

Completed acquisition by Nutrius UK Bidco Limited of Partnerships in Children's Services Limited and Boston HoldCo B Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6799/19

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 29 May 2019. Full text of the decision published on 20 June 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. On 17 January 2019, CapVest Partners LLP (**CapVest**), acting through its subsidiary Nutrius UK Bidco Limited (**Nutrius**), a holding company of Core Assets Group (together referred to as **CAG**) acquired Partnerships in Children's Services Limited and Boston HoldCo B Limited (**Boston HoldCo**) (together referred to as **PICS**) (the **Merger**). CAG and PICS 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 CAG and PICS is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply 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 fostering placement services to local authorities (**LAs**) in the United Kingdom. Fostering placement services may be provided either through the LA's in-house network of foster carers or through independent fostering agencies (**IFAs**), such as the Parties. LAs have statutory duties to provide these services to qualifying children and young

adults in their local area.¹ LAs seek to find placements that best meet the needs of each child as close to their original community as possible.

4. The CMA received evidence that some providers (including the Parties) operate nationally, and some set certain parameters of their offering nationally. However, the evidence available to the CMA indicated that competition in the supply of fostering placements is predominantly local.
5. Fostering placement services provided by IFAs are typically procured through framework agreements, operated either by a single LA or a consortium of geographically proximate LAs. Framework agreements provide the key commercial terms on which fostering placements are made with IFAs. When an individual LA has a child to place into foster care (and is unable to do so within its in-house network of foster carers), the LA will contact IFAs on the framework and contract with the relevant IFA on the terms set out in the framework. However, the CMA also found some evidence that there was scope to further discuss or vary framework terms at the placement stage and that these discussions could be affected by competition between IFAs.
6. Having taken into account these features, the CMA has assessed the effects of the Merger: (i) nationally, across the UK; (ii) at the framework level, in relation to the geographic area covered by a given framework; and (iii) at the placement stage, in relation to individual LAs (ie at the LA level).
7. The evidence available to the CMA from shares of supply, the Parties' internal documents, and third parties indicates that the Parties were not competing particularly closely pre-Merger and will continue to face sufficient competition post-Merger across all of the areas in which they overlap.
8. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
9. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

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.

ASSESSMENT

Parties

10. CapVest, a limited company based in London, controls Nutrius (see endnote) which is the indirect parent of CAG. CAG is a fostering and children's services provider with operations in England, Scotland, Wales and Northern Ireland. CAG owns four agencies: (a) Foster Care Associates, (b) Foster Care Associates Scotland, (c) Fostering People, and (d) Active Care Solutions. The turnover of CAG for the year-ended 31 December 2017 was £ [X] million in the UK.
11. PICS is a fostering and specialist education services provider with operations in England and Scotland. PICS owns four agencies: (a) ISP, (b) Fosterplus, (c) Clifford House, and (d) Orange Grove. The turnover of PICS for the year-ended 31 March 2018 was £ [X] million in the UK.

Transaction

12. On 17 January 2019, Nutrius completed the purchase of the entire share capital of Partnerships in Children's Services Limited. On the same date, Nutrius completed the purchase of the entire share capital of Boston HoldCo. The two acquired entities owned the four fostering agencies that comprised the PICS business.
13. The Parties informed the CMA that the Merger has not been notified in any other jurisdiction as all of PICS' revenue is generated in the UK.

Procedure

14. The CMA's mergers intelligence function identified this transaction as warranting an investigation.²

Jurisdiction

15. Each of CAG and PICS is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
16. The Parties overlap in the supply of fostering placement services by IFAs, with a combined share of supply (based on number of placements) of greater than

² See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

25% (with an increment) in 26 LAs³ and 3 frameworks⁴. The CMA therefore believes that the share of supply test in section 23 of the Act is met.

17. The Merger completed on 17 January 2019 and was first made public on 17 January 2019. The four-month deadline for a decision under section 24 of the Act is 22 June 2019, following extension under section 25(2) of the Act.
18. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
19. The initial period for consideration of the Merger under section 34ZA (3) of the Act started on 4 April 2019 and the statutory 40 working day deadline for a decision is therefore 5 June 2019.

Counterfactual

20. 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
21. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have 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

22. 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

³ Derby, Derbyshire, Nottingham, Nottinghamshire, Buckinghamshire, Milton Keynes, Cheshire West and Chester, Liverpool, Windsor and Maidenhead, Hammersmith and Fulham, Herefordshire, Staffordshire, East Riding of Yorkshire, Sheffield, York, East Dunbartonshire, Midlothian, West Dunbartonshire, West Lothian, North East Lincolnshire, North Lincolnshire, Angus, East Ayrshire, East Renfrewshire, South Ayrshire and North Ayrshire.

⁴ East Midlands Children's Regional Framework, Glasgow Framework and Rotherham Framework.

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).

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

Background

23. The Parties overlap in the supply of fostering placement services to LAs across the UK.⁷
24. LAs have statutory duties to provide fostering placement services to qualifying children and young adults.⁸ LAs can offer fostering placement services in-house or they can procure them from private providers (independent fostering agencies, or **IFAs**).
25. When procuring these services from IFAs, LAs can do so through framework agreements, which typically set out the commercial terms on which IFAs agree to provide certain services, or on a case-by-case (or 'spot') basis. Framework agreements may cover a single LA or a consortium of geographically proximate LAs (eg Placements North West), with one LA typically taking the lead to manage the framework tender process.
26. When a LA has a child which it needs to place into foster care (and is unable to do so within its own in-house network), the LA will contact IFAs on the framework and seek to make the placement that offers the best available care (the 'best match') for the child, typically at the price submitted by the IFA at the framework tender stage.
27. The requirements of each child placed into foster care, and therefore the type and nature of foster care required, will differ depending on a large number of factors (including age, ethnicity, any behavioural issues concerning the child, and the duration of the required foster placement). The CMA also understands that, for the purposes of frameworks, which try to establish a supplier set which is able to capture all these diverse individual needs, IFAs and customers may categorise placements under broad headings, such as: standard, enhanced (complex) and 'solo'.⁹ Additionally, IFAs may vary the parameters of the service that they offer to LAs outside of framework terms

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

⁷ As noted above, CAG is active in England, Wales, Scotland and NI. PICS is not active in Wales and NI. Together, post-Merger, the Parties will have activities across the UK.

⁸ 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.

⁹ I.e., for young children with considerable complex needs who require constant high-level supervision on a one-to-one basis from experienced and skilled foster carers.

under some circumstances; for instance, in emergency placements, where an LA needs to place a child at short notice.

Product scope

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 IFAs, and (ii) different types of fostering placement services.

Provision of services by IFAs and LAs

29. In *National Fostering Agency / Acorn Care*¹⁰ and *CareTech/Cambian*,¹¹ the CMA concluded that it was appropriate to assess the supply of fostering placement services by IFAs separately from supply by LAs. The CMA did not receive any evidence during the present merger investigation to indicate that the market for fostering placement services has changed since those decisions.
30. As stated in *National Fostering Agency / Acorn Care*, evidence from third parties indicates that IFA provision is a 'spill-over' market that is separate from LA in-house provision, because LAs typically seek to place children with their own in-house network of carers first and therefore do not, in practice, choose between placing a child into foster care through an IFA or through their in-house network. In addition, evidence from third parties and a Department for Education (DfE) report¹² indicates that there are some differences between the placement types/cost of in-house foster care and IFA foster care.
31. For these reasons, the CMA believes that private fostering placement services should be considered separately from those provided by LAs.

Fostering placement type

32. In *National Fostering Agency / Acorn Care* and *CareTech/Cambian*, the CMA concluded that it was appropriate to assess the Merger based on the overall supply of fostering placement services, rather than focusing on any particular sub-category of placement type. In those cases, LAs and framework operators confirmed to the CMA that the majority of IFAs provide services for all or most placements and therefore, IFAs are typically viewed as largely undifferentiated in their service offering. The Parties agreed with this assessment.

¹⁰ Completed acquisition by [SSCP Spring Topco Limited of Acorn Care and Education Group](#), ME/6640/16.

¹¹ Completed acquisition by [CareTech Holdings plc of Cambian Group plc](#), ME/6775/18.

¹² [Foster Care in England. A review for the Department for Education](#) by Sir Martin Narey and Mark Owers. December 2017.

33. 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 fostering placement services. Where necessary, the CMA has considered any variation between fostering providers in terms of the nature of placements they can cater for in the competitive assessment.

Conclusion on product scope

34. For the reasons set out above, the CMA has considered the effects of the Merger in the supply of fostering placement services by IFAs.

Geographic scope

National and local parameters of competition

35. In order to determine the appropriate geographic frame of reference, the CMA considered whether competition in the supply of fostering placement services takes place nationally and/or locally.
36. The Parties submitted that competition takes place locally and primarily at the framework level rather than at the placement stage. However, the Parties also acknowledged that some larger IFAs operate nationally, and submitted that as a result there is the potential for a national dimension to competition between IFAs, particularly if: (a) significant components of the competitive 'offer' are decided centrally and applied uniformly; and/or (b) aspects of the competitive 'offer' are significantly influenced by rivalry with other national operators rather than reflecting the aggregation of competitive conditions at a local level.
37. The CMA believes that competition in the supply of fostering placement services has a strong local dimension as:
- (a) Demand is local. LAs seek to find placements which best meet the needs of each child as close to their original community as possible and, where possible, within 20 miles of the LA.
 - (b) 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 frameworks. In that context, both Parties submitted that while decision making is to some extent centralised, pricing is not uniform. The Parties submitted that prices vary across the Parties' brands and frameworks where they are active to reflect differing competitive conditions.

- (c) As discussed in further detail below, evidence available to the CMA indicates that there is scope for competition at both the framework stage and the placement stage of the procurement process. However, as any discussion/negotiation at the placement stage takes place bilaterally between the LA and relevant IFA, these discussions will be influenced by local competitive conditions.
- (d) Competitors vary between regions in the UK as the market is fragmented, with even large multi-regional providers tending to have a stronger presence in some regions than in others, and providers compete directly with both local and large multi-regional providers in any local area.
38. However, the CMA also received evidence indicating that some suppliers may compete on a more aggregated or national¹³ basis.
- (a) As acknowledged by the Parties, while the market is fragmented, evidence from the Parties' internal documents,¹⁴ a report from the DfE¹⁵ and third-party responses indicate that the Parties are two of a sub-set of "national" suppliers who provide services across the UK, including: NFA, Compass, BSN, Swiis, Cambian, Capstone, Tact and Sunbeam.
- (b) The Parties' submissions, internal documents and third-party responses indicate that these suppliers are large-scale operators, with nationally-recognised brands, sophisticated integrated operations, and centralised teams managing key elements of their competitive offering.
- (c) The Parties' submissions and their internal documents indicate that the Parties are increasingly seeking to apply aspects of their competitive offering more uniformly across important parameters of competition. For example:
- (i) Evidence from the Parties' internal documents¹⁶ and third parties indicates that the recruitment and retention of carers is a key parameter of competition. [REDACTED].¹⁷
- (ii) While fostering placement services are ultimately delivered locally, the Parties seek to ensure uniform standards of care [REDACTED].

¹³ ie across the UK.

¹⁴ See for example [REDACTED].

¹⁵ [Foster Care in England. A review for the Department for Education](#) by Sir Martin Narey and Mark Owers. December 2017.

¹⁶ See [REDACTED].

¹⁷ See for example [REDACTED]

(iii) The Parties have centralised placement teams [REDACTED]. The Parties' internal documents indicate that efficiency in responding to placement requests is an important parameter of competition.¹⁸

(d) The Parties and other IFAs noted that some competitive parameters may be more significantly influenced by the behaviour of larger or 'national' providers. For instance, the Parties' submissions and internal documents [REDACTED].¹⁹ [REDACTED].²⁰

39. Based on the evidence considered above, the CMA believes that competition in the supply of fostering placement services currently takes place primarily at a local level. However, the CMA believes that the Parties may also seek to set important elements of their competitive offering uniformly across all their activities, nationally and by reference primarily to other national IFAs. As such, any loss of competition resulting from the Merger may have an impact on every local area in which the Parties operate, if that loss of competition is sufficient to lead to a change in any nationally-set parameters of competition.
40. Therefore, on a cautious basis, the CMA has assessed the effects of the Merger (and any reduction in competition) at a national level and thereby in every local area where either Party operates, as well as in individual local areas where the Parties overlap (see competitive assessment below).

Framework and purchasing of IFA services

41. As noted above, the CMA believes that competition for the supply of fostering placement services is primarily local. Therefore, the CMA has considered the extent to which local competition takes place at the framework stage or whether there is also scope for competition at the placement stage.
42. The Parties submitted that competition between providers occurs at the point at which they have the opportunity to be admitted to a framework agreement. The Parties submitted that there is limited scope for competition at the placement stage as, at this point, LAs have typically pre-agreed all key components of the competitive offer and are primarily seeking to find the best match to meet the needs of the child, as required by their statutory duties. The Parties submitted that, to the extent there is scope for further competition at the placement stage, this is likely to be very limited.
43. In *National Fostering Agency/Acorn Care*, the CMA concluded that there was scope for competition at both the framework and placement stage. On that

¹⁸ [REDACTED].

¹⁹ See for example [REDACTED].

²⁰ See Parties' response of 26 February 2019 to CMA s109 request of 19 February 2019 and notes of calls with each Party (PICS and CAG) on 29 April 2019.

basis, the CMA assessed the effects of the merger both in the geographic areas covered by the framework agreements where the parties were operating (**framework-level**), which will typically include multiple LAs, and the geographic areas covered by each LA where the parties were overlapping (**LA-level**).

44. The evidence received in this present merger investigation similarly confirms that there may be scope for some competitive interaction at the placement stage. The CMA received evidence from third-party customers and competitors of the Parties that, at least in some cases, some commercial negotiation can take place at the LA level regarding terms not agreed at the framework level. Negotiation can also take place at LA level regarding the variation of terms agreed at the framework level.
45. Additionally, the market presence of different IFAs (including those of the Parties) can vary between different LAs that form part of a single framework area. This suggests that when negotiations take place at the placement stage the competitive constraints faced by suppliers may vary across LAs within a single framework.

Conclusion on geographic scope

46. For the reasons set out above, the CMA believes that it is appropriate to assess the effects of the Merger at: (a) the national level; (b) the framework-level; and (c) the LA-level.

Conclusion on frame of reference

47. For the reasons set out above, the CMA has considered the effects of the Merger in the supply of fostering placement services by IFAs at the national level, the framework-level, and the LA-level.

Competitive assessment

Horizontal unilateral effects

48. 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. 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 fostering placement services, at the national, the framework and at the LA level.

Horizontal unilateral effects at the national level

49. As noted above, the evidence available to the CMA indicates that while demand is primarily local, the Parties may compete on a more aggregated or national basis with regard to certain parameters of competition such as the recruitment and training of carers. Therefore, if the Merger lessens competition in local areas representing a significant proportion of the Parties' overall activities, the Merger may result in a worsening of the Parties' offering on these parameters of competition across all local areas where they operate.²¹
50. The CMA undertook a national assessment of the Parties' fostering placement services by considering the following quantitative and qualitative evidence:
- (a) National shares of supply;
 - (b) Evidence on the extent to which the Parties compete geographically, based on the local areas in which they overlap;
 - (c) Evidence from third parties and internal documents on the extent to which the Parties were competing closely pre-Merger, and in relation to alternative competitive constraints.
51. Table 1 below sets out the Parties' shares of supply by number of placements²² as well as an indication of where other multi-regional IFAs are operating based on the Parties' estimates, third party data and publicly available data from the DfE. As can be seen, the Parties' post-Merger shares will remain moderate at around [10-20]%. While post-Merger the Parties will become the second largest IFA, several other IFAs with a national or multi-regional presence will continue to be present in a number of the same geographical areas as the Parties.

²¹ The CMA also assessed the scope for a loss of dynamic competition nationally (see paragraphs 1.20-1.22 of [CMA62: Retail mergers commentary](#)). The Parties' submissions and third parties indicated that the Parties had been expanding their geographic footprint by growing their carer networks. The CMA considered whether, absent the Merger, one or both of the Parties might have entered into a new geographic area and if so, whether such entry would have led to greater competition. Whilst the CMA saw some evidence indicating the Parties were looking to expand into new geographic areas (in particular, [§]), overall the evidence the CMA reviewed was insufficient for the CMA to believe that the Merger was likely to give rise to a realistic prospect of an SLC on the basis of a loss of dynamic competition.

²² The CMA understands that the fostering placement services sector is characterised by significant capacity constraints. This is the case because carer recruitment is a material challenge, involving considerable time and expense. Given that the CMA has more limited evidence on capacity, the CMA has used shares of placements as a proxy for the Parties' competitive significance on the basis of their existing carer networks and predominantly carried out its assessment on this basis.

Table 1. Number of IFA placements and market share by competitor

IFA	Areas covered	Placements	Share
CAG	England [X], Wales and Northern Ireland, and [X] in Scotland.	[X]	[10-20]%
PICS	England [X] and Scotland	[X]	[0-5]%
Combined	England, Scotland, Wales and Northern Ireland	[X]	[10-20]%
NFA	England (Southwest, South East, East Midlands, West Midlands, North, and Central) and Wales.	[X]	[10-20]%
Compass	England and Wales	[X]	[0-5]%
BSN	From the Midlands to the south coast and from Pembrokeshire to Cornwall	[X]	[0-5]%
SWIIS	The Midlands, The South West of England, Yorkshire, The North West, The North East, Scotland	[X]	[0-5]%
Cambian	England [X] and [X] Wales	[X]	[0-5]%
Capstone	Most areas of England [X]	[X]	[0-5]%
TACT	Scotland, Wales, North East, Yorkshire, North West, Peterborough, East Midlands, West Midlands, South West, London & The East, London & The South, South Coast, Kent	[X]	[0-5]%
Sunbeam	London, South Central Region, Coventry, West Midlands, East Midlands, Nottinghamshire, Luton, Bedford, Bedfordshire, Northamptonshire, Hertfordshire, Cambridgeshire and Peterborough	[X]	[0-5]%
Top 10 IFAS		[X]	[55-65]%
Other IFA		[X]	[35-45]%
Total IFA		22,730	100%

Source: Parties' and DfE data.

52. The Parties' compete against each other in a substantial proportion of local areas. The Parties overlap across [X] LAs, which represents [50-60] % of the LAs where they operate. The Parties generate [70-80] % of their placements from these overlapping LAs. However, evidence on the Parties' revenues and an analysis of LA-level shares of supply indicates that their activities are largely complementary from a geographic perspective. As discussed below in relation to the LA-level assessment, the Parties have generally low to moderate shares of supply with shares over [10-20]% in relation to 48 LAs²³ and over [30-40]% in relation to seven LAs only.²⁴ In addition, the Merger

²³ These [X] LAs accounted for [X].

²⁴ These [X] LAs accounted for a very small proportion of the Parties' placements.

generally results in a limited increment across all of these overlaps (see paragraphs 86 onwards).

53. Further, third parties, in particular other national/multi-regional IFAs, did not consider the Parties to be competing particularly closely and named a number of other national/multi-regional IFAs who they considered to be competing closely with the Parties.
54. In addition, the Parties' internal documents benchmark the Parties against several other national/multi-regional IFAs. For example:
 - (a) [REDACTED]²⁵
 - (b) [REDACTED].²⁶
 - (c) [REDACTED].²⁷
 - (d) [REDACTED].²⁸
 - (e) [REDACTED].²⁹

Conclusion on horizontal unilateral effects at the national level

55. For the reasons set out above, the CMA believes that the evidence in this case indicates that (pre-Merger) only some competitive parameters are set a national level (as discussed above in paragraph 49) and that the Parties will continue to be constrained post-Merger by at least eight other national/multi-regional IFAs (see Table 1 above). Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of fostering placement services by independent providers at a national level.
56. However, the CMA notes that while currently some parameters are set a national level, it does not exclude the possibility that the dynamics of competition could continue to change in the future (for example, in the event of continued consolidation in this sector).

Horizontal unilateral effects at the framework level

57. The CMA's concern under this theory of harm is that the Merger may significantly reduce competition between IFAs at the framework level,

²⁵ [REDACTED].
²⁶ [REDACTED].
²⁷ [REDACTED].
²⁸ [REDACTED].
²⁹ [REDACTED].

resulting, in particular, in an increase in price and/or deterioration in the quality of bids submitted in future framework tenders. The CMA assessed whether an SLC may arise on this basis in each of the framework areas where the Parties overlap.

58. The Parties submitted that they were registered on a total of [X] frameworks for fostering placement services located in the UK, as at January 2019.³⁰ Out of these, the Parties overlap on [X] framework areas in England and Scotland.³¹ The Parties submitted that competition between providers occurs at the point at which they have the opportunity to be admitted to a framework agreement. The Parties suggested that competition concerns could not arise within any framework area because there is no reason to believe that the Parties would have a combined share of placements on any framework that is greater than 40%.
59. Before assessing the potential impact of the Merger within individual framework areas which the CMA assessed in greater detail (in paragraph 70 onwards), the CMA first provides a brief summary of the operation of the framework tender process and the key indicators of competitive strength in that context (in paragraph 60 onwards) and then sets out its approach to its framework assessment (in paragraph 65 onwards).

The operation of framework tender processes

60. The framework tender process generally ranks a group of IFAs that may be suitable for future placements based on the bids submitted by those IFAs. On many frameworks, IFAs are ranked by being placed on tiers with those IFAs scoring more highly (on quality and price criteria) in the tender process being placed on higher tiers (e.g. in tier 1). Once on the framework (whether tiered or not), prices are generally fixed for the duration of the framework.
61. Overall, competition at the framework level is not ‘a winner takes all’ bidding market, where an IFA wins either all or no placements as an outcome of the framework tender process. Instead, the framework tender process may determine the position or tier that an IFA is positioned, and this may, to some extent, influence the number of referrals/placements subsequently won by the IFA.

³⁰ The Parties do not overlap in Northern Ireland (NI), only CAG is present in NI. Merger Notice, paragraph 94.

³¹ This is based on the UK frameworks where the Parties are either registered or have placements. The Parties do not have placements on all the frameworks where they are registered and have placements with some LAs that use frameworks that the Parties are not registered on. There are also LAs that do not use a framework so competition at the LA level is as important for price setting as it would be if the LA used a framework that was specific to that LA. These LAs have been treated as single area frameworks for these figures.

62. The CMA received mixed evidence on the competitive significance of tiers. Some LAs considered that tiers were important in determining which IFAs were contacted when a carer was needed (that is, the higher an IFA was ranked on the framework, the more frequently they would be contacted) and therefore had an impact on how IFAs bid (and therefore competed) for a place on a framework. However, a significant proportion of LAs said that in a substantial number of instances they contacted all IFAs (as well as ‘off framework’ providers) simultaneously and irrespective of relative ranking in order to find a ‘best match’ for the placement. In addition, [X] and a number of other IFAs submitted that tier position has a limited impact on tender bidding strategy.³²
63. In addition, the evidence available indicates that other factors – in particular the size of an IFA’s carer network – will also influence where placements are made and may provide a stronger indication of competitive constraint than tiers. This is consistent with the CMA’s findings in *National Fostering Agency/Acorn Care*.
64. However, where the evidence indicates that in relation to specific frameworks a supplier’s relative ranking is an important factor for determining placements the CMA has considered this evidence in its competitive assessment.

CMA’s approach

65. Consistent with the CMA’s view that the scale of an IFA’s existing carer network is a significant indicator of competitive strength, the CMA has considered evidence on shares of placements³³ at the framework level and the increment caused by the Merger to identify frameworks requiring more detailed assessment to determine whether the Merger would give rise to competition concerns.³⁴
66. When considering the level of concentration and increment at which the CMA could exclude any realistic prospect of an SLC, the CMA took a cautious approach and considered other factors which may impact on the likelihood of horizontal unilateral effects as a result of this Merger. In particular, the CMA noted that:
- (a) A significant number of customers have expressed concerns about the impact that the Merger could have on competition;

³² For example, one third-party competitor told the CMA that tiering is not particularly relevant because there is a shortage of carers. [X].

³³ As noted above at footnote 22, given that the CMA has more limited evidence on capacity, the CMA has used shares of placements as a proxy for the Parties’ competitive significance on the basis of their existing carer networks and predominantly carried out its assessment on this basis.

³⁴ [Retail mergers commentary](#), from paragraph 3.1.

- (b) The CMA identified that the supply of independent fostering services appears to have some barriers to entry and expansion (for example, in relation to recruiting and retaining carers);
- (c) The CMA found that customers appear to have limited price sensitivity because LAs have no credible alternative to placing a child with an IFA once LA in-house capacity has been used (this is, in particular, due to statutory duties imposed on LAs);³⁵
- (d) The nature of fostering service often involves dealing with extremely vulnerable children, often in emergency situations, and therefore anti-competitive effects that result in a degradation in service quality could have particularly adverse effects on consumer welfare;
- (e) The CMA found some evidence to suggest that IFAs' variable profit margins appear high;³⁶ and
- (f) It may be difficult for customers to monitor changes in the Parties' commercial offering post-Merger, given that there appears to be a material degree of confusion among some customers over the ownership and independence of the different brands and agencies operated by the Parties.

67. Therefore, on the basis of the factors set out in paragraph 65 above, the CMA has assessed in greater detail the impact of the Merger on competition in relation to the following frameworks:

- (a) East Midlands Children's Regional Framework
- (b) Glasgow Framework
- (c) Rotherham Framework
- (d) Scotland Excel Framework

68. In the remaining 24 framework areas in which the Parties overlap, evidence on the Parties' shares of placements indicates that the market share held by the merged entity post-Merger will be relatively small, the Merger does not result in a significant increase in concentration in the local area, and the Parties will continue to face sufficient competition from other IFAs post-Merger. Therefore, the CMA believes that the Merger does not result in a realistic prospect of an SLC in relation to each of these areas.

³⁵ CAG stated that [REDACTED].

³⁶ [REDACTED]

69. For the purposes of its more detailed assessment in relation to each of the areas set out at paragraph 67, the CMA considered:
- (a) Evidence on the IFAs present in the local area, the shares of placements at the framework level and, where available, evidence on capacity and spare capacity;
 - (b) Tiers and rankings within a framework where the evidence indicated that the tiers and rankings play a significant role in that framework;
 - (c) The extent to which the Parties may be competing more closely due to belonging to the same tier within a framework;
 - (d) Views of third parties regarding competition within a framework.

East Midlands Children's Regional framework

70. Under this framework, the Parties' combined share of placements is [20-30]% and the increment resulting from the Merger is [5-10]%.³⁷
71. The evidence received by the CMA shows that the Parties are not close competitors in this framework area. Whilst evidence on shares of placements indicates that CAG is a strong supplier under this framework, particularly in [REDACTED], PICS has a more limited presence.
72. The evidence available to the CMA from third parties also indicates that the Parties will continue to face sufficient competitive constraints post-Merger. Other large IFAs operate in the area, including NFA, Cambian (By the Bridge), Compass Fostering, Swiis, Capstone, Barnados and Sunbeam. Evidence from third parties indicates that NFA and Compass are both significantly larger than PICS. In addition, the CMA has received evidence that a number of suppliers have capacity to continue constraining the merged entity post-Merger.
73. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the East Midlands framework area.

³⁷ Based on CAG placement data from November 2018 and July 2018 placement data for PICS. Total number of placements for East Midlands is based on information from the Department for Education provided to the Parties in response to a Freedom of Information Request. This is equivalent to [REDACTED] placements for CAG and [REDACTED] placements for PICS. The Parties submitted that based on January 2019 placement data, their placement figures had increased to [REDACTED] (CAG) and [REDACTED] (PICS), which using the same estimate of total number of placements [REDACTED], would indicate a combined share of [25-35]%.

Glasgow (single LA) framework

74. Under this framework, the Parties have a combined share of placements of [35-45]% and the increment resulting from the Merger is [10-20]%.³⁸
75. The evidence from the Parties and third parties³⁹ indicates that the Parties are not close competitors on this framework. [REDACTED].⁴⁰
76. The evidence available to the CMA indicates that sufficient competitive constraints will remain post-Merger including three providers with significant scale based on number of placements: National Fostering Agency (NFA), Barnardos and Swiis. These three IFAs, in addition to other smaller IFAs (in terms of placements), will continue to constrain the merged entity post-Merger. In addition, the CMA received some evidence of expansion planned by one of the IFAs on the current framework. [REDACTED]
77. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the Glasgow framework area.

Rotherham (single LA) framework

78. Under this framework, the Parties have a combined share of placements of [30-40]% in Rotherham area and the increment resulting from the Merger is [5-10]%.
79. These shares indicate that PICS represents a relatively more limited constraint pre-Merger. In addition, evidence provided to the CMA based on the number of placements made during the current framework period indicates that CAG and PICS were not close competitors pre-Merger.
80. Evidence from third parties indicates that sufficient competitive constraints will remain post-Merger. A number of significant competitors will remain post-Merger including National Fostering Agency (NFA), By the Bridge (Cambian) and Compass Fostering. These three national IFAs, in addition to three other smaller ones (in terms of placements) will continue to constrain the merged entity.
81. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the Rotherham framework area.

³⁸ Based on CAG placement data from November 2018 and July 2018 placement data for PICS. [REDACTED] The Parties submitted evidence that the Parties had a combined share of placements from the Glasgow framework increased from [30-40]% in March 2016 to [35-45]% in March 2017. However, that market share has since declined to around [30-40]%. The decline in CAG/PICS' share of placements is a result of the absolute number of placements with CAG and PICS from the Glasgow framework falling [REDACTED].

³⁹ [REDACTED]

⁴⁰ There are currently [REDACTED] providers on the framework [REDACTED].

Scotland Excel framework

82. Under this framework, the Parties have a combined market share of [10-20]% (based on placements), with an increment of [5-10]% as a result of the Merger.⁴¹ However, the data indicate that the combined market share of the Parties has been in decline since 2017. While the Parties appear to have a stronger position across certain geographically proximate LAs⁴², these represent a small proportion of the Parties' placements across Scotland as a whole.
83. Furthermore, the data received by the CMA indicated that six suppliers accounted for the vast majority of placements on this framework.⁴³ Consistent with this, evidence from third parties confirmed that a number of other suppliers would continue to operate on the framework following the Merger.⁴⁴ Some of these suppliers also indicated that they have substantial spare capacity in this framework.
84. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the Scotland Excel framework area.

Conclusion on horizontal unilateral effects at the framework level

85. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of fostering placements at a framework level in any of the areas where the Parties overlap.

Horizontal unilateral effects at LA-level

86. In *National Fostering Agency/Acorn Care*, the CMA found evidence of IFAs being able to vary service parameters outside of the terms set in framework agreements at the point at which an LA was seeking to make a placement under a framework agreement. However, the CMA concluded that the evidence indicated that the extent of any competition between IFAs at the placement stage was very limited.

⁴¹ [REDACTED]. The information originally provided by the Parties showed that their combined market share in Scotland was [15-25]% in 2016 and [15-25]% in 2017. However, the Parties did not provide information for 2018.

⁴² As noted below in relation to the LA-level assessment, the Parties have combined shares of over [30-40]% in the following Scottish LAs: Angus, East Ayrshire, East Renfrewshire, South Ayrshire, North Ayrshire.

⁴³ Six providers hold 95% of the market.

⁴⁴ [REDACTED].

87. In NFA/Acorn,⁴⁵ the CMA cited the following examples of actual or potential behaviour that could be consistent with competition between IFAs at the placement stage. These were:
- (a) IFAs offering discounts on the framework price (or being requested to do so by LAs) – either for all placements from an LA or for individual placements;
 - (b) LAs holding ‘mini-competitions’ to re-determine prices for individual placements; and
 - (c) IFAs engaging in discussions with LAs in relation to individual placements as a means of increasing the fee level from the agreed framework price, for example by including more add-on services or seeking to have the placement re-categorised into a higher priced tier.
88. The Parties in this case submitted that their experience and approach to discussions at the placement stage was consistent with the CMA’s findings in *National Fostering Agency/Acorn Care*. In particular, the Parties submitted that:
- (a) The [REDACTED] and mini-competitions were only a feature in a limited number of frameworks they participated in.
 - (b) An analysis of CAG and PICS placement prices indicated that around [REDACTED] of placements are at framework prices (including those where additional services have been agreed). Where prices varied from the framework for the remaining [REDACTED] of placements, this was for a variety of reasons, including bespoke placements to accommodate higher complexity placements than specified within a framework, shared carer arrangements, or carer retainer payments.
89. However, evidence available to the CMA from the Parties and third parties continues to support the view that there is scope for some meaningful competition at the placement level. In particular:
- (a) CAG acknowledged that [REDACTED].⁴⁶
 - (b) Most competitors supported the view that discussions on which placement terms should apply did take place and one competitor noted that it felt some competitive pressure at the placement stage.
 - (c) Evidence on the extent of negotiation at the placement stage varied significantly across LAs responding to the CMA’s merger investigation.

⁴⁵ NFA/Acorn, Paragraph 39.

⁴⁶ See note of call with Party (CAG) on 29 April 2019.

However, on average around 40% of placements were made after a discussion with a potential provider on which framework terms should apply and around 15% of placements were not made on framework terms.

90. Therefore, on a cautious basis the CMA has conducted an LA-level assessment of the areas where the Parties overlap. As noted above (in paragraph 52) the Parties' have shares of over [10-20]% in 48 areas and over [30-40]% in 7 LAs (Northeast Lincolnshire, North Lincolnshire, Angus, East Ayrshire, South Ayrshire, North Ayrshire and East Renfrewshire).
91. Considering in particular these LA areas (although the same considerations apply across other LA areas also), the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as the Parties will continue to face sufficient competitive constraints from other IFAs post-Merger. In particular, the Parties will continue to face competition from at least two (in many cases, more than two) nationally-operating IFAs (see Table 1 above) in each LA area, in addition to other, more locally-focused IFAs.
92. In addition, with regard to those areas where the Parties' post-Merger share of placements would be over 40%, the CMA notes that:
 - (a) The absolute number of placements is small. Placement numbers will invariably change to a certain extent over time as children are placed in and out of care. As such, given the very small total number of placements in absolute terms, even small variations in placement numbers will affect the Parties' shares, and so looked at in isolation, the shares of supply may overstate the Parties' competitive strength.⁴⁷
 - (b) Furthermore, the evidence available to the CMA also indicates that the Parties may face further competition in the foreseeable future as there is evidence that competitors are planning to increase capacity in these areas.

Conclusion on horizontal unilateral effects at the LA-level

93. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC at the placement stage in any LA areas in which the Parties overlap.

⁴⁷ The CMA notes that the Parties' shares of placements have in fact fallen in all of those areas where the Parties have the highest combined share of placements.

Entry and expansion

94. 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.⁴⁸
95. Whilst the CMA has identified some barriers to entry and expansion in this sector (see paragraph 66 above), the CMA has not had to conclude on whether entry or expansion might prevent an SLC as the Merger does not give rise to competition concerns on any basis.

Third party views

96. The CMA contacted customers and competitors of the Parties. Most customers raised concerns regarding the reduction in the number of competitors and the increased incentives of the Parties to raise prices (or reduce discounts) and reduce innovation. Some customers also raised concerns due to the reduction in choice post-Merger. Finally, some competitors raised concerns related to the ability of the merged Parties to increase geographic coverage and the type of placements provided post-Merger. They also mentioned the ability of larger IFAs to recruit more carers.
97. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

98. 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 United Kingdom.
99. The Merger will therefore **not be referred** under section 22(1) of the Act.

James Waugh
Director, Mergers
Competition and Markets Authority
29 May 2019

⁴⁸ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Endnote: CapVest Partners LLP does not control but advises funds that have a controlling stake in Nutrius. This is an important legal distinction for the funds.