Completed acquisition by Kohlberg & Company, LLC of Nelipak Corporation, Inc. and certain subsidiaries of Bemis Company, Inc.

Decision on relevant merger situation and substantial lessening of competition

ME/6843/19

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 25 October 2019. Full text of the decision published on 11 November 2019.

Please note that [✂] 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. Kohlberg & Company, LLC (**Kohlberg**) acquired Nelipak Corporation, Inc. (**Nelipak**) on 2 July 2019 (the **Nelipak Transaction**), and acquired certain subsidiaries of Bemis Company, Inc. (the **Bemis Subsidiaries**) on 8 August 2019 (the **Bemis Transaction**). The acquisitions by Kohlberg of Nelipak and the Bemis Subsidiaries are together referred to as the **Transactions** and each a **Transaction**. Kohlberg, Nelipak and the Bemis Subsidiaries 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 Kohlberg, Nelipak, and the Bemis Subsidiaries are an enterprise; that these enterprises have ceased to be distinct as a result of the Transactions; and that the share of supply test is met in relation to each Transaction as at the date of this decision. The four-month period for a decision has not yet expired in relation to either Transaction. The CMA therefore believes that it is or may be the case that each of the Transactions results in a relevant merger situation.

3. The Parties overlap in the supply of medical packaging. These products can be further segmented based on whether the packaging is flexible or rigid; the

medical end-use for the packaging (eg diagnostics/monitoring devices, orthopaedics, injection systems), and the type of packaging (eg bags and pouches, lids, trays). The CMA has assessed the impact of the Transactions on the supply of medical packaging in the United Kingdom (**UK**).

4. The combined market share of Nelipak and the Bemis Subsidiaries in the supply of medical packaging in the UK is low. The CMA believes that Nelipak and the Bemis Subsidiaries do not compete closely with each other as they primarily focus on different types of packaging. The CMA also believes that the merged entity would face sufficient competitive constraints from other competitors in the market for the supply of medical packaging and in each of the relevant market segments.

5. The CMA believes that these constraints, taken together, are sufficient to ensure that the Transactions do not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.

6. The Transactions will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. Kohlberg is a US private equity firm. The purchaser is one of Kohlberg's eight funds, Kohlberg VIII, using an acquisition vehicle KNPAK Acquisition Limited.

8. Nelipak is a supplier of rigid and semi-rigid plastic medical device and pharmaceutical packaging, with production facilities in the Netherlands and Ireland. The turnover of Nelipak in 2018 was £[✂] in the UK.

9. Bemis is a supplier of flexible and rigid plastic packaging for food, consumer products, medical and other sectors worldwide. The Bemis Subsidiaries acquired by Kohlberg are Bemis Healthcare Packaging Ireland Limited registered in Ireland; Bemis Healthcare Packaging Limited registered in Northern Ireland; Bemis Elsham Limited registered in England and Wales; and Bemis Laboratory Services Limited registered in Ireland. The turnover of the Bemis Subsidiaries in 2018 was £[✂] in the UK.

Transaction

10. Kohlberg acquired Nelipak on 2 July 2019 and acquired the Bemis Subsidiaries on 8 August 2019.[1] Both purchases were carried out through an acquisition vehicle KNPAK Acquisition Limited.

11. The Parties informed the CMA that the Transactions were also the subject of review by competition authorities in Germany and Austria. The German and Austrian competition authorities cleared both Transactions.

Procedure

12. The CMA's mergers intelligence function identified the Transactions as warranting an investigation.[2]

Jurisdiction

13. Each of Kohlberg, Nelipak and the Bemis Subsidiaries are an enterprise within the definition of Section 129 of the Act. As a result of the Transactions, Kohlberg has ceased to be distinct from Nelipak and has ceased to be distinct from the Bemis Subsidiaries.

14. Section 23(9) of the Act states that the question of whether a relevant merger situation has been created shall be determined immediately before the time when the reference has been, or is to be, made. As a result of the operation of this section, Kohlberg is to be treated as overlapping with both Nelipak and the Bemis Subsidiaries in the supply of packaging for medical purposes in the UK for jurisdictional purposes.[3]

15. The Parties overlap in the supply of packaging for diagnostics/monitoring devices, with a combined share of supply of 30-50% by value (with an increment of 5-10%) in the UK.[4] The CMA therefore believes that the share of supply test in section 23 of the Act is met.

16. The Nelipak Transaction was completed and made public on 2 July 2019 and the Bemis Transaction was completed and made public on 8 August 2019. The four-month deadline for a decision under section 24 of the Act is 2

[1] The Bemis Subsidiaries were sold to Kohlberg as part of a divestment package offered by Amcor and Bemis to the European Commission in the context of the EU merger control process (the **EC Divestment Process**). See Case No COMP/M.9094 – *Amcor / Bemis* (2019).
[2] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.
[3] That is, at the time of the decision on reference, Kohlberg already owned Nelipak (for the purpose of the Bemis Transaction) and already owned the Bemis Subsidiaries (for the purpose of the Nelipak Transaction).
[4] See below Table 1: Parties' combined market shares.

November 2019 for the Nelipak Transaction and 8 December 2019 for the Bemis Transaction.

17. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created in relation to each Transaction.

18. The initial period for consideration of the Transactions under section 34ZA(3) of the Act started on 9 September 2019 and the statutory 40 working day deadline for a decision is therefore 1 November 2019.

Counterfactual

19. 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]

20. The Parties submitted that the counterfactual situation should be one where the Bemis Subsidiaries are sold to a third-party bidder in the EC Divestment Process.

21. In this case, the Transactions were separate and not contractually inter-conditional.

22. At the time that Kohlberg acquired Nelipak, it remained uncertain whether it would acquire the Bemis Subsidiaries as this depended on the European Commission (the **EC**) approving Kohlberg as a suitable purchaser for the Bemis Subsidiaries in the EC Divestment Process. Furthermore, the CMA understands that at the time Kohlberg acquired Nelipak, Kohlberg had already commenced its engagement in the EC Divestment Process by putting itself forward as the proposed purchaser of the Bemis Subsidiaries.

23. As such, a realistic counterfactual for the Transactions may be one in which (i) Kohlberg does not acquire either Nelipak or the Bemis Subsidiaries, (ii) Kohlberg acquires Nelipak but the Bemis Subsidiaries are acquired by a third-party bidder, or (iii) Kohlberg acquires the Bemis Subsidiaries but not Nelipak.

[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).

In any counterfactual, Nelipak and the Bemis Subsidiaries remain independent entities from one another, which the CMA considers to be the most competitive counterfactual that is realistic in this case.

24. The relevant question for the CMA was whether the addition of the relevant target business itself created a realistic prospect of a substantial lessening of competition. In determining the answer to this question for both relevant merger situations, the CMA assessed the competitive constraints that the merged entity would be likely to face following the mergers (as it would do in assessing an individual merger).

25. The CMA has also considered whether the counterfactual should include a scenario in which one of the Parties would have expanded its presence in the supply of rigid or flexible medical packaging in the UK had the merger not taken place. The Parties' internal documents suggest that Bemis has previously contemplated expanding further into the supply of rigid packaging.[6] [7] Given the Bemis Subsidiaries' limited presence in rigid packaging in the UK at present, with a share of supply of approximately 0-5% and having earned approximately 90-100% of its revenue in 2018 from the sale of flexible packaging, the CMA believes that any expansion by the Bemis Subsidiaries in the supply of rigid packaging would not have a material impact on the competitive dynamics of the market in the foreseeable future.[8] Based on the evidence, the CMA believes the supply of flexible packaging would have continued to be the focus of the Bemis Subsidiaries' activities in the counterfactual.

26. As a result, the CMA has considered the impact of the Transactions against a counterfactual in which the pre-merger conditions of competition prevail and Nelipak and the Bemis Subsidiaries remain independent entities from one another, which it considers to be the most competitive counterfactual that is realistic in this case.

Frame of reference

27. 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

[6] Internal documents, Annex 1.2.
[7] Amcor/Bemis internal documents, [✂].
[8] Internal documents, Annex 1.3.

than others. The CMA will take these factors into account in its competitive assessment.[9]

Product scope

28. In defining the relevant frame of reference in merger inquiries the CMA's starting point is the overlapping products between the Parties.[10] The Parties overlap in the supply of medical packaging in the UK.

29. The CMA considered whether the relevant product market was wider than the supply of medical packaging. The CMA also considered whether it was appropriate to segment the relevant product market based on:

    (a) whether the packaging is flexible or rigid; and

    (b) further segmentation within medical packaging based on either the end-use (eg diagnostics/monitoring devices, orthopaedics, injection systems) or the type of packaging (eg bags and pouches, lids, trays).

Alternative end-use applications

30. In *Amcor/Bemis* (2019), the EC identified the market for the supply of medical packaging to be distinct from other packaging markets, such as the market for food packaging, for the following reasons:

    (a) medical packaging must have specific barrier properties to ensure and to maintain a sterile barrier;

    (b) technical characteristics of the packaging are strictly defined;

    (c) the packaging must conform to regulations and with standards specific to medical packaging in general; and

    (d) medical packaging must undergo lengthy qualification and validation procedures with customers.[11] [12]

31. The CMA has found no evidence that contradicts the above findings and, as a result, the CMA does not believe it would be appropriate to consider a wider frame of reference than the market for medical packaging.

[9] *Merger Assessment Guidelines*, paragraph 5.2.2.
[10] Merger Assessment Guidelines, paragraph 5.2.11.
[11] Case No COMP/M.9094 – *Amcor/Bemis* (2019).
[12] Paragraph 9.1 of the Parties' response to the s109 notice dated 9 August 2019.

Flexible packaging vs rigid packaging

32. The Parties submitted that the markets that should be considered are (i) the market for flexible medical packaging and (ii) the market for rigid medical packaging.[13]

33. As discussed in the competitive assessment below, the CMA has seen some evidence to suggest that there may be demand-side substitutability between flexible and rigid packaging, with evidence indicating a recent trend towards flexible packaging as it is becoming more economical. Further, it is feasible for customers to switch to flexible packaging for products that do not require rigid packaging for protection. The Parties also confirmed that there is some degree of supply-side substitution between flexible and rigid packaging.

34. The CMA notes that the Bemis Subsidiaries are primarily active in the supply of flexible medical packaging, while Nelipak is primarily active in the supply of rigid medical packaging.

35. The CMA has been able to leave open the exact market definition because no competition concerns arise on any plausible basis. The CMA has considered differences between flexible and rigid medical packaging in its competitive assessment.

Possible further segmentation within medical packaging

36. The CMA considered whether it is appropriate to apply a narrower market definition than medical packaging, based on the end-use or type of packaging. The Parties submitted that such sub-segmentation is not appropriate.[14]

37. In *Amcor/Bemis* (2019), the EC considered possible narrower product market segmentation within flexible medical packaging by end-use, by material and by type of packaging. The EC's market investigation pointed to a highly differentiated product market and did not give a conclusive answer as to whether the market should be further sub-segmented into narrower product markets. On the basis of the evidence before it, the EC left open the exact market definition with respect to any possible narrower segmentation of flexible packaging by end-use, material or type of packaging.[15]

38. The evidence available to the CMA was not conclusive on whether sub-segmentation based on the end-use or type of packaging is appropriate. On the one hand, the Parties appear to benchmark themselves against their

[13] Paragraph 5.3 of the Parties' Briefing Paper to the CMA dated 23 August 2019.
[14] Paragraph 5.3 of the Parties' Briefing Paper to the CMA dated 23 August 2019.
[15] Case No COMP/M.9094 – *Amcor/Bemis* (2019), paragraphs 61, 62.

competitors by comparing shares of supply in flexible or rigid packaging as a whole.[16] However, the Parties also consider the types of packaging that competing suppliers produce (eg bags and pouches, lids and trays) and the end-uses in which competing suppliers are active (eg orthopaedics and injection systems).

39. The CMA has considered whether the Transactions may give rise to competitive concerns within any particular segments of medical packaging but the CMA has not had to conclude on whether further sub-segmentation is appropriate as no concerns arise on any basis.

Conclusion on product scope

40. The CMA has considered the impact of the Transactions on the supply of medical packaging as a whole. However, it was not necessary for the CMA to reach a conclusion on the exact product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

41. The CMA has considered whether the market for the supply of medical packaging is narrower than at least EEA-wide. The Parties submitted that the appropriate market is the EEA-wide market for the supply of flexible packaging for medical devices.[17]

42. The EC has generally considered the geographic scope of the overall flexible packaging market to be at least EEA-wide.[18]

43. On a cautious basis, the CMA has considered the market for the supply of medical packaging at the national level, given the recent conclusions of the EC that suggest no issues arise on an EEA-wide basis.[19]

Conclusion on frame of reference

44. For the reasons set out above, the CMA has considered the impact of the Transactions in the supply of medical packaging in the UK. However, it was not necessary for the CMA to reach a conclusion on the precise frame of reference as no competition concerns arise on any plausible basis.

[16] Internal documents, Annex 2.3.
[17] Paragraphs 9.2, 16.2 of the Parties' response to the s109 notice dated 9 August 2019.
[18] Case No COMP/M.9094 – *Amcor/Bemis* (2019), paragraph 74.
[19] Case No COMP/M.9094 – *Amcor/Bemis – Decision on the implementation of the commitments – Purchaser approval* (2019).

Competitive assessment

Horizontal unilateral effects in the supply of medical packaging in the UK

45. 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.[20] 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 Transactions have resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of medical packaging in the UK. The CMA considered whether such effects could arise in relation to the supply of medical packaging or in relation to any segments within medical packaging.

Shares of supply

46. Table 1 presents the Parties' combined market shares in the supply of medical packaging in the UK, and for four sub-segments where the Parties' combined share of supply is most significant.

[20] *Merger Assessment Guidelines*, from paragraph 5.4.1.

Table 1: Parties' combined market shares

	Parties' combined shares of supply in the UK (increment)	Parties' combined UK sales
Packaging for medical applications	5-10% (0-5%)	£[✂] (£[✂])
Packaging for diagnostics / monitoring devices	30-50% (5-10%)	£[✂] (£[✂])
Packaging for orthopaedics	10-20% (0-5%)	£[✂] (£[✂])
Packaging for injection systems	5-10% (0-5%)	£[✂] (£[✂])
Lidding for medical devices / to seal trays	5-10% (0-5%)	£[✂] (£[✂])

Source: Parties' information[21] [22] [23] [24]

47. The Parties' combined market share in the overall supply of medical packaging in the UK is relatively low at 5-10% and the increment arising from the Transactions is minimal at 0-5%.

48. With the exception of packaging for diagnostics/monitoring devices, the Parties' combined market shares in the above sub-segments are also relatively low with an increment of below 0-5% in each case. In relation to the supply of packaging for diagnostics/monitoring devices, the Parties have a combined share of supply of between 30-40% and 40-50% in the UK, with an increment arising from the Transactions of 5-10%.[25] However, given the existence of several competing suppliers and the differences in the Parties' product offerings as described further below, the CMA believes that the Transactions are unlikely to raise competition concerns.[26]

[21] Table 2 of the Parties' response to the s109 notice dated 9 August 2019.
[22] Paragraph 7.1, 7.2 of the Parties' response to the s109 notice dated 30 August 2019.
[23] Information provided by the Parties on 4 October 2019.
[24] Note: we asked rival medical packaging suppliers to provide revenue figures. These suggest that the market share figures provided by the Parties are accurate.
[25] Note: the market share for packaging for diagnostics/monitoring devices is presented as a range while the increment is presented as a single value. This is because one of the Parties provided their market share as a range while the other presented it as a single value.
[26] The CMA also notes that, while the share of supply in this segment is relatively high, the value of sales in this sub-segment is low at between £[✂] and £[✂].

Closeness of competition

49. The CMA has examined the closeness of competition between the Parties and considered within its assessment:

(a) the Parties' views;

(b) evidence from internal documents;

(c) evidence regarding the substitutability of flexible and rigid packaging; and

(d) third party views.

Parties' views

50. The Parties submitted that they do not compete closely and that they supply complementary products. In particular, Nelipak primarily supplies rigid medical packaging while the Bemis Subsidiaries primarily supply flexible medical packaging. Further, the Parties explained that 90-100% of Nelipak's sales in the EEA are from trays whereas most of the Bemis Subsidiaries' sales are from bags and pouches and lids.[27] The Parties also referred to the EC's investigation of *Amcor/Bemis* (2019) in which win-loss bidding data showed that the Parties competed with each other [✂].[28]

Internal documents

51. The Parties' internal documents indicate that they provide a weak constraint on each other, given their focus on different segments of the medical packaging market. The Bemis Subsidiaries focus on flexible packaging while Nelipak focuses on rigid packaging. Further, the documents demonstrate that the Parties' activities are focused on different packaging types (Nelipak on trays and Bemis on bags and pouches and lids).[29] [30]

Substitutability of rigid and flexible medical packaging

52. As noted above, the Bemis Subsidiaries are primarily a supplier of flexible medical packaging whilst Nelipak primarily supplies rigid medical packaging. Therefore, the CMA considered the extent to which rigid packaging and flexible packaging are substitutable and, consequently, the extent to which

[27] Paragraphs 10.3, 10.4 of the Parties' response to the s109 notice dated 9 August 2019.
[28] Paragraph 20.4 of the Parties' response to the s109 response dated 9 August 2019.
[29] Internal documents, Annex 1.1, 1.2.
[30] Amcor/Bemis internal documents, [✂].

customers are likely to see the Bemis Subsidiaries and Nelipak as competitors.

53. The Parties' internal documents suggested that there may be some demand-side substitutability between rigid and flexible packaging, with a 'conversion trend' being observed from rigid to flexible medical packaging as it is more economical.[31] However, the overwhelming majority of customers submitted that there was no demand-side substitutability between these types of packaging or that it was unlikely, mainly due to regulations and the significant amount of time it would take to switch. One customer indicated that it is generally only possible to switch between rigid and flexible packaging for certain products, such as light, non-fragile, non-sharp products which do not require rigid packaging for protection.[32]

54. Therefore, the CMA considers that there is limited demand-side substitutability between rigid and flexible medical packaging, thereby limiting the current competitive interaction between the Parties both in general and in any particular segment of medical packaging.

55. Further, the Parties noted that while there is some degree of supply-side substitutability between flexible and rigid packaging, there are also material differences in the manufacturing processes and machinery used. Further, significant investment would be required in order to switch from manufacturing rigid to flexible packaging (or vice versa).[33] Therefore, it is unlikely that the Bemis Subsidiaries would perceive the possibility of Nelipak expanding its activities into flexible packaging as a significant competitive constraint.

Third party views

56. The CMA received mixed evidence from Nelipak customers with respect to whether the Bemis Subsidiaries would be a viable alternative to Nelipak. Three customer responses indicated that the Bemis Subsidiaries are not a viable alternative[34] and four customer responses indicated that they could potentially be considered an alternative, although two of those customers had never previously considered purchasing from the Bemis Subsidiaries.[35] Conversely, only one customer of the Bemis Subsidiaries considered Nelipak as a viable alternative.[36]

[31] Amcor/Bemis internal documents, [✂].
[32] [✂] Third party responses to questionnaire.
[33] Paragraphs 5.1, 5.2 of the Parties' response to the s109 notice dated 30 August 2019.
[34] [✂] Third party responses to questionnaire.
[35] [✂] Third party responses to questionnaire.
[36] [✂] Third party responses to questionnaire.

57. Therefore, the evidence from third parties supported the conclusion that the Parties do not compete closely.

Conclusion

58. On the basis of the evidence set out above, the CMA considers that the Parties are not close competitors in the supply of medical packaging either in general or in any particular sub-segment.

Competitive constraints from other suppliers

59. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA has therefore assessed whether there are alternative suppliers which would provide a competitive constraint on the merged entity in the supply of medical packaging.

60. The CMA has considered within its assessment:

(a) the Parties' views; and

(b) third party views.

Parties' views

61. The Parties submitted that there are a significant number of competitors active in the market.[37] With respect to the supply of rigid and flexible medical packaging, the Parties submitted that some competitors, including the Bemis Subsidiaries and Nelipak, focus on a particular segment, while others compete strongly in both segments, such as Wipak, Oliver, Coveris and Prent. The Parties further explain that there are many existing market players active in the supply of flexible medical packaging and list over 20 credible competitors.[38]

Third party views

62. The CMA's market investigation has confirmed that there a number of competitors who would continue to exert a constraint on the merged entity post-Transactions, in particular Amcor, Oliver, Wipak and Sudpack.

63. Customers identified a range of alternative suppliers to both Parties. For example, the majority of Bemis customers listed Amcor, Wipak, Oliver and/or Huhtamaki as viable alternatives to the merged entity. In addition, Bemis

[37] Paragraph 25.2 of the Parties' response to the s109 notice dated 9 August 2019.
[38] Paragraphs 5.2, 14.2 of the Parties' response to the s109 notice dated 30 August 2019.

customers listed nine other viable alternatives for the products that Bemis supplies to them. Nelipak customers listed three additional suppliers as viable alternatives. Competitors also identified a number of competitors in the market that they believe would exert a constraint on the Parties.

64. The presence of multiple competing suppliers is consistent with the relative lack of concerns expressed by third parties, with most third parties expressing no concerns. A small number of third parties raised concerns with respect to the loss of a competing supplier of rigid medical packaging. One of those suggested that the merged entity will impact upstream suppliers of materials used for rigid medical packaging.[39] The CMA notes, however, that the Parties have a limited overlap in the supply of rigid packaging with an increment of 0-5% and the available evidence indicates that customers will continue to have a number of viable alternative suppliers of rigid packaging following the Transactions. Further, the CMA does not believe the merged entity will exert strong influence on upstream material suppliers.

65. Overall, third party evidence from both competitors and customers confirmed there are a range of suppliers of medical packaging who provide a competitive constraint on the Parties in the segments in which they operate, and customers would have sufficient choice among alternative suppliers following the Transactions. The CMA therefore concludes that the Parties face sufficient competitive constraint from rival suppliers of medical packaging in the overall market and in each of the sub-segments considered.

Conclusion on horizontal unilateral effects

66. For the reasons set out above, the CMA believes that the Parties focus their activities in different segments of the market for the supply of medical packaging. The Bemis Subsidiaries are mainly focused on the supply of flexible packaging while Nelipak is focused on the supply of rigid packaging. Where the Parties do overlap, the CMA believes they would face sufficient constraints from competitors, and customers will continue to have a wide choice among competing suppliers. Accordingly, the CMA found that the Transactions do not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of medical packaging in the UK, either in general or in any segment.

Barriers to entry and expansion

67. 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

[39] [✂] Third party responses to questionnaire.

assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[40]

68. However, the CMA has not had to conclude on barriers to entry or expansion as the Transactions do not give rise to competition concerns on any basis.

Third party views

69. The CMA contacted customers and competitors of the Parties. The majority of third parties expressed no concerns about the Transactions.

70. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

71. Consequently, the CMA does not believe that it is or may be the case that the Transactions have resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.

72. The Transactions will therefore **not be referred** under section 22(1) of the Act.

Richard Romney
Director of Mergers
Competition and Markets Authority
25 October 2019

[40] *Merger Assessment Guidelines*, from paragraph 5.8.1.