremental revenue seems small if we consider customer categories between three and 10 regions. Rentokil estimated that the increment in revenue, for customers served in three to 10 regions, is [x<]percentage points per additional region. [x<] For Cannon, we estimate that the equivalent proportions are [x<]percentage points.

<sup>219</sup> For example, [x<] is a customer of Cannon, served in eight regions. The tender for [x<] In the tendering specification, Cannon [x<]

<sup>220</sup> In response to the provisional findings, the Parties did not object to our approach to identifying national and multi-regional customers for the competitive assessment.

However, we found that competition for framework customers takes place on two levels: (a) competition between suppliers to be listed on a framework and (b) competition between suppliers on a framework for users that procure under a framework. We therefore consider framework customers as a separate segment from end customers and FM customers in our assessment of the competitive effects of the Merger.

- 7.41 We identified framework organisations with a national and multi-regional coverage as those that are open to users located in all or the majority of regions in the UK. We do not consider it is necessary to use the number of regions to draw a sharp distinction for the purpose of the competitive assessment.

### ***FM customers***

- 7.42 As described in Chapter 6, we found no evidence to suggest that FM customers should be a separate market. However, compared to end customers, we found that FM customers may have different negotiating strength and set of outside options available, because FM customers appear to be more willing than end customers to consider multiple suppliers.<sup>221</sup> We therefore consider the competitive effects of the Merger on FM customers as a separate segment in our competitive assessment. We focus on FM customers in eight or more regions in the assessment of national and multi-regional customers.

## **Measures of concentration**

- 7.43 Market shares can give an indication of the potential extent of a firm's market power. When interpreting information on market shares, the CMA has regard to the extent to which products are differentiated and other measures of concentration.<sup>222</sup>
- 7.44 In this inquiry, however, it has been difficult to obtain reliable market share data. Competitors were generally only able to provide data aggregated across all washroom services and customers. Most competitors told us they do not maintain data for the segments defined in our assessment, namely the supply of waste disposal to national and multi-regional customers (and respectively

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<sup>221</sup> See paragraphs 6.67-6.69. The business of FM companies is to manage the delivery of a range of services on behalf of their customers so that they have the necessary infrastructure and systems in place which can be adapted to different types of services.

<sup>222</sup> [Merger Assessment Guidelines](#), 5.3.2-5.3.4.



for end customers, frameworks and FM customers). We have been provided with estimates or customer examples instead of precise data in all cases.

- 7.45 In this section, we first present market share estimates submitted by Rentokil and PHS. We then examine indicators of the scale of each supplier and the level of concentration based on the data and estimates we have collected from the Parties and competitors.

### ***Rentokil's market share estimates***

- 7.46 Rentokil estimated that the Parties have a [redacted]% combined share of all suppliers of washroom services and products in the UK.<sup>223</sup>
- 7.47 Given the focus of our assessment on the supply of waste disposal services to national and multi-regional customers, we do not place reliance on Rentokil's estimate because it overstates the strength of other of suppliers (except PHS) that have few or no national and multi-regional customers, and those that do not offer waste disposal services.

### ***PHS estimates of 'key account' market shares***

- 7.48 PHS estimated that its share of [redacted] in washroom services was [redacted]%, Rentokil's share was [redacted]% and Cannon's was [redacted]%.<sup>224</sup> We place limited weight on PHS's estimates because they were based on PHS's definition of [redacted] which provided a partial picture of national and multi-regional customers.<sup>225</sup>

### ***Other data on level of concentration***

- 7.49 Table 3 below sets out the size of each washroom service supplier serving national and multi-regional customers, based on information we have obtained from the Parties and their competitors.<sup>226</sup> Table 3 covers the five largest suppliers of washroom services in the UK by total revenue.<sup>227</sup> It also includes information from smaller suppliers which were identified to serve national and multi-regional customers.

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<sup>223</sup> Parties' response to phase 1 decision, 30 July 2018, paragraphs 1.12(a) and 5.3, [redacted]. Rentokil's estimate is based on [redacted]

<sup>224</sup> [redacted] See Appendix B for further detail.

<sup>225</sup> PHS defined [redacted] as customers [redacted]. PHS told us that most of [redacted] customers are national in geographic scope. However, PHS's definition [redacted] does not include national or multi-regional with a lower level of spend.

<sup>226</sup> Further detail is set out in Appendix B.

<sup>227</sup> They include (in descending order by revenue): PHS, Rentokil, Cannon, Cathedral and Mayflower.

**Table 3: Number and value of national and multi-regional customers served by the Parties and their competitors, and total revenue, 2017**

Supplier	End customers	FM customers	Framework customers	2017 revenue (all customers)	
				Washroom services	Waste disposal
PHS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Rentokil	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cannon	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cathedral	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mayflower	[redacted]		[redacted]	[redacted]	[redacted]
Elis (Berendsen)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Hygienic Concepts	[redacted]		[redacted]	[redacted]	[redacted]
IWSA	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Chiltern Hygiene	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Sources: Parties' customer data [redacted] and response to the provisional findings; third-party submissions.

Notes:

1. Further details can be found in Appendix B.
2. N/A = data not available.
3. Suppliers may have a different interpretation of 'national and multi-regional customer'. Where possible, we have identified end customers and FM customers with sites in eight or more regions in the UK, and frameworks with a national or multi-regional coverage.
4. All value refers to annual revenue of washrooms services in 2017 or the most recent financial year (except for the column 'waste disposal' which refers to annual revenue of waste disposal). [redacted]
5. [redacted] The table does not include Zenith, [redacted], and other washroom services suppliers which were not identified to serve national and multi-regional customers.

7.50 Table 3 provides a useful indication of the relative positions between competitors in respect of the supply of washroom services to national and multi-regional customers. We found that:

- (a) PHS is the supplier with the highest revenue [redacted]. PHS is also likely to have the highest number of national and multi-regional customers because in addition to the aforementioned, [redacted].
- (b) Rentokil is the second largest supplier with [redacted] end customers [redacted], [redacted] FM customers [redacted] and [redacted] frameworks [redacted]
- (c) Cannon is the third largest supplier with [redacted] end customers [redacted] [redacted] FM customers [redacted] and [redacted] frameworks [redacted]

- (d) Cathedral and Mayflower are the next two largest suppliers in the UK. Cathedral estimated that it has [X] national and multi-regional end customers, representing approximately [X] in revenue. In addition, Cathedral serves [X]. Mayflower has up to [X] end customers and FM customers, with a combined revenue [X]
- (e) The number and value of national and multi-regional customers of other suppliers including Elis,<sup>228</sup> Hygienic Concepts, Chiltern Hygiene and IWSA were small.

7.51 All competitors listed in Table 3 offer waste disposal together with other washrooms services. Given our findings that waste disposal is the lead washroom service demanded by most customers and accounting for the largest proportion of revenue,<sup>229</sup> the supplier positions on washroom services generally are also indicative of those for waste disposal specifically. Furthermore, because Table 3 covers all major suppliers in the UK that deliver waste disposal to national and multi-regional customers with their own capability, it provides a useful indicator of the scale of each competitor relative to the waste disposal segment as a whole.<sup>230</sup>

7.52 On this basis, we found that the market for the supply of washroom services to national and multi-regional customers, in particular in the waste disposal segment, appears to be concentrated. The top three suppliers in the UK (PHS and the Parties) supply the largest number and value of services provided to those customers. The fourth and the fifth suppliers, Cathedral and Mayflower, serve some national and multi-regional customers but they are smaller in comparison with PHS and the Parties. There are very few other suppliers that have national and multi-regional customers. We have tested these indicators for consistency with other available data and evidence in the analysis which follows.

## **Impact of the Merger on the supply of waste disposal services**

7.53 We examined the competitive effects of the Merger in relation to the supply of waste disposal services as a distinct segment of the washrooms services market. As described in Chapter 6, we found that the competitive condition of

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<sup>228</sup> Elis outsourced washroom services to other suppliers as explained later in this chapter.

<sup>229</sup> See Chapter 6, paragraphs 6.13-6.24.

<sup>230</sup> We have not found any suppliers other than washroom services suppliers that provide waste disposal services to national and multi-regional customers using their in-house capability (ie without outsourcing). As explained in paragraphs 7.200 *et seq* below, FM companies outsource waste disposal to washroom suppliers, including to the Parties and PHS. See also paragraphs 7.227 *et seq* below for assessment of other specialist waste collection and cleaning companies.

waste disposal is different from that of other washroom services because there are fewer competitors offering waste disposal.<sup>231</sup> We focus on competition from suppliers of waste disposal and assess their competitive constraints in this section.

- 7.54 We found that customers typically buy waste disposal together with other washroom services. Therefore, much of the evidence such as internal documents and analysis of customer choice relates to washroom services generally. However, we consider that the findings also apply to waste disposal because customer choice is likely to be driven by waste disposal, given waste disposal is the leading service.<sup>232</sup>
- 7.55 In this section, we first set out the evidence on the pre-Merger conditions of competition by considering the closeness of competition between the Parties and competition from other suppliers. We then assess the impact of the Merger on the supply of waste disposal services to national and multi-regional customers generally, including end customers. In the following two sections, we assess the impact of the Merger specifically as regards framework customers (paragraphs 7.271 *et seq*) and FM customers (paragraphs 7.328 *et seq*).

### ***Evidence on competition pre-Merger***

#### *The closeness of competition between the Parties*

- 7.56 In this section, we examined the following evidence regarding the degree of competition between Rentokil and Cannon pre-Merger:
- (a) The views of the Parties.
  - (b) The Parties' internal documents.
  - (c) Analysis of tendering data.
  - (d) Analysis of Rentokil customer loss data.
  - (e) The views of customers.
- 7.57 Unless otherwise specified, the evidence presented in this section applies generally to all national and multi-regional customer segments.

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<sup>231</sup> If customers wish to purchase waste disposal and other washroom services separately, they have more supply options for non-waste services. See paragraphs 6.29-6.34, and paragraphs 7.355 *et seq* below for discussions of competition in relation to washroom services other than waste disposal.

<sup>232</sup> See Chapter 6, paragraphs 6.13-6.39.

### *The views of the Parties*

- 7.58 The Parties told us that Rentokil and Cannon are not each other's closest competitors as evidenced by the low to moderate diversion between the Parties.<sup>233</sup> The Parties conducted an analysis of Rentokil customer loss data which in the Parties' view shows that 'PHS rather than the other merger party is by far the most important competitor to each of Rentokil and Cannon'.<sup>234</sup> The Parties further said that the CMA's assessment of tenders and the GfK customer survey indicates that Cannon is only a weak constraint on Rentokil and that Rentokil is, at most, a moderate constraint on Cannon.<sup>235</sup>
- 7.59 In response to the provisional findings, the Parties said that the CMA had not demonstrated that any loss of competition between the Parties would be substantial: (a) on the basis of the CMA's analyses of diversion ratios, the Parties are 'not particularly close competitors'; and (b) 'the upwards price pressure arising from the transaction is demonstrably small', which 'holds all the more when there are other constraints on the Parties and PHS (such as Mayflower and Cathedral)'.<sup>236</sup>

### *The Parties' internal documents*

- 7.60 The Parties' internal documents showed that the Parties each perceive the other to be one of its two closest competitors on a national level, with the other close competitor being PHS.<sup>237</sup>
- 7.61 Rentokil's internal documents indicated that Rentokil considered PHS to be its closest competitor and Cannon to be its next closest competitor.
- (a) In Rentokil's ~~XXXX~~.<sup>238</sup> ~~XXXX~~.<sup>239</sup>
- (b) In a Rentokil ~~XXXX~~.<sup>240</sup>
- 7.62 Similarly, Cannon's internal documents indicated that Cannon perceived PHS and Rentokil to be ~~XXXX~~, and that Cannon saw '~~XXXX~~':
- (a) The '~~XXXX~~

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<sup>233</sup> ~~XXXX~~

<sup>234</sup> Parties' response to the issues statement, 31 August 2018, paragraphs 5.2-5.3.

<sup>235</sup> ~~XXXX~~

<sup>236</sup> Parties' response to the provisional findings, section 8 and Annex I.

<sup>237</sup> The Parties did not comment on our interpretation of their internal documents in response to our provisional findings.

<sup>238</sup> ~~XXXX~~ See assessment of competition from PHS and Cathedral below.

<sup>239</sup> ~~XXXX~~

<sup>240</sup> ~~XXXX~~

(b) In the five-year strategy for Cannon (2016-2020),<sup>241</sup> OCS Group (the former owner of Cannon) [X]

*Analysis of tendering data*

7.63 We analysed the Parties’ tendering data for private sector customers.<sup>242</sup> The tables below set out the diversion ratios estimated based on tenders lost by Rentokil and Cannon respectively to each competitor, measured by value of tenders.<sup>243</sup> We found that:

- (a) The diversion from Rentokil to Cannon was low at X (and X including diversion to X which X)<sup>244</sup> (Table 4).
- (b) The diversion from Cannon to Rentokil was moderate, at X% (Table 5).
- (c) Diversion from each of the Parties to PHS was the highest, at X% from Rentokil (Table 4) and X% from Cannon (Table 5).

**Table 4: Winners of private tenders lost by Rentokil**

<i>Winner of tender</i>	<i>Value of tender (£)</i>	<i>% value of tenders</i>
X	X	X
X	X	X
X	X	X
X	X	X
X	X	X
X	X	X
X	X	X

Source: CMA analysis of Rentokil tendering data; see Appendix C, Table 3

<sup>241</sup> [X]

<sup>242</sup> Further detail of the tendering analysis is set out in Appendix C. The Parties’ data reported private sector tenders by end customers and FM customers, but there were no records of tenders by private frameworks. National and multi-regional customers in eight or more regions accounted for X% by value of tenders lost by Rentokil and X% of tenders lost by Cannon considered in the analysis.

<sup>243</sup> A diversion ratio between supplier A and supplier B represents the proportion of sales that would divert to supplier B (as opposed to suppliers C, D, E etc) as customers’ second choice in the event of a price increase for Product A. The diversion ratio from the product of one of the merger firms to the other is a useful indicator of the ability of the second product to constrain the prices of the first product. See [Merger Assessment Guidelines](#), paragraph 5.4.9(a) and footnote 52.

<sup>244</sup> We consider that Zenith is not an independent competitor X in the supply of waste disposal, since Zenith X as explained when we assess competition from Zenith below.

**Table 5: Winners of private tenders lost by Cannon**

<i>Winner of tender</i>	<i>Value of tender (£)</i>	<i>% value of tenders</i>
✂	✂	✂
✂	✂	✂
✂	✂	✂
✂	✂	✂
✂	✂	✂
✂	✂	✂
✂	✂	✂

Source: CMA analysis of Cannon tendering data; see Appendix C, Table 4

7.64 We took account of the Parties’ submissions in relation to the ‘small sample size’ and the ‘low share of new business generated by private tenders’,<sup>245</sup> and ‘a significant number of cases in which the Parties have lost a tender to an ‘unknown’ competitor’.<sup>246</sup>

7.65 We nevertheless put weight on the analysis of tendering data. We found that both Parties’ data captured tenders with significant value,<sup>247</sup> and the proportion with an unknown winner was very small (✂% for Rentokil’s lost tenders and ✂% for Cannon’s lost tenders by value).<sup>248</sup> In addition, we have gathered data from other suppliers, including PHS, Cathedral and Mayflower, to verify the degree of competitive interactions between these suppliers and the Parties, and to better understand the competitor set in the segment.<sup>249</sup>

7.66 In conclusion, our analysis of the private sector customer tenders indicated that PHS is the closest competitor to each of Rentokil and Cannon for national and multi-regional customers. For both Rentokil and Cannon, the other merger party is the next closest competitor after PHS.<sup>250</sup>

*Analysis of Rentokil customer loss data*

7.67 The extent to which the Parties have won or lost customers between each other provides a useful indicator of the closeness of competition between them.

<sup>245</sup> ✂

<sup>246</sup> [Parties’ response to provisional findings](#), paragraph 1.3(a).

<sup>247</sup> The total annual contract value of the tenders in the analysis was ✂ (£✂ tenders lost by Rentokil) and £✂ (£✂ tenders lost by Cannon).

<sup>248</sup> See Table 4 and Table 5.

<sup>249</sup> See section on competition from other suppliers later in this chapter.

<sup>250</sup> We considered an analysis of tenders for public sector customers in our assessment of framework customers. We further consider the inference from the tendering analysis on alternatives available to customers when we assess competitive constraints from other suppliers later in this chapter.

- *Results of the analysis*

7.68 Based on analyses of Rentokil customers lost data in the supply of washroom services generally, and in the waste disposal specifically, in relation to national and multi-regional customers, we found that PHS was the closest competitor to Rentokil, and Cannon was the second closest competitor.<sup>251</sup>

(a) We considered Rentokil national and multi-regional customers with losses incurred in eight or more regions and estimated that the diversion from Rentokil to PHS was  $\times\%$ , and the diversion to Cannon was  $\times\%$ .<sup>252,253</sup>

(b) Rentokil used a different approach which identified national and multi-regional customers as those operating in (or in the case of frameworks, with users located in) eight or more regions. It estimated that the diversion to PHS was  $\times\%$ , and the diversion to Cannon was  $\times\%$ .<sup>254</sup>

7.69 Irrespective of which approach was used, we found a broadly similar level of diversion from Rentokil to Cannon (at  $\times\%$ ), and that after PHS, Cannon was the second closest competitor to Rentokil.<sup>255</sup>

- *Data with unknown competitors*

7.70 The Parties said that the CMA has not engaged with the implications of the large number of unknown winners.<sup>256</sup> We found that, as Rentokil told us, the Rentokil customer loss data ‘covers  $\times\%$  of the value of losses’ and ‘a high share of the lost value has been allocated to a competitor,  $\times\%$ ’.<sup>257</sup> In relation to national and multi-regional customers, we found that the proportion of observations with an ‘unknown’ winner was low by value.<sup>258</sup>

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<sup>251</sup> Further detail is set out in Appendix D. Cannon was not able to provide its customer loss data.

<sup>252</sup> The diversion was calculated based on all washroom services including end customers and FM customers (no framework users were in eight or more regions). The diversion to PHS was  $\times\%$  and diversion to Cannon was  $\times\%$  considering waste disposal.

<sup>253</sup> A small percentage of losses to FM companies or cleaning companies was also identified ( $\times\%$ ) but these were losses for FM customers rather than end customers. No losses to suppliers other than the above were identified.

<sup>254</sup> In relation to other competitors,  $\times\%$  of losses to FMs / cleaning companies was identified but none of these were for end customers. Diversion to Mayflower was less than  $\times\%$  (relating to an FM customer), and to Cathedral,  $\times\%$ .

<sup>255</sup> Appendix D sets out the differences between the approaches above in further detail. We consider inferences from the Rentokil loss analysis on constraints from other suppliers, as well as analysis for framework customers, later in the competitive assessment.

<sup>256</sup>  $\times\%$  and *Parties’ response to provisional findings*, Annex 1, Section 3.2.

<sup>257</sup>  $\times\%$

<sup>258</sup> Using the CMA’s approach to identify customers lost incurred in eight or more regions, the proportion with an unknown competitor is less than  $\times\%$ . Using Rentokil’s approach to identify customer groups operating in eight or more regions (where a loss can be incurred in a single region), the proportion with an unknown competitor was  $\times\%$  (see *Parties’ response to the provisional findings*, Annex 1, section 3.2). However, we found that only  $\times\%$  percentage points of the  $\times\%$  relate to end customers, with the rest being FM customers and framework users. We therefore consider the results to be informative in particular to end customers.



- *Win-loss data of other competitors*

7.71 The Parties said the Rentokil loss analysis is not informative of ‘what is happening in the market (eg the extent to which Cathedral and Mayflower have won national contracts from PHS)’.<sup>259</sup>

7.72 In our view, the analysis of business lost by Rentokil is consistent with other evidence including internal documents and tendering analysis, indicating the competitive constraints faced by Rentokil from Cannon, and from other suppliers as discussed further below. In addition, we gathered information from PHS, Cathedral, Mayflower and other suppliers regarding their national and multi-regional customers, and the competitive interactions between these suppliers with the Parties, as detailed in our assessment of competitive constraints below.

- *Conclusion on Rentokil loss analysis*

7.73 In conclusion, we found the analysis of Rentokil loss data to be relevant to the assessment of the Merger. The findings from the loss analysis indicated that PHS, and to a lesser extent Cannon, were the main constraints on Rentokil in supplying washroom services and waste disposal to national or multi-regional customers pre-Merger.

*The views of customers*

7.74 The largest national and multi-regional customers generally told us that they considered PHS, Rentokil and/or Cannon to be a viable alternative suppliers of waste disposal and have obtained quotes from them.

7.75 Of the nine<sup>260</sup> end customers of the Parties who responded to our question, eight<sup>261</sup> identified the other merger party as an alternative and/or considered them in their last tender. Eight<sup>262</sup> identified PHS and five<sup>263</sup> identified other suppliers.<sup>264</sup>

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<sup>259</sup> The Parties told us that ‘a broader set of ‘win-loss’ data from competitors including PHS, Cathedral and Mayflower is more reflective of the market as a whole’>< We noted, however, that the Parties have queried in Phase 1 the relevance of PHS tendering analysis, submitting that ‘the relevant issue is the extent to which one Party loses to the other. It is not which rival PHS loses to.’ See paragraph 75, [><]

<sup>260</sup> [><]

<sup>261</sup> [><]

<sup>262</sup> [><]

<sup>263</sup> [><]

<sup>264</sup> Customers can identify multiple options; therefore, the numbers do not add up to the total.

7.76 Three end customers of PHS also responded. One of them identified PHS and both Parties as the only qualified bidders in a previous tender.<sup>265</sup> Another customer said only PHS and the Parties were able to service its estate.<sup>266</sup> Another customer considered PHS, Rentokil and Zenith in a tender (we note that Zenith [REDACTED]).<sup>267</sup>

7.77 The Parties said the GfK survey results indicate low diversion to Cannon and high diversion to PHS'.<sup>268</sup> For reasons explained in paragraph 7.12, we place limited weight on the customer survey results in our assessment of national and multi-regional customers.<sup>269</sup>

*Our conclusions on closeness of competition between the Parties*

7.78 In conclusion, we found that in relation to national and multi-regional customers:

(a) Both Parties' internal documents depicted PHS, Rentokil and Cannon in a distinct competitor set from other suppliers, and Rentokil considered PHS to be a closer competitor than Cannon.

(b) The Rentokil customer loss data and the Parties' tendering data indicated PHS captured the highest proportion of diversion from each of the Parties, followed by the other Party. Rentokil appeared to be a stronger constraint on Cannon than Cannon was on Rentokil.

7.79 Our view therefore was that PHS was the closest competitor to both Rentokil and Cannon, and that, after PHS, the Parties were each other's next closest competitor pre-Merger. We consider evidence specific to FM customers and framework customers later in this chapter.

*Competition from other suppliers*

7.80 We assessed the extent of competitive constraints exerted by alternative options available to customers pre-Merger. We examined the evidence regarding:

(a) Competition from PHS.

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<sup>265</sup> [REDACTED]

<sup>266</sup> [REDACTED]. It identified Elis and Admiral in addition to the Parties and PHS as bidders, but these suppliers were not qualified.

<sup>267</sup> [REDACTED]

<sup>268</sup> [REDACTED]

<sup>269</sup> We consider responses from the 11 national and multi-regional customers in the GfK survey in Appendix E.

- (b) Competition from Cathedral.
- (c) Competition from Mayflower.
- (d) Competition from other individual washroom services suppliers.
- (e) Competition from a combination of regional washroom services suppliers.
- (f) Competition from FM companies.
- (g) Competition from specialist waste collection companies, cleaning companies, and self-supply.

7.81 Unless otherwise specified, the evidence presented in this section applies generally to all national and multi-regional customer segments.

#### *Competition from PHS*

- *The views of the Parties*

7.82 The Parties told us that PHS is a competitor of significant strength, has the most customers in the UK, which enables it to achieve the highest operational density of any washroom services supplier. The Parties also said that PHS operates as a ‘serious constraint’ and was each Party’s closest competitor responsible for the highest share of wins from tenders.<sup>270</sup> The Parties submitted that PHS will continue to act as a constraint post-Merger, and competitive constraints on PHS from other competitors should be considered.<sup>271</sup>

- *Internal documents*

7.83 Both Rentokil’s and Cannon’s internal documents considered PHS the main competitor, or one of the main competitors alongside the other merger party.

(a) Rentokil’s Strategy Update 2017 ~~⌘~~.<sup>272</sup>

(b) Rentokil maintained a list of ~~⌘~~.<sup>273</sup>

(c) The ‘Competitor UK map’ of Cannon showed that ~~⌘~~.<sup>274</sup>

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<sup>270</sup> ~~⌘~~

<sup>271</sup> [Parties’ response to provisional findings](#), paragraph 4.4 and Schedule I.

<sup>272</sup> ~~⌘~~

<sup>273</sup> ~~⌘~~

<sup>274</sup> ~~⌘~~~~⌘~~

(d) OCS Group's five-year strategy for Cannon [REDACTED].<sup>275</sup>

- *The views of PHS*

7.84 PHS told us that it considered itself together with the Parties as the only providers with 'the ability to effectively serve national customers across the UK'. PHS said that it is because of their 'national depot infrastructure'; 'ability to handle national account management needs'; 'ability to provide a national customer service organisation'; 'ability to handle complex procurement process', and 'national IT systems'.<sup>276</sup>

- *CMA assessment*

7.85 The evidence we have received indicated that PHS is the largest washroom services supplier in the UK. PHS operates [REDACTED] sites across all regions in the UK, with washroom services revenue of [REDACTED].

- *PHS's current national and multi-regional customers*

7.86 PHS has provided data on a list of its [REDACTED] customers which include end customers and FM customers. It told us that most of these customers are national in geographic scope.<sup>277</sup> The total spend in washroom services of these customers was £[REDACTED] (£[REDACTED] for end customers). PHS told us that, in addition to [REDACTED] customers, it has another [REDACTED], some of which are also national. Furthermore, PHS is listed on [REDACTED] public frameworks and at least another [REDACTED] private frameworks with national and multi-regional coverage, generating over [REDACTED] of revenue.

7.87 On this basis, we found that the total value of national and multi-regional customers supplied by PHS will remain larger than that of the Parties combined across all customer segments (see Table 3).

- *Analyses of the Parties' tendering data and Rentokil customer loss data*

7.88 We found in our analyses of the Parties' tendering data and Rentokil customer loss data that PHS was the closest competitor to each merger party, because

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<sup>275</sup> [REDACTED]

<sup>276</sup> [REDACTED]

<sup>277</sup> PHS defined [REDACTED] PHS has [REDACTED] accounts relating to these [REDACTED] customers; some customers have multiple accounts.

PHS captured the highest proportion of diversion from each of the Parties under all measures.<sup>278</sup>

(a) Private sector tender analysis: diversion from Rentokil to PHS was [X]%; and from Cannon to PHS was [X]%.<sup>279</sup>

(b) Rentokil customer loss analysis: diversion from Rentokil to PHS was X% for customers lost incurred in more than eight regions.<sup>279</sup> Using the Parties' approach to identify customers operating in eight regions, diversion to PHS was estimated to be X%.<sup>280</sup>

7.89 The Parties' tendering data also indicated that PHS frequently bid against each of the Parties.<sup>281</sup>

- o *PHS customer win-loss data*

7.90 PHS provided win/loss data for customers in eight or more regions,<sup>282</sup> which showed that:

(a) PHS won [X].<sup>283</sup> Cannon tendering data X.<sup>284</sup>

(b) PHS lost [X],<sup>285</sup> [X] Cannon data reported that X]

(c) PHS did not identify [X]

7.91 The analysis confirmed that Rentokil is a strong constraint on PHS. While Cannon [X], it bid X] This is consistent with the analysis of the Parties' tendering data, which showed frequent competitive interactions between PHS and both Parties.

- o *Third-party views*

7.92 All third-party views were consistent with PHS being an effective competitor. Nearly all the Parties' national and multi-regional customers which responded to the CMA's questionnaire considered PHS as an alternative viable supplier

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<sup>278</sup> See Appendix C and Appendix D

<sup>279</sup> See Table 1 in Appendix D.

<sup>280</sup> This approach includes FM customers and framework customers.

<sup>281</sup> See Appendix C. For example, Cannon data reported that PHS bid on X]of the private tenders that Cannon also bid for. Rentokil data reported that PHS bid on X]of the private tenders that Rentokil also bid for.

<sup>282</sup> PHS data includes [X] in eight or more regions won or lost by PHS since January 2017.

<sup>283</sup> [X]

<sup>284</sup> [X]

<sup>285</sup> Cannon won the [X] contract from PHS, but this customer did not purchase waste disposal.

and/or included PHS in their last tender. Similarly, most other washroom suppliers identified PHS as a leading competitor.<sup>286</sup>

- *Conclusions on the competitive position of PHS*

7.93 In summary, we found from our analysis of the Parties' tendering data, Rentokil customer loss data, PHS's customer win/loss data, customer submissions and the Parties' internal documents that:

- (a) PHS was the closest competitor to the Parties in the supply to national and multi-regional customers.
- (b) Both Rentokil and Cannon competed against PHS closely for national and multi-regional customers, but Rentokil more strongly than Cannon.
- (c) PHS had the most national and multi-regional customers by number and by revenue.

7.94 On this basis, we found that PHS operates as a substantial competitor to the Parties pre-Merger. We consider in paragraphs 7.249 *et seq* below on the strength of constraint of PHS and other competitors post-Merger.

#### *Competition from Cathedral*

- *The views of the Parties*

7.95 The Parties said Cathedral marketed itself as a 'national player' and is able to provide washroom services on a national basis.<sup>287</sup> In the Parties' view, Cathedral is an effective competitor because it serves national customers,<sup>288</sup> markets in all regions of the UK,<sup>289</sup> and has 'accomplished the 'break-through' to enlarge national business.<sup>290</sup> The Parties considered Cathedral's growth is 'probably partly due to its novel supply model'.<sup>291</sup>

7.96 The Parties said the GfK survey indicated that customers often asked Cathedral to tender or quote, and in ~~§~~] Cathedral was ~~§~~].<sup>292</sup>

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<sup>286</sup> See Appendix E.

<sup>287</sup> ~~§~~]

<sup>288</sup> The Parties understood that Cathedral has a national accounts team and they identified five national customers that they understood to be supplied by Cathedral: ~~§~~]

<sup>289</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.14(b).

<sup>290</sup> [Parties' response to provisional findings](#), paragraph 7.1-7.3. In the Parties' view, 'the crucial breakthrough for smaller players in the market is to be able to serve their first national customer. Once they have demonstrated an ability to do that [...] there is no reason why they cannot serve other national customers'.

<sup>291</sup> ~~§~~]

<sup>292</sup> ~~§~~]. [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.17.

7.97 The Parties submitted an analysis which showed that Cathedral accounted for [REDACTED]% of 'large customers' lost by Rentokil.<sup>293</sup> The Parties were not able to identify examples of national or multi-regional customers they have lost to Cathedral.<sup>294</sup>

- *The Parties' internal documents*

7.98 Rentokil documents indicated the following in relation to Cathedral:

(a) [REDACTED].<sup>295</sup> [REDACTED].

(b) [REDACTED].

(c) In Rentokil's 'Internal Regional Competitor Survey' [REDACTED].<sup>296, 297</sup>

7.99 Cannon internal documents described Cathedral as follows:

(a) In Cannon's 5-year strategy plan for FY16-20 by OCS Group, [REDACTED].<sup>298</sup>

(b) [REDACTED].<sup>299</sup>

(c) [REDACTED].<sup>300</sup>

7.100 Based on the Parties' internal documents, we found that although the Parties monitored competition from Cathedral, they considered Cathedral different from PHS and the Parties, and perceive Cathedral to be more regional/local than national.

- *The views of Cathedral*

7.101 We held extensive discussions with Cathedral as well as a hearing. Cathedral provided a range of evidence including its views on competition in washroom services, its current operations, and examples of its existing national and multi-regional customers and contracts for which it attempted to compete.

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<sup>293</sup> [REDACTED]. See Appendix D for a detailed description of the Parties' analysis, which defined 'large customers' as those with an annual spend over £30,000.

<sup>294</sup> [REDACTED]. In response to the provisional findings, the Parties did not put forward further evidence about their competitive interactions with Cathedral.

<sup>295</sup> See Slide 38, [REDACTED]

<sup>296</sup> Rentokil asked its regional branch managers the following question: 'Q1 [REDACTED]'. See Rentokil's response to the Market Questionnaire, Question 36, Annex 182, and [REDACTED]

<sup>297</sup> [REDACTED]

<sup>298</sup> [REDACTED]

<sup>299</sup> [REDACTED]

<sup>300</sup> [REDACTED] We note that Cannon did not define the meaning of [REDACTED] in this document.

7.102 Cathedral told us the following:

- (a) Its total revenues for all customers have grown from [redacted] million in 2012 to [redacted]million in 2017.<sup>301</sup>
- (b) [redacted].<sup>302</sup> It 'regularly' tendered or quoted for 'national accounts'.<sup>303</sup>
- (c) It operates [redacted],<sup>304</sup> from which it services [redacted]customer sites across the UK. It supplies customers directly in all but one UK region, and it sub-contracts in a very limited number of post codes.<sup>305</sup>
- (d) It employs [redacted].

7.103 Cathedral told us that it did not hold records of tenders for which it had competed, or business it had won or lost from competitors, in the past. It provided the CMA with examples of customers it had bid for, as we discuss below.

- *CMA assessment*

7.104 To form a view on the competitive constraint provided by Cathedral, we assessed:

- (a) Cathedral's current national and multi-regional customers.
- (b) Cathedral's attempts to acquire national and multi-regional customers.
- (c) The degree of competition between Cathedral and the Parties pre-Merger.
- (d) The views of customers and competitors.
  - *Cathedral's current national and multi-regional customers*

7.105 We found that Cathedral supplied to a number of national and multi-regional customers:

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<sup>301</sup> [redacted]Cathedral revenue [redacted], and it was not able to provide a breakdown for revenue of washroom services only or for national and multi-regional customers. Financial years ended June 2012 to June 2017 based on published annual reports and accounts.

<sup>302</sup> Cathedral emphasised that it did not hold precise revenue data or an exhaustive customer list.

<sup>303</sup> Cathedral did not define 'national account' in this submission. Cathedral subsequently clarified that 'national account' was not defined by reference to customers located in multiple regions. [redacted].

<sup>304</sup> [redacted]

<sup>305</sup> [redacted]



7.106 Cathedral estimated that it had between [X] national and multi-regional end customers in eight or more regions, which represented less than [X] of revenue (£[X]).<sup>306</sup>

(a) National and multi-regional customers represented less than [X]% of Cathedral's 5% annual growth (with the remainder being driven by local or regional customers).

(b) Cathedral also confirmed that [X] was a national customer and that it has previously supplied [X].<sup>307</sup>

7.107 However, we found that Cathedral's total revenue from national and multi-regional end customers was [X] than that of Rentokil (£[X]), Cannon (£[X]) and PHS (over £[X]).<sup>308</sup> (See Table 3.) Further, Cathedral's contracts with national and multi-regional customers appeared to be of relatively low value compared to that of the Parties' and PHS's.<sup>309</sup>

7.108 We concluded that Cathedral was able to supply national and multi-regional customers, but its scale was small compared to that of the Parties and PHS.

o *Cathedral's attempts to acquire national and multi-regional customers*

7.109 Cathedral submitted ten examples of national and multi-regional customers it attempted to win in the last 12 months.<sup>310</sup> [X],<sup>311</sup> and [X].<sup>312</sup>

7.110 Cathedral [X] in the last 12 months.<sup>313</sup> Cathedral won the contract from Cannon, [X].

7.111 We concluded that Cathedral had generally not been successful when seeking to attract new national and multi-regional customers from the Parties or from PHS.

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<sup>306</sup> Revenue including washroom services, [X]

<sup>307</sup> [X]

<sup>308</sup> Cathedral's FM and framework customers are set out in our assessment of evidence specific to these customers segments. Further details may be found in Appendix B.

<sup>309</sup> For example, the largest end customer of Rentokil ([X]) had an annual spend of £[X], which [X]. The largest end customer of Cannon [X] has an annual spend of £[X] which is [X]% of Cathedral's national and multi-regional customer turnover.

<sup>310</sup> [X] We note that these opportunities were not identified in the Parties' tendering data.

<sup>311</sup> [X]

<sup>312</sup> [X]

<sup>313</sup> [X] with annual receipts of [X]

- *The degree of competition between Cathedral and the Parties pre-Merger*

7.112 Competitive interactions are an important indicator of the strength of competitive constraint. We found that:

- (a) Cathedral accounted for only [redacted]% of 'large customers' lost by Rentokil.<sup>314</sup>
- (b) The Parties did not identify any national and multi-regional customers that they have lost to Cathedral.<sup>315</sup>
- (c) Cathedral identified a customer won from Cannon,<sup>316</sup> and another customer it has lost to Cannon.<sup>317</sup>
- (d) Cathedral was not reported as a winner or a bidder in the Parties' tendering data.<sup>318</sup>

7.113 Based on the evidence above, we found very limited competitive interactions between Cathedral and the Parties to supply national and multi-regional customers pre-Merger.

- *The views of customers and competitors*

7.114 Of the national and multi-regional customers which responded to our questionnaire, one customer told us that it invited Cathedral to bid for a washroom services tender, but Cathedral did not take part.<sup>319</sup> [redacted] identified Cathedral as a qualified supplier in a recent request for quotation (but Cathedral did not win the contract). No other customers mentioned Cathedral as a viable alternative or a bidder in past tenders.

7.115 The Parties said the GfK survey suggested that 10% of new multi-site customers asked Cathedral to tender/quote.<sup>320</sup> However, we considered that the aggregated GfK survey results to be of limited value to our assessment of national and multi-regional customers.<sup>321</sup> In any event, none of the 11 national and multi-regional customers captured by the GfK survey said they would switch to Cathedral upon a price increase, and none of those eight customers

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<sup>314</sup> 'Large customers' defined by the Parties as those with annual spend over £30,000. See Appendix D.

<sup>315</sup> [redacted]

<sup>316</sup> The customer in question is [redacted] See footnote 313.

<sup>317</sup> The customer in question is [redacted]

<sup>318</sup> We noted that it is not possible to identify bidders exhaustively due to lack of transparency in the market.

<sup>319</sup> [redacted]

<sup>320</sup> See paragraphs 7.96 above.

<sup>321</sup> See paragraph 7.12 above.

who asked other suppliers to quote in the last two years have received a bid from Cathedral.<sup>322</sup>

7.116 PHS told us that its key account customers rarely mentioned Cathedral as a national competitor.<sup>323</sup> Mayflower told us that it rarely competed with Cathedral for national customers.<sup>324</sup>

7.117 In conclusion, customer and competitor views appear to indicate limited competitive interactions between Cathedral and the Parties.

- *Conclusion on the competitive position of Cathedral*

7.118 Although Cathedral has some national and multi-regional customers, we found that it provided a limited constraint on the Parties, as demonstrated by the relatively low value of its current national and multi-regional customer contracts, limited competitive interactions with the Parties, and that it has [REDACTED]

*Competition from Mayflower*

- *The views of the Parties*

7.119 The Parties told us that:

(a) Mayflower served a national customer ([REDACTED]) and ‘should suffice to qualify it as an effective national player’.<sup>325</sup>

(b) Mayflower has grown in recent years, and [REDACTED] is ‘understood to have sponsored growth by Mayflower to offer national coverage’.<sup>326</sup>

(a) Mayflower has six branches and, in the Parties’ view, matches Rentokil’s estimate of how many would be needed to achieve national coverage, and it is ‘in a position to continue to strengthen its existing national coverage capabilities’.<sup>327</sup>

(b) Mayflower has won [REDACTED]% by value of the private sector tenders lost by Cannon in the CMA’s analysis; has won ‘at least one large contract’ from

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<sup>322</sup> See Appendix E for further detail.

<sup>323</sup> [REDACTED]

<sup>324</sup> Mayflower told us it identifies ‘national customers’ as those served over 25 sites.

<sup>325</sup> [REDACTED]

<sup>326</sup> [REDACTED]

<sup>327</sup> [REDACTED]

Cannon,<sup>328</sup> and has won [redacted]% of Rentokil's lost value for 'large customers' in the analysis of Rentokil customer losses.<sup>329</sup>

7.120 Following provisional findings, the Parties told us that they understood that Mayflower had won the national accounts of [redacted].<sup>330</sup> In addition, the Parties also believed that Mayflower was in the running for [redacted].<sup>331</sup>

- *The Parties' internal documents*

7.121 We considered how the Parties perceived competition from Mayflower in their internal documents:

(a) Rentokil Strategy Update 2017 listed Mayflower [redacted].<sup>332</sup> [redacted].<sup>333</sup>

(b) In Rentokil's 'Internal Regional Competitors Survey', Mayflower [redacted].<sup>334</sup>

(c) Mayflower [redacted].<sup>335</sup> [redacted].<sup>336</sup>

(d) Mayflower was included as [redacted],<sup>337</sup> [redacted].<sup>338</sup>

7.122 In summary, evidence from the Parties' internal documents indicated that Mayflower was not monitored closely by Rentokil, and it was primarily considered a regional competitor rather than a national competitor by Cannon.

- *The views of Mayflower*

7.123 We held a number of discussions with Mayflower as well as a hearing. Mayflower provided a range of evidence to our inquiry, including in relation to its current customers, recent growth and strategy and its views on competition in the washrooms sector.

7.124 Mayflower told us the following about its current operations:

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<sup>328</sup> [redacted]

<sup>329</sup> [redacted]

<sup>330</sup> [redacted]

<sup>331</sup> [redacted]

<sup>332</sup> See discussions above regarding Rentokil's description of these competitors in the Strategy Update 2017.

<sup>333</sup> [redacted]

<sup>334</sup> Rentokil asked its regional branch managers the following question: 'Q1 - Name your top 5 regional competitors? Q2 - Have you come across Cathedral Hygiene in your area?'. [redacted]

<sup>335</sup> [redacted]

<sup>336</sup> [redacted]

<sup>337</sup> The Cannon document does not explain the definition of '[redacted]

<sup>338</sup> [redacted]

- (a) It started in the South East, has five depots,<sup>339</sup> and is setting up a sixth depot in the East Midlands.<sup>340</sup>
- (b) Its total washroom services turnover across all customers was around £[<],<sup>341</sup> which has grown by [<]% last year. Mayflower has supplied [<]
- (c) It does not have a centralised sales force, but it targets customers in some sectors,<sup>342</sup> and does not ‘simply chase turnover but sought to ensure that it had clients which were able to pay its bills’. It occasionally turned down customers that ‘do not fit in well with its portfolio’ if that imposes additional costs.
- (d) It competed in tenders for ‘national customers’ around four to six times per month.<sup>343</sup>
- (e) It understood that there to be no significant differences between the prices it offers and those offered by Rentokil, Cannon and PHS.

7.125 In Mayflower’s view, Rentokil, Cannon and PHS would have been the main suppliers to the largest customers five years ago. However, Mayflower considered this an outdated view of the market.

- *CMA assessment*

7.126 To assess the competitive constraint provided by Mayflower, we considered the following evidence, including the evidence from the Parties and Mayflower:

- (a) Mayflower’s current national and multi-regional customers.
- (b) The degree of competition between Mayflower and the Parties pre-Merger.
- (c) The views of customers and competitors.

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<sup>339</sup> Woolwich, Swindon, Corby, Manchester, Motherwell in the UK; it also has a depot in the Republic of Ireland (Dublin).

<sup>340</sup> [<]

<sup>341</sup> [<]services [<]). [<]. Mayflower’s website states that in addition to washroom services, it has three other divisions: consumables, laundry and cleaning machinery.

<sup>342</sup> Including [<]

<sup>343</sup> We note that Mayflower did not define national customer in this submission, and it did not identify or provide examples of these ‘national customer’ tenders.

- *Mayflower's current national and multi-regional customers*

7.127 Mayflower estimated that it currently supplies between [X] national customers,<sup>344</sup> which account for approximately [X] of its washroom services business (or £[X]million in revenue).<sup>345</sup> These estimates include both end customers and FM customers. We found that they appear to be similar in order of magnitude as Cathedral, but substantially smaller than the Parties and PHS.<sup>346</sup>

7.128 Whilst Mayflower was not able to provide an exhaustive customer list, it confirmed that [X] is one of its top six customers.<sup>347</sup> Mayflower told us that it had recently won [X],<sup>348</sup> [X].

7.129 The evidence above indicated that Mayflower has the ability to supply some national and multi-regional customers, especially FM customers.

- *The degree of competition between Mayflower and the Parties pre-Merger*

7.130 We examined the following evidence on competitive interactions between the Parties and Mayflower pre-Merger.

(a) The Parties have identified one national and multi-regional customer lost to Mayflower [X].<sup>349</sup> [X],<sup>350</sup> and it has recently awarded a national contract to Mayflower.<sup>351</sup>

(b) Mayflower said it won the [X] contract [X].

(c) The Cannon tendering data indicated that Mayflower has won [X]% by value of Cannon's lost private sector tenders;<sup>352</sup> but the majority of this value is attributable to [X].<sup>353</sup> Mayflower was identified as a bidder in another national contract [X] which it did not win.

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<sup>344</sup> Mayflower identified national customers as customers which are served from all its depots and which have 25 or more delivery points.

<sup>345</sup> These included end customers and FM customers. We do not have a revenue broken down by customer type. [X]

<sup>346</sup> See Table 3.

<sup>347</sup> Mayflower's other five top customers are FM companies or cleaning companies. Mayflower told us that its top six customers are: [X]

<sup>348</sup> [X]

<sup>349</sup> [X] At the [X], the Parties did not identify any national or multi-regional customers lost to Mayflower. Cannon said Mayflower has won one [X], which is a local/regional customer.

<sup>350</sup> [X]

<sup>351</sup> [X]

<sup>352</sup> Prior to customer sector information provided by the Parties, we estimated the diversion ratio from Cannon to Mayflower to be [X]%.  
<sup>353</sup> [X]

(d) The Rentokil tendering data does not identify Mayflower as a bidder or winner of any tenders.<sup>354</sup>

(e) The Parties' analysis indicated that Mayflower has won [X]% of 'large customers' lost by Rentokil by value.<sup>355</sup> However, our analysis showed that all Rentokil customers lost to Mayflower were [X].<sup>356</sup> (See Appendix D.)

7.131 Based on the above, our view is that there is limited evidence of competitive interactions between Mayflower and the Parties to supply national and multi-regional customers, other than for the [X] tender and [X] contract.

- *The views of customers and competitors*

7.132 Other than [X], the end customers that responded to us did not mention Mayflower as a viable alternative or a bidder in past tenders.<sup>357</sup> Similarly, none of the 11 national and multi-regional end customers responding to the GfK survey said they would switch to Mayflower upon a price increase, or have invited Mayflower to tender/quote.

7.133 PHS told us that Mayflower is 'rarely mentioned as a national competitor by the larger customers'.<sup>358</sup> PHS's 'top target list' identified [X] Mayflower end customers,<sup>359</sup> and estimated that Mayflower has a share of [X] across PHS's current and potential key account customers.<sup>360</sup>

- *Conclusion on the competitive position from Mayflower*

7.134 The evidence indicated that Mayflower is the fifth largest washroom services supplier by total revenue and it operates across the UK. Mayflower is estimated to have approximately [X] national and multi-regional customers representing [X] of its business (ie around £[X]), including end customers and FM customers.

7.135 In our view, therefore, Mayflower is capable of serving some national and multi-regional customers. However, we found that Mayflower currently acts as a limited constraint on the Parties, because its current scale is significantly smaller than that of the Parties and PHS, there has been limited competitive interactions between the Parties and Mayflower, and the Parties' internal

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<sup>354</sup> See Appendix C.

<sup>355</sup> The Parties defined 'large customers' as customers with annual spend over [X]

<sup>356</sup> In Rentokil's data, the [X] servicing [X]

<sup>357</sup> We consider FM customers and framework customers later in this chapter.

<sup>358</sup> [X]

<sup>359</sup> [X]

<sup>360</sup> See Appendix B.

documents did not consider Mayflower as a close competitor. The evidence is also consistent with Mayflower's view that it targets only certain customer sectors and will turn down customers that do not fit its portfolio.

#### *Competition from other individual washroom services suppliers*

7.136 We considered competition from other individual washroom services suppliers.

- *The views of the Parties*

7.137 The Parties identified several 'national providers' (Elis, Greenworks, Zenith, B Hygienic) and four players which 'have the capacity to expand their networks to become national' (Inspire Healthcare, City Hygiene Services, Dirty Harry's Washrooms, Shorrock Trichem), in addition to PHS, Mayflower and Cathedral.<sup>361</sup>

- *CMA assessment*

7.138 We assess the evidence regarding the extent of competition between these washroom services suppliers and the Parties.

7.139 As a general observation, our analysis of Rentokil loss data indicated that Rentokil has not lost any customer contracts that covered eight or more regions to suppliers other than to PHS, Cannon and FM/cleaning companies.<sup>362</sup> The losses identified in the Rentokil loss data to other suppliers were incurred within a single region, most of which relate to independent users of frameworks or sites served by FM companies.<sup>363</sup>

- *Elis (Berendsen)*

7.140 Berendsen was acquired by Elis, an international group offering textile, hygiene and facility services, in September 2017.<sup>364</sup> The Parties submitted that it 'would seem very unlikely that Elis would not contemplate bringing in-house' washroom services, which is Elis' key specialist area.<sup>365</sup>

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<sup>361</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.16. In response to the provisional findings, the Parties did not make additional submissions in relation to these suppliers other than regarding the potential entry of Elis, which is discussed in Chapter 9.

<sup>362</sup> In the case of losses to FM company, the majority of customers are FM customers, rather than loss of end customers to an FM company.

<sup>363</sup> See Appendix D for further detail.

<sup>364</sup> [redacted]

<sup>365</sup> [redacted]



7.141 Elis told us that its core business in the UK is workwear, and washroom services are an add-on.<sup>366</sup> It generated washroom services revenues of £[redacted] in 2017, of which it estimated that [redacted] were to national and multi-regional customers.<sup>367</sup> However, all washroom services [redacted].<sup>368</sup> Elis said it did not compete in washroom services tenders because customers would want to deal directly with the service provider.<sup>369</sup>

7.142 Elis was identified as a viable alternative by a national and multi-regional customer of Rentokil.<sup>370</sup> A Cannon customer [redacted].<sup>371</sup> A [redacted] national customer told us that Elis was not able to service an estate of its size.<sup>372</sup>

7.143 We found that Elis is currently not an independent competitive constraint, because it [redacted]. In any event its washroom services business from national and multi-regional customers is very small. [redacted] We engaged extensively with Elis in relation to entry into the UK washrooms sector, the assessment of which is set out in Chapter 9.

- o *Zenith Hygiene Group*

7.144 Zenith is a supplier of cleaning and hygiene chemicals. The Parties identified Zenith as a national washroom provider.<sup>373</sup> Zenith told us that it operates a branch (Welham Green) which provides washroom services and waste disposal in the South East, with a revenue of £[redacted] in 2017. Outside the South East, [redacted] acts as a sub-contractor for Zenith.<sup>374</sup>

7.145 Rentokil's tendering data identified [redacted].<sup>375</sup> Cannon told us that [redacted] supplied the national contract for [redacted], a restaurant chain across the UK.<sup>376</sup> In both cases, Zenith outsources waste disposal to [redacted]

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<sup>366</sup> Elis is not aware of any contracts where it provides washroom services without an associated workwear service.

<sup>367</sup> Elis's estimate of customers with sites in eight or more regions. [redacted] customers of washroom services are in eight or more regions. See Appendix B.

<sup>368</sup> Elis said [redacted]

<sup>369</sup> [redacted]

<sup>370</sup> ([redacted])

<sup>371</sup> [redacted]

<sup>372</sup> [redacted], who told us that it has 'spoken to Berendsen'.

<sup>373</sup> The Parties said Zenith has 'a network of distribution centres strategically located across the UK'. [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.16.

<sup>374</sup> This is confirmed by the contract between Zenith and [redacted], which states that '[redacted] This is also confirmed by Zenith's submission, and [redacted]

<sup>375</sup> [redacted] See Appendix C.

<sup>376</sup> [redacted]

- 7.146 A [redacted] national customer [redacted] told us that it has considered the Zenith as a qualified supplier in a previous tender, but the customer appointed another provider.
- 7.147 On the basis of the above, we found that Zenith is not an independent constraint on the Parties in the supply of waste disposal services to national and multi-regional customers, as the service was largely outsourced to [redacted]
- o IWSA
- 7.148 The IWSA is ‘a group of independent washroom service providers who work in partnership’ to provide washroom services ‘across the whole of UK’.<sup>377</sup>
- 7.149 IWSA told us that it has over 35 members. It said three of its members have contracts with customers located in multiple regions, citing [redacted] as examples. South West Hygiene also told us that it has just been awarded a ‘very large contract’ under IWSA. However, IWSA told us that its ‘biggest problem’ is getting over 35 members to agree a price for large contracts, and its members ‘may be more expensive than national suppliers’.<sup>378</sup>
- 7.150 We have not seen evidence of competitive interactions between IWSA and the Parties.<sup>379</sup> The Parties’ internal documents did not monitor IWSA in any detail.<sup>380, 381, 382</sup>
- 7.151 PHS told us that IWSA is a ‘trade body’ and it is ‘difficult to coordinate service requirements across a large group of regional or local service providers’.<sup>383</sup> On the other hand, a regional washroom service supplier ([redacted]) said it can ‘easily offer services elsewhere in the UK using [IWSA’s] other members’.<sup>384</sup> Another provider ([redacted], which is not an IWSA member) said ‘there is more national competition recently through collaborations between regional providers using the IWSA’.<sup>385</sup>
- 7.152 No national or multi-regional customers which responded to us have identified IWSA as a viable alternative or a supplier considered in previous tenders.

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<sup>377</sup> [redacted]

<sup>378</sup> [redacted]

<sup>379</sup> We note that IWSA was not identified as a winner or bidder in [redacted], nor was it identified as [redacted]

<sup>380</sup> [redacted]

<sup>381</sup> IWSA was described as [redacted] but the document does not define the meaning of [redacted]

<sup>382</sup> IWSA is not mentioned as a competitor in OCS Group’s [redacted]

<sup>383</sup> [redacted]

<sup>384</sup> The supplier in question was not able to provide information of its current contracts under IWSA to the CMA.

<sup>385</sup> [redacted]

7.153 Given the evidence above on the number of national and multi-regional customers served by IWSA, competitive interactions between the Parties and IWSA and internal documents, we found that the constraint from IWSA is limited.

- *Hygienic Concepts*

7.154 Hygienic Concepts told us that it provides washroom services around Great Britain,<sup>386</sup> generated a revenue of £[redacted] in the most recent year. It estimated that approximately £[redacted] was from national and multi-regional customers.<sup>387</sup>

7.155 Hygienic Concepts confirmed that it has won the tenders of two national and multi-regional customers ([redacted] and [redacted]).<sup>388</sup> Hygienic Concepts said that it competed by offering a high service quality, and understood that its price was typically higher than that of Cannon and PHS, by approximately [redacted].

7.156 We found limited evidence on competitive interactions between the Parties and Hygienic Concepts (other than the [redacted] tender which it won from [redacted]). [redacted] Based on the above, we found that Hygienic Concepts is able to serve some national and multi-regional customers, but its constraint on the Parties is limited.

7.157 Based on the above, we found that Hygienic Concepts is able to serve some national and multi-regional customers, but its constraint on the Parties is limited.

- *Other washroom services suppliers*

7.158 We have been told that other suppliers currently serve or were identified as viable alternatives for some national and multi-regional customers:

(a) A national customer of Cannon ([redacted]) considered B Hygienic as a viable 'local supplier'.<sup>389</sup>

(b) Another national customer of Cannon ([redacted]) identified Mustang Washrooms as a viable alternative.<sup>390</sup>

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<sup>386</sup> Its head office is in Cannock (in the West Midlands), and it operates a depot in High Wycombe in the South East for re-stocking. It does not supply to Northern Ireland.

<sup>387</sup> Identified by Hygienic Concepts as customers in eight or more regions [redacted]

<sup>388</sup> Hygienic Concepts estimated that the contract value is [redacted].

<sup>389</sup> [redacted] clarified that B Hygienic could supply only within a local area and not regionally, ranked it fourth in the last tender [redacted]

<sup>390</sup> [redacted]

(c) Rentokil tender data identified Pink Hygiene as sharing a contract for [redacted], which operates a franchise.<sup>391</sup>

(d) Chiltern Hygiene told us that it serves [redacted] national or multi-regional customers, with a combined revenue of [redacted].<sup>392</sup>

7.159 We set out the evidence available on competition from other potential national suppliers identified by the Parties in Appendix B.

- *Conclusion on competition from other individual washroom services suppliers*

7.160 We found that a few other washroom services suppliers are capable of serving national and multi-regional customers,<sup>393</sup> but they exert a very limited constraint on the Parties. This is based on the limited examples of national and multi-regional customers they currently serve, the lack of evidence on competitive interactions between them and the Parties, and the Parties did not monitor these competitors in any meaningful way in relation to national and multi-regional customers. In the case of Elis and Zenith, we found that they are not independent constraints because they currently outsource their washroom services to other suppliers.<sup>394</sup>

#### *Competition from a combination of regional suppliers*

- *The views of the Parties*

7.161 The Parties told us that it is easy to multi-source across regions to achieve national coverage,<sup>395</sup> and customers can ‘buy-around’ the Parties by using ‘a combination of regional washroom services providers rather than a single national provider’.<sup>396</sup> The Parties said that national customers can deal with numerous suppliers already. In support of their view, the Parties cited the results of the GfK survey and third-party responses to the CMA.<sup>397</sup>

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<sup>391</sup> [redacted]

<sup>392</sup> [redacted]

<sup>393</sup> Other than PHS, Cathedral and Mayflower which we have already assessed above

<sup>394</sup> We note that [redacted]

<sup>395</sup> [Parties’ response to the issues statement](#), 31 August 2018, paragraph 3.3.

<sup>396</sup> [redacted]

<sup>397</sup> [redacted]The Parties submitted that ‘According to [the CMA’s] survey, 34% of multisite customers would be very / fairly likely to use regional players to achieve national coverage for their sanitary waste disposal needs if their current provider was unavailable; ‘the CMA cites two large customers (with a significant total washroom spend of £[redacted]and £[redacted]respectively) that would consider a combination of regional washroom services suppliers in the event of a 5% price increase’.

7.162 Further, the Parties estimated that the incremental cost of dealing with an additional supplier is less than 0.2% of the value of a contract.<sup>398</sup>

7.163 In response to provisional findings, the Parties said that customers did not need to buy around in every region; if the merged entity sought to increase price by 5% on waste disposal, then if a customer switched away 20% of waste disposal value this would ‘frequently be sufficient to deter the price rise’.<sup>399</sup> The Parties provided two examples: [redacted] as a customer who threatened to ‘buy-around’,<sup>400</sup> and [redacted] as a customer who adopted a ‘regional procurement model’.

- *CMA Assessment*

7.164 To assess the strength of a combination of regional suppliers as an option for national and multi-regional customers, we considered the following:

- (a) Forms of ‘multi-sourcing’ of waste disposal for an estate.
- (b) Purchase patterns of national and multi-regional customers.
- (c) Customer submissions on whether they would consider a combination of regional suppliers.
- (d) The ability of customers to source regionally.
- (e) The incentive for customers to source regionally.
- (f) Competitor submissions.

7.165 The following paragraphs focus primarily on end customers. We discuss framework customers and FM customers later in this chapter.

- *Forms of ‘multi-sourcing’ of waste disposal for an estate*

7.166 We considered how customers may purchase waste disposal from multiple suppliers in different regions.<sup>401</sup>

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<sup>398</sup> [redacted] and the [Parties’ response to the issues statement](#), 31 August 2018, paragraph 3.3.

<sup>399</sup> [Parties’ response to provisional findings](#), paragraph 4.5.

<sup>400</sup> The Parties said [redacted]. The Parties said that a national customer being prepared to switch from central to regional procurement was important new evidence that cuts across the CMA’s broad conclusion that customers would not countenance organisational changes to facilitate ‘buy around’; instead, customers would simply need to enter into additional contracts. [Parties’ response to provisional findings](#), paragraph 4.5. We examine the evidence on the extent to which customers would be able and willing to multi-source from regional suppliers by entering into additional contracts in paragraphs 7.178-7.199 below.

<sup>401</sup> Our assessment focus on multi-sourcing waste disposal geographically for an estate, rather than multi-sourcing different types of washroom services from different types of suppliers. We assess evidence on washroom services other than waste disposal later in this chapter.

- 7.167 First, we note that ‘multi-sourcing’ is not equivalent to procuring from regional suppliers. Customers can multi-source from the Parties and/or PHS rather than from multiple regional suppliers.
- 7.168 Second, we consider that ‘multi-sourcing’ should be assessed in the context of the organisational and procurement structure of a customer, which can take various forms:
- (a) A customer which procures centrally can use multiple regional suppliers to service different sites of a national or multi-regional estate.
  - (b) A customer with separate regional procurement teams can make supplier choice for different regions.
  - (c) A national brand or group consisting of independent entities making local procurement decisions,<sup>402</sup> which can result in the appointment of different suppliers for different sites under the same national organisation.
- 7.169 To assess the strength of regional suppliers as an outside option for national and regional end customers, we consider (a) to be particularly relevant.<sup>403</sup> A key question is whether or not a customer, which currently uses a single supplier of waste disposal for the entire estate, would be able and willing to change its behaviour and switch to multiple regional suppliers to service different parts of their estate, if current prices were to increase by a small amount. For example, this can be achieved by entering into additional contracts with multiple regional suppliers.
- 7.170 We consider that customers would be very unlikely to change the organisation structure, eg set up regional procurement functions as described in (b) above, or change to a franchise or symbol group model as described in (c), in response to a price increase in waste disposal services. This is because washroom services typically account for a small part of the expenditure of a business.
- 7.171 Therefore, in the assessment that follows, we focus on national and multi-regional end customers that procure waste disposal centrally for an estate that would not be prepared to change their organisational structure to procure regionally.

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<sup>402</sup> For example: symbol groups, franchisees and users of frameworks.

<sup>403</sup> Rentokil told us at the [redacted] that ‘most large multi-site organisations’ have centralised procurement teams with a professional buyer. National and multi-regional customers have also told us that they typically procure centrally for an entire estate.

- *Purchase patterns of national and multi-regional customers*

7.172 To understand customer preference, we assess how the Parties' national and multi-regional end customers currently purchase waste disposal for their estates.

- *Rentokil customers*

7.173 Rentokil estimated that around [X] of its large national multi-regional multi-site (LNMM) customers use a single supplier of waste disposal across their estates.<sup>404</sup>

7.174 We found that, of these [X] LNMM customers,

- (a) At least [X] customers use Rentokil for their entire estates, ([X] of them in eight or more regions).<sup>405, 406</sup>
- (b) [X] customers purchased from Rentokil for less than 90% of their sites according to Rentokil's estimates, but these customers are private frameworks,<sup>407</sup> franchises,<sup>408</sup> and symbol groups.<sup>409</sup> In our view, these are not examples of customers choosing to multi-source, but instead are examples of independent local members of organisations making procurement decisions locally.<sup>410,411</sup> (See paragraph 7.168 above.)
- (c) For [X] remaining customers, we do not have further information on which other suppliers (if any) they use – these customers may be single sourcing or multi-sourcing.<sup>412</sup>

<sup>404</sup> This is not an exhaustive list of Rentokil's national and multi-regional customers because Rentokil's definition of 'LNMM' only considers customers with over 100 sites, and moreover, [X]. Rentokil defined LNMM as customers with over 100 sites served by more than one region. [X]

<sup>405</sup> The other customer was a regional consumer co-operative ([X]) served in five regions.

<sup>406</sup> These include [X] customers identified as single-sourcing based on Rentokil's estimates, and [X] additional customers for which we have verified either from the customer's submission or other evidence reviewed. [X][X]; [X] (both based on the customers' submissions to the CMA), and [X] (Rentokil supplies to 99% of [X] stores including franchises).

<sup>407</sup> [X] Users of buying groups are independent businesses or retailers, as explained in Chapter 6.

<sup>408</sup> [X]

<sup>409</sup> [X]. Symbol groups are collections of stores which are affiliated with a wholesale symbol group provider, usually operating under a common brand. The retailer is independent from the wholesaler.

<sup>410</sup> Rentokil confirmed that [X] franchisees procure washroom services locally; [X] franchisees set up separate contracts; and agreements with [X] were approved with the retailer directly.

<sup>411</sup> [X] 'Based on Rentokil's understanding, [X] (only 7% of its sites are estimated to be serviced by Rentokil) uses local washroom providers in combination with self-supply for the remainder of its sites. [X] uses the opposite model, as 78% of its sites are estimated to be serviced by Rentokil, while the remaining sites are serviced by local washroom providers in combination with self-supply.'

<sup>412</sup> Rentokil provided possible explanations for two of these customers: 'centrally-driven genuine multi-sourcing' (management decision to use different suppliers in different regions) [X], and 'locally-driven geographic multi-sourcing' [X]. (arising from the decisions of individual managers) [X] [X]

- *Cannon customers*

7.175 Cannon did not provide estimate of the purchase patterns of its national and multi-regional customers. Based on customer submissions and tender documents reviewed, we identified at least [§<] customers who purchase from Cannon across their entire estates.<sup>413</sup>

- *Finding on customer purchase patterns*

7.176 We have identified at least 29 national and multi-regional end customers of the Parties in eight or more regions which currently use either Rentokil or Cannon to supply waste disposal to their entire estate.<sup>414</sup> The Parties' combined washroom services revenues on these customers were [§<]million.

7.177 On the basis of the current purchase patterns, we considered that some national and multi-regional end customers prefer a single supplier rather than multiple suppliers to service an estate.

- *Customer submissions*

7.178 We asked customers whether they would use a combination of regional suppliers to supply waste disposal, if the Parties were to raise price by a small amount.<sup>415</sup>

7.179 Of the nine customers who responded to this question,<sup>416</sup> one said it would stay with the existing supplier,<sup>417</sup> eight customers said they would switch to another supplier with a national footprint (and four identified PHS,<sup>418</sup> two also identified the other Merger Party,<sup>419</sup> four did not specify). In addition, three customers (including two with large revenues) said they would also consider a combination of regional washroom services suppliers (although they appeared to prefer a single supplier and were not able to identify the regional suppliers

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<sup>413</sup> [§<] Each of these customers were serviced in eight or more regions.

<sup>414</sup> [§<] for Rentokil and [§<] for Cannon.

<sup>415</sup> We received other customer responses in Phase 1, during which we asked whether customers would switch some or all of its services to local or regional providers if all national providers of washroom services increased their prices by 5%. One customer said 'this would still require much effort with regards to central management'. Another customer said 'It would be preferable to stay with a national supplier but this is not essential if they are no longer pricing competitively'.

<sup>416</sup> All these customers were in eight or more regions, and identified as single-sourcing from either merger party.

<sup>417</sup> [§<]

<sup>418</sup> [§<]

<sup>419</sup> [§<]



they would consider);<sup>420</sup> whilst six said they would not consider using a combination of regional suppliers.<sup>421</sup>

7.180 Following our provisional findings, one further customer told us that it procured regionally in the past as a result of previously merged business and store manager arrangements, but this customer has recently awarded a contract nationally.<sup>422</sup>

7.181 We also asked three [redacted] national and multi-regional customers, which considered the Parties in previous tenders, about their preference in response to a small price increase.<sup>423</sup> One customer said it would not consider using a combination of regional suppliers,<sup>424</sup> but two other customers said they would.<sup>425</sup>

7.182 Table 6 below summarises the reasons cited by customers who would not consider a combination of regional suppliers. Generally, they noted the 'hassle' of dealing with issues, 'time and resource' required to manage multiple contracts, as well as 'economies of scale', 'cost savings' and 'consistency' of using a single supplier as reasons for not considering multiple regional suppliers. Some customers also considered same pricing for all sites to be important.

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420 [redacted]

421 [redacted]

422 [redacted]

423 [redacted]

424 [redacted]

425 [redacted]

**Table 6: Customers who said they would not consider using a combination of regional suppliers and reasons**

<i>Customer</i>	<i>Barriers to source from multiple regional suppliers</i>	<i>The extent to which it is economical to use multiple regional suppliers</i>
[X]	The cost and time to tender.  The disruption and hassle to change (communicating to [X] stores; dealing with issues; need different messages to different groups of shops)	Hidden operational cost of complexity; managing multiple suppliers for escalation of issues
[X]	Generate multiple contracts to manage, additional workload for the operations team.	It is unlikely that we will receive an overall cost in line with our budget.  It would be more beneficial for a retailer with a much larger estate.
[X]	Done a lot of work to reduce the number of suppliers; by going to regional this would increase our supply base	It would not be an option to introduce more suppliers
[X]	Supplier management is done on low overhead; unlikely to strain that model.  Not currently resourced to add suppliers (more invoices, meetings, reporting, need to co-ordinate multiple inputs to measure service level)	Overall costing more indirectly in time / resource.  Would look at alternative if 'one supplier' solution not working, but prefer a 'nationwide' solution – one point of contact, one contract, consistent service, relatively resource efficient.
[X]	Complexity/time and cost involved in managing multiple suppliers to deliver the same service.	National coverage for convenience and to benefit from economies of scale
[X]	[Not responded]	Through the tender process we found a national contract provided a better rate
[X]	Localised or regionalised contractors could not deliver brand and quality consistency and account management structure that supports on a nationwide scale	Cost-savings through economies of scale of a single supplier

Note: This table covers customers who told us they would not consider using a combination of regional washroom specialists, if current supplier increased the price of feminine hygiene waste disposal by 5%.  
Source: Customer submissions to the CMA.

7.183 Customers who would consider a combination of regional providers, generally told us that this approach would increase cost, but it is manageable. However, these customers have not considered this option in the past and did not identify the regional suppliers they would use. Table 7 below summarises their responses.

**Table 7: Customers who said they would consider using a combination of regional suppliers, and the reasons**

<i>Customer</i>	<i>Steps to source from multiple suppliers and any costs involved</i>	<i>The extent to which it is economical to use multiple regional suppliers</i>	<i>Which suppliers considered</i>
[X]	Identify different suppliers in each region  Tender with those suppliers to determine cost and service levels.  No direct cost of sourcing, just the time and resource.	Not the most economical to manage multiple suppliers  Some sites may be discouraged that other sites have a better rate in a particular region	Market research would need to be done
[X]	This increases management cost to deal with more suppliers, but manageable	If they turn out to be cheaper after accounting for the additional management costs	No detailed analysis done
[X]	Not responded	Not responded	Unsure
[X]	Not responded	Possibly; but cannot imagine there is too much benefit  Reasons for using single supplier: Ease, one contact and escalation, one contract and same pricing for all outlets.	Only PHS, Initial/Cannon were able to service an estate of its size; previously spoken to Berendsen and Admiral
[X]	Not responded	Reasons for using single supplier: Consistency across the estate, leverage volume to improve pricing, consolidation of supply base.	Initial, Zenith*

Notes:

\* Zenith [X]

This table covers customers who told us they would consider using a combination of regional washroom specialists, if current supplier increased the price of feminine hygiene waste disposal by 5%.

Source: Customer submissions.

7.184 We found that customer preferences were mixed, with some customers identifying barriers to switching to regional suppliers. Whilst some other customers told us that they were willing to consider regional suppliers, they appear to prefer a single supplier and were not able to identify the regional suppliers they would consider.

7.185 In response to provisional findings, the Parties said that the views of 11 national and multi-regional customers who responded to the GfK survey contradicted some of our provisional findings.<sup>426</sup> The Parties said ‘customers

<sup>426</sup> Parties’ response to provisional findings, paragraph 4.13.

consider geographic multi-sourcing a viable option' because geographic coverage was not one of the reasons for these customers to choose the Party, and because 'four out of six customers said they were fairly or very likely to appoint multiple providers'.<sup>427</sup> The Parties also stated that 'if national customers do not like the outcome of a tender, they can easily retender, including by breaking up the country into small lots' and that 'customers can and do adopt this strategy'.<sup>428</sup>

7.186 We note that while most of the 11 national and multi-regional customers in the GfK survey did not mention 'geographic coverage' as a reason for choosing the Parties, seven of the 11 customers said it is important that a supplier is able to supply washroom services to all sites.<sup>429</sup> In relation to customer willingness to appoint multiple providers, the question cited by the Parties asked customers whether they would consider appointing multiple providers for different washroom services, ie multi-sourcing across products. The response to this question therefore does not indicate whether or not customers consider geographic multi-sourcing from regional suppliers to be a viable option.

- *The ability of customers to source regionally*
  - *Cost of sourcing regionally*

7.187 The Parties estimated that the incremental costs of dealing with an additional supplier is less than 0.2% of the value of a contract,<sup>430</sup> based on procurement cost to negotiate and manage a contract.<sup>431</sup>

7.188 We found that procurement is one of the costs of sourcing regionally, but there are other costs. As set out above, customers told us that they require time and resource to manage ongoing operational issues arising from multiple suppliers, in addition to the cost of procurement. Some customers told us their supply management run on a 'low overhead' and they prefer to reduce the number of suppliers.<sup>432</sup> Some other customers told us that the additional time to manage several contracts is 'manageable'.<sup>433</sup> In light of the foregoing, we

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<sup>427</sup> Section 2.5, Annex 1 of [Parties' response to provisional findings](#), based on responses of 11 national and multi-regional customers to Q26 and Q34 of the GfK survey.

<sup>428</sup> Parties' response to provisional findings, paragraph 4.5

<sup>429</sup> Based on responses of 11 national and multi-regional customers to Q27 of the GfK survey. 2 customers said it is essential, 2 said it is very important, 3 said it is fairly important.

<sup>430</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.13.

<sup>431</sup> The Parties estimated this to be two to five man-days.

<sup>432</sup> Table 6.

<sup>433</sup> Table 7.

consider that the Parties' estimate, based on procurement cost only, is likely to understate the overall cost to source regionally.

- *Examples of customer 'buy around' from regional suppliers*

7.189 We considered the [redacted] examples put forward by the Parties as customers 'buying around' from regional suppliers.<sup>434</sup> Based on the e-mail exchanges between Rentokil and [redacted] as well as [redacted] tendering specification, we found that [redacted].<sup>435</sup> We also considered the Parties' submission that [redacted] operated a regional model with multiple suppliers, including [redacted], PHS, Cathedral and Zenith.<sup>436</sup> We found that [redacted] did not operate a regional model. Instead, [redacted].<sup>437</sup>

7.190 The Parties said that if a customer switched away [redacted] of waste disposal value this would 'frequently be sufficient to deter the price rise'.<sup>438</sup> However, we have not seen evidence that customers have switched small proportions to deter a price rise. Instead, as described above,<sup>439</sup> customers generally identified barriers to using multiple suppliers.

7.191 We are not aware of any other end customers that use a combination of regional suppliers. The Parties did not identify any examples of a national and multi-regional customers that they have lost to a combination of regional suppliers.<sup>440</sup>

- *The incentive for customers to source regionally*

7.192 We assess the extent to which customers would have the incentive to switch to a combination of regional suppliers, if the Parties were to increase price.

7.193 Based on the way in which prices are set,<sup>441</sup> and the evidence that we received from customers, we consider that there are two reasons that would limit the incentive of customers to switch from a single national supplier to multiple regional providers.

7.194 First, customers may have to forgo lower prices, discounts or rebates they would receive from a single supplier, if they break up a large contract into

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<sup>434</sup> See paragraph 7.163.

<sup>435</sup> Email exchanges between [redacted] and Rentokil provided in [redacted]

<sup>436</sup> [Parties' response to provisional findings](#), paragraph 4.5.

<sup>437</sup> Cannon understood that [redacted] [redacted] [redacted] confirmed that it does not serve any [redacted] sites.

<sup>438</sup> [Parties' response to provisional findings](#), paragraph 4.5(g).

<sup>439</sup> Table 6 and Table 7.

<sup>440</sup> [redacted]

<sup>441</sup> See discussions in nature of competition section earlier in this chapter.

multiple smaller contracts. This is supported by Rentokil's submission that larger customers receive lower prices,<sup>442</sup> and submissions from some customers that they use a single supplier to achieve economies of scale, 'leverage volume to improve pricing', and to benefit from cost savings, as set out in Tables 6 and 7 above.

7.195 Second, there is some evidence from customer and competitor submissions suggesting that smaller suppliers are more expensive than larger national suppliers.<sup>443</sup>

7.196 We therefore consider that the constraints from a combination of regional suppliers would be limited by the two factors above.

- *Competitor submissions*

7.197 Competitors expressed mixed views about the prevalence of multi-sourcing by customers. PHS said customers with a national presence prefer to deal with a single provider because of the benefits of having product, account management and operational consistency.<sup>444</sup> Mayflower told us that single-sourcing may be more common than multi-sourcing overall and struggled to provide examples of customers multi-sourcing.<sup>445</sup> In contrast, Cathedral told us that 'equally as many or more' national customers purchase services from multiple suppliers than those who use a single supplier,<sup>446</sup> but the relevant examples provided are franchises or customers without central procurement departments.

- *Conclusions on competition from multiple regional suppliers*

7.198 We found that while some end customers may have the ability to manage additional suppliers, some prefer to and currently use a single supplier for the entire estate. In our view, the incentive to switch to regional suppliers is limited by the fact that customers may have to forgo lower pricing, and incur

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<sup>442</sup> [redacted] Rentokil said that 'customers receive lower prices per unit as the number of units sourced increases. Hence, [redacted]

<sup>442</sup> See paragraphs in relation to price setting above and the [redacted]. Rentokil told us that 'larger customers receive lower prices based on the number of sites required to be serviced, service intervals and the number of products ordered/ serviced per site'.

<sup>443</sup> [redacted] told us that local suppliers have good local delivery of service levels and relationship with the site but price tends to be higher. [redacted] (an FM) said regional or small local suppliers may not always be price-competitive with washroom suppliers with a nationwide presence, but may offer better service quality and flexibility. [redacted] (a regional supplier) said it is 'very difficult to win' because of 'low pricing policy of national companies such as Initial and Cannon'. Cathedral told us that [redacted].[redacted] said 'through the tender process we found a national contract provided a better rate'. We consider pricing of national and regional suppliers on frameworks later in the section specific to framework customers.

<sup>444</sup> [redacted]

<sup>445</sup> [redacted]

<sup>446</sup> Cathedral did not specify the meaning of 'national customer' in its original response.

extra procurement and ongoing account management costs, by breaking up a large national contract into smaller ones regionally.

7.199 For these reasons, on balance, we consider that there is a significant group of national and multi-regional end customers, procuring centrally for their estates, which are unlikely to be willing to 'buy around' a single supplier (such as the Parties or PHS) by using a combination of regional suppliers.

*Competition from facilities management companies (FM companies)*

7.200 We considered the strength of competitive constraints from FM companies on the Parties in the supply of waste disposal services to national and multi-regional customers.

- *The views of the Parties*

7.201 The Parties submitted that FM companies 'compete aggressively' to win customers from washroom services suppliers by bundling washroom services with other facilities management services.<sup>447</sup> In relation to waste disposal, the Parties said FM companies have several options available including self-delivery by using on-site-service (OSS); sub-contract to national washroom services companies, or multi-sourcing from regional suppliers across their estates.

7.202 The Parties cited the following evidence in support of their views:

(a) Some national customers [redacted],<sup>448</sup> [redacted]

(a) Two local customer examples illustrate [redacted]<sup>449</sup> [redacted].<sup>450</sup>

(b) In the GfK survey, 66% of multi-site customers considered one of an FM, cleaning company, waste collection company or self-supply when appointing a party to provide sanitary waste disposal / washroom services.<sup>451</sup>

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<sup>447</sup> The Parties did not make submissions in relation to competition from FM companies in response to the provisional findings.

<sup>448</sup> For example, [redacted]

<sup>449</sup> [redacted]

<sup>450</sup> [redacted]

<sup>451</sup> GfK report, chart 11.

(c) The European Commission merger decision in *CWS-Boco/Rentokil Initial Target Businesses* stated that ‘a certain degree of demand side substitutability for the washroom services provided by the FM companies’.

- *The Parties’ internal documents*

7.203 We considered how the Parties perceived competition from FM companies from their internal documents.

(a) A recent Rentokil document states that [REDACTED].<sup>452</sup>

(b) Rentokil’s strategy update 2016<sup>453</sup> shows a reference [REDACTED]. In a similar strategy update 2017 [REDACTED].

(c) A Cannon [REDACTED].<sup>454</sup>

(d) An OCS Group strategy document on Cannon for 2016-2020 states that: [REDACTED].<sup>455</sup>

7.204 We consider that the Rentokil documents suggest it does not see FM companies as direct competitors. Both Parties appear to consider FM companies as part of the supply chain. [REDACTED]

- *CMA assessment*

7.205 We considered the following evidence regarding competition from FM companies:

(a) Degree of outsourcing by FM companies

(b) Competitive interactions between the Parties and FM companies.

(c) Whether customers would switch to an FM company.

(d) Whether FM companies would start to self-supply waste disposal.

(e) The views of competitors.

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<sup>452</sup> [REDACTED] Rentokil estimated that these two services account for 47% of the value of a washroom.

<sup>453</sup> [REDACTED]

<sup>454</sup> [REDACTED]

<sup>455</sup> [REDACTED]



- *Degree of outsourcing*

7.206 We found that all major FM companies outsource waste disposal.<sup>456</sup> They primarily use one or more of PHS and the Parties as their preferred suppliers, although some FM companies also use other suppliers. A customer told us that AM Services (an FM company active in the North West) supplies washroom services via a washroom specialist it owns (Pristine Hygiene).<sup>457</sup>

- *Competitive interactions*

7.207 We considered the degree of competitive interactions between the Parties and FM companies.

7.208 Rentokil submitted an analysis of Rentokil lost 'large customers',<sup>458</sup> [redacted].<sup>459</sup> However, we have not identified any end customers which have switched to an FM company for waste disposal services in this data. The losses identified here relate to customers which are either FM companies themselves, cleaning companies or users of frameworks.<sup>460</sup> We also found that neither merger party's tendering data identified an FM company as a winner or bidder of any washroom services tenders.<sup>461</sup>

7.209 Most FM companies told us that they rarely or do not compete for stand-alone washroom services contracts;<sup>462</sup> rather they compete for integrated-FM services (with washroom as a component of other facilities services), and their customers rarely use an FM company for washroom services only.

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<sup>456</sup> Based on submissions from [redacted] Many FM companies also outsource washroom services other than waste disposal to a washroom service provider. However, two FM companies told us that it is possible to self-deliver waste disposal in hospitals where they also remove clinical waste. [redacted]

<sup>457</sup> [redacted]

<sup>458</sup> In this analysis, the Parties defined 'large customers' as those customers with an annual spend over £30,000.

<sup>459</sup> [redacted]

<sup>460</sup> See Appendix D.

<sup>461</sup> This is consistent with submissions from FM companies, which said they do not compete in standalone washroom services tenders.

<sup>462</sup> Five of the seven FM companies which responded to the question of how they compete for contracts. ([redacted]).

- *Would customers switch to an FM if prices were to increase by a small amount?*
- *Customer and FM submissions*

7.210 We asked the Parties' national and multi-regional customers whether they would consider using an FM company if their current supplier increased price for waste disposal by 5%.<sup>463</sup>

7.211 One customer identified Interserve (an FM company) as an option.<sup>464</sup> Seven of the nine customers who responded said they would not consider using an FM company, with reasons including 'paying margin on margin, prefer to deal direct';<sup>465</sup> 'has own FM department';<sup>466</sup> 'not within supplier relationship management strategy'.<sup>467</sup>

7.212 Furthermore, because FM companies told us that washroom services represent a small proportion (1-3%) of the value of a typical FM contract,<sup>468</sup> we found that a price increase in washroom service alone would be unlikely to induce a customer to start using an FM company if it does not already use an FM company.

- *Customer switching example provided by Rentokil*

7.213 Rentokil referred to [X]

7.214 [X] told us that it tendered 11 facilities-related services (one of which was washroom services).<sup>469</sup> We found that its decision to choose an FM company ([X]) was driven by its intention to integrate 11 facilities services, rather than driven by washroom service alone (which is a small component as discussed above). In our view, the example does not imply customers would be willing to switch to an FM company if the Parties were to raise prices by a small amount.

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<sup>463</sup> [X] In Phase 1, we asked whether a customer would consider using them for your washroom services and why/why not.

<sup>464</sup> [X]

<sup>465</sup> [X]

<sup>466</sup> [X]

<sup>467</sup> [X]

<sup>468</sup> [X]

<sup>469</sup> [X] decided to choose [X], an FM company, and combine 11 services into an integrated contract in order to save cost. [X] proposed [X] to [X] as its outsourced washroom services supplier. We note that Rentokil's loss data submitted in response to question 16 of the Market Questionnaire identified [X] as a lost customer to [X]

- *Potential for end customers to obtain lower prices by procuring via an FM company*

7.215 We considered whether customers would be able to obtain better prices by switching to an FM company. Rentokil [§<].<sup>470</sup>

7.216 We consider that, in principle, an FM company can obtain lower prices than an end customer, since FM companies tend to be larger customers and have more frequent interactions with washroom services suppliers and therefore they may have more negotiating strength than end customers.

7.217 However, we found that [§<] are customers located in a single region, rather than national or multi-regional customers. We have not seen evidence suggesting that national and multi-regional customers could obtain better pricing in washroom services from FM companies than by procuring directly from the Parties.

- *Would FM companies start to self-supply waste disposal?*

7.218 We considered if FM companies would have the ability and the incentive to start self-supplying waste disposal in competition with the Parties, if prices were to increase by a small amount.

7.219 FM companies generally told us that they do not have the ability to self-supply waste disposal services, except for hospital sites in which the FM company also removes clinical waste.<sup>471</sup> They also told us that they would not generally consider self-supplying waste disposal (using either bin exchange or OSS) if their current supplier were to raise price by a small amount.<sup>472</sup>

<sup>470</sup> [§<]

<sup>471</sup> [§<] said it would never consider self-delivering waste disposal, but would consider the contract cleaning companies self-delivering. [§<] said that it would depend on the quantity of washrooms and volume of changes, cost effectiveness, skill set of the team and licensing requirements. [§<] told us that it would not be economically viable to self-deliver waste disposal in a regulated and auditable manner, regardless of exchange or liner service. [§<] explained that it is a site-based FM company putting employees into buildings, whereas managing waste disposal would require an infrastructure with a route-based mechanism to deliver this service, which is not its specialism. [§<] said outsourcing waste disposal helps avoid documentation and audit trail associated with waste. It can collect waste but would still need to get someone to dispose waste at a dedicated time and place. [§<] says it outsources waste disposal in hospitals. [§<] said it is easier to provide waste disposal in hospitals where it also removes clinical waste, but would involve additional costs on non-hospital sites.

<sup>472</sup> [§<] said it would 'most probably' use a site cleaning operative and specialist collector to collect the waste, and 'probably not' dispose of the waste itself. [§<] told us that it would not sacrifice hygiene and quality and hence would not move to a liner exchange. It said instead it would make economic sense for a partner to manage the process. [§<] said it would negotiate the position, consider different delivery options, or pass through the cost increase to its clients. [§<] said it does not have the 'critical mass' to self-service waste disposal efficiently and effectively. [§<] said a 5% price increase would not induce it to self-supply waste disposal. [§<][§<] said it would consider 'Binny Bins' (disposable sanitary bins) dependent on client sites (eg number of bins, size of building, permanent on site employees etc).

7.220 Based on the submissions above, we found that the potential constraints of FM companies self-delivering waste disposal would not be likely, timely and sufficient.

- *The views of competitors*

7.221 Cathedral told us that FM and cleaning companies are regularly winning contracts for washroom services. A regional supplier ([§<]) estimated that it lost around 10% of business to FM and cleaning companies. Another regional supplier ([§<]) has lost customers to FM companies, and said nationwide FM companies have sub-contract deals with Cannon, Rentokil and PHS.

7.222 Other washroom services suppliers told us that they do not compete with FM and cleaning companies.

(a) PHS submitted that FM companies and cleaning companies are customers of washroom service providers rather than competitors.<sup>473</sup> It said customers buy [FM] services jointly since 'it offers more convenience (single point of contact) and better price'.<sup>474</sup>

(b) Mayflower said FM companies are super-contractors which pull services together in a total FM package, and FM companies typically outsource cleaning, consumables and washroom services.

- *Conclusions on competition from FM companies*

7.223 We found that end customers can, and some do, procure waste disposal under an integrated contract with an FM company. However, FM companies currently outsource waste disposal and they are therefore an indirect constraint in the supply of waste disposal.

7.224 We note that Rentokil has lost [§<] as a customer to an FM company (in turn outsourced to [§<]) in the past, but there was limited other evidence on competitive interactions between the Parties and FM companies to supply national and multi-regional customers.

7.225 Because washroom services are typically only a very small part of an overall FM contract, we found that a small price increase would be unlikely to induce customers to switch to FM companies,<sup>475</sup> and FM companies would be unlikely to start self-delivering waste disposal in competition with the Parties.

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<sup>473</sup> [§<]

<sup>474</sup> [§<]

<sup>475</sup> See paragraphs 7.210 *et seq.*

7.226 On the basis of the evidence considered above, we therefore conclude that FM companies impose an indirect constraint on the Parties in relation to the supply of waste disposal services to national and multi-regional customers.

*Competition from specialist waste collection companies, cleaning companies and self-supply*

7.227 We consider the extent to which specialist waste collection companies, cleaning companies and self-supply are credible outside options for customers requiring waste disposal for their washrooms.

- *The views of the Parties*

7.228 The Parties said the competitive set for waste disposal should include waste collection companies, cleaning companies<sup>476</sup> and self-supply.<sup>477</sup> In response to the provisional findings, the Parties said the GfK survey indicated that some national and multi-regional customers would consider these alternatives.<sup>478</sup>

- *CMA assessment*

7.229 We assess the evidence on strength of competition from waste collection companies, cleaning companies and self-supply below.

- *Waste collection companies*

7.230 Two healthcare waste companies told us that they currently supply waste disposal but with very limited activity attributable to national and multi-regional customers. Healthcare Environmental Group (HEG) said it supplies washroom services to the public sector in Scotland.<sup>479</sup> SRCL told us that its core

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<sup>476</sup> The Parties said it is straightforward for general or medical waste companies to expand into washroom waste disposal, and cleaning companies already clean the washrooms and provide other washroom services, particularly the case given the key role played by FM companies and the 'transformation to an OSS service model'. See [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.29.

<sup>477</sup> The Parties said self-supply is becoming an increasingly attractive option 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. See [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 3.20.

<sup>478</sup> Section 2.5, Annex 1, Parties response to the provisional findings.

<sup>479</sup> [redacted] is based in Lanarkshire, Scotland, and supplies washroom services from a branch in Shotts. It generated a revenue in washroom services of [redacted] in 2017. It was included in the public framework Scotland Excel (used by local authorities in Scotland) for the provision of washroom solutions. HEG ceased operations in December 2018.

business is clinical waste management and it does not compete for washroom service contracts.<sup>480</sup>

7.231 Two other waste collection companies told us they do not offer washroom waste disposal services. Medisort (a healthcare waste company) told us that waste disposal from washrooms was a small part of its business that it outsources. Similarly, Tradebe (a waste collection company) said it is a disposal outlet to the companies that supply washroom services, rather than a supplier of washroom services to customers. Both companies said they have no plans to offer washroom waste disposal service.

- *Cleaning companies*

7.232 We found that cleaning companies typically outsource waste disposal to washroom service suppliers. Cannon told us that it has [redacted] cleaning companies amongst its customers. We note that Rentokil, PHS and Mayflower also supply cleaning companies. We have not seen evidence of competitive interactions between the Parties and cleaning companies in relation to national and multi-regional customers.

7.233 As noted above in relation to FM companies,<sup>481</sup> there are a number of barriers to supplying waste disposal services in-house at scale. We do not consider that cleaning companies would be likely, in response to a small price increase, to start supplying waste disposal services in-house and compete independently in the supply of waste disposal services to national and multi-regional customers.

- *Self-supply*

7.234 We have not found any evidence of national or multi-regional end customers considering the self-supply of waste disposal as a viable alternative to using the services of the Parties.

- *Conclusion on competition from specialist waste collection companies, cleaning companies and self-supply*

7.235 On the basis of the above, we found that two healthcare waste companies supply waste disposal but they have very limited activity in relation to national

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<sup>480</sup> SRCL said it offers washroom waste disposal to some 'large quantity' clinical waste customers and approximately [redacted] 'small quantity' customers from its sites in England and Wales. SRCL estimated that its washroom revenue in respect of sanitary waste disposal (for all customers) was only approximately £[redacted] in 2017, with only [redacted] customers operating across multiple regions generating revenue of [redacted]

<sup>481</sup> See paragraph 7.218 above.

and multi-regional customers. We have not seen evidence of cleaning companies or self-supply constraining the Parties.<sup>482</sup>

### *Conclusion on competition from other suppliers pre-Merger*

7.236 On the basis of the evidence on competitive interactions, internal documents and submissions from third parties set out above, we conclude the following on the competitive positions of the Parties' competitors in the supply of waste disposal to national and multi-regional customers pre-Merger:

- (a) PHS is a constraint on the Parties.
- (b) Although Cathedral and Mayflower have some national and multi-regional customers, their constraints on the Parties are limited.
- (c) There are a few other washroom services suppliers serving national and multi-regional customers, and their scale is very small.
- (d) There is a significant group of national and multi-regional end customers which are unlikely to be willing to 'buy around' the Parties (or PHS) by using a combination of regional suppliers.
- (e) FM companies are an indirect rather than a direct constraint because they outsource waste disposal to washroom services suppliers.
- (f) There is very limited evidence that waste collection or cleaning companies competed with the Parties in the supply of (washroom) waste disposal services to national and multi-regional customers, and no evidence that national and multi-regional customers self-supply waste disposal.

### ***Assessment of the effect of the Merger***

7.237 We consider whether the Merger would enable the Parties to raise price or reduce quality post-Merger. We first summarise the Parties' and third-party views on the Merger, before we assess the Merger impact drawing on the evidence set out in the preceding sections.

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<sup>482</sup> The Parties said the GfK survey indicated that seven out of 11 national and multi-regional customers would consider alternatives to washroom specialist (two considered both waste collection company and cleaning company, two considered a waste collection company, two considered a cleaning company and one considered self-supply). See section 2.5 of Annex 1, Parties' response to the provisional findings. We note that the survey question asked whether the customer considered any of those alternatives, but these customers ultimately appointed the party to provide waste disposal/washroom services. As discussed in this section, there is very limited evidence that national and multi-regional customers self-supply or procure waste disposal from waste collection companies, cleaning companies.

## *The Parties' views*

- 7.238 The Parties submitted that the Merger will not result in an SLC in relation to the 'national' segment. This is because, in the Parties' view, they have a low combined market share, they are not each other's closest competitors, there is a broad range of effective competitors at the national level, and the move to an OSS broadens the number of players able to offer waste disposal.<sup>483</sup>
- 7.239 In response to the provisional findings, the Parties said the evidence in this case does not permit the CMA to prove an SLC on the balance of probabilities. They said the provisional findings have not put forward a credible theory of harm or demonstrated harmful effects of the Merger, and have not accounted for entry and expansion and smaller competitors achieving national 'break-through' (eg Cathedral and Mayflower).<sup>484</sup> They also said that multi-regional and national customers, by 'using a combination of regional (or national and regional) washroom services providers rather than a single national provider' can 'buy around' the Parties to defeat a hypothetical price.<sup>485</sup> The Parties told us that any lessening of competition would not be substantial, and feedback from customers based on the GfK survey is 'overwhelmingly neutral or supportive' of the Merger.<sup>486</sup>

## *Third-party views*

### *Customer views*<sup>487</sup>

- 7.240 Customer expressed mixed views about the Merger overall. Five end customers expressed some concerns. [X] and [X] told us that prices could be affected with less competition. [X] and [X] said that there could be less choice, although [X] qualified that it may 'cast the net more widely'.<sup>488</sup>
- 7.241 Other end customers were not concerned. [X] said that losing Cannon was not a big issue. [X] said that it had never considered Cannon and was not impressed with Rentokil. [X], [X], [X], [X] and [X] expressed no concerns about the Merger.
- 7.242 In the GfK Survey, customers were asked whether they expect the merger to have a good, neutral or bad impact on them. Of the responses from 11

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<sup>483</sup> Parties' response to the Phase 1 Decision, Section 1.

<sup>484</sup> [Parties' response to provisional findings](#), paragraph 2.1.

<sup>485</sup> Parties' response to provisional findings, paragraph 4.5

<sup>486</sup> [Parties' response to provisional findings](#), paragraphs 2.1(f), 4.6 and 4.7

<sup>487</sup> We summarise the views of FM customers and framework customers when we assess evidence specific to these customer segments below. We set out the views of third parties across all the areas considered in this report in more detail in Appendix E.

<sup>488</sup> [X] did not specify which other suppliers it would consider using other than PHS and the Parties.



national and multi-regional customers, eight expect the merger to be ‘neutral’, two said ‘bad’ and one did not know.

### *Competitor views*

- 7.243 Competitor views about the Merger were also mixed. PHS told us that the Merger would reduce choice from ‘three to two’ for national customers. Cathedral and Mayflower were not concerned about the Merger.
- 7.244 A regional supplier was concerned that the Parties will be ‘the largest and most powerful’ in the UK ([redacted]) and three suppliers [redacted], [redacted] and [redacted] were concerned that the Merger would potentially undermine smaller providers. [redacted] said the Merger ‘will reduce competition’ and ‘business choice’, although ‘Cannon are not major competitors’.
- 7.245 Other regional suppliers expressed no concerns or did not comment ([redacted], [redacted], [redacted] and [redacted]).
- 7.246 We take account of these views and the apparent low levels of customer concerns in our assessment of the effect of the Merger.

### *CMA assessment*

#### *Level of concentration*

- 7.247 For reasons set out earlier in this chapter, we found that the supply of waste disposal to national and multi-regional customers is concentrated.<sup>489</sup> Three firms (PHS, Rentokil and Cannon) supply the largest number of and value of services provided to these customers, and the scale of other competitors is much smaller in comparison. This is clearly evidenced by the fact that both Rentokil’s and Cannon’s internal documents consider PHS, Rentokil and Cannon together as a cluster of major ‘national competitors’, distinct from other suppliers such as Cathedral and Mayflower.<sup>490</sup> It is further supported by evidence from Cathedral, Mayflower and other smaller suppliers on their national and multi-regional customers, and our analysis which shows that the Parties had limited competitive interactions with these suppliers.<sup>491</sup>

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<sup>489</sup> Paragraphs 7.50-7.52.

<sup>490</sup> Paragraphs 7.60-7.62.

<sup>491</sup> See section on competition from other suppliers.

### *Closeness of competition*

7.248 We found that the Parties are each other's second closest competitor after PHS, based on our analysis of the diversion from the Rentokil customer loss data, and the Parties' tendering data for private sector customers.<sup>492</sup> The constraint from Rentokil on Cannon is stronger than the constraint from Cannon on Rentokil. The results of these analyses are consistent with both Parties' internal documents, which [REDACTED], and a Rentokil strategy document which described PHS [REDACTED].<sup>493</sup>

### *Strength of constraints from competitors*

7.249 The evidence shows that PHS competed closely against both Rentokil and Cannon pre-Merger, based on consistent evidence from the Rentokil customer loss analysis, tendering analysis, internal documents and all third-party submissions.<sup>494</sup> We expect that PHS will continue to operate as a substantial competitor to the Parties post-Merger. However, in a concentrated market with limited credible alternatives available to customers (see further below), the elimination of one of the Parties from the market reduces the already limited set of options available to customers and is therefore likely to reduce the competitive constraint faced by both the merged entity and PHS.<sup>495</sup>

7.250 We found that Cathedral and Mayflower both supply a number of national and multi-regional customers. However, our view is that Cathedral and Mayflower are likely to remain as a limited constraint on the Parties post-Merger, for the following reasons:

- (a) The current scale of national and multi-regional customers of Cathedral and Mayflower, in number and in value, is relatively low compared to those of the Parties and PHS.<sup>496</sup>

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<sup>492</sup> See paragraphs 7.63-7.73.

<sup>493</sup> Paragraphs 7.61(a) and 7.837.83(a)

<sup>494</sup> Paragraphs 7.82-7.92.

<sup>495</sup> In [response to provisional findings](#), the Parties said the CMA 'introduced without evidence a barely articulated theory of harm in relation to PHS increasing its prices' (paragraph 10.2(c)), and in their view the theory of harm 'cannot be that PHS will be a weakened competitor post-Transaction – at most that the higher demand it faces might induce it to raise prices' (paragraph 4.4(a) and footnote 14). We note that in assessing unilateral effects of the Merger, we consider the impact on customers as a result of the removal of a credible option from the market, as described in paragraphs 7.28 *et seq.* For reasons explained in this section, we found that the Merger will alter the market structure by removing a credible option to customers. It will therefore reduce the constraints faced not only by the Parties but also by competing suppliers (including PHS). The Merger is therefore likely to affect the Parties' current customers and their potential customers (many of which are currently PHS customers). We do not consider our assessment in relation to PHS to be a separate theory of harm.

<sup>496</sup> See Table 3 and Paragraphs 7.50-7.52.

- (b) The evidence that we have reviewed, including our analysis of the Parties' private sector customer tenders, Rentokil customer loss analysis, the limited examples of national and multi-regional customers switching from the Parties to Cathedral and Mayflower, and the views of competitors and customers indicates that Cathedral and Mayflower have had limited competitive interactions with the Parties.<sup>497</sup>
- (c) The Parties' internal strategy documents indicate that Cathedral was perceived by Rentokil as [redacted], and was not considered by Cannon as [redacted]. Similarly, neither Rentokil nor Cannon monitored competition from Mayflower in any detail.
- (d) We have not seen evidence, such as any strategic priority of these companies to expand to target national and multi-regional customers post-Merger.<sup>498</sup>

7.251 We considered the ability of other individual suppliers, such as IWSA and Hygienic Concepts, to win national and multi-regional customers. We found limited evidence that these companies have had competitive interactions with the Parties, nor have they been considered in any meaningful way in the Parties' internal documents.<sup>499</sup> There is no evidence of their competitive positions changing post-Merger.

7.252 In addition, we considered whether national and multi-regional customers would be able and willing to 'buy around' the Parties by using a combination of regional suppliers. Our view is that the constraints from regional suppliers are likely to remain limited post-Merger for the following reasons:

- (a) We have not seen evidence that national and multi-regional end customers procure from a combination of regional suppliers, or that they have switched away from the Parties to multiple regional suppliers.<sup>500</sup>

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<sup>497</sup> See paragraphs 7.95 *et seq* for the assessment of Cathedral, and paragraphs 7.119 *et seq*. for the assessment of Mayflower.

<sup>498</sup> See Chapter 9 in relation to our assessment of entry and expansion as a countervailing factor. In [response to provisional findings](#) (section 7), the Parties said that Cathedral and Mayflower have achieved the 'breakthrough' to serve national customer which 'carries with it a potency and power because of what is needed to have the critical mass to 'break-through' and acquire customers of this type, and [...] because of the powerful virtues which accompany that achievement'. The Parties said 'there is no reason why they cannot serve other national customers'. However, for the reasons set out in this assessment, we found that while Cathedral and Mayflower provide national coverage and serve some national and multi-regional customers, their ability to win these customers from the Parties is limited. For example, Mayflower has acquired [redacted] as a national [redacted], but to date its scale in relation to national and multi-regional customers remains to be relatively small.

<sup>499</sup> See paragraphs 7.148-7.159.

<sup>500</sup> For reasons set out in paragraphs 7.189 *et seq*, we do not consider the two examples put forward by the Parties ([redacted]) to be valid cases of customers buying around from regional suppliers.

- (b) We found that a group of national and multi-regional end customers whose preference is to source waste disposal from a single supplier for the entire estate.<sup>501</sup>
- (c) The majority of customers which submitted evidence identified barriers to using a combination of regional suppliers. In particular, we found that a small price increase post-Merger would appear unlikely to induce customers which procure for an estate centrally to switch from a national to multiple regional suppliers because of the economies of dealing with a single supplier.<sup>502</sup>

7.253 We also considered the constraint from FM companies. We found that FM companies are an indirect constraint because, although they do supply waste disposal as part of an integrated FM contract, they outsource waste disposal mainly to PHS, Rentokil and, to a lesser extent, Cannon and other suppliers. Some customers told us they prefer to deal with a washroom service supplier directly and would not switch to an FM company just because of a small price increase in waste disposal. Moreover, the majority of FM companies told us they would not start self-delivering waste disposal if prices were to increase by a small amount.<sup>503</sup> Therefore, we expect the constraints from FM companies to remain indirect post-Merger.

7.254 We also examined alternative supply options such as healthcare waste companies, cleaning companies and self-supply, but found limited evidence that these suppliers would enter or expand in a way that would constrain the Parties post-Merger in supplying to national and multi-regional customers.<sup>504</sup>

7.255 Moreover, we found that there are barriers for national and multi-regional end customers to switch suppliers generally. Some customers told us that while switching supplier is possible, it would be a large scale project that creates risk and disruption.<sup>505</sup> This further limits the competitive threat on the Parties as a result of customers switching to another suppliers post-Merger.

7.256 In our view, the aggregation of these limited individual constraints would be unlikely to offset the loss of competition as a result of the Merger. Although the number of customers served by other non-PHS suppliers appears to be comparable to Cannon's, their collective constraints are not simply measured

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<sup>501</sup> We have identified at least 29 of the Parties' customers active in over eight regions who currently do so. See paragraphs 7.164-7.199.

<sup>502</sup> See paragraphs 7.192-7.196.

<sup>503</sup> See paragraphs 7.200-7.226.

<sup>504</sup> See paragraphs 7.227-7.234.

<sup>505</sup> See Chapter 9 and Appendix E for further discussions on general submissions on barriers to switching, and Tables 6 and 7 above in relation to barriers to switching to regional suppliers.

by the sum of the number or value of customers served as, consistent with our finding, most of these non-PHS suppliers are not considered to be credible for many customers.<sup>506</sup>

#### *Level of customer concerns*

7.257 We note that customer views are mixed overall.<sup>507</sup> Notwithstanding the apparent low level of concerns, customers were only able to identify limited examples of alternative suppliers (other than PHS). Moreover, we note that washroom services represent a very small proportion of the total spend on other facilities support services for individual customers,<sup>508</sup> and Rentokil described washroom services as a ‘low interest category’ for their customers.<sup>509</sup> These factors may also reduce customer interest or concern about the Merger.

7.258 In any event, we consider customers’ views on the Merger and responses on questions relating to our assessment in the round with other evidence including internal documents and analysis of competitive interactions.

#### *Magnitude of the competitive effects of the Merger*

7.259 We considered the Parties’ submissions on the possible magnitude of the competitive effects of the Merger and their GUPPI analysis.<sup>510</sup>

- *Whether the merger would be akin to a ‘5 to 4’ or better*

7.260 The Parties said the constraint is ‘consistent with there being at least two further national competitors in addition to PHS and the Parties, and the market concentration therefore being equivalent to a ‘5 to 4’ merger or better’.<sup>511</sup> The Parties said that an expected diversion ratio from Cannon to Rentokil of 25% would be ‘akin to a ‘5 to 4’ merger’.<sup>512</sup>

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<sup>506</sup> [redacted] For reasons explained above, we consider that the collective constraints are not simply measured by the sum of the number or value of customers.

<sup>507</sup> See paragraphs 7.240-7.242 .

<sup>508</sup> FM companies told us that washroom services typically account for 1-3% of facilities management spend (see paragraph 7.212).

<sup>509</sup> [redacted]

<sup>510</sup> In response to the provisional findings (paragraph 10.2), the Parties said the CMA has ‘disregarded the economic evidence on the diversion ratios and subsequent GUPPI analysis indicating that any lessening of competition would not be substantial’. We considered their submissions in the following paragraphs.

<sup>511</sup> [redacted]

<sup>512</sup> [redacted]

- 7.261 We do not agree with the Parties' contention that the constraint is 'consistent with there being at least two further national competitors'.
- 7.262 First, as explained earlier,<sup>513</sup> we consider that, other than PHS, the constraints from Cathedral, Mayflower and other suppliers to be limited; they had few competitive interactions with the Parties, and their scale is smaller than that of the Parties and PHS. In our view, the existence of Cathedral, Mayflower and other suppliers would be insufficient to offset the loss of competition due to the reduction in the number of credible options available to customers (ie PHS and the merged entity). These other suppliers are therefore not equivalent to 'at least two further national competitors'.
- 7.263 Second, it is important to consider the degree of concentration in addition to diversion ratio when assessing the likely merger impact. The Merger would reduce the number of credible options to national and multi-regional customers, in a concentrated market with little choice of alternative suppliers. It is therefore likely to reduce the competitive constraints faced by the Parties and other competitors, and affect not only the Parties' current customers but also their potential customers who (absent the Merger) would consider the Parties when they appoint a new supplier or negotiate their existing contracts.
- 7.264 However, the Parties' contention that the Merger is equivalent to '5 to 4 or better' is based on the level of diversion ratio in isolation. It does not account for the high level of concentration, and the likely responses of competitors due to the reduced constraints they face.<sup>514</sup> Therefore, despite the apparent low to moderate diversion between the Parties, in our view, it cannot be said that the overall impact of the Merger would be equivalent to '5 to 4 or better'.

- *The Parties' GUPPI estimates*

- 7.265 The Parties submitted GUPPI<sup>515</sup> estimates of [X] and [Y].<sup>516</sup> In response to the provisional findings, the Parties refined the estimates to be [Z]' (to address directly the relevant customer segments) for end customers and

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<sup>513</sup> See paragraphs 7.249-7.256.

<sup>514</sup> See paragraphs 7.33 above and as recognised in the Merger Assessment Guidelines, Paragraph 5.4.11.

<sup>515</sup> GUPPI stands for 'Generalised Upwards Pricing Pressure Index'.

<sup>516</sup> The Parties identified 'large customers' as customers with an annual spend over £30,000. For Rentokil, the set of customers is further limited to those in 11 or 12 regions. As discussed above, we do not identify national and multi-regional customer by reference to customer spend, nor is the definition limited to those customers in 11 or 12 regions. See [X]

frameworks<sup>517</sup> which, according to the Parties, is 'below the thresholds of concern normally applied by the CMA'.<sup>518</sup>

7.266 We do not consider the Parties' GUPPI estimate to provide an accurate indicator of pricing pressure as a result of this Merger for the following reasons.

- (a) GUPPI is typically used in markets where firms use posted prices for all customers.<sup>519</sup> The supply of waste disposal to national and multi-regional customers is characterised by bilateral negotiations and/or tendering, and prices are customised.<sup>520</sup>
- (b) The upward pricing pressure can be greater for certain customer groups or certain tenders for which margins are greater than the average. The Parties' margin estimates indicate that they earn substantially different margins across customers, and high margins for many customers.<sup>521, 522</sup>
- (c) GUPPI uses measures of diversion between the merging firms and does not take into account the responses of competitors.<sup>523</sup> It may therefore understate the overall price impact in this Merger, in which we found that elimination of one of the Parties from the market reduces the already limited set of options available to customers and is therefore likely to reduce the competitive constraint faced by both the merged entity and PHS.<sup>524</sup>

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<sup>517</sup> Section 2.4, Annex 1, Parties' response to the provisional finding.

<sup>518</sup> In a submission in relation to local effects ([redacted]) the Parties said 'a GUPPI below 10% is not likely to be indicative of harm in the absence of pass-through estimates'. This view is apparently based on the Parties' interpretation of the CMA's decision in *Ladbroke's/Coral* (2016)

<sup>519</sup> GUPPI is underpinned by a theoretical model which assumes Bertrand competition where firms set prices simultaneously without negotiation.

<sup>520</sup> In response to the provisional findings, the Parties submitted that the CMA and the Competition Commission (CC) have used similar tests in two cases where prices were not posted (*Reckitt Benckiser/K-Y* (CMA, 2015) and *AG Barr/Britvic* (CC, 2013)). However, we note that in *Reckitt Benckiser/K-Y*, the CMA stated that 'the results are only indicative and should not be interpreted as predictions of the actual price rise we would expect post-merger'. In *AG Barr/Britvic*, the CC applied a price pressure analysis to retail markets where prices were posted, and to wholesale markets where prices were negotiated. The CC recognised the limitations in assuming posted prices for the analysis of wholesale markets.

<sup>521</sup> For example, considering Rentokil's 'large' customers (over £30,000 spend) in eight regions or above, Rentokil's estimates of its gross margin were [redacted] Cannon's estimate suggests that it earned over [redacted] This estimated variation indicates that the competitive conditions can vary by customer [redacted]. Given that the margin estimates will involve some uncertainty, for example, due to the allocation of costs, there will be associated uncertainty with any GUPPI estimates.

<sup>522</sup> In response to the provisional findings, the Parties submitted that the CMA 'has not specified that any further sub-segmentation is required to assess the competitive effects within these' See [redacted]. We consider that any competitive effects of a Merger are not necessarily uniform across all customers within the relevant markets.

<sup>523</sup> As noted in paragraph 7.31 above and *Merger Assessment Guidelines*, paragraph 5.4.11, competing suppliers may respond to a price rise by the merged firm by raising their own prices; this response is likely to make the price rise more profitable than otherwise.

<sup>524</sup> See, for example, [CMA Final Report on the completed acquisition of Wincor Nixdorf AG by Diebold, Incorporated](#), 16 March 2017, paragraphs 6.85-6.88, for a discussion of use of GUPPI in markets characterised by high concentration and where prices are set via individual tenders and negotiations rather than by posted price.

7.267 In light of the above, we do not attach significant weight to the Parties' GUPPI analysis. In any event, we consider analysis of diversion in the context of other evidence. In our view, given that the Merger would remove a credible option for national and multi-regional customers in a market that is already concentrated, we consider that the likely magnitude of the overall effects would be higher than those suggested by the Parties' GUPPI estimates. Therefore, in this case, we cannot rule out competition concerns simply because the GUPPI is estimated to be below 10% (or any particular level).

### *Conclusion*

7.268 The Group decided by a majority that the Merger has resulted, or may be expected to result, in an SLC in relation to the supply of waste disposal services to national and multi-regional end customers (ie customers in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier), subject to any countervailing factors. This is based on the following findings in relation to the national and multi-regional end customer segment:

- (a) The Parties are each other's second closest competitor after PHS.
- (b) The Merger would eliminate an effective competitor in an already concentrated market. The credible options available to customers will be reduced and, leaving aside PHS, little choice of alternative credible suppliers will remain.
- (c) Post-Merger, when customers consider appointing a new supplier or negotiating with their existing suppliers, the main credible options are the merged entity and PHS, with other suppliers exercising a limited constraint. Therefore, the impact due to the removal of one of the Parties from the competitive process will be unlikely to be offset by competition from other suppliers.
- (d) The Merger is therefore likely to enable the merged entity to raise price or reduce quality profitably.

7.269 We consider the segments of framework customers from paragraph 7.270 and FM customers from paragraph 7.328 of this chapter. We examine the evidence on the scope for these suppliers to expand and to act as a potential constraint on the Parties in the supply to national and multi-regional customers in Chapter 9.



## **Impact of the Merger on the supply of waste disposal to framework customers**

### ***Introduction***

7.270 In Chapter 6, we found that competition in the supply of washroom services to framework customers takes place on two levels:

- (a) competition between suppliers to be listed on a framework; and
- (b) competition between suppliers on a framework for users that procure under a framework.<sup>525</sup>

7.271 In this section, we assess the effects of the Merger on frameworks as a separate customer segment. We focus on frameworks with a national or multi-regional coverage.<sup>526</sup>

7.272 In the remainder of the section, we set out the following evidence.

- (a) The views of the Parties.
- (b) Frameworks supplied by the Parties and their competitors.
- (c) The Parties' internal documents.
- (d) Evidence on competition for users of frameworks, including analysis of tendering data of public sector customers and Rentokil customer loss data.
- (e) Assessment of competition from regional suppliers.
- (f) The views of third parties.

7.273 On the basis of the evidence above, we then conclude on the effects of the Merger on framework customers.

### ***The views of the Parties***

7.274 The Parties told us that frameworks are designed to allow buy-around, giving framework customers the capability to 'regionalise spend if they wish to'. Further, the Parties said that customers able to access framework contracts

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<sup>525</sup> See paragraph 6.80, Chapter 6.

<sup>526</sup> See paragraphs 6.81-6.82, Chapter 6.

are not required to use the framework and can choose to procure on a local or regional basis outside the frameworks.

7.275 The Parties said that public sector procurement bodies are encouraged to promote the interests of small and medium sized enterprises in the selection of their panel providers. The ability of frameworks to draw from a wide pool of suppliers is illustrated by ESPO (a public sector owned buying organisation in the UK), which is currently supplied by PHS, the Parties and Hygiene Solutions.<sup>527</sup> In the Parties' view, the ability of large framework procurements to source services not only from national players, but also from regional and local operators, confirms the diversity of suppliers which may be used by customers to satisfy their washroom services requirements.<sup>528</sup>

7.276 In response to provisional findings, the Parties submitted that there is 'insufficient evidence or analysis' to justify an SLC finding in respect of framework customers.<sup>529, 530</sup> The Parties told us that:

- (a) Regional suppliers constrain the Parties 'on-framework', where the framework elects to list regional suppliers.<sup>531</sup> Frameworks 'frequently mandate both larger and smaller suppliers',<sup>532</sup> multi-source from 'a wide pool of suppliers',<sup>533</sup> and give 'customers the capability to regionalise spend'.<sup>534, 535</sup> The Parties cited an example of 'regional suppliers offering lower prices to members on frameworks'.<sup>536</sup>
- (b) Regional suppliers constrain the Parties 'off-framework',<sup>537</sup> because users of frameworks are typically local who can procure outside the frameworks.<sup>538</sup> Rentokil has lost customers off-framework to Cathedral,

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<sup>527</sup> [redacted]

<sup>528</sup> [redacted]

<sup>529</sup> [Parties' response to provisional findings](#), paragraph 3.7.

<sup>530</sup> The Parties said the CMA 'introduced frameworks to bolster a supposed case'; 'failed properly and fairly to put a concern in relation to frameworks to the Parties in any detail prior to provisional findings', and that the issue 'was not discussed in the hearing'. ([Parties' response to provisional findings](#), paragraphs 4.14-4.16.) However, we note that the evidence in relation to frameworks and our potential competition concerns was sent to the Parties as part of the annotated issues statement and was discussed in the main parties hearing (see transcripts of the main parties hearing).

<sup>531</sup> [Parties' response to provisional findings](#), paragraph 4.15(a).

<sup>532</sup> [redacted]

<sup>533</sup> [Parties' response to provisional findings](#), paragraph 4.15.

<sup>534</sup> [redacted]

<sup>535</sup> The Parties cited two examples of public frameworks (ESPO and NWUPC) that list regional suppliers. In respect of ESPO, the Parties told us that a regional supplier (Hygiene Solutions) offers lower prices to than other national suppliers. [Parties' response to provisional findings](#), paragraph 4.15; and Annex 1. See paragraph 7.314 below on price differentials between suppliers listed on ESPO and NWUPC.

<sup>536</sup> [redacted]. [Parties' response to provisional findings](#), paragraph 4.15(b).

<sup>537</sup> [Parties' response to provisional findings](#), paragraph 4.15(a).

<sup>538</sup> [Parties' response to provisional findings](#), paragraph 4.15. The Parties told us as an example that only [redacted] out of approximately [redacted] end customers that Rentokil services on ESPO were serviced in eight or more regions (and only a further [redacted] were serviced in more than four regions).

Mayflower and several other regional suppliers in the supply of washroom services.<sup>539</sup>

(c) Most public sector customers appear to be local or regional users and it can be presumed that there is no competition concern.<sup>540</sup>

(d) Large frameworks and their customers would have a degree of buyer power as frameworks are an important channel to access end customers and framework operators are accustomed to dealing with numerous suppliers.<sup>541</sup>

### **Frameworks supplied by the Parties and competitors**

7.277 To understand the competitive strength of each supplier, we first set out the evidence on framework customers with a national and multi-regional coverage supplied by the Parties and their competitors in this section.<sup>542</sup>

#### **Public frameworks**

7.278 The Parties are listed on two public frameworks with a national and multi-regional coverage: ESPO<sup>543</sup> and NWUPC.<sup>544</sup> Each framework also lists PHS and one or more regional suppliers. Tables 8 and 9 below set out the regions covered and the revenues generated by each supplier listed on ESPO and NWUPC respectively.

**Table 8: Washroom services suppliers listed on ESPO**

<i>Supplier listed on ESPO</i>	<i>Geographic coverage</i>	<i>2017 washroom services revenue</i>	<i>Share</i>
PHS	National	[redacted]	[redacted]
Rentokil	National	[redacted]	[redacted]
Cannon	National	[redacted]	[redacted]
Hygiene Solution	Midlands and parts of East of England*	[redacted]	
Total	UK	[redacted]	[redacted]

Source: ESPO submission

\*Buckinghamshire, Bedfordshire, Cambridgeshire, and also in limited areas of Suffolk.

<sup>539</sup> The Parties identified Active Washrooms, B Hygienic, City Hygiene, Greenworks Solutions, Simply Washrooms, Crystal Services, Island Hygiene, Polar Hygiene, Principal Hygiene, and South West Hygiene. The Parties told us that Rentokil is the only washroom supplier on the private LSG framework and yet it only services around [redacted] of LSG members.

<sup>540</sup> [redacted]

<sup>541</sup> We assess countervailing buyer power in Chapter 9.

<sup>542</sup> The list of frameworks supplied by the Parties and the number of regions covered by each framework are set out in Appendix B.

<sup>543</sup> Including entities [redacted] whose members contract with the Parties through ESPO. See [Parties' response to provisional findings](#), Annex 1, section 4.2.

<sup>544</sup> The NWUPC framework on washroom services was established by NWUPC on behalf of seven regional university purchasing consortia (NWUPC, NEUPC, SUPC, LUPC, CPC, APUC, and HEPCW). See NWUPC's [Tenders Electronic Daily notice](#) and [Parties' response to provisional findings](#), Annex 1, section 4.2. In addition, NWUPC can be used by public bodies across the UK.

**Table 9: Washroom services suppliers listed on NWUPC**

Supplier listed on NWUPC	Geographic coverage	2017 washroom services revenue	Share
PHS	National	[REDACTED]	[REDACTED]
Rentokil	National	[REDACTED]	[REDACTED]
Cannon	National	[REDACTED]	[REDACTED]
Pristine Hygiene	North West	[REDACTED]	[REDACTED]
1st class Hygiene	Midlands/Yorkshire/South East England	[REDACTED]	[REDACTED]
Healthcare Environmental	Scotland	[REDACTED]	[REDACTED]
Total	UK	[REDACTED]	[REDACTED]

Source: NWUPC submission.

7.279 The tables above show that the Parties and PHS together accounted for the large majority of revenue under ESPO and NWUPC in 2017. PHS generated the highest proportion of revenue under these frameworks. Cannon generated smaller revenue compared to PHS and Rentokil.

7.280 PHS supplies to [REDACTED] other public frameworks with a national or multi-regional coverage in addition to ESPO, NWUPC.<sup>545</sup>

7.281 Other than the above, we have not seen evidence of other washroom services suppliers or FM companies listed for washroom services on public frameworks with a national or multi-regional coverage. We assess competition from regional suppliers later in this section.

#### *Private frameworks (buying groups)*

7.282 Rentokil is listed on [REDACTED] private frameworks that offer washroom services, with a revenue of £[REDACTED] (waste disposal £[REDACTED]) in 2017. Of these frameworks, Rentokil is the sole supplier in seven cases,<sup>546</sup> a joint supplier with Cannon in one case,<sup>547</sup> and a joint supplier with PHS in two cases (one of which is also supplied by [REDACTED]).<sup>548</sup>

7.283 Cannon is listed on [REDACTED] private frameworks that offer washroom services. Cannon is a sole supplier in one case<sup>549</sup> and a joint supplier with Rentokil in

<sup>545</sup> [REDACTED]

<sup>546</sup> Including [REDACTED]

<sup>547</sup> [REDACTED] [REDACTED] told us that they also supply washroom services under [REDACTED]

<sup>548</sup> PHS is listed on [REDACTED] Diversey is also listed on [REDACTED]. Diversey is a cleaning and hygiene product supplier that owns Zenith. See Parties' Response to the CMA RFI 20 Nov.

<sup>549</sup> [REDACTED].

another case.<sup>550</sup> Cannon generated a revenue of £[redacted] for washroom services (or [redacted] for waste disposal) in 2017 from private frameworks.

7.284 PHS identified [redacted] private frameworks to which it supplies washroom services.<sup>551</sup> Cathedral told us that it supplies to [redacted].<sup>552</sup> We have not seen evidence of regional suppliers or FM companies listed on private frameworks for washroom services.

### ***The Parties' internal documents***

7.285 We reviewed evidence in the Parties' internal documents in relation to framework customers.

7.286 In its 2017 strategy document, [redacted],<sup>553</sup> and Cathedral '[redacted]'.<sup>554</sup> This indicated that Rentokil perceived Cannon to be a strong competitor for public sector customers, while Cathedral was a limited constraint.

7.287 Cannon's investment memorandum for the Merger stated [redacted].<sup>555</sup>

### ***Evidence on competition for users of frameworks***

#### ***Analysis of public tender data***

7.288 Public sector customers have access to and typically procure using public frameworks.<sup>556</sup> Therefore, public tendering data provides a relevant indicator of competition between washroom services suppliers for users of public frameworks and is also informative of the extent of competition from other suppliers. We assessed the public sector tendering data of the Parties and PHS to understand the extent to which the Parties competed against each other and other suppliers.<sup>557, 558</sup>

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<sup>550</sup> [redacted]

<sup>551</sup> [redacted]

<sup>552</sup> [redacted]

<sup>553</sup> [redacted]

<sup>554</sup> [redacted]

<sup>555</sup> [redacted]

<sup>556</sup> Public sector customers are not obliged to use a framework. See paragraph 6.76.

<sup>557</sup> The data reports tendering for washroom services generally rather than waste disposal specifically, but we consider that the findings are applicable to the assessment of waste disposal for reasons set out in paragraph 7.51 above.

<sup>558</sup> The Parties' data does not cover private frameworks, and it is not possible to carry out a tendering analysis for private framework customers. Moreover, the public sector tendering data does not identify whether a tender is run within the terms set on a framework, or organised independently outside a framework.

*The Parties' public tendering data*

7.289 Table 10 and Table 11 below set out the diversion ratios measured by the proportion of public tender value lost to each competitor by Rentokil and Cannon respectively.<sup>559</sup> We found that:

- (a) Diversion from Rentokil to Cannon was moderate ([redacted]%) (Table 10),
- (b) Diversion from Cannon to Rentokil was low ([redacted]%, or [redacted]% excluding unknowns).<sup>560</sup> (Table 11)
- (c) Diversion from each Party to PHS was higher than diversion to the other Party; at [redacted]% from Rentokil (Table 10) and [redacted]% from Cannon (Table 11).
- (d) Cathedral or Mayflower were not identified as a winner in any public tenders.

**Table 10: Public tenders lost by Rentokil and their winners**

<i>Tender lost to:</i>	<i>Value of tender (£)</i>	<i>% value of tenders</i>
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Source: CMA analysis of Rentokil tendering data; See Appendix C.

**Table 11: Public tenders lost by Cannon and their winners**

<i>Tender lost to:</i>	<i>Value of tender (£)</i>	<i>% value of tenders</i>
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Source: CMA analysis of Cannon tendering data; See Appendix C.

7.290 The Parties submitted that the CMA has not made due inquiry into tenders with an unknown competitor to gain a better understanding of the competitive set.<sup>561</sup> We do not agree. First, our analysis of Rentokil public sector data is based on tenders with a high proportion of known winners ([redacted]% by value). Second, we recognised that Cannon public tender data only identified a known winner for around half of the observations by value. We have therefore

<sup>559</sup> During the period 2015-2017. Further detail of the tendering analysis is described in Appendix C.

<sup>560</sup> We caution that the winner identity was unknown for [redacted]% of tenders for tenders lost by Cannon. See paragraph 7.290 below for discussions of unknowns.

<sup>561</sup> [Parties' response to provisional findings](#), paragraphs 1.3(a) and 4.2(a).

considered the tendering data of PHS, the largest supplier in this segment, to further understand which other suppliers could have been competing with the Parties and PHS for public sector customers.

*PHS public tendering data*

7.291 PHS submitted an analysis of washroom services tenders by public sector customers,<sup>562</sup> which indicated that:

(a) [REDACTED]

(b) Considering former customers of PHS which were lost to another bidder, [REDACTED] other than the Parties that had won from PHS.<sup>563</sup>

(c) Considering all tenders for which PHS has bid,<sup>564</sup> [REDACTED].<sup>565</sup>

(d) [REDACTED]

7.292 The PHS data illustrated that PHS is the strongest supplier followed by Rentokil and Cannon, that both Rentokil and Cannon are close competitors of PHS, and that other suppliers are substantially weaker than PHS and the Parties in the supply of washroom services to public sector customers.

*Conclusion on analysis of public tender data*

7.293 On the basis of the analysis of tendering data provided by the Parties and PHS, we found that PHS is the closest competitor to the Parties, and the Parties are each other's second closest competitor for public sector customers. We also found that other suppliers appear to be small, and Cathedral and Mayflower were not identified as a winner in this segment.

*Analysis of Rentokil customer loss data on public and private framework users*

7.294 To understand the extent to which Rentokil was constrained because framework users may switch to other suppliers, we analysed the Rentokil customer loss data.<sup>566</sup> The data reported users which procured waste

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<sup>562</sup> [REDACTED] See Appendix C for further detail.

<sup>563</sup> PHS analysis identified other suppliers ([REDACTED]) but they did not win from PHS.

<sup>564</sup> Customers for which PHS has bid, irrespective of whether PHS was the incumbent supplier.

<sup>565</sup> PHS data indicated that the share of value won by each supplier was: [REDACTED]

<sup>566</sup> See Appendix D for further detail on Rentokil customer loss analysis. The data is available for waste disposal separately from other washroom services, and therefore we focus on waste disposal in our analysis.

disposal from Rentokil under one public framework and eight private frameworks which Rentokil has lost to other competitors.<sup>567</sup>

7.295 The Parties said Rentokil has lost to Cathedral, Mayflower and several regional suppliers 'off framework'.<sup>568</sup> However, we found that:

- (a) In respect of the only public framework (ESPO) reported in the data, The total value of framework users lost by Rentokil was small as a proportion of Rentokil's revenue under ESPO (less than £[redacted] or [redacted]% of Rentokil's annual waste disposal revenue generated by ESPO in 2017).<sup>569</sup> Moreover, the majority of the framework users were lost to Cannon ([redacted]) or PHS ([redacted]).<sup>570</sup> Only a very small proportion was lost to regional suppliers,<sup>571</sup> and no customers were lost to Cathedral and Mayflower.<sup>572</sup>
- (b) In respect of eight private frameworks reported in the data, the reported value of private framework users lost by Rentokil to competitors was very small (less than £[redacted] combined, or [redacted]% of Rentokil's annual waste disposal revenue generated from these frameworks in 2017). In any event, PHS and Cannon accounted for the highest proportion of the framework users lost by Rentokil ([redacted]% and [redacted]% respectively). The value of customers lost to each of the other suppliers was small; the data reported a loss to Cathedral ([redacted]%) but not to Mayflower.<sup>573</sup>

7.296 We found that only a small proportion of framework users have switched away from Rentokil, and the majority of these users had switched to either PHS or Cannon. Therefore, our view is that the competitive constraint on Rentokil from suppliers other than PHS and Cannon, as a result of framework users electing to procure 'off framework' or to a 'on framework' supplier other than PHS or Cannon, was likely to be weak.

### ***Competition from regional suppliers***

7.297 We assess the extent to which regional suppliers constrain the Parties in respect of:

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<sup>567</sup> The data reported that Rentokil has lost users of [redacted]

<sup>568</sup> See paragraph 7.276(b) above.

<sup>569</sup> See Appendix D, Table 7.

<sup>570</sup> The public framework users procured via Rentokil under ESPO. The proportion of loss is measured by value of waste disposal services.

<sup>571</sup> The other competitors [redacted]

<sup>572</sup> Considering washroom services other than waste disposal, Cathedral accounted for [redacted] of the value of public framework users lost by Rentokil, and Mayflower accounted for [redacted]

<sup>573</sup> [redacted] See [Parties' response to provisional findings](#), paragraph 4.15(a). We found that [redacted] of all Rentokil's loss relating to [redacted] was attributable to Cathedral, but the value of the lost customer was very small (less than [redacted] in waste disposal). See Appendix D.



- (a) competition to be listed on frameworks with a national and multi-regional coverage; and
- (b) competition for users that procure washroom services under these frameworks.

#### *Competition between suppliers to be listed on framework organisations*

7.298 As described in Chapter 6, public frameworks re-tender their framework agreements at least every four years, and private frameworks can choose to appoint new suppliers upon termination of their contracts. We assess whether regional suppliers are a credible option for frameworks with a national or multi-regional coverage when a framework considers appointing new suppliers.

7.299 Frameworks enable their users to procure washroom services from a pre-qualified list of suppliers. To serve a user base across the UK, therefore, frameworks must list national suppliers, multiple regional suppliers to cover different regions, or a combination of both.

#### *Regional suppliers currently listed on framework organisations*

7.300 We found that public frameworks can and do list regional suppliers, but these suppliers can only serve a sub-set of a framework's user base. As shown in Table 8 above, ESPO lists Hygiene Solutions which serves the Midlands and certain parts of East of England. However, ESPO users outside these regions do not have access to Hygiene Solutions. Similarly, NWUPC lists a regional supplier respectively in the North West, Scotland and the Midlands, but NWUPC users located in other regions cannot choose these suppliers. Moreover, regional suppliers have generated small or no revenues from these frameworks in comparison with PHS and the Parties.<sup>574</sup>

7.301 ESPO and NWUPC told us that very few regional suppliers have competed to be listed on these frameworks. For ESPO, [redacted].<sup>575</sup> and NWUPC [redacted].<sup>576</sup>

7.302 We have not seen evidence of private frameworks using regional suppliers. We found that where private frameworks have listed multiple suppliers, they chose from national suppliers.<sup>577</sup>

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<sup>574</sup> See Tables 8 and 9.

<sup>575</sup> ESPO told us that [redacted].

<sup>576</sup> Shorrock Trichem was listed on a previous NWUPC framework.

<sup>577</sup> See paragraph 7.282 et seq.

### *Alternative suppliers considered by framework organisations*

7.303 We asked framework organisations the reasons for choosing their current suppliers, and what other suppliers they would consider if prices of waste disposal were to increase by a small amount.

(a) Two public frameworks (ESPO and NWUPC) said national coverage is not a pre-requisite for a supplier to qualify on their frameworks. If the Parties were to raise prices in the next tender, ESPO said 'smaller regional may want to tender for the framework'.<sup>578</sup> NWUPC said that given that it is a national contract, 'a broad range of suppliers is preferred'.

(b) In relation to private frameworks,

(i) LSG cited 'national coverage' as one of the reasons it chose Rentokil.<sup>579</sup> LSG told us that it considered PHS and Zenith in the past,<sup>580</sup> and if Rentokil no longer offered good prices, LSG would focus on national suppliers.<sup>581</sup>

(ii) Bright Sourcing told us that waste disposal is a small part of its requirement and a cost rise of [redacted] would not cause it to change supplier.

(iii) [redacted] said 'national coverage' is one of the reasons for choosing both Parties, as its members are based all over the UK.<sup>582</sup> It said it would examine other options including regional suppliers, it is aware of Cathedral as a national supplier, but it said changes to suppliers on the framework would be not be easy for their customers.

### *Conclusions on competition to be listed on framework organisations*

7.304 In light of the above, we found that regional suppliers are weak alternatives to national suppliers for framework organisations seeking to appoint a washroom service supplier. For public frameworks, the regional suppliers listed only serve a sub-set of a framework's user base; only a limited number of them have bid in the past; and the regional suppliers listed have generated little or no revenue. Private frameworks told us that they prefer national suppliers

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<sup>578</sup> [redacted]

<sup>579</sup> The other reasons were 'high quality of products and service covering a wide range of product'.

<sup>580</sup> We note that Zenith outsources waste disposal to [redacted]

<sup>581</sup> [redacted] LSG cited PHS, Cannon, Initial, Mitie and Zenith as national suppliers it would consider. It said regional suppliers might be an alternative but it is undesirable to use a lot of suppliers to get national coverage.

<sup>582</sup> The other reasons cited are: high service quality, competitive pricing and strong account management.

Purchase Direct said it uses Rentokil and Cannon 'to give customers a choice of two suppliers. This gives customers different options if they had previously had a bad experience with a supplier, and allows Purchase Direct to stay impartial'.

over regional suppliers and we are not aware of any currently listing regional suppliers.

### *Competition between suppliers for users procuring under frameworks*

7.305 We assessed the extent to which the Parties are constrained by: (a) regional suppliers already listed ‘on framework’, and (b) suppliers not listed on frameworks (‘off framework’).

### *Regional suppliers on frameworks*

7.306 We found that PHS, Rentokil and Cannon accounted for the majority of spend under public frameworks.<sup>583</sup> ESPO told us that Hygiene Solutions has small volume in 2017 and is ‘starting to pick up business’ in the Midlands. NWUPC told us that Pristine Hygiene has won business in the North West but HEG and 1<sup>st</sup> class Hygiene has not won business in their regions.<sup>584</sup> This appears to suggest that the Parties and PHS are more successful in winning business than other regional suppliers on framework.

7.307 We considered the price differentials in waste disposal services between the suppliers listed on a framework. Table 12 below shows the list prices of suppliers on ESPO and NWUPC, measured as price per service of a feminine hygiene unit and a nappy disposal unit respectively.

**Table 12: ESPO and NWUPC list prices for waste disposal, per collection and disposal**

<i>Supplier</i>	<i>Geographic coverage</i>	<i>ESPO list price</i>		<i>NWUPC list price</i>	
		<i>Feminine hygiene unit</i>	<i>Nappy disposal unit</i>	<i>Feminine hygiene unit</i>	<i>Nappy disposal unit</i>
Rentokil	National	[redacted]	[redacted]	[redacted]	[redacted]
PHS	National	[redacted]	[redacted]	[redacted]	[redacted]
Cannon	National	[redacted]	[redacted]	[redacted]	[redacted]
Hygiene Solutions	Midlands and parts of East of England	[redacted]	[redacted]		
Pristine	North West			[redacted]	[redacted]
1st Class	Midlands/Yorkshire			[redacted]	[redacted]
Healthcare Environmental	Scotland			[redacted]	[redacted]

Source: list prices provided by ESPO and NWUPC.

7.308 We found that in the case of ESPO, a regional [redacted]. This suggests that Hygiene Solutions constrains the Parties in supplying to customers located in the region where Hygiene Solutions is present.<sup>585</sup> In contrast, [redacted]. Even if

<sup>583</sup> See Table 8 and Table 9 in paragraph 7.278 above.

<sup>584</sup> NWUPC told us regional suppliers were not winning business because [redacted]

<sup>585</sup> We note that Hygiene Solutions can be more expensive than other national suppliers for other washroom services. For example, considering odour remediation service (the second largest service of the Parties by

users of NWUPC in three regions have the option of using a regional supplier, the size of the price differential indicates that these regional suppliers on framework exercise weaker constraints on the Parties.

7.309 For framework users located outside those regions with a listed regional supplier, the Parties and PHS will remain unconstrained by other suppliers on framework.

7.310 As noted above, we have not seen evidence of regional suppliers listed on private frameworks.

#### *Regional suppliers off framework*

7.311 To understand the constraints from suppliers ‘off framework’, we assessed the degree to which customers use frameworks to procure washroom services, the incentives for them to use a framework rather than procuring independently, and the extent to which Rentokil has lost customers that procured on framework.

- *Whether customers use frameworks to procure washroom services*

7.312 We found that public frameworks are a significant way through which public sector users procure washroom services.<sup>586</sup> ESPO told us that four of the six member authorities that own ESPO procure washroom services using ESPO.<sup>587</sup> NWUPC told us that 19 of the 24 member universities procure using NWUPC.<sup>588</sup> Cannon’s Investment Memorandum stated that washroom services for the public sector are ‘typically offered under framework agreements’ and the vast majority of Cannon’s public sector work is carried out under framework agreements.<sup>589</sup>

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revenue), Hygiene Solutions charges [redacted] per week, which is [redacted]. That means customers purchasing waste disposal together with other washroom services, which we found was a common practice in Chapter 6, may pay a higher price overall on Hygiene Solutions compared to other national suppliers.

<sup>586</sup> We do not have the equivalent information for private frameworks.

<sup>587</sup> Leicestershire County Council, Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council, and Peterborough City Council. ESPO is accessible to any public bodies, but ESPO does not have an estimate of proportion of public sector users that purchase on-framework and those that purchase off-framework.

<sup>588</sup> NWUPC told us that [redacted]. There are various reasons why they might not use the framework, one institution provides the service in house; [redacted] may have tendered directly with a provider, perhaps through a lack of awareness of agreements we offer or because a legacy contract has continued to roll over.’

<sup>589</sup> [redacted]

- *Incentives for customers to use a framework rather than procure independently*

7.313 We found that frameworks confer some convenience and price benefits to their users (which are typically local or regional organisations). Public frameworks told us that they are compliant with UK and EU procurement legislation so that public sector users do not have to engage in the process themselves.<sup>590</sup> Several public and private frameworks and a competitor told us that customers can benefit from ‘low prices’ or ‘national account’ prices on framework.<sup>591, 592</sup>

7.314 To understand whether customers would be willing to procure ‘off framework’ from a supplier independently, we considered the price differential between these channels.<sup>593</sup> We found that the list prices the Parties set for framework users are substantially lower than those for customers that procure directly. For example, as shown in Table 13 below, a feminine hygiene unit on framework costs between [redacted] per service on ESPO and NWUPC, while the equivalent product for Cannon is at least [redacted], and for Rentokil at least [redacted]. The differential is similarly large for nappy units.<sup>594</sup>

**Table 13: The Parties’ prices on framework and list prices customer procuring directly, waste disposal (price per service per unit)**

Product	Party	Price listed on		List price for customer procuring directly
		ESPO	NWUPC	
Feminine Hygiene Unit	Cannon	[redacted]	[redacted]	[redacted]
	Rentokil	[redacted]	[redacted]	[redacted]
Nappy Unit	Cannon	[redacted]	[redacted]	[redacted]
	Rentokil	[redacted]	[redacted]	[redacted]

Sources: Framework list prices submitted by ESPO and NWUPC; Parties’ list prices from their [redacted] † Rentokil list price relates to Signature Lite Manual (17.5l) for FHU and pedal Nappy Disposal Unit, price range dependent on number of units taken. Price based on weekly service. Does not include annual waste transfer fee of £41.

‡ Cannon list price relates to Standard Concept feminine hygiene unit and Nappy Disposal unit of 34L. Does not vary according to units taken, Cannon sometimes charges an annual waste fee of £35 as well, which is not included above.

<sup>590</sup> ESPO User Guide stated that: ‘this framework is compliant with UK/EU procurement legislation – we’ve done the work, so there’s no need for you to run a full EU procurement process’. NWUPC told us that ‘large institutions are more likely to utilise an agreement because the aggregated value over the contract period is going to exceed, or be very close to, the OJEU threshold- in which case they would need to conduct an OJEU compliant tender themselves which is time consuming.’

<sup>591</sup> ESPO Users Guide identifies ‘Great prices...sanitary collection from as little as £[redacted] per visit/collection’ as a benefit of using ESPO. NWUPC told us that smaller institutions might use it for the competitive pricing, administrative simplicity or preferential contract terms. Private frameworks ([redacted]) told us that they negotiate ‘competitive’ or ‘national account’ prices for their members, which would otherwise not be available if members procure independently. [redacted] told us that ‘a supplier that can offer national account prices is a huge benefit to our members’.

<sup>592</sup> [redacted]

<sup>593</sup> The Parties told us that smaller local and regional customers procuring directly are typically charged list prices, albeit some customers may negotiate discount (see paragraph 7.20 above).

<sup>594</sup> The size of the price differential is consistent with NWUPC submission that ‘Initial/PHS are around 160% cheaper than the most expensive regional providers not on the framework’ [[redacted]]

7.315 We consider the Parties' list prices for direct customers to be a useful indicator of the prices one may expect from regional suppliers 'off framework', as these regional suppliers compete with the Parties for regional and local customers. The price differential set out above indicates that the constraints from suppliers 'off framework' are weak.

- *Rentokil customer loss to regional suppliers off framework*

7.316 We assessed the extent to which Rentokil has lost users of framework to other competitors. As detailed in paragraphs 7.294 *et seq* and in Appendix D, we found that Rentokil has only lost a very small proportion of its framework users to other suppliers, and in any event, the majority were lost to Cannon or PHS. The evidence indicates that the threat on Rentokil of users switching to regional suppliers appears to be weak.

#### *Conclusion on competition from regional suppliers*

7.317 In light of the evidence above in relation to competition from regional suppliers, we found that regional suppliers are weak alternatives compared to the Parties and PHS when framework organisations re-consider their supplier options. When users of a framework procure washroom services, the constraints from regional suppliers are weak 'on framework',<sup>595</sup> and likely to be limited 'off-framework'.

#### ***Views of third parties on the impact of the Merger***

##### *Framework customers*

7.318 Two public framework organisations expressed views on the Merger. [X] told us that the Merger would reduce national providers from three to two, creating the potential for a price increase, but the framework is most favourable and that customers would receive the best price. [X] said Cannon is the 'closest competitor to [PHS and Rentokil] on the framework', and 'removing Cannon negates any real constraint on the freedom of the 'big two', particularly in terms of service on the current agreement [...] and would impact on the competitiveness of the agreement when retendered.'<sup>596</sup>

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<sup>595</sup> Except for customers in one region who can procure from Hygiene Solutions under ESPO. See paragraph 7.308.

<sup>596</sup> [X]

7.319 Three private frameworks also commented on the Merger[§<] did not raise a concern. [§<]told us that it currently has two suppliers for each product area and that the Merger could affect prices as competition is being limited. [§<]said that the Merger will ‘clearly reduce competition’, but said that it was not unduly concerned if the merged entity does not drive up prices.

### *Competitors*

7.320 PHS said that Rentokil and Cannon are its closest competitors in public sector tenders. It told us that there are hurdles to supply public frameworks due to the formalistic process. PHS submitted that serving frameworks is different from FM customers because a supplier that wins a FM customer gets ‘a big chunk of work’, whilst once a supplier is listed on the framework it still has to ‘win the business at each individual site’.<sup>597</sup>

7.321 Cathedral told us that most of the public and private sector frameworks are ‘done below cost’, and it does not compete on frameworks ‘where services are provided at a loss’. However, Cathedral said it ‘regularly wins customers who have the option to buy from a framework’, driven by ‘poor service on the framework’.<sup>598</sup> Mayflower told us it only competed for users of public frameworks when it is asked to do so,<sup>599</sup> and it won [§<]. Elis said it did not compete for public sector contracts or frameworks for washrooms because it sub-contracted washroom services to other providers.<sup>600</sup>

7.322 FM companies generally told us that they do not compete for frameworks for washroom services, because FM companies offer integrated-FM services but not washroom services alone. In any event, they sub-contract waste disposal to washroom service suppliers.<sup>601</sup>

### ***Conclusions on impact of the Merger on framework customers***

7.323 We assessed the competitive effects of the Merger in the supply of waste disposal services to public and private framework customers with a national and multi-regional coverage, including evidence on the closeness of competition between the Parties and the constraint imposed by other suppliers.

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<sup>597</sup> [§<]

<sup>598</sup> [§<]

<sup>599</sup> [§<]

<sup>600</sup> [§<]

<sup>601</sup> See paragraphs 7.200 et seq for discussions about the supply of waste disposal by FM companies.

### *Conclusions on competition to be listed on a framework organisation*

7.324 In respect of competition between suppliers to be listed on a framework organisation, the evidence showed that:

- (a) The Parties and PHS are the three major suppliers listed on public frameworks which generated the large majority of the revenue from contracts awarded under these frameworks. They also serve private frameworks, although Cannon is smaller than Rentokil and PHS.
- (b) Cathedral and Mayflower are not listed on any public frameworks, and Cathedral supplies to only one private framework. Both competitors told us they do not target public and private framework customers, and Cathedral said it is [redacted].<sup>602</sup>
- (c) Regional suppliers have been successful in getting listed on frameworks but represent a limited constraint on national suppliers. On public frameworks, regional suppliers are weak alternatives to national suppliers because they only serve in a limited number of regions and have generated low or no revenue. Few regional suppliers are listed on public frameworks or have bid to be listed on frameworks in the past. Private frameworks tend to appoint a single supplier and prefer a national supplier over regional suppliers.
- (d) FM companies are not listed on frameworks as washroom service suppliers because they offer integrated FM services, rather than washroom services on a stand-alone basis.<sup>603</sup> They are therefore not a credible alternative to washroom service suppliers.

### *Conclusions on competition between suppliers for users procuring under a framework*

7.325 In respect of competition between suppliers for users that procure washroom services using a framework:

- (a) Evidence from public sector tendering analysis showed that PHS is the closest competitor to the Parties, but the Parties and PHS together are three main competitors. Similarly, evidence from the Rentokil customer loss data showed that the strongest constraint on Rentokil came from Cannon and PHS, and that the constraints from other suppliers 'off framework' are weak because the value of customers which have

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<sup>602</sup> See paragraphs 7.106, 7.109 and 7.321.

<sup>603</sup> FM companies outsource waste disposal to washroom service suppliers. See paragraph 7.206 above.



switched away from Rentokil to other suppliers, for both private and public framework users, was very low.<sup>604</sup>

- (b) Evidence showed that the constraints from regional suppliers 'on framework' are weak. On public frameworks, regional suppliers are not available to framework users in most regions. While there is evidence in one region that a regional supplier on ESPO is cheaper than national supplier, all three regional suppliers on NWUPC are more expensive than national suppliers.<sup>605</sup> Moreover, we are not aware of regional suppliers listed on and supplying to private framework users.
- (c) Customer and competitor submissions indicated that it is generally cheaper and more convenient for users who have access to a framework to procure under a framework than to procure from a supplier directly, especially for public sector customers that need to comply with procurement regulation. Moreover, evidence from the Parties' list prices showed that public frameworks are substantially cheaper than purchasing directly 'off framework', indicating that the constraints from suppliers 'off framework' are weak.
- (d) Internal documents showed that for public sector customers, Rentokil perceived Cannon to be a strong competitor, and Cathedral to 'have no desire to compete'.

### *Overall conclusion*

7.326 Taken together, the evidence above showed that prior to the Merger, the Parties and PHS are the major suppliers to framework organisations and their users, with other suppliers representing a weak constraint.

7.327 The Group decided by a majority that, subject to countervailing factors, the Merger has resulted, or may be expected to result, in an SLC in the supply of waste disposal services to public frameworks and private frameworks with national or multi-regional coverage due to:

- (a) A reduction in the number of credible options to framework organisations with a national or multi-regional coverage. When the merged entity competes to be listed on these frameworks, it may be expected to have

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<sup>604</sup> In response to provisional findings, the Parties said that GUPPI analysis found that the Merger would not give rise to 'substantial upwards price pressure' for framework customers ([Parties' response to provisional findings](#), paragraph 4.15(c); and Annex 1). However, for the reasons set out at paragraph 7.265 et seq, we do not consider the Parties' GUPPI estimate to provide an accurate indicator of pricing pressure as a result of the Merger.

<sup>605</sup> Customers in the Midlands and East of England can procure from Hygiene Solutions under ESPO. See paragraph 7.308.

the ability and incentive to degrade its competitive offer, including price and service levels.

- (b) A reduction in the number of credible options to users that procure under a framework. When the merged entity competes for users that procure under existing frameworks, it may be expected to have the ability and incentive to degrade its service quality that are not constrained by contractual commitments, as well as compete with less favourable prices for users that procure by 'further competition' under existing public framework terms. When the merged entity competes for users that procure under frameworks to be agreed in future, given (a) above, it may be expected to have the ability and incentive to degrade its competitive offer in price and service levels.
- (c) Post-Merger, the main credible options to framework organisations and their users are the merged entity and PHS, with other suppliers representing a weak constraint. Therefore, the impact due to the removal of one of the Parties from the competitive process will be unlikely to be offset by competition from other suppliers.

## **Impact of the Merger on the supply of waste disposal to FM customers**

7.328 In this section, we consider the impact of the merger on the supply of waste disposal to FM customers.

7.329 In addition to our review of evidence relating to all customer segments set out above at paragraphs 7.53 to 7.269, (including the Parties' internal documents, tendering data and Rentokil customer loss data), we assessed the following evidence specific to FM customers:

- (a) The views of the Parties.
- (b) The closeness of competition between the Parties.
- (c) Competition from other suppliers.
- (d) The views of FM customers.

### ***The views of the Parties***

7.330 The Parties told us that FMs are customers with significant buyer power due to their role as aggregators, offering bundled products to end customers.

- 7.331 In relation to the closeness of competition between the Parties, the Parties said that ‘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’.<sup>606</sup>
- 7.332 In relation to competition from other suppliers, the Parties said PHS is an ‘especially important competitive constraint when it comes to contracts with FMs’ and is the preferred alternative for almost all of the Parties’ competitors.<sup>607</sup> The Parties said that FM companies can (and do) self-supply, contract with product manufacturers or distributors / wholesalers or they can sub-contract to washroom services companies on a regional or multi-regional basis.<sup>608</sup>
- 7.333 The Parties told us that multi-sourcing is intrinsic to the business model of FMs, so will always represent a competitive threat.<sup>609</sup> The Parties said that the ability of FMs to use multiple players in order to maintain competitive pressure on its suppliers is illustrated by the fact that FMs such as [X] have only [X] of their total washroom spend with Rentokil. [X] are estimated to give approximately [X] of their business to Rentokil. [X] splits its estate across a number of regional players.<sup>610</sup>

### ***Closeness of competition between the Parties***

- 7.334 We analysed the degree to which the Parties competed to serve FM customers.
- 7.335 We assessed the Parties’ customer data.<sup>611</sup> We found that Rentokil and Cannon overlapped in the supply to [X] major ‘Tier 1’ FM customers.<sup>612</sup> Of eight FM companies, four identified the other merger party as an alternative and/or considered them in their last tender. Three identified PHS and two identified other suppliers.
- 7.336 We therefore found that Rentokil and Cannon are competing for FM customers.

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<sup>606</sup> [Parties’ response to phase 1 decision](#), 30 July 2018, paragraphs 5.34.

<sup>607</sup> [Parties’ response to phase 1 decision](#), 30 July 2018, paragraph 5.34.

<sup>608</sup> [Parties’ response to phase 1 decision](#), 30 July 2018, paragraph 1.10.

<sup>609</sup> [X]

<sup>610</sup> [X]

<sup>611</sup> [X]

<sup>612</sup> [X] The Parties’ customer data indicates that they overlap [X].

## **Competition from other suppliers**

7.337 We found that PHS was the largest supplier to FM customers, and each of Cathedral and Mayflower served a number of FM customers (see Table 3 above):

- (a) PHS generated the highest revenue for FM customers among all suppliers (£[redacted]), compared to Rentokil (£[redacted]) and Cannon (£[redacted]).<sup>613</sup>
- (b) Cathedral provided 11 examples of FM companies it currently serviced.<sup>614</sup>
- (c) Mayflower said FM customers were one of the target customer sectors, and that five of its top six customers were FM or cleaning companies.<sup>615</sup> Mayflower has recently won [redacted] from Rentokil. PHS's 'top target list' identified [redacted] Mayflower FM customer.<sup>616</sup>
- (d) Hygienic Concepts told us that it is the preferred supplier with four FM companies.<sup>617</sup>
- (e) One FM customer said it would consider self-supply 'Binny Bins' depending on the number of bins and client site.<sup>618</sup>

## **Geographic multi-sourcing**

7.338 We found that the majority of FM customers currently source from multiple suppliers of waste disposal services. Of the eight FM customers which responded to our questionnaire, we found that all currently use and have considered multiple suppliers, primarily PHS and the Parties. Some FM customers said they source from other suppliers (eg Mayflower) or from regional suppliers that do not have a national footprint. Five FMs said they use or have considered using other suppliers,<sup>619</sup> although one FM said 'small suppliers' were not considered because of their limited geographic coverage.<sup>620</sup>

7.339 We asked the Parties' FM customers which suppliers they would consider using if current prices of waste disposal were to increase by a small amount.

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<sup>613</sup> [redacted]

<sup>614</sup> [redacted]. In addition, Cathedral told us that, [redacted]

<sup>615</sup> Mayflower told us that its top six customers are [redacted] Mayflower also identified a number of other FM customers ([redacted]) that it supplies [redacted]

<sup>616</sup> [redacted]

<sup>617</sup> [redacted]

<sup>618</sup> [redacted] [Binny Sanitary Bins](#) supplies disposal sanitary bins under the brand name 'Binny'.

<sup>619</sup> [redacted]

<sup>620</sup> [redacted]

Of the five FMs which responded to this question, four said they would consider another national washroom supplier, three said they would also consider a combination of regional washroom suppliers. As noted above, one customer said it would consider self-supply.

7.340 One FM customer told us that it does not have large nationwide contracts that need a one supplier UK solution.<sup>621</sup> Another FM customer told us that it would not rule out using a mixture of regional providers, but said national customers prefer to use a national provider, and it would go with the solution that best fit the customer.<sup>622</sup> Another FM customer said some of its customers have a nominated supplier of washroom services for continuity.<sup>623</sup>

7.341 We therefore found that FM customers are better able than end customers to procure from multiple suppliers. This is consistent with the fact many of FM customers currently already multi-source, and the nature of the FM business which is to handle multiple sub-contractors. However, we note that some customers of FM companies may nominate their preferred washroom services supplier.

### ***Views of FM customers on impact of the Merger***

7.342 Four FM customers did not express concerns about the Merger. [X] said that Cannon is not a viable partner but it has a global relationship with Rentokil. It also considered PHS to be strong. [X] said that it does not use Cannon much. [X] said that washroom services are not a massive area of spend. [X] was also unconcerned.

7.343 Five FM customers expressed some concerns. [X] said that the Merger could restrict competition, lead to a reduction in quality or increase in pricing. [X] said that only PHS and the merged entity will be viable and that the Merger will reduce competition for hygiene services to only two companies (adding that large national contracts make up a substantial portion of market value). [X], which uses Mayflower for [X]% of its spend in washroom services, said there would be less choice, but that washroom services are a small part of its business, adding that it prefers to engage with at least two providers to ensure competition and capacity to serve all customers. [X] said that it prefers to deal with at least two national suppliers. [X] told us that it was very worrying that a market with three true national suppliers being

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<sup>621</sup> [X]. It said it often uses brokers that manage an array of local/regional suppliers.

<sup>622</sup> [X]

<sup>623</sup> [X]

reduced to potentially two as two suppliers would not have delivered competitive costs as it makes it easier for suppliers to price higher.

### **Assessment of the competitive effects of the Merger in relation to FM customers**

- 7.344 We considered the extent to which the effect of the Merger on FM customers may differ from those end customers procuring waste disposal services directly.
- 7.345 We found that competition in the supply of waste disposal services to FM customers is likely to differ from the direct supply to end customers in two ways.
- 7.346 First, we found that FM companies aggregate services from multiple suppliers to provide an integrated FM service to their customers. Moreover, we found that nearly all FM customers multi-source with some using a combination of regional and national providers of waste disposal. This suggests that, unlike end customers, FM customers do not seem to require – or prefer using – a single supplier for an estate.<sup>624</sup>
- 7.347 We therefore found that FM customers would be more likely than end customers to consider using multiple suppliers of waste disposal as an alternative to the Parties. This widens the choice of alternative suppliers to include using smaller regional suppliers. In this context, we note that, for example, [X].
- 7.348 Second, we found that FM customers would be better placed than end customers to maintain their negotiating strength against washroom services suppliers post-Merger,<sup>625</sup> because:
- (a) FM customers have frequent and repeated interactions with multiple washroom services suppliers, compared to end customers who typically only tender or re-negotiate every few years due to the nature of their contracts.
  - (b) FM customers are an important channel for the Parties to reach end customers, and can generate substantial revenues for the Parties.

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<sup>624</sup> See paragraphs 7.164 *et seq.*

<sup>625</sup> In line with this, we note that Rentokil provided an example in which [X] (a large FM customer) threatened to terminate accounts and products in order to obtain rebates from Rentokil. [X]

7.349 We also considered the extent to which competition for FM customers differs from competition for framework customers.<sup>626</sup> In particular, we note that in contrast to winning an FM contract, when a supplier is listed on a framework, it is not guaranteed any business and it still needs to compete for users of the framework (and as noted above, some suppliers have not managed to win business on a framework).<sup>627</sup>

7.350 Moreover, in the case of public frameworks, we found that they interact much less frequently with washroom service suppliers than FM customers, since open tenders to list suppliers on a framework occurs only every three or four years. In contrast, FM customers can choose new suppliers or re-negotiate with existing suppliers across the sites they serve more flexibly and frequently.

### ***Conclusion on the impact of the Merger on FM customers***

7.351 We found key distinctions between competition for FM customers and other customer types. FM customers have a wider choice of suppliers, including regional suppliers, and the Parties will therefore face a stronger competitive constraint post-Merger in the supply to FM customers. We also found that FM customers are better placed than other customers to maintain their negotiating strength post-Merger.

7.352 We therefore conclude that the Merger has not resulted, or may not be expected to result, in an SLC in relation to the supply of waste disposal services to FM customers.

### **Conclusion of our assessment of the effect of the Merger in relation to waste disposal services**

7.353 As a result of its assessment, the Group decided by a majority that the Merger has resulted, or may be expected to result, in an SLC in relation to the supply of waste disposal services to the following national and multi-regional customers:

- (a) Customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier.

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<sup>626</sup> In response to the provisional findings, the Parties said ‘there is a greater likelihood that frameworks and their customers can exert buyer power’ in a similar way as FM companies, because in the Parties’ view, ‘frameworks are adept at dealing with numerous suppliers’ and ‘are an important channel through which to reach end customers’. See section 2.6.4, Parties’ response to the provisional findings, Annex 1.

<sup>627</sup> See Tables 8 and 9.

(b) Public and private framework customers with national or multi-regional coverage.

7.354 We decided that the Merger has not resulted, or may not be expected to result, in an SLC in relation to the supply of waste disposal services to FM customers.

## **The supply of washroom services other than waste disposal**

### ***The views of the Parties***

7.355 The Parties told us that they compete not just against other full service providers, but also against suppliers of individual product lines.

7.356 The Parties said that only approximately [X] of their 'national' customers take all seven service lines from Rentokil across their entire estate and [X] take all seven service lines from Cannon across their entire estate; the 'vast majority' use different suppliers both across their national estates and within the same washroom. The Parties said that many of these customers take certain service lines from Rentokil at only a very small proportion of their sites:

(a) For Rentokil's LNMM customers, approximately [X]% of all customer premises are supplied with waste disposal services and approximately [X]% are supplied with odour remediation services.

(b) Of their sites to which Rentokil is providing services, these 'national' customers use Rentokil for less than [X]% on average per site for each of the five remaining services (being hand drying, hand washing, toilet tissue, other toilet cubicle hygiene and vending & other).

7.357 The Parties said that odour remediation involves supplying a canister and replacing the consumable within it every eight or so weeks. If a customer wants to change provider, the Parties said that the incoming provider would take care of removing any installed products and making good.<sup>628</sup>

7.358 The Parties said that cubicle hygiene incorporates 'traditional' service products to keep toilets and urinals clean and free flowing, together with the supply of toilet seat sanitisers to disinfect toilet seats before use and water management solutions.<sup>629</sup>

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<sup>628</sup> [X]

<sup>629</sup> [X]



7.359 In relation to these service lines, the Parties said that, in addition to the usual range of specialists, the Parties face competition from:

- (a) self-supply – as customers can easily procure the necessary products from distributors, cash and carries and even supermarkets; and
- (b) contract cleaners – which can replenish the units.

7.360 In relation to water management solutions, the Parties told us that they compete against specialist water management companies such as Cisterniser and Enviro-save, as well as other washroom service providers.<sup>630</sup>

### **CMA assessment**

7.361 As described in Chapter 2, in addition to waste disposal, the Parties overlap in the supply of:

- (a) Consumables (paper towels, soap and toilet tissues).
- (b) Equipment (hand drying, soap and paper towel dispensers).
- (c) Vending.
- (d) Odour Remediation.
- (e) Toilet Cubicle Hygiene.

7.362 As noted in Chapter 6, customers tend to purchase waste disposal from the Parties together with some other products and services listed above. However, customers may also purchase these from other suppliers separately, and some of these services (eg vending) are not essential in a washroom.

7.363 We consider the competitive effects of the Merger in relation to the supply of washroom services other than waste disposal in relation to national and multi-regional customers. In our assessment, we first consider evidence from the Parties' internal documents and from third parties in relation to competition in the supply of washroom services other than waste disposal. We then consider evidence on competition in each of the service lines other than waste disposal (described at (a) to (e) above).

7.364 We reviewed evidence from the Parties' internal documents. Rentokil's Strategy Update 2016 describes the market structure of waste disposal

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<sup>630</sup> [redacted]

services and general washroom products in different ways. In relation to waste disposal services, Rentokil discussed washroom services providers, clinical waste service providers and waste brokers in the value chain. In contrast, in relation to general washroom products, it stated that the market structure for general washroom services is very fragmented and services and products are delivered through a multitude of channels: dedicated washroom service companies; contract cleaners and FM companies; consumables distribution companies; wholesalers; and retailers. The document states that the number of market participants and the size of the overall spend in these products is so high that it is irrelevant to talk about market shares for any specific organisation in this market place.

7.365 A number of FM companies told us that they whilst they outsource waste disposal services, they do not outsource some other washroom services. [X] told us that it supplies air fresheners and other washroom services.<sup>631</sup> [X] told us that it outsources and internally supplies some other washroom services.<sup>632</sup> [X] told us that it supplies consumables, eg paper towels, soap and toilet tissues.<sup>633</sup> [X] told us that contract cleaning companies self-delivered some washroom services.<sup>634</sup>

7.366 Competitors also told us that there are a wider range of suppliers active in non-waste service lines, which was also confirmed by a number of customers. For example, PHS said that sanitary disposal and nappy disposal is carried out by washroom services providers, but that other products may be supplied by a wider range of suppliers, eg air fresheners can be self-supplied and soap can be provided by cleaning companies.<sup>635</sup> PHS said that it therefore has a higher share of the market for sanitary and nappy disposal than it does for other service lines. Mayflower told us that FM companies often outsource washroom consumables to Bunzl.<sup>636</sup>

7.367 Competitors also confirmed that, in contrast to waste disposal services, there are no licensing requirements for the supply of non-waste washroom services.

### *Consumables*

7.368 We identified a number of product manufacturers and distributors that compete with the Parties in relation to consumables.

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<sup>631</sup> [X]

<sup>632</sup> [X]

<sup>633</sup> [X]

<sup>634</sup> [X]

<sup>635</sup> [Summary of hearing with PHS](#), 22 August 2018.

<sup>636</sup> [X]

- 7.369 Other washroom services providers such as PHS, Cathedral and Mayflower all supply consumables.
- 7.370 SCA Tork, Kimberly Clark, Hygiene Supplies Direct, Bunzl, Brakes and Ecolab provide consumables across the UK. We also identified FM companies active in the supply of consumables for washrooms procured from product manufacturers and distributors.
- 7.371 The Parties' internal documents identify a range of channels through which consumables for washrooms can be purchased:
- (a) Rentokil's Strategy Update 2016 identified [REDACTED]
  - (b) Rentokil's [REDACTED].
- 7.372 Competitors also told us that cleaning companies could supply consumables, such as soap.

### *Equipment*

- 7.373 In relation to washroom equipment, we also identified a number of product manufacturers and distributors supplying national and multi-regional customers, in addition to washroom service providers. SCA Tork and Vectair supply washroom equipment supply products such as soap dispensers and toilet tissue dispensers, and as do the distributors Bunzl, Brakes and Hygiene Supplies Direct.
- 7.374 In relation to hand drying, product manufacturers supplying across the UK include Air Fury, Biodrier, Dyson, Stream Hygiene and Vent-Axia. Bunzl also provides its own 'Warm Air' range of hand dryers.
- 7.375 We also found that FM companies supply washroom equipment across the UK.

### *Vending*

- 7.376 In addition to washroom service providers, there are a number of suppliers of washroom vending including Direct365, Hygiene Supplies Direct, Intelligent Vending and VP Solutions. Other suppliers, such as Reckitt Benckiser, are also active.
- 7.377 Rentokil estimated in its 2017 Strategy Update that the size of the washroom vending sector is £[REDACTED] of which Rentokil has a share of [REDACTED]%, Cannon [REDACTED]%, PHS [REDACTED]% and others [REDACTED]%. In relation to condom vending, the size of the

total market is estimated at £[x], of which Rentokil's share is [x]% and Reckitt Benckiser's [x]%.

### *Odour remediation*

7.378 In relation to odour remediation, we also found that, in addition to washroom services providers, there are a number of manufacturers and distributors supplying across the UK, including Bunzl, Hygiene Supplies Direct, Direct365, Nisbets, SCA Tork and Viking Direct (a subsidiary of Office Depot).

7.379 We also note that competitors have told us that it is possible to self-supply odour remediation.

### *Toilet cubicle hygiene*

7.380 In relation to toilet cubicle hygiene, we found that a range of products are supplied by companies other than washroom service providers. For example, Tork supplies toilet seat covers, Bunzl and Brakes supply toilet and urinal blocks and cubes. Direct 365 supplies a range of cubicle hygiene products including seat sanitisers, toilet seat wipes and water flow management devices.

### **Conclusion**

7.381 Evidence from the Parties' internal documents and competitors consistently indicates that customers purchasing washroom services other than waste disposal have a wider choice of supply options available to them than they do for waste disposal services. In each of the service lines supplied by the Parties other than waste disposal, we found that a number of product manufacturers and distributors are active in addition to washroom services suppliers (which may be due to the fact that the licensing requirements for waste disposal do not apply to these service lines). We also note that FM companies are active in the supply of a number of washroom services other than waste and do not outsource these services to washroom services suppliers.

7.382 We therefore concluded that the Merger has not resulted, or may not be expected to result, in an SLC in the supply of washroom services other than waste disposal.

## 8. Competitive effects in relation to regional and local customers

8.1 In this section, we assess the competitive effects of the Merger in relation to the supply of washroom services, including waste disposal, to regional and local customers. Appendix F sets out our analysis in more detail.

### The views of the Parties

8.2 The Parties told us that a large number of suppliers are able to compete with them in any given location. The Parties said that suppliers have incentives to service customers of all sizes as, in so doing, the business generates operational efficiencies by increasing route density. Given this, the Parties said that 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 FM companies, cleaners and waste companies.<sup>637</sup>

8.3 The Parties told us that there are over 100 national and regional providers of washroom services. The Parties said that, even on a conservative basis (ie focusing only on a subset of washroom specialist competitors and those competitors where branch location information is publicly available), 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).<sup>638</sup>

8.4 The Parties submitted:

(a) An analysis of local competition in washroom services.

(b) An analysis of Rentokil customer losses on a branch-by-branch basis.

We describe this analysis in Appendix F.

8.5 The Parties said that this analysis showed that there can be no reasonable basis on which the Merger will result in an SLC in the supply of washroom services at the local/regional level.<sup>639</sup>

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<sup>637</sup> Parties' response to phase 1 decision, 30 July 2018, paragraph 4.3.

<sup>638</sup> Parties' response to phase 1 decision, 30 July 2018, paragraph 4.4.

<sup>639</sup> Parties' response to the issues statement, 31 August 2018, paragraph 3.5. The Parties said that, in turn, the lack of competitive harm at the local level is a significant consideration to be taken into account when assessing competition at the 'national' level (if the CMA continued to seek to artificially bifurcate the market in this way).

## CMA assessment

8.6 We examined the following evidence on regional and local competition in the supply of washroom services:

- (a) An assessment of the number of competitors operating in the catchment areas of Rentokil's and Cannon's branches.
- (b) Evidence from competitors.
- (c) The Parties' internal documents.
- (d) The GfK customer survey.

We summarise our assessment of this evidence below. Further detail is set out in Appendix F.

8.7 We examined the number of competing suppliers in the areas around each of Rentokil's and Cannon's branches (defined as catchment areas within which 80% of Rentokil's and Cannon's customers are located, based on postcode data). We identified the number of competitors offering waste disposal services as well as services in each catchment area and found that the Merger would reduce the number of suppliers in the area from '4 to 3' or fewer only at Inverness (Cannon branch) and Inverurie (Rentokil branch).<sup>640</sup>

8.8 We therefore assessed competition in these specific areas in more detail. We found that Rentokil Inverurie is close to the outer edge of the 80% catchment area of Cannon Inverness, and that each of the Parties would face competition from competitors that are closer geographically than from either Rentokil or Cannon. We found that the Parties are not close competitors in these two areas.

8.9 We also examined the number of competitors in each of the UK's 12 regions. We found that there are a number of competitors in each region offering all seven washroom service lines (and a greater number offering at least six service lines, including waste disposal). In all regions there remain more than 3 competitors in addition to the merged entity. The region with the lowest number of effective competitors in the fascia analysis is Northern Ireland, although three competitors remain in addition to the Parties. We also note that

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<sup>640</sup> A '4 to 3' fascia count threshold has been used for mergers in the grocery sector while in other sectors, the CMA has often used a '5 to 4' fascia count threshold.<sup>640</sup> Here we opted for a '4 to 3' fascia threshold for local and regional customers to take account of the constraint from self-supply. Both Rentokil's customer loss data and the GfK customer survey indicate that between 10 and 13% of customers losses were to self-supply. See Appendix F, paragraphs 37-40.

Rentokil's [redacted].<sup>641</sup> In addition, we note that Mayflower, which has a site in Dublin, also serves Northern Ireland.<sup>642</sup>

8.10 Competitors told us that there are many regional and local suppliers of washroom services. Several regional suppliers said that they compete with larger suppliers by offering better services to local customers.<sup>643</sup>

8.11 The Parties' internal documents indicated that the Parties consider there to be a large number of regional suppliers of washroom services. A Rentokil document stated that there are over 80 regional suppliers and a Cannon document listed around 60 competitors in addition to PHS and Rentokil.

## Conclusion

8.12 Based on the evidence set out above, we concluded that the Merger has not resulted, or may not be expected to result, in an SLC in the supply of washroom services to regional and local customers.

## 9. Countervailing factors

9.1 We examined whether there were countervailing factors to prevent an SLC from arising from the Merger in relation to the supply of waste disposal services to national and multi-regional end customers and/or to public and private framework organisations with national or multi-regional coverage.

9.2 We considered three countervailing factors:

(a) Countervailing buyer power.

(b) Entry and expansion.

(c) Efficiencies.

9.3 For each countervailing factor, we set out the conditions under which it may prevent an SLC and our analytical framework. We then analysed whether these conditions were met such as to prevent the SLC in relation to national and multi-regional end customers and/or framework customers with national and multi-regional coverage.

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<sup>641</sup> [redacted]

<sup>642</sup> [redacted]

<sup>643</sup> See Appendix F, paragraph 55.

## Countervailing buyer power

### *The views of the Parties*

- 9.4 The Parties told us that they face significant countervailing buyer power. In this regard, the Parties said that Rentokil's typical customer contract provides little by way of barriers to switching and competition therefore takes place not only at the point of retendering or renegotiation, but also on a regular basis throughout the term of a contract.<sup>644</sup> The Parties told us that providers frequently try to increase their range with their existing customers because 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, the Parties said that they are strongly incentivised to extend their current range with their existing customers.<sup>645</sup>
- 9.5 The Parties submitted that national customers, some of which are the biggest companies in the UK (eg [redacted]), have significant countervailing buyer power. The Parties said that these customers are sophisticated buyers, with large and experienced procurement teams and that they exert significant buyer power. The Parties told us that, in line with their buying strength, this group generally obtains highly competitive terms as evidenced by the low margins that the Parties earn when serving these customers.<sup>646</sup>
- 9.6 The Parties also submitted that these customers, similar to FMs, can be expected to negotiate hard, using their volumes to command competitive prices. The Parties said that customers can exercise their buyer power in a number of ways and may include the threat of penalisation. In this regard, the Parties said that they are constantly aware of the ability of customers to either reduce their estate with the Parties and pass more attractive sites to an alternate third party, or, reduce the range of services provided on any one premise / ranges of premises thus leaving the Parties with the same cost to serve but less margin.<sup>647</sup>
- 9.7 In this regard, the Parties said that, for example, if a large customer served in nine or more regions switched away just two regions in response to a price rise, then this could be equivalent to the loss of one (or more) smaller key account customers. The Parties told us that this would be a straightforward

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<sup>644</sup> The Parties said that the typical term of a contract is [redacted]

<sup>645</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraphs 5.40-5.41.

<sup>646</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.42.

<sup>647</sup> [redacted]



threat to implement given that at least 15 competitors operate in two or more regions.<sup>648</sup>

- 9.8 The Parties submitted that actions taken by a number of Rentokil's customers serve to illustrate the point. For example, in commercial negotiations [redacted].<sup>649</sup>
- 9.9 The Parties also submitted that, in some cases, these 'national' customers may have sufficient volume to either sponsor entry or otherwise expansion of local/regional players to a national level. The Parties said that [redacted] is understood to have sponsored growth by Mayflower to offer national coverage.<sup>650</sup>
- 9.10 In relation to private framework organisations, the Parties said that these were another source of material buyer power and exist for the purpose of handling multiple suppliers and so do not need to use a single national provider. The Parties said that these groups aggregate demand from a number of members for the most part are not themselves 'national' customers.<sup>651</sup>
- 9.11 In response to provisional findings, the Parties submitted that in the case of frameworks that cater for customers with national requirements, there is a greater likelihood that frameworks and their customers can exert buyer power. The Parties said that framework organisations are accustomed to dealing with many suppliers and constitute an important channel for the Parties to reach end customers and can generate substantial revenues for the Parties.<sup>652</sup>

### **CMA assessment**

- 9.12 The CMA recognises that, in some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices.
- 9.13 We assessed the countervailing buyer power of national and multi-regional customers. As we concluded that no competition concerns arise in the supply of waste disposal services to FM companies (see Chapter 7), we focused on the countervailing buyer power of national and multi-regional end customers and framework customers.
- 9.14 We examined the following factors that affect the bargaining strength of a buyer:

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<sup>648</sup> [redacted]

<sup>649</sup> [redacted]

<sup>650</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.44.

<sup>651</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraph 5.45.

<sup>652</sup> [redacted]

- (a) The ability to switch away from a supplier.
- (b) The number of alternative suppliers available.
- (c) The mutual dependency between a supplier and each of its customers.
- (d) The impact of the Merger.<sup>653</sup>

*The ability of customers to switch supplier*

- 9.15 We assessed the ability of customers to switch supplier. The Parties told us that barriers to switching suppliers are low and we found that customers are able to switch supplier at contract expiry and typically [redacted] during the life of a contract after [redacted].
- 9.16 However, we note that an OCS Group strategy document in relation to Cannon assessing buyer power stated that there ‘[redacted].<sup>654</sup> Consistent with this, [redacted] told us that although it is possible for customers to switch between suppliers, it is a time consuming process which increases in complexity as the number and location of customer sites increases and that for larger/national customers it can take over a year. [redacted] also said that it is costly both for it and for the customer to organise site logistics to change washroom supplier.
- 9.17 We considered customer views on the ease of switching supplier in Appendix E. Five national and multi-regional end customers told us that it would be difficult to change supplier, although one said that the cost would be limited (a further customer was unsure).<sup>655</sup> Three private framework organisations told us that switching would be difficult, citing financial implications and the nature of contracts.<sup>656</sup> One public framework organisation said that it was very easy to switch if the end user gave notice in accordance with the framework agreement call of terms,<sup>657</sup> whilst another said that switching could be difficult for end users because there are typically hundreds of feminine hygiene bins to replace.<sup>658</sup>
- 9.18 Overall, we found mixed evidence regarding the ease with which customers can switch supplier. We note that some of the barriers identified by customers and competitors relate to switching to multiple suppliers (eg a combination of regional suppliers) though others also relate to switching to another single

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<sup>653</sup> [Merger Assessment Guidelines](#), Section 5.9.

<sup>654</sup> [redacted]

<sup>655</sup> [redacted][redacted]

<sup>656</sup> [redacted]

<sup>657</sup> [redacted].

<sup>658</sup> [redacted]

washroom services supplier with national coverage (see Tables 6 and 7 above).

*The number of alternative suppliers available*

- 9.19 As discussed above Chapter 7, we found that the supply of waste disposal to national and multi-regional end customers and framework customers with national and multi-regional coverage is concentrated. Three suppliers (PHS, Rentokil and Cannon) serve the largest and the majority of national and multi-regional customers. For framework customers, the Parties and PHS compete with one another more closely than they compete with other suppliers, both in respect of listing on frameworks with national and multi-regional coverage and winning business from users of these frameworks.

*The mutual dependency between a supplier and each of its customers*

- 9.20 We found that the supply of washroom services to national and multi-regional customers is typically characterised by tendering and/or bilateral negotiations. Whether they tender or negotiate contracts bilaterally, national and multi-regional customers said that they often seek bids or quotes from Rentokil, Cannon and PHS.
- 9.21 We note that Rentokil's top 10 customers each accounted for around [redacted]% of its total washroom service revenues and that Cannon's top 10 customers also each account for around [redacted]% of its total washroom service revenues. A Cannon strategy document stated that there are a [redacted].<sup>659</sup> The Parties are therefore not likely to be dependent on individual customers which, in turn, weakens the negotiating power of individual customers.
- 9.22 We note that there is some evidence that national and multi-regional customers are able to negotiate over the prices they pay for washroom services:
- (a) Cathedral said many large customers have large buying power and look to exploit that at every opportunity,<sup>660</sup> for example by 'consolidating volumes' or 'multi source across regions to increase competition between suppliers in each area'.<sup>661</sup> Cathedral said that the largest suppliers serviced national washroom customers at low prices and that, for these

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<sup>659</sup> [redacted]

<sup>660</sup> [redacted]

<sup>661</sup> [redacted]

contracts, the price charged to the customer may be below the cost of providing the service and that [REDACTED].<sup>662</sup>

- (b) PHS said that bilateral negotiations with large national customers (who often have a sophisticated procurement function) can take a lot of time, sometimes up to a year. PHS said that these customers generally have some buyer power, and usually request alternative quotes from competitors before asking the incumbent supplier for their best price to see whether the current supplier is willing to match it.<sup>663</sup>
- (c) Competitors, including [REDACTED], confirmed that the incremental cost of selling additional service lines to customers is low.
- (d) A number of customers, including [REDACTED], told us that they negotiate price based on volumes.<sup>664</sup>
- (e) Three national and multi-regional customers ([REDACTED]) told us that they receive rebates.<sup>665</sup> [REDACTED] said that it receives a discount for acting as a private framework.<sup>666</sup>
- (f) A Cannon strategy document assessing buyer power stated that [REDACTED].<sup>667</sup>

9.23 We assessed whether customers could credibly threaten to switch away certain service lines from the Parties, other than waste disposal given the wider range of supply options available for these service lines. We did not find any examples of end customers or framework customers adopting this strategy either from the Parties or from third parties. We also note that many national and multi-regional customers already use other suppliers for a number of non-waste washroom services.

9.24 We also examined whether national and multi-regional end customers and framework customers would switch away part of their estates to competitors, or credibly threaten to do so in negotiations. We note, however, that many of the Parties' customers would not consider using a combination of regional suppliers (see Chapter 7 above).

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662 [REDACTED]  
663 [REDACTED]  
664 [REDACTED]  
665 [REDACTED]  
666 [REDACTED]  
667 [REDACTED]

9.25 We did not find any evidence that customers have sponsored entry or have threatened to do so. [X] said that winning the [X] contract was not the reason that it had grown.<sup>668</sup>

### *The impact of the Merger*

9.26 As set out above, we found some evidence from customers and competitors that national and multi-regional customers are able to negotiate deals – for example, by securing discounts or rebates, particularly where large volumes are purchased.

9.27 However, as set out in our assessment of the competitive effects of the Merger, we found that the supply of waste disposal to national and multi-regional customers is concentrated.

9.28 Cannon is one of the three largest suppliers of washroom services serving national and multi-regional customers in the UK. The Merger would reduce the supply options available to these customers both in tenders and bilateral negotiations. In turn, this may be expected to weaken the negotiating position of customers.

9.29 We found in Chapter 7 that there is limited evidence of other washroom suppliers having had material competitive interactions with the Parties for these customers and that FM companies are only an indirect constraint as they outsource waste disposal to washroom specialists. For some customers, PHS is therefore likely to be the only credible alternative to the Parties post-Merger (see Chapter 7). Given that many customers tender or negotiate by playing off suppliers against one another, we found that having limited credible alternative options restricts the countervailing buyer power of these customers.

9.30 In relation to framework customers, as noted in Chapter 7, we also found that the Parties and PHS are the major suppliers to framework organisations and their users, with other suppliers representing a weak constraint. We found that the Merger would result in both a reduction in the credible options for framework organisations with a national or multi-regional coverage and a reduction in credible options available to users that procure under such frameworks. Post-Merger, PHS is likely to be the only alternative for these customers.

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<sup>668</sup> [X]

## Conclusion

- 9.31 We note that some national and multi-regional customers appear to be able to negotiate deals with the Parties. However, these and other customers affected by the SLCs only have limited supply options for waste disposal and the Merger would remove a key supply option.
- 9.32 We therefore found that the countervailing buyer power of national and multi-regional end customers and public and private framework customers with national or multi-regional coverage is likely to be limited post-Merger in relation to waste disposal and is not sufficient to prevent the SLCs in relation to national and multi-regional end customers and/or frameworks with national or multi-regional coverage.

## Entry and expansion

- 9.33 In assessing whether market entry or expansion in the supply of waste disposal to national and multi-regional customers might prevent an SLC, we consider whether such entry or expansion would be timely, likely and sufficient:<sup>669</sup>
- (a) **Timely:** whether entry or expansion can be ‘sufficiently timely and sustained to constrain the merged firm’.<sup>670</sup> The Merger Assessment Guidelines note that: ‘The Authorities may consider entry or expansion within less than two years as timely, but this is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants’.<sup>671</sup>
  - (b) **Likely:** whether firms have the ability and incentive to enter the market.<sup>672</sup>
  - (c) **Sufficient:** whether the scope or scale of entry or expansion would be sufficient to act as a competitive constraint to deter or defeat any attempt by the merged firm to exploit any lessening of competition resulting from the merger.<sup>673</sup>
- 9.34 For an SLC to be prevented, all three of these criteria would have to be met. We assess each of the criteria separately, before making an overall judgement on whether entry or expansion would be timely, likely and sufficient.

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<sup>669</sup> Merger Assessment Guidelines, paragraph 5.8.3.

<sup>670</sup> Merger Assessment Guidelines, paragraph 5.8.11.

<sup>671</sup> Merger Assessment Guidelines, paragraph 5.8.11.

<sup>672</sup> Merger Assessment Guidelines, paragraph 5.8.8.

<sup>673</sup> Merger Assessment Guidelines, paragraph 5.8.10.

- 9.35 In this section, we first assess barriers to entry and expansion in relation to waste disposal. We then assess whether the prospects for entry or expansion in this market would be timely, likely and sufficient such as to prevent an SLC. During the course of our inquiry, Elis (which is a leading supplier of washroom services in Continental Europe and one of the largest suppliers in France) developed plans to enter the direct supply of washroom services in the UK. Alongside our more general assessment of the prospects for entry and expansion, we therefore assessed Elis' entry plans in detail to establish whether entry by Elis would be timely, likely and sufficient such as to prevent an SLC.
- 9.36 Further details of the views of third parties and evidence provided to us is included at Appendix G.

***The views of the Parties on barriers to entry and expansion***

- 9.37 The Parties told us that the barriers to entry in the washrooms sector are low and, in light of recent market developments, are decreasing.<sup>674</sup> The Parties told us that on-site service (OSS) is a major development in the industry and has not only reduced the capital requirements but also increased the number of potential providers that can provide washroom services by:
- (a) Lowering the capital requirements to start up, for example no industrial washer is required.
  - (b) Lowering the cost of providing washroom services.
  - (c) OSS has increased the ability for consumables to be stored in vans, thereby reducing the frequency of depot visits it is much easier for smaller competitors to serve more dispersed customers by increasing the range that a single depot might service.
- 9.38 The Parties estimate that the total investment required per branch would be in the region of £600,000–£700,000.<sup>675</sup>
- 9.39 In relation to barriers to expansion, the Parties told us that expansion to a national footprint does not require significant capital, technology or capability over and above local entry. The Parties estimate that six branches would be sufficient to form a national network of depots to serve national customers in

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<sup>674</sup> [Parties' response to phase 1 decision](#), 30 July 2018, paragraphs 6.47 to 5.52.

<sup>675</sup> The Parties said that this estimate is based on the work of 10 employees per branch and noted that new entrants may not have enough work to occupy 10 employees, in which case a lesser investment would be required.

Great Britain and noted that not all competitors, eg Cathedral, used a branch network model.

- 9.40 The Parties also told us that it would be easy for companies in adjacent industries, including FM companies and healthcare waste companies, to enter the provision of washroom waste disposal. From there, the Parties said that it would be easy to expand to provide a full washroom service. The Parties provided two examples of potential new entrants – [redacted] and Elis.

### ***The views of third parties on entry and expansion***

- 9.41 Most competitors told us that the barriers to entry into the UK washrooms sector are low at the local level. This is supported by the substantial number of local and regional suppliers in the sector.
- 9.42 We note that a presentation given to the board of OCS Group in relation to the potential sale of Cannon called [redacted].<sup>676</sup> However, a 2016 Cannon Hygiene UK strategy document states that [redacted].<sup>677</sup>
- 9.43 In relation to barriers to expansion, evidence from third parties was mixed. We examined the Parties' submission that Mayflower and Cathedral are examples of suppliers which have expanded to serve national and multi-regional customers. Cathedral told us that barriers to entry are low.<sup>678</sup> However, it has expanded one customer at a time. Mayflower told us that the barriers to expansion are not insurmountable and that the decision to enter depends on risk appetite. Mayflower has expanded both through acquisition and by setting up new sites.<sup>679</sup> The evidence and examples provided to us by these suppliers suggests that expansion typically takes place one customer at a time.
- 9.44 Mayflower also told us that it turns down customers who do not fit in well with its existing portfolio, since adding the customer imposes additional costs such as adding more vans to the fleet.<sup>680</sup>
- 9.45 PHS told us that there is an inherent challenge as to 'what comes first' in expansion – namely acquiring the customer, or the operational site (which is necessary to enable the supplier to service that customer). PHS told us that there would be a significant financial risk in expanding without customers and

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<sup>676</sup> [redacted]  
<sup>677</sup> [redacted]  
<sup>678</sup> [redacted]  
<sup>679</sup> [redacted]  
<sup>680</sup> [redacted]



that, in its view, a competitor is highly unlikely to get sufficient customers without having the operational sites required to service those customers. PHS said that a key barrier to expansion in the washrooms sector is the national infrastructure that it, Rentokil and Cannon have but which others do not have.<sup>681</sup>

9.46 PHS said, however, that entry could be a little easier for companies in adjacent industries. For example, PHS told us that it would be easier for healthcare waste providers to supply sanitary waste disposal and cited the example of HEG, which was at that time active in both sanitary and medical waste disposal.<sup>682</sup> However, PHS said that HEG is the only entity of its kind which has attempted to enter and that it has not been successful in winning contracts; PHS does not consider HEG to be a serious competitor to it, Rentokil or Cannon. PHS also noted that the larger healthcare waste providers have a preference to service (much) larger bins stored outside buildings rather than having to deal with the complexities associated with entering buildings to service washrooms (which could be located in many different locations at large customer sites).<sup>683</sup>

9.47 Similarly, Cathedral told us that, at various times, Rentokil has operated FM companies, and Cannon was owned by OCS Group (which is a FM company), and there is no reason why a FM company could not develop their own specialist washroom service business.<sup>684</sup> However, as described in Chapter 7, this view was not shared by FM companies themselves.

### ***CMA assessment of barriers to entry and expansion***

9.48 We assessed barriers to entry and expansion in relation to the supply of waste disposal services to national and multi-regional customers. Below we summarise evidence and views regarding:

- (a) The attractiveness of market entry, including the level of market demand, regulatory barriers and capital costs.
- (b) The impact of OSS on entry conditions.
- (c) Whether entry by firms in adjacent industries would be timely, likely and sufficient to prevent the SLC

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<sup>681</sup> [redacted]

<sup>682</sup> [redacted]

<sup>683</sup> In our assessment of competitive effects in Chapter 7, we found that HEG only provides washroom services to the public sector in Scotland. We note that HEG ceased operations in December 2018.

<sup>684</sup> [redacted]

(d) Barriers to expansion.

*The attractiveness of market entry*

9.49 The attractiveness of a market may be a helpful indicator as to the likelihood of entry or expansion. In evaluating this issue we looked at the level of market demand, regulatory barriers and capital costs.

*The level of market demand*

9.50 We have been told by the Parties and a number of third parties that the market in the UK grows in line with GDP. PHS said the reason the market grows in line with GDP is that firms tend to outsource services in proportion to a growing economy.<sup>685</sup>

9.51 Both Rentokil and Cannon are growing their washroom revenues, with the organic growth being in line with GDP. The next largest competitors, Cathedral and Mayflower, told us that they have a faster rate of revenue growth than the three largest competitors. Mayflower told us that its washrooms revenues were the fastest growing part of its business, currently growing at [redacted]%.<sup>686</sup> Cathedral told us that its revenues were growing by 5% per annum, with growth coming from [redacted].<sup>687</sup> Conversely, PHS told us that between 2014 and 2016, its revenues fell by [redacted]%, whilst smaller regional players were estimated to be achieving revenue growth of [redacted]%.<sup>688</sup>

9.52 [redacted] also said that market conditions are changing, citing the falling exchange rate, bigger FM companies and investment by European companies in washroom services providers in the UK.

9.53 [redacted] told us that the market appetite for acquisitions has considerably lessened and this has made the market more competitive. This reduction in 'buying spree' will, in Mayflower's view, help smaller players to expand.<sup>688</sup>

9.54 Rentokil's annual report and accounts states that the market offers good growth opportunities due to factors that include:<sup>689</sup>

(a) Changing demographics – growing and aging population creating more health issues and hygiene product requirements.

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<sup>685</sup> [redacted]

<sup>686</sup> [redacted]

<sup>687</sup> [redacted]

<sup>688</sup> [redacted]

<sup>689</sup> [Rentokil Annual Report 2017](#).

- (b) Rising customer expectations – increasing awareness of hygiene in workplaces.
- (c) Tighter regulations – greater compliance with workplace hygiene and environmental standards.

#### *Regulatory barriers*

9.55 We found no evidence that regulatory barriers are more complex at a national or multi-regional level than at a local level. However, we note that licences have to be acquired regionally and will be commensurately harder to acquire at a national level.

#### *Capital*

- 9.56 Most regional suppliers told us that barriers to entry are not high at a local or regional level, which was consistent with the evidence we reviewed.
- 9.57 We found that the capital required to enter at a national or multi-regional level is higher than at a local level. We also note that an entrant at the national level would need to build customer density without a ready customer base and that investing in a national network may be risky if there is no guarantee of gaining national customers.
- 9.58 Northern Counties Cleaning Limited told us that significantly more capital is required up-front to acquire the products that are leased to large customers and that this is a barrier to acquiring larger customers.
- 9.59 We also note that IT and technology systems may be more important when operating at a larger scale in order to meet the more sophisticated requirements of larger customers. For example, Rentokil uses handheld technology to generate information for management reports and offers customers an online reporting tool. Similarly, Cannon uses customer relationship management technology.
- 9.60 Overall, we found that the markets had moderate growth potential, though entry at scale would require capital investment that carried associated risks. Large scale entry is potentially unattractive though not overwhelmingly so and there have been no examples in recent years of a new provider entering at scale.

#### *The impact of OSS on entry conditions*

9.61 As described in Chapter 2, Rentokil has, in recent years, been moving more of its waste disposal business to OSS. The Parties said that this was a recent

market development that has lowered barriers to entry and expansion by removing the capital requirement to purchase an industrial washing machine and by generating ongoing operational cost savings.<sup>690</sup>

- 9.62 Third parties told us that OSS was not a recent market development.<sup>691</sup> Moreover, the Parties confirmed that the savings can only be realised when almost all customers have switched to OSS (for example, a washing machine is still required if some customers are still using bin exchange rather than OSS). PHS said that there is little cost difference in providing OSS compared to bin exchange, because bin exchange means the bins are machine washed away from customer premises, whilst the liner exchange model can be less time efficient because staff need to spend more time on site to clean the bins.<sup>692</sup>
- 9.63 We therefore found that, whilst OSS may lower the cost of entry relative to bin exchange, it is not a recent market development that has significantly reduced the cost of entry.

#### *Entry from adjacent industries*

- 9.64 We note that there is no evidence of recent entry at a national level. We found that the capital required to enter at a national scale would be significant for an entrant with no existing national network and would include the cost of vans, depots and associated infrastructure as well as establishing a brand and market reputation. A new entrant would either need to acquire customers without first having a national network, or invest in a network first but then carry the risk of not gaining national customers. We therefore found that entry by a new supplier with no established UK infrastructure (ie 'greenfield' entry) would not be timely, likely and sufficient to prevent the SLCs.
- 9.65 We therefore focused on whether entry from adjacent industries would be timely, likely and sufficient to prevent the SLCs from arising.

#### *FM companies*

- 9.66 In relation to FM companies, we note that, despite the relatively low fees for acquiring licences, FM companies typically outsource waste disposal along with the other washroom services. In Chapter 7, we assessed whether FM companies would have the ability and the incentive to start self-supplying waste disposal in competition with the Parties if prices were to increase by a

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<sup>690</sup> [redacted]

<sup>691</sup> [redacted]

<sup>692</sup> [redacted]

small amount and found that the potential constraint of FM companies self-delivering waste disposal would not be timely, likely and sufficient.

#### *Waste collection companies*

- 9.67 Although waste collection companies have the licences to transfer waste, we find that few of them provide waste disposal services on customer premises, but instead they collect waste from washroom services providers. We received responses from two waste collection companies, Medisort<sup>693</sup> and Tradebe<sup>694</sup>. Both companies told us that they do not visit end-client buildings to service washrooms and they had no plans to enter the UK washrooms market.
- 9.68 Rentokil told us that they disagree with this assessment, quoting HEG as an example to demonstrate that it is likely for small volume waste collectors to go to end-client buildings to service washrooms.<sup>695</sup> As explained in Chapter 7, we found that HEG, at the time,<sup>696</sup> provided washroom waste disposal only in Scotland and it did not serve national and multi-regional customers.

#### *Other suppliers from adjacent industries*

- 9.69 The Parties told us that Zenith and Calabash had entered the UK washrooms market from adjacent industries. However this entry is at the local level, in relation to which we agree that barriers to entry are low. We also note that Zenith [redacted]. We therefore consider that this form of entry is insufficient to affect competition for national and multi-regional end customers and frameworks with national or multi-regional coverage.

#### *Potential entrants*

- 9.70 The Parties told us that [redacted], a washroom service supplier is partnering with cleaning and hygiene supplier, [redacted].<sup>697</sup>
- 9.71 We spoke to [redacted] to understand its intentions regarding entry. [redacted]
- 9.72 The Parties told us that Elis (which acquired Berendsen in 2017) supplies washroom services in other European countries and has plans to potentially enter the UK washroom sector. We consider Elis' entry in more detail below.

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<sup>693</sup> [redacted]

<sup>694</sup> [redacted]

<sup>695</sup> [redacted]

<sup>696</sup> HEG has now ceased trading.

<sup>697</sup> [redacted]

9.73 We have not encountered or been informed of any other planned entry to the UK washrooms sector that would materially alter the competitive conditions for national and multi-regional end customers and/or framework customers with national or multi-regional coverage.

#### *Barriers to expansion*

9.74 The history of expansion by smaller players whether through opening a new site or acquiring a competitor is typically achieved one site at a time. There are examples of firms expanding to achieve national coverage, notably Mayflower and Cathedral (both of which started as regional competitors), but it has taken many years for them to reach their current scale.

9.75 We note that Mayflower and Cathedral are growing faster than both Rentokil and Cannon overall. However, as described in Chapter 7, Cathedral estimated that its national and multi-regional customers account [redacted] % of its turnover. Cathedral [redacted]. Mayflower's national and multi-regional customers account for around [redacted]% of its washroom services business, but its competitive interaction with the Parties and PHS also remains limited. Mayflower said that it targets only certain customer sectors, but will turn down customers that do not fit its portfolio.<sup>698</sup>

9.76 In Chapter 7, we concluded that Cathedral and Mayflower are likely to act only as a relatively limited constraint on the Parties post-Merger. We noted that we had not seen evidence, such as any strategic priority of these companies to target national and multi-regional customers, that would suggest that the constraints from any expansion of Cathedral or Mayflower will be timely, likely and sufficient.

9.77 Two firms, Northern Counties Cleaning Limited and [redacted] highlighted the challenge of acquiring customers as a potential barrier to expansion.<sup>699</sup> Northern Counties Cleaning Limited highlighted the challenge of accessing public sector purchasing arrangements and [redacted]told us that the bigger named companies generally charge too cheaply to keep the independents out.

9.78 In summary we have not found evidence of washroom providers with significant expansion plans nor have we seen any evidence to suggest that the pattern of competitor expansion in the UK washrooms will change going forward.

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<sup>698</sup> [redacted]

<sup>699</sup> [redacted]

## ***Entry by Elis to the UK washroom sector***

9.79 The Parties made a number of submissions in relation to Elis, in which they argued that the entry/expansion of Elis into the UK washroom sector would be timely, likely and sufficient to prevent an SLC.<sup>700</sup> We considered these submissions carefully and collected further evidence in order to evaluate whether entry by Elis would prevent the SLCs.

### *The views of the Parties*

9.80 The Parties told us that Elis has a very successful model across the markets it operates in and that model involves the in-house delivery of washroom services. The Parties said that the stated purpose of the acquisition of Berendsen was for Elis to extend its model and reach into the UK; the Parties told us that it is therefore logical to conclude that the previous outsourcing arrangements of Berendsen for washroom services will be internalised within the Elis model.

9.81 Following provisional findings, the Parties made a number of further submissions in relation to entry by Elis. In summary, the Parties told us:

(a) Entry would be timely:

- (i) The Parties said that they expect the market entry/expansion of Elis on a national scale within less than two years. Rentokil's advisers note that Elis had not apparently contested that it could be a national supplier of washroom services within two years.<sup>701</sup>
- (ii) The Parties understand that [X]. The Parties said that it would be too late to run a tender now and the plan must be to internalise washroom services.
- (iii) The Parties noted that Elis confirmed that [X] would represent the migration of a significant proportion of Elis' overall washroom services business to self-service.
- (iv) The Parties noted that evidence from Elis suggested that in a best case scenario, Elis could have national coverage in [X] for the

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<sup>700</sup> Parties' response to provisional findings, 20 November 2018, section 5; Memorandum on market entry/expansion by Elis, 5 November 2018; Response to Elis evidence, 22 November 2018; Response to new Elis evidence, 28 November 2018; and Supplementary memorandum on the market entry/expansion of Elis, 4 January 2019.

<sup>701</sup> Rentokil's advisers noted the following statement from Elis It is impossible to know when it will be in a position to provide washroom services to all regions in the UK [X] and added 'This leaves entirely open the possibility (we say likelihood), that it will have national coverage by the end of 2020'.

national roll-out – and three months less if [REDACTED]. The Parties submitted that it is unrealistic to think that a player of Elis' scale, experience and expertise – as well as brand recognition in its own right and via Berendsen, which also provides it with an established customer base – would not be an immediate and substantial national constraint as soon as (and indeed before) it had national coverage. The Parties noted that Elis has provided internal documents, seen by Rentokil's advisers, that imply a faster roll-out of washroom services to sites nationally than the incremental process claimed by Elis elsewhere.

- (v) The Parties also said that Elis was recruiting via Michael Page for roles in its new 'Elis Washroom UK' division, including for a national sales manager role. In response to Elis evidence [REDACTED].
- (vi) The Parties said that Elis already has members of a management team for the washroom division in the UK, its own sales force, vans and drivers as a result of its £2.2 billion acquisition of Berendsen in 2017.
- (vii) The Parties said that Elis may have acquired an existing washroom business. In response to Elis evidence, Rentokil's advisers subsequently noted that Elis has confirmed that [REDACTED]. They further noted that whilst Elis has claimed that it is [REDACTED] this carefully worded statement does not appear to exclude future ambitions in this area to complement the organic entry / expansion that is already under way.

(b) Entry would be likely:

- (i) In relation to Elis' *ability* to enter the sector, the Parties said that Elis has an existing network of branches with national coverage and a strong national customer base in an adjacent industry through Berendsen which could be leveraged to rapidly grow its washroom business in the UK. It has an industrial and so-called 'tribe' model, the purpose of which is to facilitate multiple service offerings. The Parties also submitted that Elis has a track record of entry/expansion into new geographies that indicates relevant experience and expertise and it has the resources to do so across the UK without difficulty.<sup>702</sup>

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<sup>702</sup> The Parties said that Elis has a number of natural advantages as a new entrant. In particular, Elis has its own in-house manufacturing expertise in washroom services to ensure ready access to all the key products required to service washrooms. It owns Kennedy Hygiene Products, which designs and manufactures washroom appliances, and which has a plant in the UK. Elis also has a range of own-brand washroom equipment and Rentokil considers that stock could be easily transported to the UK.



In this regard, the Parties also said that the imminent washroom services pilot will fine-tune Elis' entry ability.

The Parties submitted that Elis has overstated barriers to entering the sector and has completed steps previously identified as barriers to entry (eg obtaining a waste carrier licence and conducting training).<sup>703</sup> The Parties said that the costs associated with waste collection are very low and would not deter entry by Elis and that waste storage requires only limited space, noting that Elis already has 35 sites in the UK. The Parties also said Elis would not require sanitary bins to enter as it could use OSS (and if bins were required, the cleaning infrastructure is not extensive or costly). In addition, the Parties said Elis could lease vans to transport waste or could instead use its existing fleet.<sup>704</sup> The Parties added that entry/expansion is not subject to shifting local regulation or policy.

- (ii) In relation to Elis' *incentive* to enter the sector, the Parties submitted that Elis has confirmed [REDACTED]. The Parties noted that Elis [REDACTED]. The Parties also noted that Elis has recruited [REDACTED] in the UK and that Elis plans to enter with a full-service offering.
- (c) Entry would be sufficient to remove an SLC on a standalone basis and on a cumulative basis when considered together with other constraints (including competition from PHS, Cathedral and Mayflower as well as countervailing buyer power):<sup>705</sup>
- (i) Elis is the largest washroom services provider in France and its [REDACTED]. The Parties added that the Elis business model involves the transference of global expertise, a push for national success, the combination of multiple service offerings to customers and cross-selling between services, enabling Elis to price aggressively, control costs and take advantage of economies of scale. The Parties said that Elis is deploying this same formula in relation to Berendsen.
  - (ii) Elis entered the Swiss market in 2010 and swiftly became the market leader in western Switzerland and by 2013 was the second largest player in workwear, linen and washroom services. In Brazil, Elis set

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<sup>703</sup> The barriers to entry identified by Elis are set out at paragraph 20 of Appendix G.

<sup>704</sup> The Parties said that if Elis wished to segregate its washroom products from its laundry products, a segmentation system could be obtained cheaply.

<sup>705</sup> The Parties said that the need to consider entry in combination with other competitive constraints on the merged entity is well-established by numerous entry / expansion cases in recent years.

up a sales office in 2012 and became market leader in 2014 via the acquisition of Atmosfera, since acquiring other local players.

- (iii) Elis would provide end customers with a credible alternative to the merged entity and PHS.
- (iv) There is no evidence that Elis would not have learned all the lessons necessary during the pilot and its subsequent rollout in order to become a significant national competitor, not least given Elis has the required expertise as the leading provider of washroom services in France and an established customer base.<sup>706</sup>
- (v) Elis would not need to have a large share of national customers in order to be a material constraint – it requires only that the merged entity would fear losing to Elis when seeking to supply national customers, with Elis only needing to win one or two national customers in order to signal its intention to compete for customers with a presence in eight plus regions.
- (vi) Even before it achieves national scale, the entry/expansion of Elis would act as a sufficient constraint on the merged entity as, should the merged entity seek to raise prices, this would make Elis' entry/expansion all the more likely in terms of speed and scale. In addition, Elis would materially enhance the buyer power of customers operating in eight plus regions, with customers having a credible threat to switch supply to Elis in some regions before it has national coverage.
- (vii) In relation to frameworks, the Parties said that Elis (through Berendsen) is already listed as a supplier of laundry services on a number of public framework organisations in the UK.<sup>707</sup> Since Elis has experience dealing with and being listed on these frameworks, the Parties said that there is no obvious barrier to Elis offering washroom services on frameworks.
- (viii) Lastly the parties said that putting aside Elis, there are already a number of competitive constraints, including PHS, Cathedral, Mayflower, and buyer power, which cumulatively discipline the merged firm. With the addition of Elis, collectively, these alternatives

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<sup>706</sup> Rentokil estimates that of the [redacted] end customers identified as provisionally suffering from and SLC, [redacted]% by revenue ([redacted] by customer count) are laundry or workwear customers (the corresponding figures for Cannon being [redacted] by value and [redacted] by customer count).

<sup>707</sup> Including, APUC, HEPCW, LUPC, NEUPC, NWUPC, SUPC, Crown Commercial services and London Procurement Partnership.

would ensure a sufficient constraint to discipline the commercial behaviour of the Parties. Given the absence of material customer concerns in market testing and the absence of evidence of material upwards price pressure, the addition of Elis' entry / expansion to the list of competitive constraints that will continue to discipline the merging parties post-transaction should suffice to cause the CMA to reach a finding that there will not be an SLC in its final decision.

#### *Evidence submitted by Elis*

9.82 We engaged extensively throughout the inquiry with Elis in relation to its potential entry to the UK washroom sector. We found that Elis' entry plans had developed further since provisional findings and therefore probed its entry plans in detail. We summarise the evidence we obtained from Elis below.<sup>708</sup>

#### *Outsourcing to [REDACTED]*

9.83 [REDACTED]

#### *Entry pilots*

- *Launch of the entry pilots*

9.84 Elis said that it plans to pilot the offering of washroom services to local and regional customers in Q1 2019 from three workwear depots. [REDACTED].<sup>709</sup> Elis told us that no other sites have been included in any discussions regarding the pilots.

9.85 Elis said that preparations have mainly focused on existing washroom customers. However, it is anticipated that the pilots will also aim to cover potential customers (with existing Elis non-washroom customers, non-Elis 'washroom only' customers and non-Elis customers interested in washrooms and other Elis services being targeted in the pilot areas). [REDACTED]

9.86 [REDACTED]

9.87 [REDACTED]. In December 2018, Elis said that preparation of its customer communication programme had started but had not yet been completed (instead being transferred from its site team to its marketing team). In January 2019, Elis said that no communication had taken place.

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<sup>708</sup> [REDACTED]

<sup>709</sup> Elis said that [REDACTED]

9.88 In relation to delivery logistics, Elis said that consumables will be delivered using existing laundry and workwear vans, but separate vans will be used for waste disposal.

9.89 Elis confirmed that its planned UK washrooms offering includes hand dryers, paper towel dispensers, roller towels dispensers, soap dispensers, toilet roll dispensers, air fresheners, feminine hygiene bins and waste removal.

- *Evaluation of the entry pilots*

9.90 [REDACTED]<sup>710</sup> The criteria used to assess the pilots are expected to include the attractiveness of the services to clients, the operation and onboarding, the success of delivery, financial performance and organisational consequences. The assessment decision will be taken by members of Elis' UK executive team.

- *Strategy following the entry pilots*

9.91 [REDACTED]. Elis told us that decisions on a rollout of the project will be made following ample time to assess the success of the pilots, after [REDACTED]. In this regard, Elis told us that:

(a) [REDACTED]

(b) It is impossible to know when it will be in a position to provide washroom services to all regions in the UK. [REDACTED]

(c) There are a number of barriers to entry and expansion (described in Appendix G), but generally not 'structural' barriers to entry. Indeed, [REDACTED]

(d) Elis said that having national coverage does not guarantee success in acquiring national and multi-regional customers. Elis told us that it still has lessons to learn in relation to the UK washroom sector and that becoming an effective national competitor takes time. Becoming an effective national competitor would require it to develop expertise in washroom services, to be recognised as a credible and effective player as well as to win a significant market share in the business. [REDACTED]

9.92 Elis said that it has no plans in place should the decision be made not to proceed with an unsuccessful pilot. [REDACTED]

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<sup>710</sup> Elis said that there is currently no review meeting scheduled and that the uncertainty is largely due to the timing of the pilots going live and the unknown sample period of time needed to make the assessment.

### *Other issues relating to entry*

- 9.93 Following submissions from the Parties, we considered a number of other issues relating to Elis' entry:
- (a) Supply to frameworks – Elis said that, in the UK, it is only party to a framework agreement with Crown Commercial Services. Elis told us that this public framework is generally used by public bodies such as the NHS and has been signed by Elis' Healthcare division, with a pricing for the workwear section as well.
  - (b) Entry in other countries – Elis said that it entered the supply of washroom services in Switzerland in 2016, but remains a small player in Switzerland, supplying only French speaking cantons. Elis said that it does not supply washroom services in Brazil.
  - (c) Corporate structure – in relation to the suggestion that Elis is creating a washroom division in the UK, Elis told us that it already has an 'Industry, Commerce and Services' division' which covers workwear, mats and washrooms. Elis said that it does not see washrooms as a business, but as a service offering.
  - (d) [REDACTED].<sup>711</sup>
  - (e) Acquisition of washroom suppliers in the UK – Elis stated that it has not acquired a washroom services supplier in the UK [REDACTED]

### *CMA assessment of entry by Elis*

9.94 We assessed whether entry by Elis would be timely, likely and sufficient to prevent the SLC in relation to national and multi-regional end customers and/or frameworks with national and multi-regional coverage. In doing so, we critically reviewed the evidence provided by Elis and considered the Parties' submissions in relation to this issue.

- *Timeliness*

9.95 We found that Elis has advanced plans to pilot the sale of washroom services to regional and local customers in three areas in Q1 2019. We also found that the [REDACTED]. We also found that Elis has obtained a waste carrier licence.

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<sup>711</sup> [REDACTED]

- 9.96 We therefore expect that Elis will shortly enter the washroom sector at up to three depots (noting that entry plans are more advanced for [redacted] and [redacted] than they are at [redacted], where the start date is [redacted])
- 9.97 We considered the timeliness of expansion by Elis in the event that the entry pilots were successful. Elis told us the pilots are expected to last for [redacted] and that decisions on a rollout of the project will be made following ample time to assess the success of the pilots.
- 9.98 If the pilots are successful, and the decision is taken to roll-out, Elis said that it expects to [redacted]. This is consistent with how Mayflower and Cathedral told us they had expanded.<sup>712</sup> However, we note that Elis told us that it has no formal plans in relation to the expansion of its washroom service offering and that its likely strategy is wholly dependent on the pilots.
- 9.99 The Parties said that Elis could have national coverage in approximately 15 months (three months for the pilot and 12 months for the national roll-out – and three months less if [redacted], and in a worst case scenario in two years (six months for the pilot and 18 months for the national roll-out). Elis said that it is impossible to know when it will be in a position to provide washroom services to all regions in the UK but told us that it considers it unlikely that it will have national coverage in relation to washroom services by the [redacted]
- 9.100 Whilst Elis has estimated a possible timescale for a national rollout of washroom services, we have seen no firm evidence from Elis, including from its internal documents, of any timescales for a national rollout.
- 9.101 We therefore found that while Elis might expand to achieve national coverage within two years, this is uncertain given that a national rollout depends on the success of the pilot schemes and the fact that entry would take place [redacted]
- 9.102 Moreover, Elis told us that becoming an effective national competitor would take longer than establishing national coverage (this is discussed further below in our consideration of the sufficiency of entry [redacted])
- 9.103 The Parties told us that Elis entered the Swiss market in 2010 and swiftly became the market leader in western Switzerland. However, Elis told us that it remains a small player in Switzerland and that it entered the market in 2016. We also note that whilst Elis expanded in Brazil following market entry and acquisitions, it does not supply washroom services in Brazil. Moreover, we found no evidence that Elis has acquired a washroom supplier in the UK.

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<sup>712</sup> See paragraph 9.43

9.104 We therefore found that whilst entry at two or three depots entry appears likely in Q1 2019, the evidence provided to us did not enable us to conclude with sufficient confidence that entry would be timely to prevent the SLC in relation to national and multi-regional end customers and/or frameworks with national or multi-regional coverage.

- *Likelihood*

9.105 We assessed Elis' ability and incentive to enter the UK washrooms sector.

9.106 In relation to Elis' ability to enter the UK washroom sector, we note that Elis is a major supplier of washroom services in a number of countries in Continental Europe and is the leading supplier in France.

9.107 Elis cited a number of costs associated with entering the supply of washrooms in the UK, including the costs of removing waste, waste storage, obtaining licences to transport waste, capital to purchase washroom equipment, segmenting vehicles to carry waste and acquiring customer density.

9.108 Elis now has a waste carrier licence. [REDACTED]. We note that Elis told us that it can use its current vans to transport consumables [REDACTED]

9.109 In relation to entry costs, [REDACTED] and that there would be costs associated with entry. However, Elis did not describe these costs as insurmountable and we note that the costs may be low relative to Elis' turnover (which stood at €2.2 billion globally and €[REDACTED] in the UK and Ireland in 2017).

9.110 In relation to customer density, we note Elis has an existing network of workwear and laundry customers, including some to whom Elis supplies washroom services. However, we found that there are challenges associated with the acquisition of national and multi-regional customers. In particular:

- (a) Elis currently has no national or multi-regional washroom customers and would have to win these customers from incumbent suppliers, which are likely to seek to retain their key customers.
- (b) Elis told us that it needed to ensure that its washroom service would be of high quality before it was offered to its workwear customers as delivering a poor washroom service would risk the loss of these customers.
- (c) Notwithstanding its existing laundry and workwear network, achieving the necessary customer density may represent a barrier to Elis expanding to supply national and multi-regional customers.

(d) We note that the OCS Group presentation in relation to the potential sale of Cannon stated that [REDACTED].

(e) As described in Chapter 7, we found that both Cathedral and Mayflower, despite their national coverage, have a limited number of national and multi-regional customers.

9.111 In relation to Elis' incentive to enter, Elis told us that its washroom services in Europe are generally profitable and it therefore had an appetite to explore whether entry could take place and, as the case may be, how and when. We also note the evidence which indicates the washroom services sector is growing in the UK (see above).

9.112 The Parties told us that Elis has recruited [REDACTED] in the UK and has contemplated targeting new customers in the entry pilots – both of which Elis confirmed.

9.113 [REDACTED]. Elis said that its decision on the success of the pilots will depend on a range of factors including financial performance and organisational consequences for Elis. As a result, we therefore found that there remains uncertainty as to Elis' decision to enter the washroom services market at national level.

9.114 Based on the evidence above – in particular the advanced plans to launch entry pilots – we found that entry by Elis at a local/regional level is likely.

9.115 However, the success of the entry pilots and subsequent decision by Elis' UK executive team on any national rollout of washroom services is uncertain. The evidence provided to us did not enable us to conclude with sufficient confidence that entry would be likely to prevent the SLCs in relation to national and multi-regional end customers and/or frameworks with national or multi-regional coverage.

- *Sufficiency*

9.116 We assessed the sufficiency of Elis' entry to the UK washrooms sector. Whilst Elis is a major supplier of washroom services in Continental Europe, we found that Elis' planned UK entry pilots are on a limited, regional scale. There remains uncertainty as to whether, how and when Elis will expand to compete for national and multi-regional customers in the event that the pilots are successful.

9.117 We note that Elis told us that it plans to offer a wide range of washroom services, including waste disposal. Our review of Elis' internal documents relating to entry also indicates that Elis has planned the entry pilots in detail,



suggesting that it is seeking to ensure it becomes a credible supplier of washroom services.

- 9.118 The Parties highlighted that approximately [X] of Elis' revenue currently generated in UK washroom services is from the three pilot depots. However, we note that Elis' total revenue in UK washroom services through outsourcing is currently [X]. Elis would need to expand significantly to become a credible national competitor. In this regard, we also note that Elis sees washrooms as a service offering, not a business, and is not, in our view, focused on washroom services as a standalone business.
- 9.119 We assessed whether achieving national coverage would be sufficient for Elis to act as a constraint on the Parties at a national and multi-regional level. As noted above, there are a number of barriers to winning national and multi-regional customers. In this regard, we note that in our assessment of the potential for Cathedral and Mayflower to constrain the Parties (see Chapter 7), we found that both of these established companies with infrastructure enabling them to supply nationally – which already provide national coverage and supply to some national and multi-regional customers – exert a relatively limited constraint on the Parties and do not compete for framework customers. We therefore considered that Elis is likely to face barriers to competing effectively with the Parties, which would take time to overcome.
- 9.120 The Parties said that Elis would not need to have a large share of national customers in order to be a material constraint and that it requires only that the merged entity would fear losing to Elis when seeking to supply national customers. The Parties said that even with Elis operating in just a few regions, customers would have a credible threat to punish the merged entity by removing supply in some but not all regions by switching to Elis.
- 9.121 However, we note that even in the event that the entry pilots were to be successful, as described above, Elis is likely to face a number of barriers to supplying national and multi-regional customers. Moreover, if Elis were to operate in a few regions, it may struggle to win a share of the supply to national and multi-regional customers given that there is a significant group of national and multi-regional customers which would not likely be willing to 'buy around' the Parties by using a combination of regional suppliers (see Chapter 7).
- 9.122 The Parties also said that Elis is already listed as a supplier of laundry services on a number of public framework organisations in the UK. However,

Elis told us that it supplies only one framework in the UK, Crown Commercial Services.<sup>713</sup>

9.123 Taken together, the evidence provided to us did not enable us to conclude with sufficient confidence that entry, even in the event that that the entry pilots were successful, would be sufficient to prevent the SLC in relation to national and multi-regional end customers and/or frameworks with national or multi-regional coverage.

#### *Conclusion on entry by Elis*

9.124 Based on our detailed consideration of the above and taking an overall assessment, we therefore found that entry by Elis would not be timely, likely and sufficient to prevent the SLC in relation to national and multi-regional end customers and/or frameworks with national or multi-regional coverage.

#### ***Overall conclusions in relation to entry and expansion***

9.125 We found that barriers to entry at a local and regional level were not high, but that there are a number of barriers to entry and expansion at the national and multi-regional level. Whilst organic market growth was in line with GDP and regulatory barriers are not complex, capital is required to develop the necessary infrastructure and an entrant would need to develop customer density. We found that OSS is not a recent market development that significantly reduces the cost of entry.

9.126 We did not find any examples of recent entry at a national level and found that entry by a new supplier with no established UK infrastructure (ie 'greenfield' entry) would not be timely, likely and sufficient to prevent the SLCs.

9.127 We therefore focused on the assessment of potential entry from adjacent industries. We found that entry by FM companies, waste collection companies or other suppliers from adjacent industries would not be would be timely, likely and sufficient to prevent the identified SLCs.

9.128 We also found that there is insufficient evidence to suggest that expansion from the next two largest competitors, Cathedral and Mayflower, is likely to be timely or sufficient. Both Cathedral and Mayflower have expanded in the past and appear to have an appetite to grow and win new customers, but their growth has been driven more on a local and regional level than on a national level. However, we have not seen evidence such as any strategic priorities of

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<sup>713</sup> We found that the Parties and PHS are the major suppliers to frameworks, with other suppliers representing a weak constraint.

these companies to target national and multi-regional customers. Neither has any specific major expansion plans and their expansion to date would suggest that future expansion is not likely to be timely for our purposes. Cathedral and Mayflower are therefore likely to only act as a limited constraint on the Parties post-Merger.

9.129 The Parties told us that [redacted] and Elis had entry plans. We found that [redacted] did not have plans to supply washroom services to national and multi-regional customers. We examined Elis' entry plans in detail and found that, whilst Elis has plans to commence entry pilots at three depots, its entry would not be timely, likely and sufficient to prevent the SLC.

9.130 Based on the evidence we reviewed, we concluded that expansion or entry would not be timely, likely and sufficient to prevent the SLC in relation to the supply of waste disposal to national and multi-regional end customers and/or framework customers with national or multi-regional coverage.

## Efficiencies

### *The views of the Parties*

9.131 [redacted], Rentokil expects to be able to achieve synergies by [redacted].<sup>714</sup> Rentokil also told us that significant synergies were forecast [redacted].<sup>715</sup>

9.132 Rentokil estimates that the total synergies of the Merger are £[redacted] in the UK for three years, although we note that this estimate is not specific to washroom services. The estimated synergies broken down by year are as follows: £[redacted] in year one; £[redacted] in year two and £[redacted] in year three.<sup>716</sup> We note that most of the synergies relate to [redacted] (£[redacted] in year one and £[redacted] in year two). Rentokil said that [redacted] would amount to £[redacted] in year one and £[redacted] in year two.

9.133 In response to the annotated issues statement, the Parties told us that the transaction will enable Rentokil [redacted].

9.134 Rentokil said that, consequently, the Merger will see [redacted]:

(a) [redacted]:

(i) [redacted]

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<sup>714</sup> Rentokil Annual Report 2017.

<sup>715</sup> Parties' response to phase 1 decision, 30 July 2018, paragraph 2.3.

<sup>716</sup> [redacted]

- (ii) [REDACTED]
- (b) [REDACTED]:
  - (i) [REDACTED];
  - (ii) [REDACTED]; and
  - (iii) [REDACTED]; and
- (c) [REDACTED]

### *CMA assessment*

9.135 The Merger Assessment Guidelines state that that, whilst mergers can harm competition, they can also give rise to efficiencies.<sup>717</sup> Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC.

9.136 The Act also enables efficiencies to be considered in the form of relevant customer benefits (RCBs).<sup>718</sup> These benefits are not limited to efficiencies affecting rivalry. In addition, the statutory definition enables us to consider benefits to customers arising in markets other than where the SLC is found, and benefits to future customers.

9.137 The following criteria, as outlined in our Merger Assessment Guidance, must be satisfied in order to reach a view on efficiencies:

- (a) efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and
- (b) the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it.<sup>719</sup>

9.138 The Merger Assessment Guidelines state that efficiency claims can be difficult to verify because most of the information concerning efficiencies is held by the merger firms. We therefore encourage the merger firms to provide evidence to support any efficiency claims whether as part of the SLC analysis or the consideration of RCBs.<sup>720</sup>

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<sup>717</sup> [Merger Assessment Guidelines](#), Section 5.7.

<sup>718</sup> Relevant customer benefits are defined in Section 30(1) of the Act.

<sup>719</sup> [Merger Assessment Guidelines](#), paragraph 5.7.4.

<sup>720</sup> [Merger Assessment Guidelines](#), paragraph 5.7.5.

9.139 The Merger Assessment Guidelines also state that:

- (a) The Authorities are more likely to take cost savings into account where efficiencies reduce marginal (or short-run variable) costs as these tend to stimulate competition and are more likely to be passed on to customers in the form of lower prices.
- (b) The Authorities will not in general give as much weight to savings in fixed costs because they may often represent private gains to firms and are less important in short-run price formation, although reductions in fixed costs may play an important role in longer-term price formation.<sup>721</sup>

9.140 We note that the synergies for three years identified by Rentokil primarily relate to fixed cost savings:

- (a) The administration and overhead synergies (£[X]) are anticipated to arise as a consequence of, inter alia, [X]. Rentokil anticipates that these will primarily amount to savings in fixed costs.
- (b) The other synergies (£[X]) are anticipated to arise as a consequence of, inter alia, [X], which would be fixed cost savings.
- (c) the sales organisation synergies (£[X]) are anticipated to arise as a consequence of, inter alia, [X]. Rentokil anticipates that these will primarily amount to savings in fixed costs.
- (d) The service improvement synergies (£[X]) are anticipated to arise as a consequence of, inter alia, [X]. For instance, this would include [X]. Rentokil anticipates that this category will include savings in both variable costs and fixed costs.

9.141 We also note that the efficiencies estimated by the Parties are not specific to washroom services. The majority relate to fixed costs rather than variable costs. Moreover, we have seen no evidence that these cost savings would be passed onto customers.

9.142 We did not receive any evidence that the Merger would enhance rivalry. For example, we did not receive any analysis or documents from Rentokil that would support its submission that the claimed efficiencies will enable the merged entity to 'compete more aggressively on price'.

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<sup>721</sup> [Merger Assessment Guidelines](#), paragraph 5.7.9.

9.143 We assessed whether the Merger would result in RCBs. For RCBs to be taken into account, we note that:

(a) the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned; and

(b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.<sup>722</sup>

9.144 We did not find that the benefits described by the Parties, including the move to OSS, environmental benefits or the introduction of rigorous service tracking were specific to the Merger and therefore unlikely to accrue without the Merger.

9.145 The Parties did not make any further submissions on efficiencies following the publication of our provisional findings.

### *Conclusion*

9.146 We therefore concluded that there is insufficient evidence that the Merger is rivalry enhancing or that it produces RCBs.

### **Conclusion in relation to countervailing factors**

9.147 We examined three countervailing factors. We considered each in turn.

9.148 In relation to countervailing buyer power, we found evidence that showed that national and multi-regional customers appear to be able to negotiate deals with the Parties. However, these customers affected by the SLC also have limited supply options for waste disposal and the Merger would remove a key supply option. We therefore concluded that the countervailing buyer power of national and multi-regional end customers and framework customers is likely to be limited post-Merger in relation to waste disposal and not sufficient to prevent the SLCs.

9.149 In relation to entry and expansion, we found that whilst there are no absolute cost or regulatory barriers to entering the UK washrooms market, there was insufficient evidence from which to conclude that either expansion or entry would be timely, likely and sufficient to prevent the SLCs. As part of this assessment we specifically considered potential entry by Elis, but concluded that it would not be timely, likely and sufficient to prevent the SLCs.

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<sup>722</sup> Section 30 of the Act.

- 9.150 In relation to efficiencies, the evidence we found did not show that the Merger is rivalry enhancing or that it produces relevant customer benefits.
- 9.151 The Parties told us that, taken together, competitive constraints and countervailing factors would be sufficient to prevent an SLC. We assessed competitive constraints, including the limited constraints of Cathedral and Mayflower, in our competitive assessment and have assessed all three countervailing factors. We concluded that the countervailing factors and limited constraints which we have found were not sufficient to prevent the identified SLCs in the supply of washroom services to national and multi-regional end customers and/or frameworks with national or multi-regional coverage.

## **10. Findings – overall conclusion**

- 10.1 As a result of our assessment, we concluded that:
- (a) the acquisition by Rentokil of Cannon has created a relevant merger situation; and
  - (b) the relevant merger situation has not resulted, or may not be expected to result, in an SLC in relation to the supply of:
    - (i) Healthcare waste services.
    - (ii) Mats services.
    - (iii) Washroom services to local and regional customers.
    - (iv) Washroom services other than waste disposal services.
    - (v) Waste disposal services to FM companies.
- 10.2 The Group decided by a majority that the relevant merger situation has resulted, or may be expected to result, in an SLC in relation to the supply of waste disposal services to the following national and multi-regional customers:
- (a) Customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier.
  - (b) Public and private framework customers with national or multi-regional coverage.

# 11. Remedies

## Introduction

- 11.1 We have concluded that the Merger has resulted, or may be expected to result, in an SLC in the provision of waste disposal services to the following national and multi-regional customers in the UK:
- (a) Customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier.
  - (b) Public and private framework customers with national or multi-regional coverage.
- 11.2 Having reached this conclusion we are required to decide whether and, if so, what action should be taken (by CMA or others) to remedy, mitigate or prevent the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC.<sup>723</sup>
- 11.3 In this chapter we set out our decision on remedies. In reaching our decision we have consulted with the Parties and a number of third parties, including a number of customers and competitors.
- 11.4 The rest of this chapter is set out as follows:
- (a) CMA remedies assessment framework (paragraphs 11.5 to 11.6);
  - (b) Overview of remedies process (paragraphs 11.7 to 11.17);
  - (c) Outline of remedy options (paragraphs 11.18 to 11.36);
  - (d) Evaluation of remedy options (paragraphs 11.37 to 11.213);
  - (e) RCBs paragraphs (11.214 to 11.221);
  - (f) Assessment of the proportionality of effective remedies (paragraphs 11.222 to **Error! Reference source not found.**);
  - (g) Remedy implementation (paragraphs 11.243 to 11.273); and
  - (h) Decision on remedies (paragraphs 11.274 to 11.278).

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<sup>723</sup> Section 35(3) of the Act. See also Merger Remedies: Competition Commission Guidelines (CC8), paragraph 1.6.



## ***CMA remedies assessment framework***

- 11.5 The Act requires that the CMA, when considering possible remedial actions shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.<sup>724</sup> To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least onerous (ie least costly and/or intrusive) remedy that it considers to be effective.<sup>725</sup> As set out in its guidance, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>726</sup>
- 11.6 The CMA may also have regard, in accordance with section 35(5) of the Act, to the effect of any remedial action on any RCBs arising from the merger.<sup>727</sup>

## ***Overview of remedy process followed***

### *The Remedies Notice*

- 11.7 On the 18 October 2018, alongside the provisional findings, we published a Notice of Possible Remedies (Remedies Notice).<sup>728</sup> The Remedies Notice is a consultation document and sets out the actions which we initially considered we might take for the purpose of remedying the SLC and/or any resulting adverse effects identified in the provisional findings report.
- 11.8 In the Remedies Notice we set out our initial view, identifying one potential structural remedy, the divestiture of the entire Cannon UK business, including the washroom services business as well as the mats and healthcare waste business. The Remedies Notice stated this would represent an effective divestiture package which is viable on a standalone basis and would be likely to enable a suitable purchaser to compete effectively.
- 11.9 The Remedies Notice stated that we were open to considering other divestiture options but considered the divestiture risks would be significantly higher, limiting their potential effectiveness. The Remedies Notice stated that we would also consider any other practicable remedies that the Parties, or

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<sup>724</sup> Section 35(4) of the Act.

<sup>725</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 1.7.

<sup>726</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 1.7 to 1.13.

<sup>727</sup> Section 35(5) of the Act. See also Merger Remedies: Competition Commission Guidelines (CC8), paragraph 1.14 to 1.20.

<sup>728</sup> The Remedies Notice sets out the initial views and actions which the CMA considers it might take for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings report. The Remedies Notice can be found on the case page.

any interested third parties, may propose that could be effective in addressing the SLC and/or any resulting adverse effects.

- 11.10 In the Remedies Notice, we also stated our provisional view that a behavioural remedy was unlikely to be an effective remedy to the provisional SLC finding and any resulting adverse effects. We have not identified a behavioural remedy capable of addressing our concerns and none has been put to us, so we do not consider behavioural remedies further.

#### *The Parties' response to the Remedies Notice*

- 11.11 In response to the Remedies Notice,<sup>729</sup> the Parties proposed, should a remedy be required, a divestiture of the contracts for Cannon's customers affected by the SLC along with all the infrastructure that a prospective purchaser required to service those contracts in order to compete as a national washrooms provider. The Parties submitted that this would be effective and comprehensive at addressing the CMA's concerns as well as being reasonable, proportionate and practical.

- 11.12 The Parties also raised points on proportionality of alternative remedy options which are discussed in the section on proportionality (see paragraphs 11.226 to 11.230 below).

- 11.13 We discussed the Parties' views on remedies at a response hearing on 6 November 2018.

#### *Third party responses to the Remedies Notice*

- 11.14 We received only one third party response to our Remedies Notice; from PHS. PHS told us that only a sale of the entire Cannon UK business, including all the assets and brand, would be effective at addressing the provisional SLC the CMA identified.

- 11.15 PHS told us that it would be unlikely that a divestiture excluding the mats and/or healthcare waste business would be as effective as a full divestiture of the entire Cannon business because the residual portion would be less attractive to potential buyers. If a partial divestiture were considered then all the infrastructure (properties, vehicles, systems, people) would need to form part of the divestiture package.

- 11.16 PHS told us that a divestiture package including only the provisionally identified SLC elements ('national customers' and 'framework customers')

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<sup>729</sup> The Parties response to the Remedies Notice can be found on the case page.

would not be effective; in order to run an effective and profitable national washrooms business that competes effectively, a prospective purchaser would require both a national network of licensed properties and a significant volume of customer contracts with national, regional and local customers. PHS stated that having the infrastructure and only national contracts would not deliver that outcome.

11.17 There were no other responses to the Remedies Notice. We contacted a number of customers and competitors to seek their views on remedies. A summary of these discussions is included in Appendix E.

## **Outline of remedies options**

11.18 The Remedies Notice outlined the divestiture of the entire Cannon UK business, including the washroom services business as well as the mats and healthcare waste business. In response to the Remedies Notice the Parties proposed a divestiture of the SLC customer contracts of Cannon UK.

11.19 We have not identified any alternative stand-alone business that includes all the relevant operations to enable its purchaser to compete effectively for the national and multi-regional customers in the UK. Nor was any such alternative proposed to us by either the Parties or any third party.

11.20 In the remainder of this section we outline the two remedy options under consideration.

### ***Option 1 – A divestiture of Cannon UK***

11.21 The CMA will generally prefer divestiture of an existing business that can compete effectively on a stand-alone basis independently of the merger parties rather than a divestiture of a part of a business or a package of assets. This is because the divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.

11.22 In the Remedies Notice, we set out our initial view that the divestiture of the entire Cannon UK business, including the washroom services business as well as the mats and healthcare waste business, would represent an effective package which is viable on a standalone basis and would be likely to enable a suitable purchaser to compete effectively.

11.23 The Remedies Notice outlined our provisional view that the divestiture would be likely to take the form of a transfer to a suitable purchaser of all the assets and staff of the Cannon UK business, Cannon UK Limited. The Notice

highlighted that an interim service agreement would likely be required to support a purchaser for a limited period of time.

- 11.24 The divestiture of Cannon UK would include the sale of Cannon UK Limited and all of its associated assets and contracts as acquired by Rentokil Initial plc on 1 January 2018 and any changes to the business since. This would represent approximately £41 million of revenues, of which approximately £[X]million relate to washroom services, with the remainder mats and healthcare waste management.
- 11.25 By including all the assets of Cannon UK, a divestiture of Cannon UK Limited would allow a prospective purchaser to continue to provide the same service as Cannon did pre-Merger, including the ability to offer bin exchange to customers who prefer this.
- 11.26 A divestiture could be implemented by a sale of shares or an asset transfer. We consider that a share sale is the simplest form of divestiture as it transfers the whole legal entity (ie, the complete package of assets and liabilities) to a new owner, and is therefore likely to be the most appropriate way to implement a sale of the entire Cannon UK business. Our assessment is therefore based on a sale of the Cannon UK Limited business through a share sale.
- 11.27 The Remedies Notice said we would consider an alternative divestiture process provided this would not undermine the principle or impact the effectiveness of this remedy.

### ***Option 2 – A divestiture of the SLC customer contracts of Cannon UK***

- 11.28 In response to the Remedies Notice, the Parties proposed a divestiture consisting of the contracts of Cannon's customers affected by the SLC (the 'SLC Contracts') along with all necessary assets and infrastructure which a prospective purchaser may require in order to be a national washroom services provider. The divested SLC Contracts would include any other services provided under the same contractual arrangement, eg mats and healthcare waste services.
- 11.29 The Parties proposed that a divestiture of the SLC Contracts would comprise the following assets and operations, subject to the requirements of the purchaser:
- (a) the Cannon contracts with customers in the markets affected the SLCs, meaning the contracts of the [X] customers located in eight or more regions of the UK purchasing directly for their premises from a washroom

services supplier and [X] public and private framework customers with national or multi-regional coverage;

- (b) the 'Cannon Hygiene' brand and the 'Cannon' brand, to the extent owned or controlled by the Parties in the UK. The Parties propose that Rentokil would then implement a prompt rebranding process related to the retained assets and business lines to address the risk of any confusion following the divestiture;
- (c) all intangible assets owned or controlled by Cannon UK which are necessary to carry out washroom services for the SLC Contracts, including the relevant intellectual property rights (trademarks, service marks and domain names);
- (d) all Cannon employees and other personnel primarily engaged in providing or supporting the SLC Contracts, including central national account management capability, service technicians and those with other central functions (subject to employment law restrictions). The Parties also propose to offer the prospective purchaser any other personnel who are both used (exclusively or not) in servicing the SLC Contracts who are necessary to ensure the continued viability and competitiveness of the divested SLC Contracts and related assets, or an adequate substitute;
- (e) permits and licences: all permits and licenses in relation to waste collection and disposal of healthcare waste services including waste carrier licenses to the extent that they are transferable;
- (f) other assets:
  - (i) all Cannon UK facilities engaged in washroom services to support the SLC Contracts including all on-site equipment related to such washroom services as well as all such leased equipment to be transferred to the purchaser to the fullest extent possible;
  - (ii) all leases for the transferred Cannon UK facilities or a sub-lease as appropriate, to the extent transferrable;
  - (iii) all Cannon vehicles currently owned or leased by Cannon UK which are used to service the SLC Contracts; and
  - (iv) any other asset which is both used (exclusively or not) to service the SLC Contracts and is considered necessary by the purchaser, in order to ensure the continued viability and competitiveness of the SLC Contracts, or an adequate substitute.

- 11.30 The Parties proposed that the sale of the affected SLC Contracts (and related assets to the extent that they are required by the prospective purchaser) could be structured in one of the following ways:
- (a) 100% of the shares in a new company incorporated as a private limited company that includes the SLC Contracts and related assets required by the prospective purchaser; or
  - (b) the sale of 100% of the shares in Cannon UK Limited after all assets and liabilities not relating to the SLC Contracts and related assets required by the prospective purchaser have been transferred to a new entity; or
  - (c) a sale of the assets that comprise the SLC Contracts and related assets required by the prospective purchaser.
- 11.31 As with Option 1, this divestiture could be implemented by a sale of shares or an asset transfer. We consider that a share sale of Cannon UK (ie Option 1) is the simplest form of divestiture of this type. It would transfer the legal entity less the assets and liabilities not part of the divestiture package, to a new owner. Our assessment is therefore based on a sale of the Cannon UK Limited business through a share sale.
- 11.32 As this proposal includes only a subset of the Cannon UK business, we consider that there may be both advantages and disadvantages to structuring the transaction in any of the ways outlined by the Parties. Different purchasers are likely to have different preferences. We would consider an alternative divestiture process where this would not undermine the principle or impact the effectiveness of this remedy.
- 11.33 Additionally, the Parties propose that they would undertake not to solicit for the waste disposal services of the SLC Contracts for a period of time to be agreed with the CMA post-closing of the divestiture.
- 11.34 Depending on the needs of the purchaser, the Parties also offered to provide, subject to any legal constraints: (a) transitional services to the purchaser under a transitional services agreement; (b) reasonable training and assistance to the purchaser at the Parties expense; and (c) hygiene and washroom products and consumables for a period of up to [X] months from closing and/or reasonable assistance in liaising with hygiene and washroom products and consumables suppliers.

- 11.35 At the response hearing, Rentokil stated that a ‘back to back’ subcontracting relationship is commonly used as a work around in deals that involve issues around customer consent.<sup>730</sup>
- 11.36 The Parties proposed a divestment of the SLC Contracts with revenues of approximately £[X] million (£[X]million in washroom revenues, £[X]million of mats revenues and £[X]million in medical waste disposal revenues).<sup>731</sup> We would require third party verification of the completeness of any such customer list.

## Evaluation of remedy options

- 11.37 In this section, we discuss the effectiveness of both remedy options. Both potential remedies are divestiture remedies.
- 11.38 In each case, the objective of the remedy option is to address the SLCs which may be expected to result from the Merger, as set out in this report, by restoring competition to the level expected absent the merger.
- 11.39 We first outline the evidence with regards to the following aspects of design of the remedy before evaluating its effectiveness:
- (a) the scope of the divestiture package, ie its composition; and
  - (b) the likely availability of a suitable purchaser.
- 11.40 The specification of the divestiture process is covered in the section on remedy implementation, see paragraphs 11.243 to 11.273.
- 11.41 In assessing the effectiveness of the potential remedies, we have considered the following factors:<sup>732</sup>
- (a) *Impact on the SLC and its resulting adverse effects*: whether the remedy will restore competition by re-establishing the structure of the market expected in the absence of the Merger.
  - (b) *Appropriate duration and timing*: the CMA prefers remedies that quickly address competitive concerns, and whose effect will be sustained for the likely duration of the SLC.

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<sup>730</sup> [X]

<sup>731</sup> Difference due to rounding.

<sup>732</sup> CC8 – Merger Remedies: Competition Commission Guidelines, 1.8.

(c) *Practicality*: remedies should be capable of effective implementation, monitoring and enforcement.

(d) *Acceptable risk profile*: the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.

11.42 We note that divestitures may be subject to a variety of risks that may limit their effectiveness:<sup>733</sup>

(a) Composition risk arises if the scope of a divestiture package is too constrained or not properly configured to attract a suitable purchaser or may not allow the purchaser to operate as an effective competitor.

(b) Asset risk arises if the competitive capability of the assets to be divested deteriorates before the completion of the divestiture.

(c) Purchaser risk arises if a suitable purchaser is not available or if the merger parties dispose the assets to a weak or otherwise inappropriate purchaser.

11.43 The need to ensure an effective divestiture process is also a key part of the design of any effective divestiture remedy. This is discussed after our assessment of the two remedy options.

### ***Option 1 – A divestiture of Cannon UK***

11.44 In the Remedies Notice we outlined the sale of the entire Cannon UK business as likely to be an effective remedy.

#### *The scope of the divestiture package*

11.45 Cannon UK Limited includes all the assets and infrastructure currently used to service Cannon's washroom, mats and healthcare waste management customers in the UK.

11.46 The Cannon UK business has been held separate from Rentokil since 5 February 2018<sup>734</sup> and over this period has continued to grow its revenues. Cannon UK currently has an EBITA<sup>735</sup> margin of approximately [X]%.

11.47 We note that Cannon UK itself was carved out of a large FM company (OCS), and, as a result, does not have all the support functions a stand-alone

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<sup>733</sup> CC8 – Merger Remedies: Competition Commission Guidelines, paragraph 3.3.

<sup>734</sup> An Initial Enforcement Order (IEO) was made 5 February 2018.

<sup>735</sup> Earnings before interest, tax and amortisation.



business would need. Cannon is currently receiving some back-office support, including HR, finance and IT support from Rentokil, granted under derogation from the Interim Order (IO).<sup>736</sup>

11.48 Additionally, Cannon UK does not have all of the IT software and IT licences a standalone company would have.<sup>737</sup> Depending on the identity of any prospective purchaser, the purchaser may be required to obtain additional IT licences and/or infrastructure.

11.49 The Parties told us at the response hearing that a sale of the entire business would be effective.<sup>738</sup> However, the Parties also told us that it provides less flexibility to match the profile and asset requirements to a purchaser's existing operational structure, which matching will improve the purchaser's operational efficiency especially in terms of customer density and profitability, profile and credibility. A full divestiture of the business would also leave a purchaser with the costs, liabilities and management distractions associated with dealing with assets superfluous to its requirements.<sup>739</sup>

11.50 A washroom customer, [REDACTED] told us that there is benefit in infrastructure that comes with scale such as service centre capability and coverage of remote areas with enough staff spread geographically. This customer told us that any smaller divestiture would need to address this.

#### *Evidence about the potential availability of a suitable purchaser*

11.51 There are risks to any divestiture that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser.

11.52 At the response hearing the Parties told us that it was likely there would be a different set of potential purchasers for a sale of the entire Cannon UK than for the Parties' proposed remedy.<sup>740</sup>

11.53 The Parties told us that they consider that trade buyers may be more attracted to their proposed remedy given the flexibility it affords. The Parties said this could mean the pool of potential purchasers may be narrower for a sale of the entire business.<sup>741</sup>

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<sup>736</sup> Interim Order, 10 July 2018.

<sup>737</sup> Rentokil is providing limited back-office support functions, including IT, to Cannon. These functions have been granted under derogation from the Interim Order and are overseen by a Monitoring Trustee.

<sup>738</sup> [REDACTED]

<sup>739</sup> [REDACTED]

<sup>740</sup> [REDACTED]

<sup>741</sup> [REDACTED]

- 11.54 We have spoken to one potential purchaser, [X], that was interested in acquiring the entire Cannon Global business. [X]
- 11.55 [X] noted that [X] could be someone worth approaching regarding a potential purchase of Cannon. [X] have indicated they were looking to widen their portfolio to washroom services. [X] said it is not clear if this is feminine hygiene units, or products such as soaps. [X] deemed that [X] is capable of extending their portfolio as would their competitors such as [X]. [X]. [X] said other possible buyers could include waste companies such as [X], [X] or [X].
- 11.56 [X] told us an ideal purchaser would be someone that is already an existing supplier - such as [X] told us the buyer should ideally have industry know-how or at least understand the marketplace. Subject to due [X] does not mind who they do business with. Capability is the most important factor.
- 11.57 [X] said the sale of the entire business would cause a great upheaval and it would not be easy to find a buyer as this is a niche market.

### *Assessment of Effectiveness*

#### *Impact on the SLC and its resulting adverse effects*

- 11.58 In considering the impact of potential divestitures on the SLC and its resulting adverse effects, we assessed whether, following a divestiture, a prospective purchaser would be as effective at serving and competing for national/multi-regional end customers and framework customers as Cannon had been pre-Merger. To inform this assessment, we considered the risk profile of the remedy against the factors set out in our guidance<sup>742</sup> as well as seeking the views of third parties.

#### *Composition risks*

- 11.59 In identifying an appropriate divestiture package, the CMA will normally take, as its starting point, all or part of the acquired business. This is because restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy.<sup>743</sup>
- 11.60 A sale of the entire Cannon UK business contains all the assets currently used by Cannon UK to service its UK customers. In addition, with the exception of some back-office support, the Cannon business is currently

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<sup>742</sup> CC8 – Merger Remedies: Competition Commission Guidelines, 3.3.

<sup>743</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 3.6.

being run independently from Rentokil. Given this, we consider that the composition risks are not material to the effectiveness the remedy.

11.61 The support that Cannon has received from Rentokil during our investigation has not prevented Cannon from operating and competing independently in this period. The ability of a purchaser to support these functions will need to be considered with regard to the suitability of any purchaser and may reduce the pool of potential purchasers. However, we consider that none of these support functions are difficult to replicate and, as they do not pertain to operational service delivery, they do not undermine the composition of this divestiture package.

11.62 Nevertheless, given the back-office and IT support being provided to Cannon at present, a transitional service agreement may be required.

11.63 While the current financial performance of Cannon UK is not reflective of a stand-alone business given the support functions currently being provided, we consider that it indicates that the entire Cannon UK business is profitable.<sup>744</sup>

- *Views of third parties and customers on composition*

11.64 As noted in paragraphs 11.11 to 11.12, the Parties consider that the proposed remedy would be effective.

11.65 Some third parties we spoke to also considered this proposal would be effective in restoring competition.

(a) [X] told us that a sale of the entire Cannon UK business appears to be the most sensible option.

(b) [X] told us that the sale of the entire Cannon UK business would be the least risky option.

(c) [X] told us it would be effective.

(d) [X] told us it could be effective in securing competition.

11.66 Other third parties did not have a view on the effectiveness of the remedy or otherwise. No respondents told us the proposal would not be effective but some ([X] and [X]) told us the effectiveness would be predicated on finding a suitable purchaser.

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<sup>744</sup> Cannon has positive margin before interest, tax and amortisation are deducted (EBITA margin). EBITA is one measurement of a company's operating profitability.

11.67 The Parties told us that the ‘vast majority’ of Cannon’s customers are on its standard terms and conditions and do not include any change of control or novation/transfer clauses. The Parties identified [redacted] contracts with restrictions on transferability, of [redacted] contracts include a restriction on both (a) assignment, novation or sub-contracting and (b) change of control. As such, for these [redacted] contracts, the transferability issue would also be triggered on the divestiture of the Cannon UK business.<sup>745</sup> These clauses would apply under any divestiture scenario. We consider that customer consent is likely to be linked to customers’ confidence in the purchaser of the Cannon UK Limited business.

- *Framework customer considerations*

11.68 We considered there were three key elements to assessing the effectiveness of a divestiture in effectively restoring competition for framework customers:

- (a) The ability of a purchaser to continue to service existing contracts entered into by Cannon.
- (b) The ability and appetite of a purchaser to enter into new contracts between now and the time the framework comes to an end.
- (c) The appetite and ability of a purchaser to tender to get onto the new framework, once the framework comes to an end.

11.69 Of the above, appetite is not a composition risk but a factor relating to purchaser suitability and as such is dealt with in the purchaser assessment process.

11.70 To be able both to serve contracts already awarded to Cannon under a framework and to compete for new customers under the framework, the divestiture would need to enable any prospective purchaser to join or take Cannon’s place on, the existing frameworks. This is because irrespective of the ability to serve Cannon’s framework contracts already awarded to Cannon, the purchaser could not compete for new framework customers if it were not on the relevant framework.

11.71 Cannon is listed on [redacted] private and [redacted] public frameworks. Of these, [redacted]% of waste disposal revenue comes from the public frameworks.

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<sup>745</sup> Response to the Remedies Notice, paragraph 4.12.

**Table 14: Cannon framework waste disposal revenue**

Framework Group	Framework Type	Waste disposal revenue (2017)
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Source: Rentokil, response to the Remedies Notice

- o *Private framework organisations*

11.72 As can be seen in Table 14 above, [REDACTED] of Cannon’s revenue in waste disposal services supplied to framework customers comes from private framework organisations.

11.73 Private framework organisations are not subject to public procurement rules. We consider the desire and ability to serve private framework customers and the ability to get onto the private frameworks will be key to the consideration of our purchaser assessment.

11.74 However, given that [REDACTED]% Cannon’s revenue in waste disposal services supplied to framework customers comes from public frameworks and public frameworks are subject to public procurement rules, we consider the ability to service and win public framework customers more important to the effectiveness of the remedy.

- o *Public framework organisations*

11.75 As noted, [REDACTED]% of Cannon’s waste disposal framework revenue comes from customers purchasing through two public frameworks. These frameworks are subject to the application of the Public Contracts Regulation 2015 (PCR). Frameworks subject to the PCR must not be modified without a new procurement process being conducted, except where such modifications are conducted in accordance of the principles of regulation 72(1)(d), which states ‘universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other

substantial modifications to the contract and is not aimed at circumventing the application of this Part'.<sup>746</sup>

- 11.76 Subject to certain conditions being met, it is therefore possible for a company's position on a framework to be maintained following a merger, acquisition or company restructure.
- 11.77 Pursuant to the PCR:
- (a) No modifications (other than the change of contracting party) can be made to the provisions of the ESPO and NWUPC framework agreements; and
  - (b) The new contractor for the ESPO and NWUPC framework agreements must fulfil the criteria for the qualitative selection initially established.
- 11.78 We spoke to both ESPO and NWUPC about a potential divestiture of Cannon UK Limited. Both framework groups told us that while a new provider cannot be added to a framework whilst it is live, it is possible to accommodate changes following a merger or acquisition, ie by transferring one company's position on a framework to its acquirer.
- 11.79 In relation to a sale of the entire Cannon UK business, ESPO and NWUPC told us that where there is a change in control but no change in the legal entity that has entered into the framework agreement (for example through the acquisition of the entire share capital of Cannon UK) as the framework operators, [X]. We consider that in practice this would not be expected to arise where we are satisfied with the identity of any purchaser, and that purchaser's capability, desire and commitment to serve on the frameworks.
- 11.80 Where ESPO and NWUPC are satisfied with the identity and capability of a suitable purchaser and that purchaser commits to honouring the terms Cannon signed up to the framework, then Cannon's position can be maintained on the framework.
- 11.81 Both ESPO and NWUPC told us that maintaining Cannon's position on the framework is more straightforward [X], transfers to a new acquirer.
- 11.82 There is a distinction between framework agreements and contracts awarded under them. The frameworks provide standard contract terms and conditions for the companies that procure through them, although use of these contracts is not mandatory.

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<sup>746</sup> Public Contracts Regulations 72(1)(d).

- 11.83 The Parties told us that the majority of the national/multi-regional and framework customers are on Cannon's standard terms and conditions which do not include any restrictions on transferability.<sup>747</sup>
- 11.84 Whilst there is a risk that customers may not agree to their contracts being transferred to a new provider, we consider in practice this is not likely to be a material risk if the purchaser is sufficiently able to demonstrate to end users its capability and commitment and is a risk not specific to framework customers.
- 11.85 Accordingly, whilst not without risk, a sale of the entire Cannon UK business, subject to: (a) ESPO and NWUPC being content with the purchaser's suitability and the purchaser's commitment to maintain Cannon's position on its public framework agreements; and (b) individual customer consent, where required would:
- (a) not affect Cannon's/its successor's position on the frameworks; and
  - (b) allow it to serve and tender for new customers under those frameworks.
- 11.86 Both frameworks are [redacted]. The appetite and ability to tender to get onto the new framework when it is put out to tender, is a question we would consider as part of our purchaser suitability assessment.
- 11.87 The ability to serve framework customers depends on whether a prospective purchaser:
- (a) Can demonstrate that it can continue to provide the same level of service as Cannon currently provides.
  - (b) Can profitably honour the terms the customers are currently on.
  - (c) Has the appetite and incentive to compete for more business with existing frameworks.
  - (d) Has the appetite and ability to compete for the frameworks when they come up for renewal.
- 11.88 In summary, subject to finding a suitable purchaser, a sale of the entire Cannon UK business does not raise any material concerns with regards to:
- (a) the continuation of current service delivery, for example bin-exchange;

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<sup>747</sup> Response to the Remedies Notice, page 15, paragraph 4.11.

- (b) Cannon's position on its current frameworks, enabling a purchaser to service Cannon's framework customers and win new framework customers; and
- (c) having confidence that the national/multi-regional end customers and framework customers can be served profitably, as part of the entire Cannon UK business as at present.

#### *Asset risks*

- 11.89 The CMA's guidance identifies asset risks as risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, for example through loss of customers or key members of staff.<sup>748</sup>
- 11.90 The Parties told us that a sale of Cannon UK is a more complicated proposition for operational integration by a trade buyer than the divestment of the SLC contracts.<sup>749</sup>
- 11.91 We consider this could be true for some trade buyers. However, a purchaser of Cannon UK Limited would have the flexibility to run the Cannon business as it is now, with positive profit margins, and integrate the business into its own network over time.
- 11.92 No third parties raised any specific concerns in relation to asset risks.
- 11.93 A monitoring trustee is already in place and will be required to remain under any divestiture process.
- 11.94 We do not consider there are material specific risks with regards to the deterioration of the Cannon UK business. Implementation considerations, such as asset preservation during the divestiture process, are set out in paragraphs 11.243 to 11.273.

#### *Purchaser risks*

- 11.95 Purchaser risk will depend on whether there is there a prospective purchaser, willing to acquire the Cannon UK business, with the necessary incentives and capability to compete successfully for customers located in eight or more regions of the UK purchasing waste disposal services directly for their premises from a washroom services supplier, and public and private

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<sup>748</sup> [redacted]

<sup>749</sup> [redacted]



framework customers requiring national or multi-regional coverage. Anything less than this would not be effective in addressing our concerns.

11.96 We have had an expression of interest from one potential purchaser and a number of customers have suggested companies that they would consider to be suitable purchasers and that may be interested in acquiring the business.

11.97 In addition<sup>750</sup> as described in Chapter 5, on 25 October 2017, after deciding to sell the Cannon business, OCS Group received offer letters from [redacted] bidders, these were:

(a) [redacted].

(b) [redacted].<sup>751</sup>

(c) [redacted]

(d) [redacted]

11.98 This provides further evidence that there may be interested parties in any divestiture process.

11.99 Notwithstanding their view that it may be a narrower set of purchasers than for its proposed remedy, the Parties agree that there would be some potential purchasers for the entire business.

11.100 We note that the lack of support functions and limited senior management team within Cannon UK may make this divestiture relatively unattractive to firms with no operations in, or links to, washrooms or adjacent markets.

11.101 With regards to framework customers, we consider it important that any prospective purchaser can demonstrate their capability and desire to serve and win new framework customers and their appetite and ability to get onto the new framework when it comes up for renewal.

11.102 One of the potential purchasers for Cannon UK Limited, which has indicated an interest, is [redacted]. [redacted] is a provider of multiple services to businesses including a full-service washroom offering [redacted]. [redacted]. The current CEO [redacted] has a good understanding of the UK business, its services and how it is run.

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<sup>750</sup> See chapter 5, counterfactual

<sup>751</sup> [redacted]

11.103 We consider there is at least one, and potentially other companies in adjacent industries and in washroom services that may be interested in acquiring Cannon UK and would be suitable purchasers.

11.104 Given the views received and the profitability of the business, we do not consider that there is a high degree of purchaser risk in relation to the divestiture of the Cannon UK business.

*Other*

11.105 As outlined above, we consider that there are some practical considerations with regards to the sale of Cannon UK, as the business is provided with some support from Rentokil. However, we do not consider these practical challenges to be material in terms of effectiveness given the nature of the support.

*Appropriate duration and timing*

11.106 Remedies need to address the SLC effectively throughout its expected duration. The SLC identified in the provisional findings is not time limited in any way, we must therefore be confident that the effect of a remedy would also be sustained.

11.107 We have given consideration to potential disruption to, and the likely response of, the affected customers. If these customers were to leave as a result of the chosen remedy or their perceived view of the purchaser's ability to effectively service their washroom contracts, it would potentially undermine the remedy.

11.108 The Parties told us that [X] of the Cannon customers had restrictions on transferability in their contracts. The Parties told us that [X] contracts include a restriction on both (a) assignment, novation or sub-contracting and (b) change of control.<sup>752</sup> As such, for those [X] contracts, the transferability issue would also be triggered on the divestiture of the entire Cannon UK business.<sup>753</sup> A change of control risk is reasonably common with divestiture remedies. We do not consider the change of control clauses to be a risk that undermines effectiveness. Further, as part of a purchaser assessment, we would aim to mitigate this by checking the purchaser would be an effective competitor with all the necessary capabilities to serve all customers.

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<sup>752</sup> [X]

<sup>753</sup> Response to the Remedies Notice, paragraph 4.12.

11.109 With regards to framework customers, we consider it important that any prospective purchaser can demonstrate their appetite and ability to tender to get onto the new frameworks when they are put back out to tender. The ability and desire to serve and win new framework customers will be a key consideration to the CMA's view of a suitable purchaser.

### *Practicality*

11.110 A practical remedy should be capable of effective implementation, monitoring and enforcement. Divestitures generally do not require detailed monitoring following implementation although, in some cases, an effective divestiture may require supplementary measures.

11.111 Aside from the support services, this remedy is a divestiture of a broadly stand-alone, profitable business. We consider the key practical challenge to be the integration of the customers and assets. We consider that a transitional support agreement will be required for any purchaser of Cannon UK Limited.

### *The need to ensure an effective divestiture process.*

11.112 An effective divestiture process will protect the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.<sup>754</sup>

11.113 There was no substantial integration between the Parties prior to or since the imposition of the IEO and the subsequent IO.<sup>755</sup> This should make it easier to ensure an effective divestiture process, compared to a situation where there was substantial integration between the Parties.

11.114 Given that a monitoring trustee is already in place and will be required to remain under any divestiture process, we consider that a standard divestiture process would be suitable for a sale of the entire Cannon UK business as we consider the risks of asset deterioration to be low.

11.115 We set out our detailed consideration of remedy implementation in paragraphs 11.243 to 11.273.

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<sup>754</sup> CC8 – Merger Remedies: Competition Commission Guidelines, paragraph 3.20.

<sup>755</sup> The support provided by Rentokil to Cannon is a reflection of the nature of the transaction and not a result of operational integration.

### *Conclusion on the effectiveness of a sale of Cannon UK*

11.116 Based on the above assessment, we concluded that a sale of the entire Cannon UK business, whilst not entirely without risk, would be effective at addressing our concerns. Subject to finding a suitable purchaser, a divestiture of Cannon UK would be effective and restore competition to the level expected absent the Merger and therefore remedy the SLC. A suitable purchaser of this business is likely to be as effective at serving and competing for national/multi-regional end customers and framework customers as Cannon had been pre-Merger.

### ***Option 2 – A divestiture of the SLC customer contracts of Cannon UK***

11.117 The Parties' proposed divestiture (outlined above in paragraphs 11.28 to 11.36) is not of a stand-alone business. The Parties' proposal transfers the Cannon customer contracts affected by the SLC, along with the Cannon brand, to a purchaser approved by the CMA. The purchaser would also have the option of acquiring the assets, infrastructure and staff from Cannon that it considered necessary or desirable to effectively service the SLC contracts.

11.118 The proposed package includes the Cannon customer contracts in their entirety, thus including revenues from mats and healthcare waste management that are not part of the SLC finding.

11.119 As noted in the outline of this remedy option, our assessment assumes a sale of the Cannon UK business will be structured by way of a sale of shares in the Cannon UK legal entity, which is the most straightforward way in which this remedy could be implemented, particularly in relation to framework customers.

11.120 We first outline the evidence with regards to the scope of the divestiture package and the availability of a suitable purchaser before discussing its effectiveness.

### *The scope of the divestiture package*

11.121 The Parties told us the divestiture of the SLC Contracts to a trade buyer would further strengthen the purchaser's ability to compete for national and multi-regional customers.<sup>756</sup> They also told us the package of assets would make the purchaser an effective competitor whilst not burdening it with

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<sup>756</sup> Parties' response to the Remedies Notice, paragraph 5.5.

the costs and liabilities associated with dealing with assets superfluous to the purchaser's requirements.<sup>757</sup>

11.122 In order to address the risk that the relevant customers might seek to transfer their contract to Rentokil, the Parties have offered a non-solicitation commitment following closing of the divestiture in favour of the purchaser in respect of the waste disposal services of the SLC Contracts which are transferred to the purchaser, for a period of time to be negotiated.<sup>758</sup> The Parties also told us that composition risks with regards to contract length arise regardless of whether the divestment is of just the Cannon SLC contracts, or of the entire Cannon UK business.<sup>759</sup>

11.123 As noted with the divestiture of Cannon UK, the Parties told us that the majority of the national/multi-regional end customers and framework customers are on Cannon's standard terms and conditions which do not include any restrictions on transferability.<sup>760</sup>

11.124 The Parties told us that they do not anticipate any issues in relation to transferring customers acquired through a framework to the purchaser as the vast majority of them are simply on Cannon's standard terms and conditions with framework rates.<sup>761</sup>

11.125 Upon reviewing the [REDACTED] framework agreements, and as clarified in the Parties' response to the CMA's request for information dated 29 November 2018, the Parties told us that:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED].<sup>762</sup>

11.126 In addition, pursuant to the PCR:

(a) No modifications (other than the change of contracting party) can be made to the provisions of the ESPO and NWUPC framework agreements; and

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<sup>757</sup> Parties' response to the Remedies Notice, paragraph 5.2.

<sup>758</sup> The CMA would expect some form of non-solicitation, that did not reduce customer choice, regardless of the divestiture package.

<sup>759</sup> Parties' response to the Remedies Notice, paragraph 5.3.

<sup>760</sup> Parties' response to the Remedies Notice, page 15, paragraph 4.11.

<sup>761</sup> [REDACTED]

<sup>762</sup> [REDACTED]

(b) The new contractor for the ESPO and NWUPC framework agreements must fulfil the criteria for the qualitative selection initially established,

11.127 These restrictions apply equally to either remedy.

11.128 The Parties told us they are confident that if the purchaser engages with the frameworks early and continues to offer framework customers the same lower rates and high quality of service as before, there is no reason why these frameworks would have any issues with the transfer.<sup>763</sup>

11.129 In terms of composition of the divestment package, the Parties said their proposal gives greater flexibility as it allows a prospective purchaser to obtain only those assets which it believes are essential in order to service the SLC Contracts.<sup>764</sup> The purchaser can also choose to avail itself of the transitional service arrangements which are being offered by the Parties in order to ensure a smooth transfer of the SLC Contracts to the purchaser.

11.130 At the response hearing, the Parties told us that the divestiture package is profitable and sustainable to an existing washroom service provider in the UK.<sup>765</sup> We note that, whilst this may be the case with the supporting infrastructure of Cannon's business,<sup>766</sup> a question mark remains as to whether these contracts would be profitable for a potential purchaser that has a different business model and cost base.

11.131 The Parties have informed us that [redacted] and [redacted] have indicated that they may be interested in acquiring the divestiture package. [redacted]:

(a) [redacted]

(b) [redacted].<sup>767</sup>

(c) [redacted].<sup>768</sup>

11.132 Earlier in our inquiry, Mayflower told us that it understands that [redacted] and those offered by Rentokil, Cannon and PHS.

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<sup>763</sup> Response to Remedies Notice page 11, paragraph 3.19 (c).

<sup>764</sup> [redacted]

<sup>765</sup> [redacted]

<sup>766</sup> Cannon does not have the capability to assess contract level profitability.

<sup>767</sup> [redacted]

<sup>768</sup> [redacted]

- *Views of third parties and customers on scope*

11.133 [X]<sup>769</sup> and [X]<sup>770</sup> told us they were potentially interested in acquiring the customer contracts but [X]

11.134 One Cannon customer we spoke to, [X], said that in theory selling parts of Cannon to a smaller competitor might solve the SLC but it was not guaranteed to end up with a national competitor as a result of the divestiture.<sup>771</sup> [X], another customer of Cannon told us that in the event of any divestiture it will assess the resilience of the acquirer/new business and assess its options. [X] would want to understand the size and shape of the new business and its dependency on [X] as it is reluctant to have a supplier which is dependent upon it for viability.<sup>772</sup>

11.135 The proposal does not necessarily confer on any purchaser the ability to offer bin exchange in respect of washroom waste disposal on a national basis. The affected customers currently receive a bin exchange service from Cannon. We received a mixed response from customers and competitors on this:

- (a) [X], which is a Rentokil customer (and not a Cannon customer), told us that it might not be an issue if this was changed to liner exchange but they would have to wait and see, then assess.
- (b) [X] said it would have some reservations with liner exchange, although this is cheaper. However, [X] said it is not necessarily a deal breaker and would have to be assessed.
- (c) [X] said it had no preference for liner or bin exchange and noted that bin exchange is not specified in its contract.
- (d) [X] said that liner is a 'better' service but some customers would consider bin exchange instead. [X] considered it would be relatively easy to convince a customer to change preference. [X] said it is rare for customers to specify bin exchange.

11.136 With regards to bin exchange, the Parties told us that Rentokil has moved most of its customers from bin exchange to liner exchange and Rentokil has received practically no objections from customers (this is discussed further in Chapter 2). The Parties told us that to carry out a

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<sup>769</sup> [X]

<sup>770</sup> [X]

<sup>771</sup> [X]

<sup>772</sup> [X]

migration exercise of this size without any material negative feedback demonstrates how comfortable customers are with this transformational shift in the industry.<sup>773</sup> [redacted].<sup>774</sup>

11.137 The Parties told us that bin exchange is not a standard term of service specified in Cannon's contracts. From a sample review they identified one contract [redacted] that specified full bin exchange.<sup>775</sup>

*Evidence about the potential availability of a suitable purchaser*

11.138 The Parties foresee that a trade buyer currently in the washrooms market would be attracted to the divestment of the SLC Contracts given that this would provide such a purchaser with the flexibility to add the divested contracts to their existing operational structure. This would have the effect of improving the purchaser's operational efficiency whilst at the same time not loading the purchaser with unnecessary costs and liabilities in order for the purchaser to service the SLC Contracts.

11.139 The Parties consider that because the remedy proposal consists of all of Cannon's SLC national washroom services contracts together with the assets and transitional support a purchaser may need, it represents an attractive proposition for a trade purchaser.<sup>776</sup> At the response hearing the Parties told us that they had entered into tentative discussions with [redacted] industry competitors [redacted], who have both indicated a degree of interest.

11.140 Subsequently the Parties told us they had received further expressions of interest. On 4 January 2019, the Parties told us that they were in discussions with [redacted]

11.141 The Parties told us they have progressed talks with [redacted]. [redacted].<sup>777</sup>

11.142 The evidence indicates that route density is key to profitability, see paragraph 8.2. Given the SLC customers are dispersed throughout the UK, we consider a purchaser not already active in the UK washrooms market, or who does not have an established route-based delivery network, would be unlikely to be interested in or to be able to serve the customers profitably.

11.143 [redacted] told us that it would be difficult to profitably build a washroom service business around national customers alone as the low pricing

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<sup>773</sup> [redacted]

<sup>774</sup> [redacted]

<sup>775</sup> [redacted]

<sup>776</sup> Parties' response to the Remedies Notice.

<sup>777</sup> [redacted]



characteristics of national accounts are only profitable by leveraging the cost structure created by dense service routes of other higher margin business. [X] told us that smaller supplies such as those in fourth, fifth and sixth place by size would not have national scale. [X] told us that these suppliers would have to sub-contract certain services. [X] said this would put these smaller suppliers at a disadvantage in bidding for large contracts since having to sub-contract parts of this business could impact their costs compared to the large companies who can service all locations directly.

11.144 One potential purchaser, [X], told us it is not particularly interested in providing all healthcare waste disposal services. [X]. Their interest or otherwise in servicing the healthcare waste component of Cannon's customers would depend on whether it was profitable for them to do so.<sup>778</sup>

11.145 The Parties told us that if a purchaser did not provide all the service lines a customer required there is a work around whereby those services could be subcontracted back to Rentokil or another provider. The Parties told us that subcontracting is common in this industry.<sup>779</sup>

### *Assessment of Effectiveness*

11.146 In this section we outline our views on the effectiveness of this remedy under the CMA's standard framework.<sup>780</sup>

11.147 In considering the impact of potential divestitures on the SLC and its resulting adverse effects, we assessed whether, following a divestiture, a prospective purchaser would be as effective at serving and competing for national/multi-regional and framework customers as Cannon had been pre-transaction. To inform this assessment, we considered the risk profile of the remedy against the factors set out in our guidance as well as seeking the views of third parties.

### *Impact on the SLC and its resulting adverse effects*

#### *Composition risks*

11.148 At the response hearing Rentokil told us that the package would increase the capabilities of the purchaser, if they were already a washroom

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<sup>778</sup> [X]

<sup>779</sup> [X]

<sup>780</sup> CC8 – Merger Remedies: Competition Commission Guidelines.

provider, to compete for the national/multi-regional and framework customers by:<sup>781</sup>

- (a) Increasing the customer density and scale of the purchaser by allowing them to layer new customers and sites on top of existing ones thereby enabling them to become more price competitive for these types of customers.
- (b) Enhancing the purchaser's reputation amongst these customers, who are important in the market.

11.149 As regards incentives, Rentokil stated that a purchaser would have every incentive to be successful with the SLC contracts due to the reputational consequences of not being successful. Rentokil noted that no purchaser would half-heartedly run the business as their reputation would be tarnished and credibility damaged in the eyes of well-known national and multi-regional customers.

11.150 In our view, in order to be confident that this remedy would be effective and restore competition to the level expected absent the Merger, a single purchaser of all the SLC contracts would be required. This is because we consider that this remedy would not be effective if the contracts were split between multiple providers as this would dilute the additional competitive strength of any individual purchaser.

11.151 It is not possible at this stage to answer the question as to whether or not the package of assets could be operated profitably by existing medium sized UK washroom providers. This is a risk to the effectiveness of the remedy which would need to be managed through the design of the divestiture process.

11.152 The Parties proposed a non-solicitation agreement. We would typically accept a time limited non-solicitation clause if requested by the purchaser. Non-solicitation clauses are common in Undertakings. Any non-solicitation clause would be in a form that did not impact customer choice.

11.153 We consider that the composition of this remedy may increase both the ability and incentive of Mayflower and Cathedral to serve and compete for national customers, were they to acquire the divestiture package. We consider this may also be true of other trade buyers. By acquiring these customers, a competitor might increase its overall customer density. This might improve profitability and increase national coverage. This in turn, might

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<sup>781</sup> [3<]

increase the value of national customers to the purchaser and thus the purchaser's incentive to compete for national customers.

11.154 Given the remedy does not necessarily confer on the purchaser the ability to offer bin exchange we sought views on whether this might affect the effectiveness of this remedy. With regards to bin exchange, we did not receive any strong objections from customers. We are aware that most competitors in the market offer liner exchange (ie OSS) and not bin exchange. Given this is not a standard contractual term of service delivery, and the fact that Rentokil has successfully moved a large proportion of its customers to liner exchange, we do not consider a move to liner exchange undermines the effectiveness of the remedy.

- *Framework customer considerations*

11.155 As outlined in paragraph 11.68, to effectively restore competition for framework customers we considered there were three key elements to assessing the effectiveness of the remedy:

- (a) the ability of a purchaser to continue to service existing contracts entered into by Cannon;
- (b) the ability and appetite of a purchaser to enter into new contracts between now and the time the framework comes to an end; and
- (c) the appetite and ability to tender to get onto the new framework.

11.156 Of the above, appetite is not a composition risk but a factor relating to purchaser suitability and as such is dealt with in purchaser assessment process.

- *Private frameworks*

11.157 Private framework organisations are not subject to public procurement rules. We consider the desire and ability to serve private framework customers and the ability to get onto the private frameworks will be a key consideration of our purchaser assessment.

11.158 However, given that [X]% Cannon's revenue in waste disposal services supplied to framework customers comes from public frameworks and public frameworks are subject to public procurement rules, we consider the ability to serve and win public framework customers more important to the effectiveness of the remedy.

- *Public framework organisations*

11.159 As described above, these frameworks are subject to the application of the PCR. Frameworks subject to the PCR must not be modified without a new procurement process being conducted, except where such modifications are conducted in accordance of the principles of regulation 72(1)(d), which states ‘universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Part’.<sup>782</sup>

11.160 Subject to certain conditions being met, it is therefore possible for a company’s position on a framework to be maintained following a merger, acquisition or company restructure.

11.161 The ability to serve framework customers depends on whether a prospective purchaser can demonstrate that by acquiring the SLC Contracts and any necessary Cannon infrastructure that it:

- (a) Can demonstrate that it can continue to provide the same level of service as Cannon currently provides.
- (b) Can profitably honour the terms the customers are currently on.
- (c) Has the appetite and incentive to compete for more business with existing frameworks.
- (d) Has the appetite and ability to compete for the frameworks when they come up for renewal.

11.162 As noted in paragraphs 11.75 to 11.88, we do not consider that a sale of the entire Cannon UK business jeopardises a prospective purchasers position on the public framework. We explored with ESPO and NWUPC whether a sale of a subset of the Cannon UK business would allow a purchaser to get on the framework and serve Cannon’s current framework customers and win new framework customers.

11.163 As with a sale of the entire Cannon UK business, both frameworks told us that while a new provider cannot be added to a framework whilst it is live, it

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<sup>782</sup> Public Contracts Regulations, 72(1)(d).

is possible to accommodate changes following a merger or acquisition, ie by transferring one company's position on a framework to another.

11.164 As with a sale of the entire Cannon UK business, ESPO and NWUPC told us that [X] (for example through the acquisition of the entire share capital of Cannon UK, as framework operators they [X]).

11.165 As with a sale of the entire Cannon UK business, in practice we consider this would not be expected to arise where we are satisfied with the identity of any purchaser, and that purchaser's capability, desire and commitment to serve on the frameworks.

11.166 The considerations for ESPO and NWUPC are in practice similar, whether we are considering a sale of just the SLC Contracts or a sale of the entire Cannon UK business. In both scenarios we envisage the transfer of the Cannon UK legal entity to a prospective purchaser. In either situation, where ESPO and NWUPC are satisfied with the identity and capability of a suitable purchaser and that purchaser commits to honouring the terms Cannon signed up to the framework, then Cannon's position can be maintained on the framework.

11.167 Both ESPO and NWUPC told us that maintaining Cannon's position on the framework is more straightforward when the company registration number, and therefore legal entity, transfers to a new acquirer.

11.168 Whilst there is a risk that customers may object to their contracts being acquired by a new provider, along with ESPO and NWUPC we consider in practice this is not likely to be a material risk if the purchaser is sufficiently able to demonstrate to end users their capability and commitment.

11.169 Accordingly, a sale of only the national/multi-regional and framework contracts, subject to: (a) ESPO and NWUPC being content with the purchaser's suitability and the purchaser's commitment to maintain Cannon's position on its public framework agreements; and (b) individual customer consent, where required (both in the bounds of acceptable risk for the reasons outlined above) would:

(a) not affect Cannon's position on the frameworks; and

(b) allow it to serve and tender for new customers under those frameworks.

11.170 The appetite and ability to tender to get onto the new frameworks (both public and private frameworks) is something we would explore as part of our consideration of purchaser suitability.

11.171 Subject to finding a suitable purchaser, a divestiture of the national/multi-regional end customers and framework customers does not raise any material concerns with regards to Cannon's position on its current frameworks and ensures it can continue to service and win new framework customers.

11.172 In summary, we consider that the risks are higher with regards to the impact of potential service delivery changes compared to a sale of the entire business which includes all of Cannon's assets and depot network. We similarly consider that we currently have less information on which to assess whether national/multi-regional end customers and framework customers can be served profitably, compared to a divestiture of the entire business.

11.173 However, these are issues we could explore with potential purchasers. We consider that with the right purchaser, these risks are capable of being overcome. Therefore, subject to finding a suitable purchaser, a divestiture of the national/multi-regional end customers and framework customers, could be effective.

#### *Asset risks*

11.174 The CMA's guidance identifies asset risks as risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, for example through loss of customers or key members of staff.<sup>783</sup>

11.175 We consider that the early identification by the Parties of a suitable purchaser and early engagement with customers would be critical to the effectiveness of this remedy. If a purchaser cannot be found during the initial divestiture period, it increases the risk that the Cannon UK business may deteriorate as customers may become increasingly concerned about the uncertainty of the process.

11.176 The Parties originally submitted that a [redacted]divestiture period would be appropriate to canvass suitable purchasers, facilitate adequate due diligence, create an effective and appropriate divestiture package and obtain the customer consents to transfer the SLC Contracts.<sup>784</sup> The Parties told us that a period of [redacted]is not expected to result in appreciable asset risk given that the Parties:

(a) have demonstrated their ability to maintain the value of the Cannon UK business since it was acquired on 1 January 2018 and are subject to an

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<sup>783</sup> CC8 – Merger Remedies: Competition Commission Guidelines, paragraph 3.3, (c).

<sup>784</sup> Response to the Remedies Notice, paragraph 5.7.

IO which requires that the assets of the Cannon UK business must be preserved;

- (b) have already received expressions of interest in acquiring the Cannon SLC Contracts; and
- (c) consider that the divestiture process could be run largely within the scope of existing derogations to the interim order.

11.177 In response to our remedies working paper, the [REDACTED].<sup>785</sup>

11.178 At the response hearing, Rentokil told us they could deliver a divestiture quickly, [REDACTED].<sup>786</sup>

11.179 Our discussions with customers affected by the SLCs indicate that although the need for a remedy is recognised customers would prefer to be consulted on transfer of contracts. One Cannon customer ([REDACTED]) said it would prefer to negotiate with a supplier and would not like its contract to be transferred without consultation.

11.180 [REDACTED]

11.181 Our decisions relating to ensuring an effective divestiture process are outlined in paragraphs 11.243 to 11.273 below.

#### *Purchaser risks*

11.182 Purchaser risk will depend on whether there is a prospective purchaser, willing to acquire these contracts, with the necessary incentives and capability to compete successfully for customers located in eight or more regions of the UK purchasing waste disposal services directly for their premises from a washroom services supplier, and public and private framework customers requiring national or multi-regional coverage. Anything less than this would not be effective in addressing our concerns.

11.183 In relation to all SLC Contracts, including contracts awarded under a framework, we would expect a purchaser to commit to and have the capability and appetite to:

- (a) serve the current terms of acquired contracts;
- (b) bid for the re-tender of these contracts; and

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<sup>785</sup> [REDACTED]

<sup>786</sup> [REDACTED]

(c) seek new contracts with other customers.

11.184 We consider it essential to the success of this remedy to identify either: (a) a trade purchaser in the UK washrooms market with the capability and ambition to serve and win national customers; or (b) a purchaser who already has a UK wide route-based delivery network that can profitably add, and has an incentive to add, national and framework customers onto its existing operations.

11.185 The extent to which a potential purchaser might be deemed a suitable purchaser of the divestment contracts would depend on the nature of their business plans with respect to the affected customers. We would need to be satisfied that not only could a potential purchaser compete effectively for these customers and the service requirements of the SLC Contracts acquired, but that they could do so in line with Cannon's capability pre-Merger.

11.186 We do not consider the lack of ability of a potential purchaser to offer nationwide bin-exchange would necessarily undermine the effectiveness of the remedy. The way a potential purchaser plans to manage this change in service would form part of our purchaser assessment.

11.187 As outlined in paragraphs 11.138 to 11.145, the Parties have told us they have received initial indications of interest from several potential purchasers.

11.188 We have spoken to [X] of these, [X], [X] of whom indicated an initial interest. [X] potential purchasers [X].

11.189 We consider that the composition of this remedy may increase both the ability and incentive of [X] to serve and compete for national and multi-regional customers by increasing [X] overall customer density. This may improve profitability and increase national coverage. In turn, this may increase the value of national and multi-regional customers to the purchaser and thus the purchaser's incentive to compete for national and multi-regional customers.

11.190 Given the [X] potential purchasers and the potential further interest, as indicated by the Parties, we consider that there is sufficient evidence to conclude that there is potentially a suitable purchaser for the proposed divestiture package, though we would need to review business plans to confirm this view during the remedies implementation process and ensure all purchaser suitability criteria are met.

11.191 With regards to framework customers, we consider it important that any prospective purchaser can demonstrate its appetite and ability to tender to get



onto the new frameworks when they are put back out to tender. The ability and desire to serve and win new framework customers will be a key consideration in our decision on a suitable purchaser.

#### *Appropriate duration and timing*

11.192 Remedies need to address the SLC effectively throughout its expected duration. The SLC identified in the provisional findings is not time limited in any way, we must therefore be confident that the effect of a remedy would also be sustained.

11.193 We have given consideration to potential disruption to and the likely response of the affected customers. If these customers were to leave as a result of the chosen remedy or their perception of the purchaser's ability to effectively service their washroom contracts, it would potentially undermine the remedy.

11.194 A change of control risk is reasonably common with divestiture remedies. We do not consider the change of control clauses to be a risk that undermines effectiveness.

11.195 As outlined, some customers would resist being moved unilaterally to another supplier but they did not indicate what action they would take. It is our view that to be effective there would need to be smooth, negotiated transition for the customers with no impact on service quality, timing or frequency.

11.196 Subject to finding a suitable purchaser, we consider that the remedy may increase the incentives and the ability of the purchaser to service, win and compete for national/multi-region and framework customers.

#### ***Practicality***

11.197 A practical remedy should be capable of effective implementation, monitoring and enforcement. Divestitures generally do not require detailed monitoring following implementation although, in some cases, an effective divestiture may require supplementary measures.

11.198 The remedy proposed by the Parties is not a divestiture of a stand-alone, profitable business. The affected customers therefore need to be integrated into the purchaser's business.

11.199 We consider that the SLC Contracts could be acquired by a new purchaser, subject to customer willingness, and the ability of the purchaser to become listed as a framework provider. The Parties have reviewed the transferability of the SLC Contracts and told us that a large proportion of the

contracts are on Cannon's standard terms, and do not include any contractual restrictions on transferability. We have confirmed this, however it is possible customers may choose to end contracts early or not extend them, subject to all other contractual terms.

11.200 At the response hearing the Parties told us that there were no practical challenges with separating out the affected contracts and services from the rest of the business. In addition, to aid the process the Parties have offered:

- (a) a transitional services agreement;
- (b) procurement support; and
- (c) training assistance.

11.201 We consider the key practical challenge to be the integration of the customers and assets.

11.202 The Parties have provided us with a list of customers it considered fell within the scope of our SLC. We would, however, require third party assurance, for example from a monitoring trustee, as to the completeness of any customer list.

#### *The need to ensure an effective divestiture process*

11.203 An effective divestiture process will protect the competitive capability of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale.

11.204 We consider there are risks with regards to the effectiveness of this remedy. These risks are sufficient that we would need to introduce safeguards through the design of the divestiture process to mitigate against any specific purchaser, composition or asset risks that arise. This will be particularly important because the effectiveness of the remedy is largely dependent on identifying a suitable purchaser for the SLC Contracts.

#### *Acceptable risk profile*

11.205 In evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant

risks that remedies will not have the requisite impact on the SLC or its adverse effects.<sup>787</sup>

11.206 We consider that risks with regards to the sale of the SLC Contracts can be explored with a potential purchaser. We consider that with the right purchaser, these risks are capable of being overcome. [X]

#### *Conclusion on the effectiveness of a sale of the Cannon UK SLC Contracts*

11.207 For this remedy to be effective, it requires a purchaser who can service the SLC Contracts profitably and can compete for these types of customers going forward in line with Cannon's capability pre-Merger.

11.208 Based on our investigations so far, it is our view that such a purchaser may exist. Assuming such a purchaser can be found, we therefore consider that a divestiture of SLC Contracts, plus any Cannon UK operations or infrastructure required, including the legal entity, would be an effective remedy.

11.209 [X].<sup>788</sup> [X]. This is discussed further in the remedy implementation section, see paragraphs 11.243 to 11.273.

#### **Summary of effectiveness of remedy options**

11.210 In reaching our view on the effectiveness of remedy options we have had regard to the various dimensions of effectiveness identified in our Merger Remedies Guidelines:<sup>789</sup>

- (a) impact on the SLC and resulting adverse effects;
- (b) appropriate duration and timing;
- (c) practicality; and
- (d) acceptable risk profile.

11.211 We have found that a divestiture of Cannon UK Limited and the Parties' proposed divestiture of the national/multi-regional end customers and framework customers (SLC Contracts), along with the infrastructure required by a prospective purchaser, subject to safeguards, would both be effective in

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<sup>787</sup> CC8 – Merger Remedies: Competition Commission Guidelines, paragraph 1.8 (d).

<sup>788</sup> CC8 – Merger Remedies: Competition Commission Guidelines, paragraph 3.13 to 3.14.

<sup>789</sup> CC8 – Merger Remedies: Competition Commission Guidelines, paragraph 1.8.

remediating the SLCs, would do so in a timely manner and with an acceptable risk profile.

11.212 As outlined in paragraph 11.208, we consider the legal entity should also transfer to the purchaser along with the SLC Contracts.

11.213 We now consider RCBs before considering proportionality.

## Relevant customer benefits

11.214 In deciding the question of remedies, the CMA may have 'regard to the effects of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned'.<sup>790</sup>

11.215 The Act defines RCBs as lower prices, higher quality, greater choice of goods or services in any market in the UK or greater innovation in relation to those goods or services.<sup>791</sup>

11.216 In addition, the RCBs must: (a) accrue as a result of the merger or be expected to accrue within a reasonable period of the merger; and (b) be unlikely to accrue without the merger or a similar lessening of competition.<sup>792</sup>

11.217 RCBs can be taken into account, as permitted by the Act, by considering the extent to which alternative remedies may preserve such benefits. In essence, RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy.<sup>793</sup> Remedies can be modified, or alternative remedies chosen to ensure retention of RCBs. In rare cases, the CMA may decide that no remedy is appropriate.

11.218 The Parties submitted that the divestiture of the entire Cannon UK business as a remedy to the SLC will produce adverse effects given that it will deprive affected customers of relevant customer benefits in respect of both washroom services and mats and healthcare.<sup>794</sup>

11.219 The Parties note that these benefits include: (a) the introduction of Rentokil's very high service standards; and (b) an expanded product range (see the efficiencies section of Chapter 9 for further detail). Additionally, the Parties refer to the situation in Australia where the Merger has completed, and the Parties claim that customers have benefitted from certain environmental

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<sup>790</sup> Sections 35(5) of the Act.

<sup>791</sup> Section 30 of the Act.

<sup>792</sup> Section 30(2) of the Act.

<sup>793</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 1.15.

<sup>794</sup> [redacted]

benefits and the introduction of service tracking. Given that we have not identified an SLC in the market for mats and healthcare waste disposal services, the Parties do not believe that we are objectively justified in depriving these customers of the benefits of the transaction.<sup>795</sup>

11.220 The Parties have not submitted any evidence<sup>796</sup> to support their claims that the Merger gives rise to RCBs as defined by the Act.<sup>797</sup> In our view the benefits claimed by the Parties are not Merger specific and could arise without the Merger or a similar lessening of competition (see the discussion of efficiencies in Chapter 9). For example, there is nothing to prevent customers from seeking an expanded product range through Rentokil or alternative suppliers absent the merger.

11.221 We therefore conclude that there are no RCBs, as defined by the Act, that would cause us to modify or alter our choice of remedies.

### **Assessment of the proportionality of effective remedies**

11.222 Having identified the remedy options that would be effective in addressing the SLC and the resulting adverse effects we have found, we next consider the costs of those remedies and their proportionality.<sup>798</sup>

11.223 In order to be reasonable and proportionate the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. Where the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is the least restrictive.<sup>799</sup> We will, as set out in our guidance and in accordance with our duties under public law, seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>800</sup>

11.224 In considering proportionality of remedies in line with our Merger Remedies Guidelines, we have also followed the established criteria set out by the EU and UK courts, which have been explicitly endorsed by the CAT in the context of the assessment of merger remedies<sup>801</sup>. These are that the remedy selected:

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<sup>795</sup> [X]

<sup>796</sup> 'The merger parties will be expected to provide convincing evidence regarding the nature and scale of relevant customer benefits that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits' (Competition Guidelines (CC8), paragraph 1.16).

<sup>797</sup> For example, no evidence to support the claim that Rentokil's service standards are higher than its competitors.

<sup>798</sup> Relevant costs would normally exclude costs of divestiture to merger parties in completed mergers.

<sup>799</sup> Merger Remedies Guidelines, paragraph 1.9.

<sup>800</sup> Merger Remedies Guidelines, paragraphs 1.9 and 1.12.

<sup>801</sup> See for example, *Intercontinental Exchange Inc v Competition and Markets Authority* [2017] CAT 6.

- (a) must be effective to achieve the legitimate aim in question (appropriate);
- (b) must be no more onerous than is required to achieve that aim (necessary);
- (c) must be the least onerous, if there is a choice of equally effective measures; and
- (d) in any event must not produce adverse effects which are disproportionate to the aim pursued.<sup>802</sup>

### **Views of the Parties**

11.225 The Parties told us that Parliament had given the CMA a statutory discretionary power to determine whether it should take action to remedy an SLC or any adverse effects resulting from it.<sup>803</sup> In deciding whether to exercise this discretion, the Parties said that CMA needs to undertake an ‘in the round’ assessment which calls for the re-evaluation of:

- (a) the materiality of the harm, its nature and scale viewed in an informed overall context, any countervailing considerations pointing the other way, and the strength of the thesis on which the supposed harm is based;
- (b) the appropriateness of exercising the discretionary power to insist on action;
- (c) the nature, degree and implications of the action being envisaged; and
- (d) the overall picture taking into account (a)-(c).<sup>804</sup>

11.226 The Parties submitted that the SLC we have found is only in relation to a very small part of the target business.<sup>805</sup>

11.227 The Parties told us that the divestiture of the entire Cannon UK business (with total revenues of approximately £[redacted]million) as a remedy to the SLC in this case (£[redacted]million) would be disproportionate and unreasonable (the SLC representing only approximately [redacted] of the annual revenue of the Cannon UK business). The Parties noted that the CMA has found an SLC only in relation to waste disposal services provided to two sub-segments of Cannon’s national customer base. These are (a) end customers

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<sup>802</sup> See *Tesco plc v Competition Commission* [2009] CAT 6 at [137], drawing on the formulation by the European Court of Justice in Case C-331/88 *R v Ministry of Agriculture, Fisheries and Food, ex p. Fedesa*, ECLI:EU:C:1990:391, para 13.

<sup>803</sup> Parties’ response to the Remedies Notice, paragraph 2.4.

<sup>804</sup> Parties’ response to the Remedies Notice, paragraph 2.9.

<sup>805</sup> Parties’ response to the Remedies Notice, paragraph 2.14.

(£[redacted]million) and (b) public and private framework customers with national or multi-national coverage (£[redacted]million). The likelihood of harm therefore is seen by the Parties as being low, and the scale of the provisionally identified adverse effects as small. As such, the Parties said that the SLC in this case relates to a very small part of the Cannon business, and to require the divestment of the entire Cannon UK business to address the SLC is not justifiable to address the perceived harm which the CMA has found.

11.228 Compared to a sale of the entire Cannon UK Limited business, the Parties described a divestiture of the SLC Contracts as a structural solution that is ‘less intrusive, more reasonable and proportionate, and far better aligned to the SLC, and which would strike a fair balance were there justification for action.<sup>806</sup>

11.229 Further, the Parties submit that a divestiture of Cannon UK will produce adverse effects given that it will deprive affected customers of relevant customer benefits in respect of not just washroom services, but in relation to both mats and healthcare waste disposal as well.<sup>807</sup>

11.230 [redacted].<sup>808</sup>

### **CMA Assessment**

11.231 We have found that both (a) a divestment of Cannon UK Limited and (b) a divestment of the SLC Contracts (along with the any necessary supporting infrastructure a purchaser requires), subject to safeguards, would be effective in addressing the SLC and the resulting adverse effects we have found, i.e. in relation to the provision of waste disposal services to the following national and multi-regional customers in the UK:

- (a) Customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier.
- (b) Public and private framework customers with national or multi-regional coverage.

11.232 We have not identified a less onerous effective remedy – eg involving a smaller divestiture package - than the divestiture of the SLC Contracts. [redacted] Further, while we acknowledge that a divestiture of the Cannon UK business would be wider in scope than the scope of the SLC, the Act does not preclude such remedies. We note that such an approach – ie requiring a divestiture

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<sup>806</sup> Parties’ response to the Remedies Notice, paragraph 3.1.

<sup>807</sup> Parties’ response to the Remedies Notice, paragraph 2.21.

<sup>808</sup> [redacted]

that is wider in scope than the SLC, where this is necessary to achieve an effective remedy - would be consistent with the CMA's guidance and decisional practice.

11.233 We have considered the costs associated with the two effective remedies. The costs of a remedy may be incurred by a variety of parties, including the merger parties, third parties, the CMA and other monitoring agencies. As the merger parties have the choice of whether or not to proceed with a merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than costs that will be imposed by a remedy on third parties, the CMA or other monitoring agencies. In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy as it is open to the parties to make merger proposals conditional on competition authorities' approval.<sup>809</sup> Since the cost of divestiture is, in essence, avoidable, the CMA will not in the absence of exceptional circumstances accept that the cost of divestiture should be considered in selecting remedies.<sup>810</sup>

11.234 The costs of a remedy may arise in various forms, including: (a) the loss of relevant customer benefits; (b) significant ongoing compliance costs; and (c) through distortions in market outcomes.<sup>811</sup>

11.235 We have not identified any significant relevant costs to factor into the assessment. In particular:

(a) As set out in paragraphs 11.214 to 11.221, we have not found any RCBs arising from the Merger that would be foregone as a consequence of either remedy we have found to be effective. We note in addition that we have not received any evidence to the contrary.

(b) We have not found any costs to third parties as a consequence of either remedy. As both are structural remedies, we have not identified any significant ongoing compliance costs.

(c) We have not identified any costs arising from market distortions arising in relation to either remedy.

11.236 In light of the foregoing, we have found:

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<sup>809</sup> Merger Remedies Guidelines, paragraph 1.10.

<sup>810</sup> Merger Remedies Guidelines, paragraph 1.10. *Intercontinental Exchange, Inc. v Competition and Markets Authority & Anor* [2017] CAT 6 at 100-101 (ICE/Trayport).

<sup>811</sup> Merger Remedies Guidelines, paragraph 1.11.



(a) Both the divestiture of either (a) the Cannon UK business or (b) the SLC Contracts would be an effective remedy.

(b) There are no material differences between the relevant costs associated with each remedy and in any case, we consider the relevant costs to be low.

11.237 We note the submissions made by the Parties that the CMA has a discretion whether or not to impose a remedy and that it is necessary to undertake an ‘in the round’ assessment. We also note that established case law<sup>812</sup> requires that a remedy does not produce adverse effects which are disproportionate to the aim pursued, and that the CMA’s guidance states that in exceptional circumstances, even the least costly but effective remedy might be expected to incur costs that are disproportionate to the scale of the SLC and its adverse effects.<sup>813</sup>

11.238 However, as set out above, we have not identified any significant relevant costs associated with either remedy. Further, as described in Chapter 7, the Merger eliminates an effective competitor in an already concentrated market and as a consequence, the credible options available to the affected national and multi-regional customers in the UK will be reduced. We have found that post-Merger, when national and multi-regional customers consider appointing a new supplier or negotiating with their existing suppliers, the removal of one of the Parties from the competitive process is unlikely to be offset by other suppliers, which exercise a limited constraint. We concluded that this loss of rivalry is likely to enable the merged entity to raise prices or reduce quality.

11.239 In light of the foregoing, we do not consider either of the two identified effective remedies would produce adverse effects which are disproportionate to the aim pursued as the relevant costs associated with the implementation of either remedy would not exceed the scale of the SLC and adverse effects we have found.

### ***Conclusion on proportionality***

11.240 Accordingly, we have concluded that each of the remedy options would be an effective remedy to the SLC we have identified and each would be proportionate to the aim pursued.

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<sup>812</sup> See ICE/Trayport at paragraph 100.

<sup>813</sup> Merger Remedies Guidelines, paragraph 1.12.

11.241 However, it is self-evident that the divestiture (subject to safeguards) of the SLC contracts to a suitable purchaser with any infrastructure and transitional arrangements required by a prospective purchaser, including the Cannon UK legal entity if required, would be the least onerous effective remedy. This is therefore the more proportionate solution and our preferred remedy.

11.242 [REDACTED]

## Remedy implementation

11.243 Having identified that the divestiture, of the SLC customers is an effective and proportionate remedy, in this section, we set out the key considerations in relation to the implementation of the remedy.

11.244 An effective divestiture process will protect the competitive potential of the divestiture package and enable a suitable purchaser to be secured in an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.<sup>814</sup>

[REDACTED]

11.245 [REDACTED]

11.246 [REDACTED]<sup>815816817</sup>

11.247 [REDACTED]

11.248 [REDACTED]<sup>818</sup>

11.249 [REDACTED]

(a) [REDACTED]

11.250 [REDACTED]

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<sup>814</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 3.20.

<sup>815</sup> [REDACTED]

<sup>816</sup> [REDACTED]

<sup>817</sup> [REDACTED]

<sup>818</sup> [REDACTED]

## ***Preparation for divestiture***

11.251 We consider that the following issues need to be addressed prior to any divestiture:

- (a) Separation of the Parties. Whilst continuing to abide by the IO the Parties must take steps to prepare for separating some of the services that Cannon UK currently receives from Rentokil, to the extent that a prospective purchaser will be taking on these functions. We will expect any purchaser to be able to demonstrate to us that it is able to provide these functions, although a transitional services agreement between Rentokil and the purchaser may be required.

This issue is most acute with regards to IT systems that are currently being migrated from OCS Group to Rentokil (as Cannon does not have hosting capabilities). We expect those staff currently working on the migration, granted under derogation, should formulate a plan as to how best to identify and transfer the information belonging to the national/multi-regional end customers and framework customers.

- (b) Identification of the full list of contracts to be included in the divestiture package with third party assurance as to the completeness of this list provided to the CMA. We consider the monitoring trustee could perform this task.
- (c) The two public framework organisations we spoke to told us that maintaining Cannon's position on their frameworks, subject to purchaser suitability, may be easier where a purchaser acquires the Cannon legal entity. The Parties should communicate early with the framework organisations to identify any further practical challenges. We will need to be confident that a purchaser will be able to maintain Cannon's position on its frameworks and compete for new framework customers going forward.

## ***Divestiture timetable***

11.252 We have given careful consideration to the period in which the Parties should achieve effective disposal of the preferred divestiture package of the SLC Contracts to a suitable purchaser (ie the 'initial divestiture period').

11.253 When determining the initial divestiture period, we have sought to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence. The initial divestiture

period may be extended by the CMA where this is necessary to achieve an effective disposal.<sup>819</sup>

11.254 At the response hearing, Rentokil told us they could deliver a divestiture of the SLC Contracts quickly, rather than the ‘months’ they considered a full divestiture of the Cannon UK business would take.<sup>820</sup> [REDACTED].<sup>821</sup>

11.255 Given the Parties’ views on how quickly a divestiture could be achieved, and that the effectiveness of the remedy is subject to finding a suitable purchaser, we consider that a [REDACTED].

11.256 We will seek to implement the remedy by negotiating Undertakings with the Parties.<sup>822</sup> We will expedite the process as far as possible but in any event these will need to be agreed within the [REDACTED].

11.257 We consider that the approved purchaser should complete the acquisition within [REDACTED] after the acceptance of final Undertakings. Such a time frame will allay some of our concerns with regards to purchaser suitability and disruption and uncertainty faced by customers.

11.258 [REDACTED].<sup>823</sup>

11.259 [REDACTED]:

(a) [REDACTED]

(b) [REDACTED]

11.260 (a) (b) (c)

11.261 To ensure a smooth divestiture process we will require the Parties to provide monthly progress updates on which we can decide if further action is required.

11.262 The Final Undertakings and monitoring trustee will remain in place until completion.

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<sup>819</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 3.24.

<sup>820</sup> [REDACTED]

<sup>821</sup> Response to the remedies working paper, Paragraph 2.1, (e), (i).

<sup>822</sup> Enterprise Act, Section 82.

<sup>823</sup> [REDACTED]

11.263 In the event that the process or timetable failed to achieve a successful outcome, we would appoint a divestiture trustee to oversee the sale within a specified timeframe to be agreed upon the divestiture trustee's appointment.

### ***Protecting the divestiture package***

11.264 The parties to a merger may have significant incentives to run down or neglect the business or assets of a divestment package in order to reduce future competitive impact.<sup>824</sup>

11.265 To protect against asset risk, the CMA will generally seek undertakings from the relevant parties which impose a general duty to maintain the divestiture package in good order and not to undermine the competitive position of the package. The CMA will also generally require 'hold-separate' undertakings to mitigate asset risk. These will require the divestiture package to be held and managed separately from the retained business. The appointment of a 'hold-separate' manager or management team may also be required to manage the assets/business to be divested so as to maintain their competitiveness and separation from the retained assets.<sup>825</sup>

11.266 On the 31 January 2018 the CMA made an IEO in accordance with section 71 of the Act for the purpose of preventing pre-emptive action.

11.267 On 5 July 2018, we made an IO pursuant to section 81 of the Act to ensure that no action is taken pending final determination of the Reference which might prejudice the Reference or impede the taking of any action by us under Part 3 of the Act which may be justified by our decisions on the Reference.

11.268 On 10 July 2018, pursuant to an interim order dated 5 July 2018, the CMA directed Rentokil to appoint a monitoring trustee.

11.269 Our view is that the current hold separate arrangements (ie the IO and the monitoring trustee) should be retained throughout the divestiture process.

11.270 Alongside the Undertakings we also consider it necessary to issue directions to the monitoring trustee, to direct the trustee to monitor and report to us on the Parties' progress in organising and effecting the remedy and ensuring the divestiture is conducted in a fair and transparent manner.

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<sup>824</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 3.21.

<sup>825</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 3.22.

## ***Assessment of purchaser suitability***

11.271 We require the divestment to a suitable purchaser based on the following criteria:

- (a) *Independence*: the purchaser should have no significant connection to the Parties that may compromise the purchaser's incentives to compete with Rentokil after divestiture;
- (b) *Capability*: the purchaser must have access to appropriate financial resources, expertise and assets to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor.
- (c) *Commitment to relevant market*: we will wish to satisfy ourselves that the purchaser has an appropriate business plan and objectives for competing in the relevant market(s).
- (d) *Absence of competitive or regulatory concerns*: divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.<sup>826</sup>

11.272 With regards to business plans, we consider that any prospective purchaser will need to provide the us with credible business plans that demonstrate they, already or as a result of acquiring the divestiture package:

- (a) have sufficient incentives to compete for, and have the ability to win, new national/multi-regional customers, whether it is through tendering and/or bilateral negotiation;
- (b) have sufficient incentives and ability to hold on to the national/multi-regional customers acquired through the divestment process;
- (c) have a credible plan as to how they are going to compete for, and win, new national/multi-regional end customers;
- (d) have the ability to meet the ongoing service and account management requirements of the customers of the transferred contracts;
- (e) have the capability and ambition to be a framework provider and satisfy the appointment criteria of Cannon's four framework partners to be

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<sup>826</sup> Merger Remedies: Competition Commission Guidelines (CC8), paragraph 3.15.

accepted on the framework and compete for a place when the frameworks are retendered in the future;

- (f) have the capability to service Cannon's framework customers on their current terms and have sufficient incentives to compete for and have the ability to win new customers under these frameworks;
- (g) have the resources to not only acquire the divestiture package but the resources to be a successful competitor going forward; and
- (h) have the ability to provide a national coverage in all regions of the UK.

### **Additional considerations**

11.273 We further consider that the following protections are necessary, [X], to protect the divestiture, and are therefore necessary for inclusion in the Undertakings:

- (a) Rentokil must undertake to not actively solicit for the waste disposal services of the SLC Contracts for a period to be negotiated with the prospective purchaser post-closing of the divestiture.

Such a clause shall not restrict the ability or choice of customers in choosing Rentokil as a service provider.

- (b) In the event that some of the SLC Contract customers do not consent to their contracts being novated to a new purchaser, [X].

### **Decision on remedies**

11.274 We have decided that a divestiture of the SLC Contracts to a suitable purchaser with any operations and infrastructure required by a prospective purchaser, including the Cannon UK legal entity, would be the least onerous remedy of the effective remedies we have identified.

11.275 We have concluded that subject to finding a suitable purchaser, the remedy would create a competitor as effective at serving and competing for national/multi-regional end customers and framework customers as Cannon had been pre-Merger.

11.276 Subject to the requirements of the purchaser the divestiture package should include, but is not limited to, the following assets and operations:

- (a) the Cannon contracts of the customers in markets in which the SLC arose, namely customers located in eight or more regions of the UK purchasing directly for their premises from a washroom services supplier

and four Public and private framework customers with national or multi-regional coverage;

- (b) the 'Cannon Hygiene' brand and the 'Cannon' brand, to the extent owned or controlled by the Parties in the UK. The Parties propose that Rentokil would then implement a prompt rebranding process related to the retained assets and business lines to address the risk of any confusion following the divestiture;
- (c) all intangible assets owned or controlled by Cannon UK which are necessary to carry out washroom services for the SLC Contracts, including the relevant intellectual property rights (trademarks, service marks and domain names);
- (d) all Cannon employees and other personnel primarily engaged in providing or supporting the SLC Contracts, including central national account management capability, service technicians and those with other central functions (subject to employment law restrictions). The Parties also propose to offer the prospective purchaser any other personnel who are both used (exclusively or not) in servicing the SLC Contracts who are necessary to ensure the continued viability and competitiveness of the divested SLC Contracts and related assets, or an adequate substitute;
- (e) permits and licences: all permits and licenses in relation to waste collection and disposal of healthcare waste services including waste carrier licenses to the extent that they are transferable; and
- (f) other assets:
  - (i) all Cannon UK facilities engaged in washroom services to support the SLC Contracts including all on-site equipment related to such washroom services as well as all such leased equipment to be transferred to the purchaser to the fullest extent possible;
  - (i) all leases for the transferred Cannon UK facilities or a sub-lease as appropriate, to the extent transferrable;
  - (ii) all Cannon vehicles currently owned or leased by Cannon UK which are used to service the SLC Contracts; and
  - (iii) any other asset which is both used (exclusively or not) to service the SLC Contracts and necessary in order to ensure the continued viability and competitiveness of the SLC Contracts, or an adequate substitute.



11.277 In addition, we expect a transitional services agreement to be provided to the purchaser. The precise terms of the agreement for the provision of these services to be provided on a transitional basis are to be determined through negotiations between the Parties and the purchaser and we will review it as part of the approval of the terms of the divestiture.

11.278 We expect to implement the structural remedy by seeking suitable undertakings from the Parties. The CMA has the power to issue an Order if unable to obtain satisfactory undertakings from the Parties.