

Anticipated acquisition by Top Online Partners Group Limited of Maple Syrup Group Limited and its subsidiaries

Decision on relevant merger situation and substantial lessening of competition

ME/6760/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 7 January 2019. Full text of the decision published on 8 February 2019.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. Top Online Partners Group Limited (**TopCashback**) has agreed to acquire Maple Syrup Group Limited and its subsidiaries (**Quidco**) (the **Merger**). TopCashback and Quidco are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of TopCashback and Quidco is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties both operate websites which allow consumers to receive cash rebates on their online shopping (**cashback websites**). Cashback websites are two-sided in nature. The websites compete for advertisers (merchants), who promote cashback deals and pay for advertisement on the websites, and for consumers, who take advantage of the money-saving offers.
4. The CMA has assessed the impact of the Merger in a frame of reference for the supply of money-saving offers and advertising via cashback websites in

the United Kingdom (**UK**). It has considered whether the Merger could give rise to horizontal unilateral effects in this frame of reference.

5. The CMA has found that TopCashback and Quidco operate the two largest cashback websites in the UK and are each other's closest competitor. The Parties have a very high combined share of supply of [90-100]% in the supply of money-saving offers and advertising via cashback websites in the UK. Other cashback websites impose a very limited constraint on the Parties. The CMA also found that voucher websites (which allow consumers to receive discounts on their online shopping through voucher codes and merchants to promote such discounts) and reward websites (which allow consumers receive points or other loyalty rewards when shopping online and merchants to promote such deals) whether separately or in aggregate provide only a limited competitive constraint on the Parties.
6. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of money-saving offers and advertising via cashback websites in the UK.
7. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until **14 January 2019** to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

8. TopCashback, headquartered in Staffordshire, operates the cashback website www.topcashback.co.uk in the UK. TopCashback, via the same website, also offers consumers other moneysaving content such as vouchers and price-comparison tools. In addition, TopCashback provides application programming interface-based access to affiliate marketing-based moneysaving programmes (**white label affiliate marketing services**) to third parties in the UK. TopCashback's turnover in 2017 was approximately £109 million worldwide and approximately £[~~8~~] in the UK.
9. Quidco also operates a cashback website in the UK, www.quidco.com. Quidco, via the same website, also offers consumers other moneysaving content such as vouchers and price-comparison tools. In addition, Quidco provides white label affiliate marketing services to third parties in the UK.

Quidco's turnover in 2017 was approximately £90 million worldwide and approximately £[X] in the UK.

Transaction

10. The proposed transaction is the purchase by TopCashback of [X]% of the issued share capital of Quidco. Pursuant to a share purchase agreement dated 31 October 2018, the Merger will be effected by the creation of a Newco structure (CB Group Holdings Ltd) under which both TopCashback and Quidco will sit. TopCashback's owners will hold [X]% of the shares in CB Group Holdings Ltd with Quidco's shareholders holding the remaining [X]%.

Procedure

11. The Merger was considered at a Case Review Meeting.¹

Jurisdiction

12. Each of TopCashback and Quidco is an enterprise. As a result of the Merger, these enterprises will cease to be distinct because they will have the same ultimate owners.
13. The UK turnover of Quidco exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
14. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 8 November 2018 and the statutory 40 working day deadline for a decision is therefore 7 January 2019.

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic (for

¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

example, because the CMA believes that one of the merger firms would inevitably have exited from the market), or there is a realistic prospect of a counterfactual that is more competitive than these conditions.²

17. The Parties submitted that [✂].
18. However, [✂].
19. Therefore, the CMA has assessed the Merger against the prevailing conditions of competition.

Background

20. The Parties operate cashback websites. To receive cashback, consumers log into the cashback website and then click on specific links (so-called affiliate links) on the cashback website to access a particular merchant's website. This is recorded via online trackers ('cookies') which register that the consumer accessed the merchant's website via that cashback website. Following a qualifying purchase, the merchant pays the cashback website a commission fee (usually via an affiliate network)³, which the cashback website passes to the consumer (in whole or in part) as cashback. There will often be a delay (sometimes of several months) between a consumer making a purchase and cashback being credited to his/her account, as merchants will typically wait until the returns period has expired before confirming that a particular purchase qualifies for cashback. Additional revenues (constituting the vast majority of cashback websites' profits) are generated through advertising paid for by merchants on the cashback website.
21. Consumers are also able to receive discounts on their online shopping through other websites such as voucher websites, which promote merchant voucher codes (offering an immediate discount at the point of sale) to consumers, receiving commissions from merchants in return and reward/loyalty websites (**reward websites**), which offer points as a reward for shopping through them, receiving commissions from merchants in return. Other money-saving websites, such as price comparison websites (which allow consumers to compare different products within a relevant sector (eg insurance)), money-saving content websites (such as moneysavingexpert.com) and deal-aggregators (ie websites that compile and

² [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

³ An affiliate network is a network on which merchants publish offers of commission for sales or leads to be promoted on websites of so-called publishers (eg cashback websites, voucher websites etc).

promote deals) also make use of affiliate-marketing, earning commission when a consumer clicks through from their website to a merchant's website.

Frame of reference

22. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgment. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁴
23. The Parties overlap in the supply of money-saving offers and advertising via cashback websites. The Parties also overlap in the supply of money-saving offers and advertising via price comparison tools, and in the supply of white label affiliate marketing services. However, as [X]'s revenues from these services are minimal and the available evidence indicates that there are numerous credible alternative suppliers, these overlaps are not considered further in this decision.

Product scope

Overview

24. Cashback websites can be described as two-sided because suppliers of these websites compete for:
 - (a) Advertisers (merchants), who (usually via affiliate networks) promote cashback deals via the Parties' websites and pay for advertising on the websites; and
 - (b) Consumers who take advantage of the money-saving offers.
25. The two-sided nature of the market arises from the existence of indirect network effects between merchants and consumers. Merchants are attracted by cashback networks that are able to provide a large volume of consumers (and vice versa).
26. As explained in the CMA's Guidelines,⁵ the implementation of the hypothetical monopolist test may be more complicated when products are two-sided. The

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.20.

number of customers in each group affects the profitability of the product, because the value that one group of customers realises from using the intermediary depends on the participation of customers from the other group (indirect network effects). Prices charged to each set of customers take account of the need to get both sets 'on board'. Furthermore:

- (a) there is no single price to both sets of customers to which to apply a SSNIP;
- (b) the effect of a SSNIP on the demand of one set of customers may be exacerbated by indirect network effects; and
- (c) the constraints on the merger firms' products may come not only from other two-sided intermediaries but also from 'one-sided' firms serving one set of customers.⁶

27. The CMA considered whether separate markets should be defined on each side of the cashback website. As noted in previous cases, a distinction can be made between two-sided markets which facilitate transactions between customers on each side of the platform (such as auction houses or credit card services) and those two-sided platforms which do not facilitate transactions (eg 'media-type' platforms like radio stations and newspapers). In some two-sided markets, which do not facilitate transactions between each side of the platform, the platform suppliers may face materially different competitive constraints on each side of the market.⁷ In those cases, it may be necessary to define two separate markets: one on each side of the platform, with distinct product and geographic scopes and separate sets of competitors and competitive constraints.⁸
28. In this case, where the cashback website, after facilitating an online purchase transaction, receives money from merchants, a portion of which it passes to consumers (at its discretion), the CMA considers that analysing the Merger by reference to a single frame of reference is appropriate. As set out below, this assessment takes account of the competitive constraints on both sides of the market and assesses the hypothetical monopolist's ability to increase the prices or to degrade quality taking account of the availability of substitutes on each side of the market.

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.20.

⁷ For example, a local radio station may face very different constraints in the market for selling advertising from those it faces in the market for attracting listeners.

⁸ [Merger Assessment Guidelines](#), footnote 60.

Parties' submissions

29. The Parties submitted that the relevant product frame of reference should be, at least, the supply of affiliate marketing-based moneysaving and advertising services, ie encompassing cashback websites as well as a variety of other types of moneysaving websites including voucher websites, price comparison websites and other reward websites.
30. In particular, the Parties have submitted that a segmentation between the supply of affiliate marketing-based moneysaving and advertising services via cashback websites and via other affiliate marketing-based moneysaving websites (such as voucher websites or price comparison websites) is inappropriate. The Parties contend that it is very unlikely that consumers or merchants would be willing to pay higher prices for offers expressed as cashback, rather than offers expressed via a lower price or voucher discount. For merchants, all marketing based moneysaving websites (whether delivered via an affiliate network or via a direct deal with a website) provide advertising opportunities which have to be met from an overall marketing budget, while for the consumer, the final sale price is discounted regardless of the website used. The Parties further submitted that there are similarities in terms of display and functionality of the discounts on offer across all affiliate marketing-based websites but in particular across cashback and voucher websites.
31. Furthermore, the Parties contend that the operation of the 'last-click-rule' (ie the rule that the merchant only pays commission to the last moneysaving website or affiliate publisher a consumer clicked on before completing their purchase) shows that the Parties are in direct competition with all affiliate marketing-based websites, and in some cases even merchants' own deals and discounts, as only one of them is able to receive the commission associated any individual purchase.
32. With regard to supply-side characteristics, the Parties submit that the technology underlying different moneysaving websites is similar and that it is easy to switch between eg points-based and cash-based reward mechanisms within a short timeframe and with limited costs.

CMA's assessment

33. The CMA's approach to the frame of reference is typically to begin with the parties' overlapping products in the narrowest plausible candidate frame of reference and then to see if this should be widened. The CMA pays particular regard to demand-side factors (ie the behaviour of customers and its effects).

However, it may also consider supply-side factors (ie the capabilities and reactions of suppliers in the short-term) and other market characteristics.⁹

34. The Parties overlap in the supply of money-saving offers and advertising via cashback websites. The CMA has considered whether the frame of reference should be widened to include other money-saving offers, in particular:
- (a) Affiliate marketing-based voucher websites;
 - (b) Affiliate marketing-based reward websites;
 - (c) Affiliate marketing-based price comparison websites, money-saving content websites and/or deal aggregator websites; and/or
 - (d) Other discounts and offers.

Voucher websites

35. As noted at paragraphs 29 to 32 above, the Parties submitted that voucher websites should form part of the same frame of reference as cashback websites. The Parties also submitted that the ban on cross-site voucher and cashback combinations resulting from the 'last-click-rule' means that voucher and cashback are interchangeable from the merchant's perspective.
36. The CMA received mixed evidence on the substitutability between voucher websites and cashback websites. On the one hand, the CMA found that some merchants consider that voucher websites are close substitutes to cashback websites, as there are some similarities to cashback websites in the services they offer to consumers and merchants:
- (a) Both types of website offer consumers a discount on their purchase;
 - (b) Both types of website include a range of brands across a wide variety of sectors in their offering; and
 - (c) Both types of website allow merchants to market to price-sensitive consumers on a cost-per-acquisition basis.
37. On the other hand, the CMA's analysis as well as submissions made by a number of third parties also highlighted important differences in the service offering:
- (a) Cashback websites have 'always-on' offers (ie the discount is always available for purchases made from that merchant) with the majority of

⁹ [Merger Assessment Guidelines](#), section 5.2.17.

merchants listed on their websites, whereas voucher offers are typically time-limited (eg only for purchases made in the following 48 hours).

- (b) Cashback websites typically offer cashback for all purchases with a merchant (although sometimes this is limited to new customers, and different rates may apply for purchases in different product ranges). In contrast, vouchers are often limited to either specific product ranges or minimum order values. This means that depending on the products purchased, a consumer may need to spend time analysing the different potential discounts and may not be able to benefit from a discount even if vouchers from that merchant are available.
 - (c) Cashback websites fund the discount to consumers from the cost-per-acquisition payments provided by merchants, whereas merchants using voucher websites fund the discount to consumers themselves at the point of sale and must also pay a separate cost-per-acquisition fee to the voucher website, meaning that voucher websites can be more expensive for merchants. Merchants using voucher code websites therefore have greater control over the discount which the consumer receives because they apply it directly to the consumer's purchase.
 - (d) Cashback websites offer a deferred discount, whereby the consumer must wait for the cashback to 'track' before they can claim it, whereas for voucher websites the discount is immediate and reduces the amount the consumer pays at the point of sale.
38. When asked to rate voucher websites on a scale of 1-5 (with 1 being close substitutes to cashback websites and 5 being distant substitutes), the average response of merchants and affiliate networks was around 3, with responses spread out across the entire five-point scale. The CMA believes that these responses indicate that while for some merchants, cashback websites and voucher websites might be alternatives, they are not close substitutes for a material proportion of merchants. In this context, the CMA notes that voucher websites are mentioned or discussed Parties' internal documents much less frequently and in less depth than cashback websites.
39. In addition, the CMA does not believe that the 'last-click-rule' referred to by the Parties implies that cashback and voucher websites must necessarily be in the same frame of reference. This rule is in place to prevent merchants from paying commission twice for the same online purchase, but this does not in itself imply substitutability between cashback and voucher websites from either the consumer or the merchant perspective.

40. On the basis of the evidence above, and on a cautious basis for the purposes of this phase 1 assessment, the CMA therefore considers that the supply of money-saving offers and advertising via voucher websites constitutes a separate frame of reference from the supply of money-saving offers and advertising via cashback websites. The CMA has, however, taken the constraint exercised by voucher websites into account, to the extent relevant within its competitive assessment.

Reward websites

41. As noted at paragraphs 29 to 32 above, the Parties submitted that reward websites should form part of the same frame of reference as cashback websites.
42. The CMA received mixed evidence on the substitutability between reward websites and cashback websites. On the one hand, the CMA found that some merchants consider that reward websites are close substitutes to cashback websites, as there are some similarities to cashback websites in the services they offer to consumers and merchants:
- (a) Both reward websites and cashback websites offer consumers an incentive to purchase from merchants;
 - (b) Both types of website fund the offer to consumers from affiliate marketing cost-per-acquisition fees; and
 - (c) Both types of website allow merchants to market to customers on a cost-per-acquisition basis.
43. However, a key difference highlighted by third parties between cashback websites and reward websites is that the latter do not offer a direct financial incentive to purchase, but instead offer points, which can be redeemed for vouchers for specific retailers or other non-cash rewards. This adds an extra step for a consumer wishing to reap the benefit of the reward website's offering because they need to make a further purchase that complies with the website's conditions, as opposed to being able to simply transfer the accrued benefit (ie the cashback) into their bank account. This also means that it may be more complex for a consumer to compare the value of a points offering with a cashback offering.
44. Furthermore, an internal TopCashback document states that the cash equivalent value of points offered by reward websites is typically substantially lower than that offered by cashback websites. This was also confirmed by a merchant of the Parties. In this context, the CMA notes that reward websites are only occasionally mentioned or discussed Parties' internal documents.

45. When asked to rate voucher websites on a scale of 1-5 (with 1 being close substitutes to cashback websites and 5 being distant substitutes), the average response of merchants and affiliate networks was around 2.5 with responses spread out across the entire five-point scale. Some of the differences highlighted by merchants and affiliate networks include that reward websites are not able to offer the same level of exposure to merchants as cashback websites and that many only work with 'top-tier' merchants, meaning that smaller merchants cannot secure exposure through them at all. The CMA believes that these responses indicate that reward websites are closer substitutes to cashback than voucher websites in the view of the respondents. However, the responses also indicate that for a material proportion of merchants, reward websites are not closely substitutable for cashback websites.
46. Given the above evidence, the CMA believes that the benefit accruing to consumers by using reward websites is qualitatively and quantitatively different from the benefit accrued by using cashback websites.
47. On the basis of the evidence above, and on a cautious basis for the purposes of its phase 1 assessment, the CMA therefore considers that the supply of money-saving offers and advertising via reward websites constitutes a separate frame of reference from the supply of money-saving offers and advertising via cashback websites. The CMA has, however, taken the constraint exercised by reward websites into account, to the extent relevant within its competitive assessment.

Price comparison websites, money-saving content websites, and deal aggregator websites

48. As noted at paragraphs 29 to 32 above, the Parties submitted that other affiliate marketing based money-saving offer websites including price comparison websites, money-saving content websites and deal aggregator websites should form part of the same frame of reference as cashback websites.
49. In addition, the Parties submitted that even though these websites do not offer a discount to the consumer, the merchant offers featured prominently on these websites must be competitive, ie typically equating to the discounted prices available on cashback websites, and that consumers seeking the most attractive offer on the product do not care what form this offer takes. The Parties also provided the results of a recent survey which found that

TopCashback users also used several other money-saving tools¹⁰ when shopping online and that most users used one or more of these tools for research before purchasing through TopCashback.

50. The CMA found that there are a number of important differences between cashback websites and these other categories of ‘money-saving’ websites:
- (a) As noted by the Parties, these websites do not typically offer consumers any cash discount or other cash-equivalent reward as an incentive to purchase. Instead, they provide information on offers available in the market, which may include those available through cashback websites;
 - (b) Price comparison websites are sector-specific rather than covering a wide range of sectors, and while these websites are frequently used in some sectors (eg insurance, telecoms, etc), they are less prevalent in other sectors such as retail;
 - (c) Moneysaving content and deal websites highlight time-limited special deals, rather than providing consistent value through ‘always-on’ offers; and
 - (d) All of these websites focus on highlighting the cheapest, market-leading offers rather than rewarding customers for purchasing from a wide range of brands.
51. Evidence received from third parties also indicated that price comparison websites, money-saving content websites and deal aggregator websites are not close substitutes to cashback websites. When asked to rate these websites on a scale of 1-5 (with 1 being close substitutes to cashback websites and 5 being distant substitutes), the average response of merchants and affiliate networks was between 3.5 and 4.5 with responses clustered at the more distant end of the five-point scale. In addition, the majority of price comparison websites and money-saving content websites told the CMA that they do not compete with cashback websites (except to the extent that some comparison websites compete with the price comparison tools offered by the Parties).
52. In addition, the CMA found that price comparison websites and money-saving content websites are not frequently mentioned or discussed in the Parties’ internal documents ([REDACTED]) and that deal aggregator websites are discussed as [REDACTED] rather than as a competitor.

¹⁰ These included price comparison tools, voucher websites, saving forums, online auction websites and ‘search engine – savings research’ as well as cashback websites.

53. The CMA therefore believes that the other categories of website listed by the Parties (price comparison websites, money-saving content websites and deal aggregator websites) are fundamentally different from cashback websites. The CMA also does not consider that the results of the survey referred to at paragraph 49 above provides evidence for including price comparison websites or other 'money saving tools' in the frame of reference. The finding that users of cashback websites also use other types of websites when shopping online does not imply that they can or would switch from using cashback to using other types of 'money saving' websites in response to a deterioration in cashback rates or quality of cashback websites. Indeed, the fact that consumers use other types of websites for research before purchasing through cashback websites may suggest that these websites are used as complements to cashback websites rather than as substitutes.
54. On the basis of the evidence above, the CMA therefore considers that the supply of money-saving offers and advertising via price comparison websites, via money-saving content websites and via deal aggregator websites constitute separate frames of reference from the supply of money-saving offers and advertising via cashback websites.

Other discounts and offers

55. The Parties submitted that they face additional constraints from other money-saving offers including from:
- (a) Discounted products and deals offered by merchants directly;
 - (b) Deal websites (such as Groupon);
 - (c) Cashback offers provided as part of discount clubs (such as Utility Warehouse);
 - (d) Card-linked offers (ie offers that allow a consumer to earn cashback on in-store or online purchases with a particular debit or credit card); and
 - (e) Loyalty programmes, cashback websites and voucher websites that do not use affiliate marketing.
56. The Parties submitted that many of these offers will be subject to the 'last-click-rule', that consumers will consider alternative offers from all sources prior to making an online purchase decision and that from the merchant's perspective, these websites are channels for advertising and driving product sales.

57. The CMA believes that these other money-saving offers are fundamentally different to cashback websites. In particular:
- (a) With regard to own-merchant offers and discounts, these do not include an affiliate marketing relationship between merchants and third parties such as cashback websites. Instead, these offers and discounts are set and implemented by the merchant independently. The CMA therefore believes that these own-merchant offers and discounts are not 'advertising services' comparable to those of cashback websites. Furthermore, in many instances, cashback will be available on discounted prices and merchant offers, suggesting that they are complementary to cashback websites rather than substitutes;
 - (b) Daily deals websites (such as Groupon) generally offer deals on very specific products and services only, rather than featuring numerous and/or 'always-on' offers from a range of particular brands. Furthermore, in many instances, cashback will be available on deals purchased on daily deals websites,¹¹ suggesting that they are complementary to cashback websites, rather than substitutes;
 - (c) Cashback provided as part of discount clubs and card-linked offers constitute ancillary services to other core products. Consumers looking to earn cashback are therefore not likely to choose or use these core products in order to earn cashback or to the exclusion of cashback websites;
 - (d) Not all money-saving offers highlighted by the Parties (eg card-linked offers) are subject to the 'last-click-rule', meaning that cashback will also be available to consumers, suggesting that they are complementary to cashback websites rather than substitutes; and
 - (e) Even where the 'last-click-rule' does apply, as set out in relation to voucher websites, the CMA does not believe that this implies that cashback and any other offers/discounts must necessarily be in the same frame of reference. This rule is in place to prevent merchants from paying commission twice for the same online purchase, but this does not in itself imply substitutability between cashback and voucher websites from either the consumer or the merchant perspective.

¹¹ See eg Groupon, which is a featured merchant on TopCashback (<https://www.topcashback.co.uk/groupon/>) (accessed on 7 January 2019) and Quidco (<https://www.quidco.com/groupon/>) (accessed on 7 January 2019).

58. In addition, the CMA found that these other providers of money-saving offers and discounts are only mentioned sporadically, if at all, in the Parties' internal documents.
59. On the basis of the evidence above, the CMA therefore considers that these other money-saving offers and discounts do not form part of the same frame of reference as the supply of money-saving offers and advertising via cashback websites.

Conclusion on product scope

60. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of money-saving offers and advertising via cashback websites.

Geographic scope

61. The Parties submitted that the geographic frame of reference should be at least UK-wide. The CMA found that pricing and service offering are the same throughout the UK (subject to limited exceptions) and found no other evidence suggesting either a wider or narrower geographic frame of reference.

Conclusion on frame of reference

62. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of money-saving offers and advertising via cashback websites in the UK.

Competitive assessment

Horizontal unilateral effects

63. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹² Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of money-saving offers and advertising via cashback websites in the UK.

¹² [Merger Assessment Guidelines](#), from paragraph 5.4.1.

64. In making this assessment, the CMA has considered:
- (a) Shares of supply;
 - (b) The closeness of competition between the Parties; and
 - (c) Competitive constraints from alternative suppliers (including voucher websites and reward websites).

Shares of supply

65. On the basis of commission paid through the [redacted] affiliate network (which the Parties submitted accounts for around [40-50]% of the UK affiliate market and is broadly representative of the whole market) in 2017, the CMA estimates that the Parties have a combined share of the supply of [90-100]% in the supply of money-saving offers and advertising via cashback websites, with TopCashback having a share of supply of [40-50]%, Quidco having a share of supply of [40-50]% and the next largest cashback website having a share of supply of [0-5]%.

Closeness of competition

66. The CMA assessed the extent to which the Parties compete closely in the supply of money-saving offers and advertising via cashback websites in the UK in particular by evaluating:
- (a) Similarity of the Parties' service proposition;
 - (b) The Parties' views and economic analyses;
 - (c) Evidence from internal documents;
 - (d) The Parties' submissions on [redacted]; and
 - (e) Third party views.

Similarity of the Parties' service proposition

67. The CMA found that (as described at paragraph 20 above) the Parties provide a near-identical service proposition to merchants and consumers based on a near-identical charging model (ie the receipt of commission from merchants that is passed on to consumers as well as the receipt of advertising revenue). In this context, TopCashback advertises on its website that both Parties typically pass on 100% of the commission received from merchants to

consumers, ¹³ [X]. The Parties also stated that they both sometimes supplement the sums paid to consumers (ie top-up the offer) above the value of commission they receive from merchants.

68. Evidence provided by some third parties suggests that the service proposition of a number of other smaller cashback websites differs from that of the Parties as these websites do not pass on 100% of the commission received to consumers (with some not providing any cash to the consumer at all eg Kidstart) and/or are closed schemes open to only employees of the companies that have signed up with them (eg Reward Gateway).
69. The CMA also found that this view is reflected in published statements on TopCashback's website which features a standalone page titled '*Quidco vs. TopCashback*' that, as set out in Figure 1 below, compares TopCashback to its '*closest rival, Quidco*'.¹⁴ The webpage compares the two websites' key features (eg cashback rates and number of retailers), their membership models as well pay-out speeds and options.¹⁵ No other competitors are mentioned on this webpage.

Figure 1 - TopCashback webpage on Quidco

QUIDCO VS. TOPCASHBACK

Use this page to compare us to our closest rival, Quidco, to see how you can make the biggest savings on your online shopping. Competition drives us on to continuously improve our service!



www.topcashback.co.uk/quidco (accessed on 7 January 2019)

¹³ <https://www.topcashback.co.uk/quidco> (accessed on 7 January 2019).

¹⁴ <https://www.topcashback.co.uk/quidco> (accessed on 7 January 2019).

¹⁵ <https://www.topcashback.co.uk/quidco> (accessed on 7 January 2019).

70. Furthermore, as set out at paragraphs 37 to 39 and 43 to 45 above, the available evidence indicates that the Parties' service proposition differs from that of voucher websites and reward websites in significant ways.

The Parties' views and economic analyses

71. The Parties provided a number of analyses which they submitted demonstrated that they are not close competitors. These are:
- (a) An analysis of TopCashback's investment in top-up rates on Black Friday 2016; and
 - (b) An analysis of CJ Affiliate reports on audience overlap.
 - *Black Friday investment analysis*
72. The Parties submitted that Quidco's website went offline for several hours during Black Friday 2016 (a peak shopping period). TopCashback carried out an analysis comparing its investment into 'top-up rates' (ie increasing the value of cashback offered to consumers above the value of commission received from the merchant) on:
- (a) Black Friday 2016 (during which Quidco's website was down for part of the day); and
 - (b) Cyber Monday 2016 (during which Quidco's website was live for the whole day).
73. This analysis showed that TopCashback's top-ups were higher on Black Friday ([X] % of commission on average) than on Cyber Monday ([X] % on average). The Parties submitted that this demonstrated that competition was stronger on Black Friday, despite Quidco's outage, and that therefore TopCashback's investment was driven by constraints imposed by other rivals.
74. The CMA did not find this to be a logical conclusion. The CMA found that the Parties' internal documents show that with Black Friday being the busiest shopping day of the Parties' websites, TopCashback had planned in advance to invest money into cashback top-ups. In this context, one internal document sets out that TopCashback invested in topping-up the cashback rates on Black Friday to [X] and to [X].
75. In light of the fact that TopCashback could not have predicted the occurrence or length of Quidco's outage, the CMA considers that TopCashback therefore had obvious commercial incentives to continue as planned with its top-up

investments ([REDACTED]) and that the high level of top-ups on Black Friday does not provide evidence of competitive constraints from other rivals.

76. This is consistent with an internal TopCashback document reviewing the events on Black Friday 2016 which shows that, contrary to the Parties' submissions, the Quidco outage gave TopCashback a unique opportunity [REDACTED]. This internal document shows that:

(a) [REDACTED];¹⁶

(b) [REDACTED];¹⁷ and

(c) [REDACTED].¹⁸

77. On the basis of this evidence, the CMA does not consider that the Parties' analysis of TopCashback's Black Friday investments provides reliable evidence of the extent of Quidco's constraint on TopCashback (and does not purport to provide evidence of TopCashback's constraint on Quidco).

- *CJ Affiliate audience overlap analysis*

78. The Parties submitted reports provided by CJ Affiliate, an affiliate network, on the 'publisher overlap' between each of the Parties and other publishers (such as voucher websites, and price comparison websites) using the network. These reports show that the 'publisher overlap' between the Parties is less than [0-5]%, and the overlap between each Party and other websites, including voucher websites, is higher. The Parties submitted that this shows that the Parties are not close competitors.

79. The Parties confirmed the CMA's understanding of the analysis as follows:

(a) CJ Affiliate measures which consumers over a period of three months, made purchases from particular merchants using multiple money-saving websites (ie 'publishers' such as cashback websites and voucher websites);

(b) The 'publisher overlap' figures submitted by the Parties refer to the percentage of consumers which clicked through from two (or more) publishers to a particular merchant in Q1 2018. For example, if a particular consumer used TopCashback to make a purchase from a particular merchant on one occasion and then used Quidco to make a purchase with the same merchant on another occasion, this would be

¹⁶ Annex 10.2 to the Merger Notice.

¹⁷ Annex 10.2 to the Merger Notice.

¹⁸ Annex 10.2 to the Merger Notice.

recorded as part of the ‘publisher overlap’ between TopCashback and Quidco. Similarly, if a consumer used both a cashback website and voucher website to make online purchases with particular merchants, a ‘publisher overlap’ between the cashback website and the voucher website would be recorded.

80. The CMA placed limited weight on this analysis for the following reasons:
- (a) The overlap figures provide evidence of which websites consumers have used in parallel over a period of months, rather than of competition for specific purchases;
 - (b) The overlap figures do not capture consumers who compared the cashback rates between the Parties for a particular merchant and subsequently only clicked through to that merchant from the website with the higher rate;
 - (c) The overlap figures do not capture competition between the Parties for membership sign-ups as consumers who only sign up to one of the Parties would not ‘overlap’.
81. The CMA therefore does not consider that the Parties’ overlap analysis provides reliable evidence of the extent of Quidco’s constraint on TopCashback (or vice versa).

Internal documents

82. The CMA found that the Parties’ internal documents show that the Parties respectively view each other as their closest competitor. In particular:
- (a) TopCashback’s strategy documents often benchmark TopCashback against Quidco, analyse Quidco’s strategy in detail [redacted]. Some of these strategy documents also [redacted]. In this context, the Parties also acknowledged in their response to the CMA’s requests for information that TopCashback closely monitors Quidco.
 - (b) A strategy document [redacted] produced by Quidco similarly extensively benchmarks Quidco’s performance against TopCashback’s and analyses TopCashback’s external performance metrics (eg [redacted]) against Quidco’s. The CMA also found that Quidco specifically pursued a strategy of [redacted].¹⁹ Furthermore, Quidco asked consumers in a survey whether they had a TopCashback account, and its merchant surveys [redacted] asked respondents

¹⁹ Annex T1 to the Merger Notice.

an open and unprompted question about which of its competitors they liked the most, with more than [REDACTED]% naming TopCashback each year.

83. The CMA considers that these internal documents indicate that:
- (a) TopCashback and Quidco target the same customers and merchants; and
 - (b) TopCashback and Quidco primarily monitor each other (and no other competitors) and justify key strategic decisions by reference to the other Party, driving each other to compete aggressively.

[REDACTED]

84. The Parties submitted that [REDACTED]²⁰
85. The CMA considers that the available evidence does not support the finding that Quidco does not exercise a strong competitive constraint on TopCashback. [REDACTED].
86. The CMA has therefore placed limited weight on the Parties' submissions that [REDACTED] and considers that the available evidence does not support the position that Quidco would not have been an important constraint on TopCashback absent the Merger.

Third party views

87. Almost three quarters of merchants responding to the CMA's merger investigation indicated that the Parties compete closely or very closely,²¹ with several indicating that the Parties are the only credible cashback websites with significant scale in the UK. In this context, several merchants told the CMA that they alternate exclusive offers between the Parties and/or that one Party will promote an exclusive rate only if the merchant offers it a higher commission/cashback rate than the one the merchant promotes on the other Party's website. These views were also echoed by several affiliate networks as well by consumers responding to the CMA's invitation to comment.

Conclusion on closeness of competition

88. On the basis of the above evidence, the CMA believes that (i) the Parties' products are close substitutes and are each other's closest competitors, and (ii) the Parties are the two main suppliers of money-saving offers and

²⁰ Response to Issues Letter.

²¹ The CMA notes that no merchants indicated that the Parties are distant competitors. Instead, some told the CMA that they did not have sufficient insight to comment or provided no comment on the closeness of competition whilst still agreeing that the Parties compete.

advertising via cashback websites in the UK, thereby providing an important competitive constraint on each other.

Competitive constraints from alternative suppliers (including voucher websites and reward websites)

89. Unilateral effects are more likely where customers have little choice of alternative supplier. The Parties submitted that they compete with a variety of money-saving offer websites as well as with discounts and offers posted by merchants directly, and face particularly significant competitive constraints from voucher websites.
90. The CMA considered whether the Parties would be effectively constrained by other suppliers of money-saving offers and advertising via cashback websites and/or by suppliers of money-saving offers and advertising via voucher websites and/or reward websites. This assessment is set out below.
91. The CMA also considered whether the Parties would be effectively constrained by other money-saving offer websites (such as price comparison websites) and discounts and offers posted by merchants directly. As set out within the frame of reference, the CMA believes that price comparison websites, money-saving content websites, deal aggregator websites as well as the other money-saving offers and discounts put forward by the Parties at paragraph 55 above are fundamentally different from cashback websites. The CMA therefore does not consider that these alternatives exercise a credible competitive constraint on the Parties.
92. In this context, the CMA found two TopCashback documents, which strongly suggest that the merged entity would not be meaningfully constrained by other alternative suppliers post-Merger:

(a) [REDACTED];²² and

(b) [REDACTED].²³ [REDACTED].

Suppliers of money-saving offers and advertising via cashback websites

93. The Parties submitted that some smaller cashback websites are growing quickly (providing an example of a cashback website that had grown 400%) and therefore constrain the Parties. The Parties also submitted that in addition to the cashback websites taken into account in the CMA's share of supply

²² TopCashback's Response to Section 109 Request, Annex 183.

²³ TopCashback's Response to Section 109 Request, Annex 150. In this context, the CMA notes that the Parties submitted that Quidco [REDACTED].

calculations at paragraph 65 above, they are constrained by cashback services provided by banks.

94. On the basis of the evidence set out above including the Parties' shares of supply, the CMA considers that other suppliers of money-saving offers and advertising via cashback websites are likely to provide only a very limited competitive constraint on the merged entity. The CMA notes that no other competitor has a market share higher than [0-5]% and that all other cashback websites in aggregate have a share of less than [0-10]%. In this context, the CMA does not consider that high growth rates provide evidence that smaller cashback websites exercise a meaningful competitive constraint on the Parties because in absolute terms, the commission growth achieved by these cashback websites is very low.
95. With regard to cashback offers provided by banks, the CMA notes that these would be captured by the share of supply calculations if these banks transact with merchants via the [X] affiliate network. One of the largest banks also told the CMA that revenues from its cashback offering were negligible ([X]). Other banks' revenues would have to be many multiples higher than this large bank's revenues before there would be a material inaccuracy in the CMA's cashback share of supply calculations as a result of excluding cashback offers from banks. The CMA believes this to be unlikely given the evidence it has received in this investigation, including the Parties' own internal views and third-party views, which do not suggest a material competitive constraint from banks.
96. This is consistent with the views presented in the Parties' internal documents, which in most instances do not refer to any cashback websites other than the other Party. In this context, the CMA notes that while [X]. The CMA considers that this evidence shows that neither Party is materially concerned with the competitive threat posed by any other cashback website.
97. Furthermore, as set out in at paragraph 87 above, several third parties referred to the Parties as the only credible cashback websites with significant scale in the UK.
98. The CMA therefore believes that other suppliers of money-saving offers and advertising via cashback websites do not exercise a strong competitive constraint on the Parties.

Suppliers of money-saving offers and advertising via voucher websites and/or reward websites

99. As set out at paragraph 89 above, the Parties submitted that they face competition from voucher websites and reward websites. The Parties submitted that they frequently experience merchants preferring other money-saving tools to cashback, with a significant constraint being exercised by voucher websites. The Parties further submitted that consumers and merchants multi-home between money-saving websites and that the Parties face intense competition from these alternatives as a result.
100. The CMA assessed the constraint from voucher websites and reward websites by taking into consideration:
- (a) Shares of supply;
 - (b) The Parties' views and economic analyses;
 - (c) Evidence from internal documents;
 - (d) Comparison of available offers between the Parties and voucher websites; and
 - (e) Third party views on alternatives.
 - *Shares of supply*
101. In order to assess the strength of the competitive constraints imposed on cashback websites by voucher websites and/or reward websites, the CMA considered the Parties' combined share of supply, based on revenue, taking these websites into account:
- (a) The CMA found that the Parties' combined share of supply when taking reward websites into account was [70-80]%, with a significant increment resulting from the Merger and the next largest reward website having a share of [5-10]%.
 - (b) The CMA found that the Parties' combined share of supply when taking voucher websites into account was [50-60]% with a significant increment resulting from the Merger. The next largest competitor (the largest of the voucher websites) had a share of [10-20]%, and the remaining share was widely dispersed.
 - (c) The CMA found that the Parties' combined share of supply when taking both voucher and reward websites into account, was [40-50]% with a

significant increment resulting from the Merger. The next largest competitor (a voucher website) had a share of [10-20%].

102. The Parties submitted that the shares of supply including voucher websites calculated by the CMA are not based on a 'like for like' comparison of revenues and do not therefore accurately reflect the competitive landscape. The Parties submitted that commissions received by cashback websites, and counted as revenue, include the consumer discount (which is passed-on and therefore not retained by the website). In contrast, for voucher websites, the discount to consumers is funded by the merchants themselves (ie it is not funded by the commission paid to voucher websites). The Parties submitted that excluding the commission element from the Parties' revenues would result in the Parties' combined share of supply being significantly lower (below [10-20]%).
103. The CMA was unable to confirm the extent of any overestimation of the Parties' shares of supply when taking voucher websites into account because the CMA was unable to confirm whether commissions paid by merchants for cashback offers are materially higher than for voucher offers. In this context, one voucher website told the CMA that cashback websites are often paid higher commission rates by merchants. However, the CMA also found that at least some merchants on the [redacted] network pay cashback websites and voucher websites the same commission.²⁴ In addition, one merchant told the CMA that advertising with voucher websites was generally more expensive than advertising with cashback websites, suggesting that commissions to voucher websites may be higher.
104. In light of the difficulties described above in establishing a comparable set of revenues between the Parties' activities and voucher websites, the CMA considers that there may be limited value in using the conventional metric (ie revenues) to compare the size (and therefore the shares of supply) of the Parties with voucher websites in this case. However, the CMA also considers that the estimates submitted by the Parties are unlikely to accurately describe the competitive landscape because the Parties' estimates compare the Parties' margins to voucher websites' revenues, meaning that they are likely to understate the voucher websites' shares of supply.¹ This issue also illustrates the material differences between the business models of voucher websites and cashback websites, which are discussed above in the frame of reference section.

²⁴ See eg [redacted] (accessed on 7 January 2019), [redacted] (accessed on 7 January 2019) and [redacted] (accessed on 7 January 2019).

105. Due to the uncertainties surrounding the shares of supply including voucher websites, the CMA has not placed any weight on them in its assessment of the competitive constraints exercised on the Parties by voucher websites.

106. With regard to reward websites however, the CMA believes that the Parties' high combined shares of supply are indicative of reward websites only exercising a limited competitive constraint on the Parties.

- *The Parties' views and economic analyses*

107. The Parties provided a number of analyses which they submitted demonstrated that they face strong competition from other money-saving websites and particularly from voucher websites. These are:

(a) An analysis of diversion resulting from Quidco's temporary outage on Black Friday 2016;

(b) An analysis of diversion following a consumer clicking through to a merchant from the Parties' websites;

(c) An analysis of lost-sales as a result of merchants declining the validity of a cashback claim.

- *Black Friday diversion analysis*

108. The Parties submitted that Quidco's website went offline for several hours during Black Friday 2016 (a peak shopping period). TopCashback carried out an analysis of consumer behaviour in response to this outage, in which it inferred the response of consumers to the Quidco outage by comparing the actual commission revenues of TopCashback, Quidco and the next two largest cashback websites on Black Friday 2016²⁵ with each website's forecast revenue.²⁶

109. The Parties submitted that Quidco's revenue was significantly lower than forecast, with the difference interpreted as consumers switching away from Quidco as a result of the outage. The Parties submitted that this lost revenue was diverted to other money-saving offer providers with the largest portion going to other money-saving websites or to merchants directly, and only about [§] being diverted to TopCashback. The Parties submitted that this showed

²⁵ TopCashback estimated the actual revenues of Quidco and two other cashback websites based on a report it received from [§] (its largest affiliate network). This report provided shares of commission for the top four cashback providers on the network, which TopCashback combined with its own actual commission revenues to estimate the revenues for the other three suppliers.

²⁶ The forecast revenue for each website was calculated by TopCashback by increasing its Black Friday 2015 commission revenues by [§] (TopCashback's year-on-year growth rate for [§], ie before Black Friday).

that other money-saving websites were stronger constraints on Quidco than TopCashback.

110. The CMA considers that the Parties' analysis and interpretation of this evidence is likely to understate TopCashback's constraint on Quidco. In particular, the Parties' diversion ratio analysis includes consumers who did not switch (ie the 'loyal' customers who waited for Quidco to come back online). If these consumers are excluded, the estimated diversion ratio is around [redacted], which the CMA considers is indicative of the Parties being close competitors.
111. Moreover, given that this analysis only definitively identified switching to TopCashback and two other small cashback websites, the CMA placed limited weight on speculative diversion to unidentified money-saving websites, which could represent:
- (a) Consumers shopping at merchants directly without using alternative moneysaving websites, ie exiting the market;
 - (b) Consumers delaying their purchases to later that day or subsequent days; and/or
 - (c) Consumers not making any purchase.
112. In general, the CMA considered that it could only place limited weight on the Parties' analysis due to the short-term nature of Quidco's outage. The CMA believes that consumer behaviour in response to Quidco being unavailable for a few hours may not be an accurate reflection of how consumers would respond to a sustained deterioration of Quidco's consumer offer. In particular, it may understate the extent to which consumers would switch to TopCashback if Quidco's offering was permanently worsened.
113. The CMA therefore did not place much weight on the Parties' Black Friday 2016 diversion analysis and does not believe that this analysis provides evidence of the Parties facing significant constraints from other competitors (including voucher websites and/or reward websites).

– *'Last-click' diversion analysis*

114. The Parties submitted data from [redacted] showing the diversion within the network occurring after a consumer had clicked through to a merchant website from one of the Parties' websites, but where that Party did not ultimately win the sale (ie another money-saving website within the [redacted] network got the 'last-click'). This analysis showed that the highest proportion of sales lost by the Parties are to the various voucher websites ([50-60]% for TopCashback and

[50-60]% for Quidco), with fewer losses to other cashback websites ([20-30]% for TopCashback and [30-40]% for Quidco).

115. The Parties submitted that the diversion between the Parties was moderate, suggesting that they are not close competitors. The Parties also submitted that the results indicated that cashback and vouchers form part of the same frame of reference (as there is significant diversion to voucher websites) and that the Parties faced significant competitive constraints from, amongst others, voucher websites.
116. The CMA found that when sub-dividing the lost-sales to voucher websites (using the share of supply data from [X]) and the sales to cashback websites individually (using the share of supply data from [X]), the largest diversion was between the two Parties.
117. With regard to the constraint imposed by voucher websites in general, the CMA considers that cashback websites compete for consumers at several different points of their purchasing journey namely:
 - (a) When the consumer signs up to a cashback website;
 - (b) When the consumer chooses to use a money-saving website for a particular purchase; and
 - (c) When, for a particular purchase, the consumer has clicked through to a merchant from a money-saving website and subsequently completes the purchase through a different money-saving website.
118. The analysis submitted by the Parties only captures a certain type of consumer action (and therefore a certain type of competition) at the final step of the purchasing journey. The CMA considers that this narrow focus is likely to overstate the competitive constraint exercised by voucher websites for the following reasons:
 - (a) Consumers may choose between cashback websites on a long-term basis rather than comparing them for each purchase, whereas vouchers offer an immediate discount;
 - (b) Even where consumers compare the available offers between cashback websites for a particular purchase, they may do so before clicking through to the merchant's website;
 - (c) In contrast, merchant websites generally prompt consumers for voucher codes separately during the checkout process, meaning that the consumer will be reminded about vouchers specifically (rather than

cashback websites or other money-saving offers) after the consumer has already clicked through to the merchant's website; and

(d) The Parties submitted at the issues meeting that consumers who do not receive cashback after using a voucher code are often '*confused*' and '*frustrated*'. This suggests that they are unaware of the 'last-click-rule' rather than actively choosing to switch from cashback to vouchers.

– *Evidence from declined cashback claims*

119. The Parties submitted that sometimes after a consumer has made a purchase through one of the Parties' websites, cashback is not awarded. The Parties submitted that common reasons for such declined cashback claims include that:

- The sale was allocated to another money-saving website, eg because the consumer also used a voucher code, violating the 'last-click-rule';
- The terms and conditions for the cashback award were not met (eg the cashback offer was limited to new users only); and/or
- The consumer subsequently cancelled the order or returned the products.

120. The Parties submitted several examples of offers for which a large proportion of cashback claims had been declined as a result of the consumer using a voucher code. The Parties submitted that this indicated that there was significant switching between cashback and voucher websites, demonstrating that vouchers exercised a strong competitive constraint on the Parties.

121. However, the CMA found that declined transactions account for less than [5-10]% of TopCashback's total transactions, with declined transactions due to the sale being credited to another channel (including a voucher website) accounting for less than [0-5]% of TopCashback's total transactions. In this context, the CMA also found that for one of the examples submitted by the Parties, the total commission lost was negligible, with TopCashback losing only about £[0-500] in commission to a voucher. Furthermore, as set out at paragraph 118(d) above, the Parties submitted that consumers who do not receive cashback after using a voucher code are often '*confused*' and '*frustrated*', suggesting that they are unaware of the 'last-click-rule' rather than actively choosing to switch from cashback to vouchers.

122. The CMA therefore does not consider that the evidence from declined transactions provides evidence that vouchers exercise a strong competitive constraint on the Parties.

- *Internal documents*

123. The Parties submitted that they monitor other money-saving offer websites (including voucher websites and reward websites) through reports received from affiliate networks such as [X]. The Parties also submitted internal email correspondence which showed internal discussions on whether to respond to particular voucher code offers as well as email correspondence with merchants who cited exclusive offers with voucher websites and/or reward websites as a reason not to promote exclusive offers with the Parties. The Parties submitted that these documents showed that the Parties consider these websites as competitive constraints in their day-to-day operations.
124. The CMA found that the Parties' internal documents clearly and consistently showed that voucher websites and reward websites exercise only a limited constraint on the Parties. In particular, the CMA found that many of the Parties' strategy documents do not refer to any voucher and/or reward competitors, [X].
125. The CMA also found that even where the Parties' strategic documents did refer to voucher websites and/or reward websites, these references were often general (ie not referring to any particular competitor or to any particular competitive action taken) and/or caveated (eg [X]²⁷) and/or limited only to individual components of the Parties' overall strategy (eg [X]). In this context, the CMA also found that while affiliate network reports provided to the Parties discuss the performance of the Parties against other money-saving websites (including voucher websites and reward websites), the reports generally discuss competition between the Parties in more detail. The CMA also found that most of the Parties' strategic documents incorporating data from these affiliate network reports did not make use of the data on voucher websites and/or reward websites, concentrating instead on cashback.
126. With regard to the emails submitted by the Parties, the CMA notes that as part of its phase 1 investigation, it has not reviewed all emails by the Parties discussing the competitive dynamics (including crucially internal email correspondence referring to the other Party), meaning that the correspondence submitted by the Parties is self-selected. In light of the fact that the emails are inconsistent with the remainder of the evidence, including the Parties' more detailed strategic internal documents prepared by and for senior management and third-party views, the CMA has only placed limited weight on them as evidence of competitive constraints on the Parties from voucher websites and reward websites. Furthermore, these emails do not provide any probative evidence regarding the way in which consumers view

²⁷ Annex T6 to the Merger Notice.

the constraint imposed by voucher websites and/or reward websites on cashback websites.

- *Comparison of available offers between the Parties and voucher websites*

127. To understand whether voucher websites compete against the Parties across the range of merchants listed on the Parties' websites, the CMA undertook a comparison between the offers available on TopCashback, on Quidco and on three major voucher websites (VoucherCodes, VoucherCloud and MyVoucherCodes) for each of TopCashback's top 20 merchants in 2017.
128. The CMA viewed the offers available on each website on 14 November 2018. It then sorted each offer of Quidco and the voucher websites into the following categories, based on how the offer compared to TopCashback's offer:
- (a) Similar offer: an offer which covered a similar range of the merchant's products/services (eg both websites having an offer on the full range of products from that merchant), although the discount level may be different.
 - (b) More limited offer: an offer which covered a significantly more restricted set of the merchant's products/services (eg one website having an offer for the full range of products and the other having an offer on only certain products or on orders above a certain value).
 - (c) No offer: no offers available.²⁸
129. The results of this comparison are summarised in Figure 2 below, with 'similar offers' shown in green, 'more limited offers' shown in yellow and 'no offers' shown in grey.

²⁸ Voucher websites often list merchant's own deals alongside vouchers – these have not been counted as voucher site offers, as the consumer does not gain any benefit over going direct to merchant.

Figure 2: Comparison of offers between Parties and voucher websites

Retailer	TCB offer	Quidco	Voucher Codes	Voucher Cloud	My Voucher Codes
[X]	1-12%				
[X]	£40-180				
[X]	3%-10%				
[X]	4%				
[X]	£75-105				
[X]	1%-4%				
[X]	£60				
[X]	£40-125				
[X]	1.05%				
[X]	£50-80				
[X]	£5-80				
[X]	£10-70				
[X]	£35-90				
[X]	1.2%-13%				
[X]	£15/£30				
[X]	£50-110				
[X]	£15.75-£89.25				
[X]	£50-90				
[X]	1%-20%				
[X]	2.5%-10%				

130. As shown by the figure above, while Quidco provided a similar offer to TopCashback for each of the merchants, the voucher websites typically had no offer available, and where offers were available these were often more limited.
131. The Parties submitted their own version of this analysis. It showed that for all but one merchant, both Parties had offers available and that for half of the merchants compared, at least one voucher website did not have an offer available. The CMA was unable to place much weight on the Parties' analysis, because in contrast to the CMA's own analysis, it did not distinguish between offers qualitatively (ie on the basis of products and/or services covered by the offer). Rather it adopted a binary approach counting any offer (even if available only on a very limited range of products and/or for purchases over a certain value) as an equivalent offer.
132. The CMA considers that its analysis suggests that any constraint from voucher websites on the Parties is likely to be limited, as in most cases a

consumer would not be able to directly substitute from cashback to a voucher website.

- *Third party views*

133. The CMA received mixed views from voucher websites on whether they compete with the Parties:

(a) [redacted] voucher websites told the CMA that they compete with the Parties and monitor their offerings.

(b) [redacted] indicated that they did not compete with the Parties for consumers.

134. The CMA also received mixed views from reward websites on whether they compete with the Parties. While two told the CMA that they compete with the Parties, one reward website indicated that it did not compete with the Parties for consumers.

135. A few merchants and affiliate networks expressed concerns that voucher websites and/or reward websites would only impose a limited constraint on the Parties post-Merger. A few also expressed the concern that the Merger would result in a consolidation within affiliate marketing generally.

- *Conclusion on constraints from suppliers of money-saving offers and advertising via voucher websites and/or reward websites*

136. Based on the available evidence, in particular the high combined shares of supply even taking reward websites into account, the Parties' internal documents and the CMA's analysis of available offers between the Parties and voucher websites, the CMA believes that suppliers of money-saving offers and advertising via voucher websites and suppliers of money-saving offers and advertising via reward websites are a weak competitive constraint on the Parties.

Conclusion on horizontal unilateral effects

137. For the reasons set out above, the CMA believes that:

(a) The Parties hold a very significant market position in the supply of money-saving offers and advertising via cashback websites with a combined share of supply of [90-100]% with a significant increment being brought about by the Merger;

(b) The Parties are each other's closest competitors; and

(c) There will be insufficient competition post-Merger from cashback websites, voucher websites, or reward websites (whether individually or in aggregate) to constrain the merged entity.

138. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of money-saving offers and advertising via cashback websites in the UK.

Barriers to entry and expansion

139. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²⁹

140. The Parties submitted that barriers to entry for the supply of money-saving offers and advertising are low as initial set-up and staffing costs are modest, merchants can easily be acquired via affiliate networks and white-label solutions allow for easy scaling. In this context, the Parties submitted that TopCashback entered the US market in 2011 on a [redacted] budget of approximately £[redacted] and [redacted].³⁰ The Parties further submitted that other money-saving websites could easily expand into the cashback segment and that international cashback websites (such as ebates, which is a large cashback website in the US) could enter the UK.

141. Evidence received from third parties on barriers to entry and expansion was mixed, with some (including voucher websites and other money-saving websites) indicating that they could start offering cashback relatively cheaply and easily. However, the majority of money-saving websites (including voucher websites, reward websites and price comparison websites) identified barriers to successful entry and expansion, including the requirement for investment into branding and marketing, the difficulty in competing against established cashback brands and the need to increase staff headcount to deal with higher consumer service requirements. In this context, the Parties also submitted that there are limited profit incentives for entry into cashback because cash flows are less immediate than for other money-saving websites. In this context, the CMA notes that while TopCashback successfully entered

²⁹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

³⁰ The CMA understands that in the US, cashback websites on average only pass around 70% of commissions onto consumers. The CMA therefore considers that barriers to entry into the US are likely to be lower than barriers to entry into the UK.

the US market in 2011, it only started receiving meaningful revenue from merchant advertising ([redacted]) in [redacted], ie more than two years later.

142. The CMA therefore believes that while initial set-up costs and time might be relatively low, merely entering into the cashback market would not sufficiently constrain the Parties post-Merger, as any new entrant (including from outside the UK) would have to achieve significant scale before being able to compete with the Parties effectively. This is consistent with a [redacted] document [redacted], which lists a number of advantages to increasing scale, including featuring higher in search results and the ability to get higher commission rates from merchants.
143. Furthermore, the Parties submitted that there have been several recent exits from the market with cashback websites ILoveCashback.com and Cashback.co.uk, as well as voucher website WowcherChing ceasing to trade. The CMA believes that this provides further evidence of the difficulties for smaller money-saving websites to achieve sufficient scale to effectively constrain the Parties. In this context, the [redacted] document discussed at paragraph 142 above also notes that [redacted]. The CMA considers that [redacted].
144. The CMA therefore considers that the infrastructure and investment required as well as the strategic and marketing barriers mean that barriers to entry and expansion are high.
145. The CMA therefore considers that it cannot rely on entry or expansion being sufficient, timely and likely to prevent a realistic prospect of an SLC as a result of the Merger in the supply of money-saving offers and advertising via cashback websites in the UK.

Countervailing buyer power

146. 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. The existence of countervailing buyer power will be a factor in making an SLC finding less likely. If all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some, not all, customers of the merged firm possess countervailing buyer power. In such cases, the CMA assesses the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.³¹
147. The Parties submitted that merchants have significant buyer power as against cashback websites, because a few large customers account for significant

³¹[Merger Assessment Guidelines](#) paragraph 5.9.1.

proportion of the Parties' advertising revenue. In particular, TopCashback submitted that [X]% of its merchant base accounted for [X]% of its advertising revenue, with its largest merchant accounting for [X]% of its advertising revenue. The Parties further submitted that merchants determine commission rates paid to cashback websites on the basis of their expected return on investment and would therefore switch to different advertising channels in the event of the Parties attempting to increase advertising prices or lowering cashback passed through to consumers.

148. The CMA considers that generally, an individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, and 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. In this context, some of the Parties' large customers expressed the concern that the Merger would decrease their negotiation power, allowing the Parties to increase advertising prices.
149. On this basis and given that the Merger would result in a merger between by far the two largest UK cashback website competitors, the CMA does not believe that this buyer power condition is satisfied.
150. In addition, even to the extent that some merchants may be able to exercise some degree of negotiating power as against the Parties, the CMA notes that [0-5]% of the Parties' customer base in each case corresponds to about [40-50] merchants, meaning that a significant number of merchants would need to stop using cashback websites before this would result in meaningful revenue losses for the Parties. In addition, the CMA considers that even if some of the Parties' merchant customers possessed countervailing buyer power, these cannot be relied upon to protect all of the Parties' merchant customers, as advertising packages are typically negotiated individually meaning that favourable terms offered to one or some merchants do not have to be extended to all.
151. For the reasons described above, the CMA does not believe that countervailing buyer power is sufficient to mitigate the adverse effects of the Merger on competition in relation to the supply of money-saving offers and advertising via cashback websites in the UK.

Third party views

152. The CMA contacted customers (merchants) and competitors of the Parties and received several responses from consumers to its invitation to comment.

153. In addition to the third-party views detailed in the competitive assessment above, several merchants, affiliate networks, competitors and consumers raised concerns about the Merger, noting that it might lead to lower cashback rates for consumers and increased costs for merchants. In particular, some third-parties expressed the concern that the Merger would lead to a ‘*monopoly*’ in cashback websites.

Conclusion on substantial lessening of competition

154. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of money-saving offers and advertising via cashback websites in the UK.

Decision

155. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the UK.

156. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.³² The Parties have until 14 January 2019³³ to offer an undertaking to the CMA.³⁴ The CMA will refer the Merger for a phase 2 investigation³⁵ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides³⁶ by 21 January 2019 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Andrea Gomes da Silva
Executive Director, Mergers and Markets
Competition and Markets Authority

³² Section 33(3)(b) of the Act.

³³ Section 73A(1) of the Act.

³⁴ Section 73(2) of the Act.

³⁵ Sections 33(1) and 34ZA(2) of the Act.

³⁶ Section 73A(2) of the Act.

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ⁱ The second sentence of paragraph 104 should be read as follows: ‘However, the CMA also considers that the estimates submitted by the Parties are unlikely to accurately describe the competitive landscape because the Parties’ estimates compare the Parties’ margins to voucher websites’ revenues, meaning that they are likely to understate the cashback websites’ shares of supply.’