

Completed acquisition by CareTech Holdings plc of Cambian Group plc

Decision on relevant merger situation and substantial lessening of competition

ME/6775-18

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. On 19 October 2018, CareTech Holdings plc (**CareTech**) acquired Cambian Group plc (**Cambian**) (the **Merger**). CareTech and Cambian 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 CareTech and Cambian is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of:
 - (a) foster care placement services.
 - (b) residential care homes for children and young people (**children's homes**)
 - (i) with Special Educational Needs and Disabilities (**SEND**), (ii) with Social, Emotional and Mental Health (**SEMH**) conditions, and (iii) aged 16+ and leaving care; and
 - (c) specialist education services (**specialist schools**) for children and young people with (i) SEND and (ii) SEMH conditions.

4. Local Authorities (**LAs**) have statutory duties to provide these services to qualifying children and young adults.¹ LAs can offer these services ‘in-house’ (ie using their own facilities and staff), or they can procure them from private providers.² The CMA found that LAs have a strong preference to place a child in one of their in-house services, causing private providers to compete in a ‘spill-over’ market for remaining placements.
5. The CMA received evidence that some providers operate nationally, and some use national pricing for some types of placements. However, the CMA found that procurement by LAs has a strong local dimension. Even in cases where LAs are unable to make placements using their in-house provision, they seek to find placements that best meet the needs of each child as close to their original community as possible. In any case, the CMA found that the Merger does not give rise to competition concerns at a national level because the Parties have very low combined national shares.
6. In relation to foster care placement services, the CMA followed the approach it adopted in *National Fostering Agency / Acorn Care*³ and assessed the Merger in the supply of foster care placement services at both a framework level and a LA level. The CMA found that the Parties’ combined shares of supply are low on any plausible basis, and the Merger does not give rise to competition concerns. As a result, the CMA did not have to carry out a more detailed competitive assessment of foster care placement services.
7. In relation to children’s homes and specialist schools, the CMA assessed the Merger, distinguishing between different SEND and SEMH services, in three potential geographic frames of reference:
 - (a) 80% catchment areas
 - (b) 20-mile catchment areas
 - (c) 50-mile catchment areas
8. These geographic frames of reference reflect the CMA’s practice of considering the area which captures 80% of a site’s customers, but they also recognise third-party evidence that competition to supply places in children’s

¹ See Children Act 1989, Local Authority Social Services Act 1970, Regulations 22 and 23 Care Planning, Placement and Case Review (England) Regulations 2010, and Education Act 1996.

² In addition to LAs, these services can be supplied by independent voluntary organisations or by providers in the private sector. For the purposes of this decision, references to ‘private’ or ‘independent’ providers should be understood as capturing all non-LA providers.

³ Completed acquisition by SSCP Spring Topco Limited of Acorn Care and Education Group, ME/6640/16

homes and specialist schools in many cases takes place within narrower catchment areas.

9. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in relation to horizontal unilateral effects in the supply of children's homes or specialist schools.
10. The CMA used a combined share of supply filter of 30%, applied to each product segment and geographic frame of reference, to identify overlap areas in which to conduct a more detailed assessment. On this basis, the CMA identified six residential children's homes and one specialist school in four different areas where competition concerns could not be excluded on the basis of this filter:
 - (a) North Yorkshire (children's homes, 50-mile catchment area)
 - (b) Middlesbrough (children's homes, 20-mile catchment area)
 - (c) Herefordshire (children's homes, 20-mile catchment area);
 - (d) Stockton-on-Tees (specialist school, 20-mile catchment area).
11. The CMA concluded that the Merger does not give rise to an SLC in any of these areas because:
 - (a) In both North Yorkshire and Middlesbrough, CareTech's overlapping children's homes are part of a 50:50 joint venture with Stockton Borough Council (the **JV**). For the reasons given below, these sites are therefore akin to LA in-house provision. The Parties' sites do not compete closely for placements in this area.
 - (b) In Herefordshire, the Parties have a combined market share over 30% within a 20-mile catchment area, although the Parties' 80% catchment area is over 90 miles. Very few of the Parties' placements come from within 20 miles. The CMA also received evidence [redacted] that the average distance of placements in SEMH children's homes in this area is approximately [redacted] miles, over which distance the Parties' combined market shares would also fall below 30%.
 - (c) In Stockton-on-Tees, CareTech's specialist school is part of the JV (see (a)), which again indicates that the Parties are not competing closely. In addition, the CMA received evidence that a competing provider will open a new school in the area this year, which will reduce the Parties' combined market share below 30% in the relevant catchment area.

12. Based on this evidence, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
13. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

14. CareTech is a provider of community care services in the UK, offering specialist support to adults, young people, and children. The turnover of CareTech in 2017 was approximately £166 million in the UK.
15. Cambian is a provider of specialist education and behavioural health services for children with complex needs and care requirements in England and Wales. The turnover of Cambian in 2017 was approximately £196 million in the UK.

Transaction

16. On 16 August 2018, the boards of CareTech and Cambian announced the terms of a recommended acquisition under which CareTech would acquire the entire issued (and to be issued) share capital of Cambian under a reverse takeover under the AIM rules and the City Code on Takeovers. The acquisition was implemented by way of a court sanctioned scheme of arrangement under part 26 of the Companies Act 2006.

Procedure

17. The Merger was considered at a Case Review Meeting.⁴

Jurisdiction

18. Each of CareTech and Cambian is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
19. The UK turnover of Cambian exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

20. The Merger completed on 19 October 2018. The four-month deadline for a decision under section 24 of the Act is 13 March 2019, following extensions under section 25(2) of the Act.
21. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
22. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 December 2018 and the statutory 40 working day deadline for a decision is therefore 11 February 2019.

Counterfactual

23. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers, the CMA generally adopts the pre-merger 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, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁵
24. In the present case, the CMA found no evidence supporting a different counterfactual, and CareTech and third parties did not put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Frame of reference

25. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. 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.⁶

⁵ [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).

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

Product scope

26. The Parties overlap in the provision of:
- (a) foster care placement services.
 - (b) children's homes for children and young people (i) with SEND (ii) with SEMH conditions, and (iii) aged 16+ and leaving care; and
 - (c) specialist schools for children and young people with (i) SEND and (ii) SEMH conditions.
27. LAs have statutory duties to provide these services to qualifying children and young adults.⁷ LAs can offer these services in-house or they can procure them from private providers. When procuring these services from private providers, LAs can do so through framework agreements,⁸ which are operated either by a single LA or a consortium of LAs (with one LA typically taking the lead), or on a case-by-case (or 'spot') basis.
28. The CMA considered whether it should assess the impact of the Merger separately for (i) services provided by LAs in-house and services provided by private providers, and (ii) different types of foster care placement services, children's homes, and specialist schools.

Segmentation by provision of services by private providers and LAs

29. The Parties submitted that services provided by LAs compete with private providers.
30. In relation to fostering services, the Parties disagreed with the approach adopted by the CMA in *National Fostering Agency / Acorn Care*, in which LA in-house provision was excluded from the market. The Parties said that LAs and private providers are both regularly invited to bid to be on framework agreements operated either by a single LA or a consortium of LAs.
31. However, the CMA did not receive any evidence during its investigation to indicate that the market for fostering services has changed since the *National Fostering Agency / Acorn Care* decision. As stated in that case, LAs typically seek to place children in their in-house network of carers first and therefore do not, in practice, choose between a private provider and their in-house

⁷ See Children Act 1989, Local Authority Social Services Act 1970, Regulations 22 and 23 Care Planning, Placement and Case Review (England) Regulations 2010, and Education Act 1996.

⁸ Framework agreements set out the commercial terms on which private providers agree to provide certain services.

network. For this reason, the CMA believes that private fostering services can be distinguished from those provided by LAs.

32. In relation to children's homes, the Parties submitted that LAs have a range of options when looking to place a child and will consider both public and private providers.
33. However, the evidence that the CMA received indicated that children's home services are provided, in the first instance, by LAs in their own sites. Third parties told the CMA that, in most cases, LAs will only consider private providers after the options to place a child in a LA site have been exhausted, particularly since the cost to LAs of placing a child with a private provider is typically higher. For these reasons, the CMA believes that residential children's home services provided by private providers can be distinguished from those provided by LAs.
34. In relation to specialist education, the Parties submitted that public sector specialist schools (provided by LAs) compete on an equal footing with private providers, particularly in relation to day schools. The Parties said that parents are the ultimate decision-makers as to which school their child attends, rather than the LA, so private schools are considered alongside LA schools.
35. The CMA found that LAs, in carrying out their statutory functions, must have regard to the views of the child and of the child's parents.⁹ Therefore, if a request is made for a particular specialist education facility, the LA must, in line with that preference, name the school or college in the child's Education, Health and Care plan unless (i) it would be unsuitable for the age, ability, aptitude or SEND of the child or young person, or (ii) the attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources. However, the CMA noted that the LA remains the ultimate decision-maker, not the child or the child's parents. Moreover, as with fostering services and children's homes, the CMA found that LAs generally have a preference for in-house provision as it is typically available at lower cost than private provision. For these reasons, and on a cautious basis, the CMA believes that private specialist schools can be distinguished from those provided by LAs.
36. Therefore, on a cautious basis, the CMA has assessed the impact of the Merger in the supply of services provided by private providers separately from those provided by LAs in-house.

⁹ See Children and Families Act 2014

Segmentation by type of service

Foster care placement services

37. The CMA considered the market for foster care placement services in *National Fostering Agency / Acorn Care*.¹⁰ In that case, the CMA concluded that it was appropriate to assess the Merger based on the overall supply of foster care placement services, rather than focusing on any particular category of service. The Parties agreed with this approach.
38. The CMA found no evidence to suggest it should adopt a different approach in the present case. Therefore, the CMA has assessed the Merger in the overall supply of foster care placement services.

Children's homes

39. Children's homes cater to children and adolescents with a wide range of complex needs. Some of these children may struggle to communicate easily with others, to understand their own feelings or needs, or to manage relationships and situations. For some children, this is due to a disability, whilst for others it is due to trauma, neglect or abuse.
40. The Parties submitted that this market can be segmented according to children's homes offering services for children with:
 - (a) SEND – this includes children and young people suffering from: Autistic Spectrum Disorder (**ASD**); Asperger's Syndrome (**AS**); and severe Learning Difficulties (**LD**)
 - (b) SEMH conditions – this includes children and young people suffering from emotional and social difficulties, and challenging behaviours, possibly triggered by abuse and neglect, sexual abuse and exploitation, or a major trauma; and
 - (c) Young adults (aged 16+) leaving care – this includes young people learning life skills in order to prepare for integration into the community after leaving care.
41. The Parties submitted that the type of care and cohort of children differs between homes. The CMA therefore considered whether the product frame of

¹⁰ Completed acquisition by SSCP Spring Topco Limited of Acorn Care and Education Group, ME/6640/16

reference should (i) include all children's homes; (ii) identify segments for each category of home; or (iii) segment further within each category of home.

- *All children's homes*

42. The CMA noted that SEND, SEMH and 16+ homes are not substitutable from a demand-side perspective as the children in these homes will have different needs and it will not generally be appropriate to home them together.
43. While the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, the CMA may widen the scope of the market where there is evidence of supply-side substitution. The CMA therefore considered whether providers switch between different types of children's homes.
44. The Parties submitted that there are certain costs in switching between types of home. These costs include (i) a change of registration through Ofsted, (ii) potential changes to the environment to accommodate different children's needs, (iii) changing the staffing capability to meet the needs of a different cohort of children, including any costs of staff redundancy, recruitment, and training, and (iv) the opportunity cost of running a site at reduced occupancy in the process of switching.
45. The CMA also received evidence from the Parties' competitors indicating that, although some private providers have repurposed a few homes in recent years, this is relatively rare, and providers are more inclined to open new sites than to repurpose existing sites, in particular as there is currently high demand and relatively low capacity in the market.
46. Based on this evidence, the CMA believes that it is not appropriate to assess the Merger in a product frame of reference for all children's homes.

- *Children's homes for children and young people with SEND*

47. In relation to children's homes for children and young people with SEND, the Parties submitted that no further segmentation is necessary because many residential homes admit a mix of children and young people with different types of SEND, and children may be diagnosed with more than one condition.
48. The CMA found that it was not necessary for it to conclude on this point as no competition concerns arise under any plausible product frame of reference.

- *Children's homes for children and young people with SEMH*

49. The Parties submitted that children's homes for children and young people with SEMH should be further segmented on the basis of services offered to children who:
- (a) have suffered from sexual trauma (eg through sexual exploitation or abuse), who are typically admitted to specialist children's homes with children who have suffered similar life events;
 - (b) exhibit harmful sexualised behaviour (ie children who are at risk of sexually exploiting/abusing others), who are typically admitted to separate children's homes (and kept away from children who have suffered sexual trauma and do not exhibit harmful sexualised behaviour);
 - (c) are deaf and also suffer from SEMH conditions, who are typically admitted to homes with staff specifically trained in British Sign Language to help children receive the appropriate care; and
 - (d) have other SEMH conditions (ie a range of emotional, behavioural, developmental and attachment problems), who can generally be housed together.
50. In relation to the first three types of SEMH conditions, the CMA received evidence from third parties confirming that children exhibiting these conditions are typically placed in homes purposed for such children. The Parties do not overlap in the provision of these services, so the CMA did not have to consider the provision of these services further.
51. In relation to 'general' SEMH conditions, the CMA noted that Ofsted's classifications at registration do not distinguish between any further categories of general SEMH conditions. The CMA also received evidence from third parties indicating that, although providers increasingly offer more specialised services (eg homes catering to children exposed to gang-related violence), most children's homes cater to children with a wide range of emotional and behavioural conditions ie "general" SEMH conditions. The evidence received by the CMA therefore supports the Parties' proposed segmentation. Nevertheless, the CMA recognised the fact that some providers of general SEMH children's homes might offer differentiated services within its competitive assessment.

- *Children's homes for young adults (aged 16+) leaving care*

52. Children's homes for young adults (aged 16+) have the objective of teaching young people life skills to prepare them for integration into the community.

The Parties submitted that these homes should be considered as a separate product frame of reference since children under the age of 16 cannot be placed with young adults over the age of 16, and vice versa.

53. The evidence received by the CMA supported this segmentation. Therefore, the CMA has assessed the Merger in a distinct frame of reference for children's homes for young adults (aged 16+) leaving care.

Specialist schools

54. Specialised education services are provided to children and young adults with additional learning needs.
55. The Parties submitted that the market for specialist schools should be segmented as follows:
- (a) specialist schools for pupils with SEND, which can be segmented further between schools for pupils with:
 - (i) ASD (ie low-functioning autism) and LD; and
 - (ii) AS (ie high-functioning autism);
 - (b) specialist schools for pupils who have suffered sexual trauma (ie children who have been sexually abused or exploited);
 - (c) specialist schools for pupils who exhibit harmful sexualised behaviour (ie that are at risk of sexually abusing or exploiting others); and
 - (d) specialist schools for pupils with general SEMH conditions (ie with a range of emotional, behavioural, developmental and attachment problems).
56. The Parties submitted that the different types of specialist school cannot be considered demand-side alternatives. For example, pupils with AS will not be able to attend a school for pupils with general SEMH conditions, and pupils who have suffered sexual abuse cannot attend a specialist school for those who exhibit harmful sexual behaviour.
57. The Parties also said that there are limitations to switching on the supply side. Teachers and support staff specialise in providing education services specifically targeted to children with a particular condition. Specialist schools also seek to have the right mix of children in order to create a harmonious environment. Moreover, if a school sought to switch, existing pupils would need to be placed in other schools before pupils with a different condition

could be admitted. Therefore, transitioning from one service type to another would take considerable time.

58. The evidence that the CMA received from third parties supported the Parties' views. Therefore, the CMA has assessed the Merger in distinct frames of reference for the different categories of specialist school as set out above.

Conclusion on product scope

59. For the reasons set out above, and on a cautious basis, the CMA has assessed the impact of the Merger in the following product frames of reference:

- (a) foster care placement services;
- (b) children's homes for children and young people with SEND;
- (c) children's homes for children and young people with SEMH conditions, further segmented by the following specialisms:
 - (i) sexual trauma;
 - (ii) harmful sexualised behaviour;
 - (iii) deafness;
 - (iv) general SEMH (ie a range of emotional, behavioural, developmental and attachment problems);
- (d) children's homes for young adults aged 16+ who are leaving care;
- (e) specialist schools for children and young people with SEND, further segmented by the following specialisms:
 - (i) ASD and LD;
 - (ii) AS;
- (f) specialist schools for children and young people with SEMH conditions, further segmented by the following specialisms:¹¹

¹¹ The Parties do not overlap in the provision of specialist schools for children and young people who (i) have suffered sexual trauma, (ii) exhibit harmful sexualised behaviour, or (iii) are deaf. The CMA therefore did not have to reach a conclusion on the geographic frame of reference for these services, and they are not discussed further in this decision.

- (i) sexual trauma;
- (ii) harmful sexualised behaviour;
- (iii) deafness;
- (iv) general SEMH conditions.

Geographic scope

Foster care placement services

60. In *National Fostering Agency / Acorn Care*, the CMA considered the geographic market at both the framework level and at the LA level.
61. In the present case, the evidence available to the CMA indicates that the Parties' combined shares of supply¹² are (i) less than 5% at a national level; (ii) less than 10% at any framework level; and (iii) less than 30% at any LA level. On the basis of these shares, the CMA believes that the Merger does not give rise to competition concerns on any plausible basis. For this reason, these services are not discussed further in this decision.

Children's homes and specialist schools: national v local

62. In order to determine the appropriate geographic frame of reference, the CMA considered whether competition between children's homes and between specialist schools takes place nationally and/or locally.
63. The evidence that the CMA received indicates that demand for children's homes and specialist schools has a strong local dimension as:
- (a) LAs seek to find placements which best meet the needs of each child as close to their original community as possible and, in many cases, within the LA itself or within 20 miles of the LA;
 - (b) competitors vary between regions in the UK as the market is highly fragmented, with even large multi-regional providers tending to have a stronger presence in some regions than others;
 - (c) procurement for a significant proportion of placements takes place on a spot basis, with terms in part negotiated bilaterally between the LA and

¹² Based on the Parties' data for their placements and Department for Education data for total placements as at 31 March 2018

the private provider. As such, the terms may vary in response to local competitive conditions;

(d) even where LAs do seek to procure services in advance of individual placement decisions via framework agreements, these agreements are local or regional rather than national, with prices and other terms varying between different areas.¹³

64. This evidence suggests that suppliers compete most closely with each other at a local level.
65. However, the CMA also received some evidence indicating that suppliers compete to some extent on a more aggregated or national basis. First, the Parties submitted that they set their headline prices for some of their services at a national level; and second, the Parties said that they try to maintain a consistent quality standard across all their sites. However, evidence from third parties indicated that larger, multi-regional providers do not tend to offer better quality or more innovation than local providers. LAs indicated that small local providers are able to offer similar standards of care as that offered by large multi-regional providers. Moreover, the CMA noted that the four largest suppliers of children's homes or specialist schools together have less than or around 20% of any relevant national market. Therefore, the evidence received by the CMA does not suggest that competition is currently predominantly national or driven by large multi-regional suppliers.
66. Based on this evidence, the CMA believes that competition in the supply of children's homes and specialist schools currently takes place primarily at a local level. However, the CMA does not exclude that the dynamics of competition could change in the future (eg in the event of continued consolidation). Currently, the Parties' combined market shares at a national level are less than or around 10% in any overlapping service and, therefore, even on a national basis, the CMA does not believe that any competition concerns would arise from the Merger. For this reason, national concerns are not discussed further in this decision.

¹³ In addition, placements made through framework agreements can still involve some bilateral negotiation between the LA and the private provider in relation to fees for additional services.

Local competition for children's homes and specialist schools

The role of framework agreements

67. As noted above, LAs commission services from private providers through framework agreements or through individual negotiations on a spot basis.
68. Framework agreements set out the terms (such as the services offered and the price) under which private providers will provide the relevant service in the specified period. The terms of the framework can specify a variation if the child or young person requires additional services. Most LAs have many framework providers.
69. The CMA found that some LAs do not have any framework agreement for procuring children's home or specialist school services. In addition, even LAs which do have framework agreements often cannot find a supplier willing to offer the relevant services under the terms of the framework. LAs therefore commission a significant proportion of their placements off-framework (ie spot placements).
70. The CMA has not distinguished between framework and off-framework procurement for children's home or specialist school services for the purposes of determining the relevant geographic scope. While the terms of framework agreements may represent a competitive constraint on participating suppliers, the geographic scope could be wider than the area covered by a framework because LAs often place children in sites outside of this area. It could also be narrower in cases where, for example, strong local suppliers have a disproportionate influence on the terms of the framework due to LAs preference for placing children close to their local community, or where there is scope for further negotiation of framework terms at the placement stage. Therefore, the CMA has instead considered different catchment areas to capture the set of suppliers that LAs will consider when making a placement decision, whether on-framework or off-framework.

Catchment areas

71. Catchment areas are a pragmatic approximation for a candidate market.¹⁴ In cases involving local markets, the CMA typically uses catchment areas which capture 80% of a site's sales or customers. However, the CMA may adjust its starting point where there is evidence that this is appropriate.¹⁵

¹⁴ See [The CMA's Merger Assessment Guidelines](#), at paragraph 5.2.25

¹⁵ See [The CMA's Retail mergers commentary](#), dated 10 April 2017, at paragraph 2.20.

72. In the present case, the CMA assessed the impact of the Merger in the usual 80% catchment area. However, the CMA also received evidence from third parties that the geographic frame of reference for children's homes and specialist schools may be considerably narrower. LAs told the CMA that, provided it is in the best interests of the child, they generally seek to place a child as close to the child's community as possible. Therefore, when comparing alternative service options, LAs start by looking locally. LAs said that most long-distance placements are simply due to capacity constraints in the local area.¹⁶ Competitors also confirmed that, when they consider what gaps exist in the market, they do so locally.
- *80% catchment area*
73. The CMA assessed the Merger on the basis of the Parties' average 80% catchment area for each of their children's homes and specialist schools. As described below, the Merger does not give rise to any competition concerns within this geographic frame of reference.
- *20-mile catchment area*
74. The CMA received evidence that a catchment area of approximately 20 miles is a relevant consideration for LAs when making placements to a children's home or specialist school. Third Parties said that placing children close to their community is a target which LAs take seriously, and independent reports confirmed that a significant proportion of children are placed within 20 miles of their local community.¹⁷
75. Based on this evidence, the CMA believes that it is appropriate to assess the Merger in a 20-mile geographic frame of reference around each children's home and specialist school.
- *50-mile catchment area*
76. The CMA requested evidence from LAs regarding the average distances over which they place children in children's homes and specialist schools. The evidence received by the CMA showed that there is a wide range of distances over which different LAs make placements. The average distance across all

¹⁶ In some rare cases, LAs will deliberately place children far from their community (eg children who have suffered sexual trauma or are at risk of gang violence).

¹⁷ [Sir Martin Narey's 2016 report on Residential Care in England](#) found that up to 63% of children were placed within 20 miles from home or within their LA. The Department of Education's report on [Children looked after in England \(including adoption\), year ending 31 March 2018](#) shows that, as of 31 March 2018, 51% of all looked-after children in secure units, children's homes or semi-independent accommodation were living within 20 miles of their home.

the LAs that responded to the CMA's questionnaire was approximately 50 miles. Based on this evidence, the CMA believes that it is appropriate to assess the Merger in a 50-mile geographic frame of reference around each children's home and specialist school.

77. The CMA believes that these three catchment areas enabled it to conduct a broad assessment of competition in the supply of the relevant services. Where appropriate, the CMA considered evidence of competitive constraints outside of these catchment areas.

Conclusion on geographic scope

78. For the reasons set out above, and on a cautious basis, the CMA has assessed the impact of the Merger within (i) 20-mile catchment areas, (ii) 50-mile catchment areas, and (iii) 80% catchment areas. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since no competition concerns arise on any plausible basis.
79. The CMA found that the Parties do not overlap within these catchment areas in the provision of children's homes or specialist schools for children and young people who (i) have suffered sexual trauma, (ii) exhibit harmful sexualised behaviour, or (iii) are deaf. The Parties also do not overlap in the provision of specialist schools for children and young people with AS within these catchment areas. These services are therefore not discussed further in this decision.

Conclusion on frame of reference

80. For the reasons set out above, the CMA has considered the impact of the Merger on local competition within (i) 20-mile catchment areas, (ii) 50-mile catchment areas, and (iii) 80% catchment areas in the following product frames of reference:
- (a) children's homes for children and young people with SEND;
 - (b) children's homes for children and young people with general SEMH conditions;
 - (c) children's homes for young adults aged 16+ leaving care;¹⁸
 - (d) specialist schools for children with SEND (ASD and LD); and

¹⁸ The CMA did not have to consider a 50-mile geographic frame of reference for these services because the Parties' 80% catchment area was under 50 miles.

- (e) specialist schools for children with general SEMH conditions.

Competitive assessment

Horizontal unilateral effects

81. 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.¹⁹ Horizontal unilateral effects are more likely when the merging parties are close competitors.
82. 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 five frames of reference set out above.

Shares of supply filter

83. The CMA regularly uses filters to screen out overlap areas where there is no realistic prospect of competition concerns. This allows the CMA to focus on the remaining overlap areas, in which a more detailed local analysis may be required.²⁰ In the present case, the CMA used a filter based on the Parties' combined share of supply in each frame of reference.²¹
84. In deciding the appropriate level of the filter, the CMA identified some factors which pointed towards using a lower level filter than might typically be applied in local cases.²² In particular, the CMA found that (i) in some areas, competitors may be unable to compete for placements because they are already operating at full capacity; and (ii) providers registered as offering general SEMH services sometimes offer differentiated services (eg by specialism, age, gender, or acuity). However, to address the second point, the CMA reviewed evidence from the most recent Ofsted inspection reports for the competing services in the areas in which the Parties overlap (which give more granular and up-to-date descriptions of the services provided), and contacted several third parties operating these services. The CMA found that most homes identified in Ofsted's inspection reports as offering general

¹⁹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

²⁰ [Retail Mergers Commentary](#), from paragraph 3.1

²¹ The CMA used shares of capacity as the best-available measure of market shares.

²² The CMA's [Merger Assessment Guidelines](#) state that previous CMA merger decisions in markets where products are undifferentiated suggest that combined market shares of less than 40% will not often give the CMA cause for concern. See paragraph 5.3.5.

SEMH services do cater to children with a wide range of emotional and behavioural conditions and are not highly specialised or differentiated.

85. Based on this evidence, and on a cautious basis, the CMA decided to use a 30% filter to identify overlap areas where a more detailed assessment is required.

Sites with combined shares of supply higher than 30%

86. Table 1 lists the Parties' sites with combined shares of supply higher than 30%.

Table 1: Parties' sites with combined shares which fail the 30% filter

| <i>Operator</i> | <i>Site</i> | <i>Capacity (no of children)</i> | <i>Service</i> | <i>LA</i> | <i>Combined capacity share 20mi (%)</i> | <i>Combined capacity share 50mi (%)</i> |
|-----------------|-------------------|--|-------------------|------------------|---|---|
| Cambian | Cambian Home A | 4 | Children's home | North Yorkshire | | [40-50] |
| Cambian | Cambian Home B | 2 | Children's home | North Yorkshire | | [40-50] |
| Cambian | Cambian Home C | 2 | Children's home | North Yorkshire | | [40-50] |
| Cambian | Cambian Home D | 1 | Children's home | Middlesbrough | [30-40] | |
| Cambian | Cambian Home E | 4 | Children's home | Middlesbrough | [30-40] | |
| Cambian | Cambian Home F | 3 | Children's home | Herefordshire | [30-40] | |
| CareTech | King Edwin School | 50 | Specialist school | Stockton-on-Tees | [30-40] | |

Source: CMA analysis

87. The CMA assessed whether there is a realistic prospect that the Merger will give rise to an SLC in any of these areas.

North Yorkshire children's homes

88. The CMA identified three Cambian general SEMH children's homes in North Yorkshire with shares of supply above 30% in a 50-mile catchment area:

- (a) Cambian Home A (4 beds)
- (b) Cambian Home B (2 beds)
- (c) Cambian Home C (2 beds)

89. These sites overlap with three CareTech general SEMH children's homes in Stockton-on-Tees, which are between [40-50] miles away.

90. The Parties submitted that the Merger does not give rise to competition concerns in North Yorkshire because:

- (a) The three overlapping CareTech sites are part of Spark of Genius North East, which is a 50:50 joint venture between CareTech and Stockton

Borough Council. These homes are operated by the JV primarily for the benefit of Stockton Borough Council, [REDACTED]. For this reason, these sites operate akin to LA in-house provision. [REDACTED].

(b) The 80% catchment area of these Cambian homes is [130-140] miles, at which distance the Parties' combined shares are below 30%.

(c) [REDACTED] children placed at the Cambian homes in the last three years have come from within 50 miles indicating that the Parties' are not competing closely in an area of this size.

91. The CMA confirmed with third parties that the JV is operated primarily for the benefit of Stockton Borough Council.

92. Based on this evidence, the CMA believes that there is no realistic prospect of the Merger giving rise to an SLC in children's homes in North Yorkshire.

Middlesbrough children's homes

93. The CMA identified two Cambian general SEMH children's homes in Middlesbrough with market shares above 30% in a 20-mile catchment area:

(a) Cambian Home D (1 bed)

(b) Cambian Home E (4 beds)

94. These sites overlap with three CareTech general SEMH children's homes in Stockton-on-Tees, which are between [0-10] miles away.

95. The Parties submitted that the Merger does not give rise to competition concerns in Middlesbrough because, among other things, the overlap is again with the three CareTech homes that form part of the JV. As noted above, the CMA found that the JV is akin to LA in-house provision.

96. The CMA also noted that the Parties' combined market shares around these two Cambian sites are only slightly above 30%, and no concerns arise on a wider catchment area.

97. Based on this evidence, the CMA believes that there is no realistic prospect of the Merger giving rise to an SLC in children's homes in Middlesbrough.

Herefordshire children's homes

98. The CMA identified one Cambian general SEMH children's home in Herefordshire with a market share above 30% in a 20-mile catchment area:

(a) Cambian Home F (3 beds)

99. This site overlaps with one CareTech general SEMH children's home in Herefordshire ([REDACTED]), which is [10-20] miles away.
100. The Parties submitted that the Merger does not give rise to competition concerns in Herefordshire because, [REDACTED]. The Parties submitted that the 80% catchment area at this site is over 90 miles, and [REDACTED] of its occupants come from over 50 miles away.
101. The CMA received evidence that, consistent with the Parties' submissions, the 20-mile catchment area may be particularly conservative in this local area. [REDACTED]. The CMA estimated that the Parties' combined market share would drop to below 30% on the basis of a catchment area of 25 miles or greater.
102. Based on this evidence, the CMA believes there is no realistic prospect of the Merger giving rise to an SLC in children's homes in Herefordshire.

Stockton-on-Tees specialist schools

103. The CMA identified one CareTech general SEMH specialist school in Stockton-on-Tees, with a market share above 30% in a 20-mile catchment area:

(a) King Edwin School (50 pupils)

104. This site overlaps with Cambian's Hartlepool school in Stockton-on-Tees.

105. The Parties submitted that the Merger does not give rise to competition concerns in Stockton-on-Tees because:

(a) King Edwin is part of the JV with Stockton Borough Council (akin to in-house provision).

(b) Witherslack, a competing provider of specialist schools, plans to open a new school (Hartwell School) for up to 80 pupils with general SEMH conditions within five miles of King Edwin School. The Parties' combined market share including Hartwell School would drop to below 30%.

(c) There is an additional competitor within 21 miles from King Edwin (Ashbrooke School) with a capacity for 80 pupils. The Parties' combined market share including Ashbrooke School (excluding Hartwell School) would drop to below 30%.

106. The CMA received evidence confirming that Witherslack would be opening Hartwell School for children with general SEMH conditions in summer 2019. Over time, it would increase the number of children at the school up to 80.
107. Based on this evidence, the CMA believes there is no realistic prospect of the Merger giving rise to an SLC in specialist schools in Stockton-on-Tees.

Conclusion on horizontal unilateral effects

108. For the reasons set out above, the CMA believes that there is no realistic prospect of the Merger giving rise to an SLC in children's homes or specialist schools in any geographic area.

Decision

109. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
110. The Merger will therefore **not be referred** under section 22(1) of the Act.

Andrea Gomes da Silva
Executive Director, Markets and Mergers
Competition and Markets Authority
8 February 2019