

# Anticipated acquisition by Unite Group plc of Liberty Living Group plc

## Decision on relevant merger situation and substantial lessening of competition

ME/6825/19

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

### SUMMARY

1. Unite Group plc (**Unite**) has agreed to acquire Liberty Living Group plc (**Liberty**) from Liberty Living Holdings Inc (the **Seller**), a wholly-owned subsidiary of Canada Pension Plan Investment Board (**CPPIB**) (the **Merger**). Unite and Liberty 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 Unite, Liberty and CPPIB is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of corporate purpose-built student accommodation (**PBSA**) to full time higher education students seeking accommodation (**FTSSA**) in the following 14 cities across the UK: Aberdeen, Birmingham, Bristol, Coventry, Edinburgh, Glasgow, Leeds, Leicester, Liverpool, London, Manchester, Newcastle, Nottingham and Sheffield (**Overlap Cities**).
4. The CMA assessed the impact of the Merger on the supply of private PBSA (**corporate PBSA**) on (i) a UK-wide basis and (ii) in local catchment areas

based on walking distances of 20 minutes and 30 minutes from higher education institutions' (HEI)<sup>1</sup> campuses in each Overlap City.

5. The CMA found that there is no realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects at a national level, as the Parties will continue to be constrained by a large number of established and credible corporate PBSA competitors.
6. To identify the local HEI campus catchment areas in which the Merger could raise competition concerns, the CMA applied a filter based on the Parties' combined share of supply and the increment in share of supply brought about by the Merger. For 14 HEI campus catchment areas that failed the filter, the CMA conducted a more detailed analysis of the competitive conditions, taking into account any constraints arising outside the relevant catchment area where relevant.
7. The CMA found 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 corporate PBSA in any of the HEI campus catchment areas that failed the filter. In particular, the CMA believes that there will be sufficient competitive constraints on the merged entity, including from alternative corporate PBSA providers; and (to a lesser extent) from houses in multiple occupation (**HMO**) and PBSA provided by HEIs to their students (**HEI PBSA**) in relation to certain customer segments.
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 an SLC as a result of horizontal unilateral effects.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

10. Unite is a UK owner, operator and developer of PBSA, headquartered in Bristol. Unite is listed on the London Stock Exchange and is part of the FTSE

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<sup>1</sup> For the purposes of the CMA's investigation, HEI refers to any universities, higher education colleges or other specialist providers of higher education from which the Higher Education Statistics Agency (**HESA**) collects data. The CMA's local analysis included HEIs with FTSSA >1,000, based on location data, bed numbers and FTSSA estimates provided by the Parties.

250 index. The turnover of Unite in the financial year ended 31 December 2018 was £112.4 million in the UK.

11. Liberty is a UK owner and operator of PBSA, headquartered in London. The turnover of Liberty in the financial year ended 31 August 2018 was [X] in the UK.
12. CPPIB is a company organised and existing under the laws of Canada with company number FC028137. CPPIB is a professional investment management organisation that invests the funds of the Canada Pension Plan.

## Transaction

13. The target is Liberty's UK business, excluding certain international assets following a pre-completion restructuring and sale (the **Target**). Unite is acquiring 100% of the shares of the Target from the Seller.<sup>2</sup>
14. CPPIB (through the Seller, its wholly owned subsidiary) is acquiring an approximate 20% shareholding in the merged entity. According to a draft Relationship Agreement between CPPIB and Unite, CPPIB will agree not to increase its shareholding above 24.99% for the first 12 months post-completion without Board approval,<sup>3</sup> and not to increase its shareholding above 29.9% at any point.<sup>4</sup>
15. The Parties publicly announced the transaction in June 2019. A Share Purchase Agreement was signed by the Parties on 3 July 2019.<sup>5</sup>

## Procedure

16. The Merger was considered at a Case Review Meeting.<sup>6</sup>

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<sup>2</sup> Response to RFI 4, paragraph 2.1.

<sup>3</sup> Draft Relationship Agreement, Annex 81 to the Merger Notice, clause 7.1: '[Comet] shall not, and shall procure that no member of the [Comet] Group shall, prior to the date which is 12 months from the Effective Date, Acquire an Interest which would result in the [Comet] Group, in aggregate, holding Interests which exceed the Agreed Threshold, without prior Board Consent (such consent not to be unreasonably withheld or delayed)'.

<sup>4</sup> Draft Relationship Agreement, Annex 81 to the Merger Notice, clause 7.2: '[Comet] shall not, and shall procure that no member of the [Comet] Group shall, following the Effective Date, Acquire an Interest which would result in the [Comet] Group, in aggregate, holding Interests which exceed 29.9% of the issued share capital of [Uganda]'.

<sup>5</sup> Share Purchase Agreement dated 3 July 2019, Annex 79 to the Merger Notice.

<sup>6</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

## Jurisdiction

17. In the context of an anticipated transaction, a relevant merger situation exists where there are arrangements in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct and either:
- (a) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
  - (b) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).<sup>7</sup>

### *Two or more enterprises ceasing to be distinct*

18. The CMA considers that each of Unite, Liberty and CPPIB is an enterprise.
19. The CMA considers that the acquisition by Unite of a controlling interest in Liberty will result in and Unite and Liberty ceasing to be distinct.
20. Separately, the CMA has considered whether CPPIB's acquisition of a 20% shareholding in Unite, together with other relevant factors, may give CPPIB the ability to exercise material influence over Unite and will therefore lead to CPPIB and Unite ceasing to be distinct.

### *The Parties' views*

21. The Parties and CPPIB submitted that CPPIB will not be able to materially influence policy relevant to the behaviour of Unite through its expected shareholding, board representation, or any other factor.<sup>8</sup> In particular, the Parties submitted<sup>9</sup> that:
- (a) While CPPIB will be the largest shareholder post-transaction, the remaining largest investors will continue to hold sizeable stakes and take an active engagement with the combined entity, as they have done so far. Further, the Parties submitted that all of Unite's top 20 investors as at 27 August 2019 (**Current Unite Shareholders**) are broader investors in the wider UK real estate sector and possess industry knowledge and expertise by virtue of their current holding in Unite.

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<sup>7</sup> Section 23 of the Act.

<sup>8</sup> Response to RFI 4, 2 September 2019, paragraph 6.4.

<sup>9</sup> Supplementary response to the Issues Letter dated 18 October 2019.

- (b) Over the last four years, Unite has had a consistently high level of shareholder participation in general meetings. Unite's average AGM voter turnout over the period 2016-2019 was 84%, and the voter turnout at the two GMs held over the last four years (on 30 November 2018 and 23 July 2019) was, respectively, 84% and 99.99%. It is apparent that CPPIB's shareholding would not have given it the ability to block special resolutions at any of those meetings. There is also no evidence that recent voter attendance patterns will change going forward as a result of CPPIB acquiring a minority interest in the combined entity.
- (c) It is speculative to suggest that CPPIB could obtain the required level of support to block special resolutions from other unidentified shareholders, or otherwise be able to influence a policy that would require a special resolution, by virtue of its own status and industry experience, either alone or in conjunction with CPPIB's board representation. The Current Unite Shareholders include shareholders that are also significant financial investors (e.g., APG Asset Management (**APG**)) with long-standing participation in real estate investment, including in Unite (indeed, 16 of the Current Unite Shareholders have held shares in Unite for over five years, whereas CPPIB has held shares in Liberty for only four years). Moreover, CPPIB does not consider that the nature of the sector suggests that a premium should be attached to CPPIB's knowledge, and in any event the Current Unite Shareholders' sector knowledge is at least comparable to, if not greater than CPPIB's.
- (d) The single director appointed by CPPIB would join a board comprising several individuals, all of which have significant experience and expertise in the provision of accommodation to students. These include the executive directors Richard Smith and Joe Lister, who jointly have over 26 years of experience in managing Unite, as well as other non-executive directors, who have experience not only in the provision of student accommodation but also in broader real estate investment, management and development. Therefore, the CPPIB director could not be characterised as possessing the most experience of the sector, or being particularly influential compared to the other board members.
- (e) Finally, CPPIB will not benefit from any veto rights, nor any other financial, constitutional or contractual arrangement beyond the draft Relationship Agreement. Under the terms of the Relationship Agreement CPPIB will agree not to influence the operations of the

Unite group outside its normal governance structures, and will allow Unite to carry on its business independently.<sup>10</sup>

### *The CMA's assessment*

22. The CMA's assessment of whether the acquisition of a minority shareholding may give rise to the ability to exercise material influence requires a case-by-case analysis of the overall relationship between the acquirer and the target, and depends on the facts and circumstances of each case.<sup>11</sup>
23. A finding of material influence may be based on the acquirer's ability to influence the target's policy through exercising votes at shareholders' meetings, together with, in some cases, any additional supporting factors. Material influence may also arise as a result of the ability to influence the board of the target, and/or through other arrangements: that is, without the acquirer necessarily being able to block votes at shareholders' meetings.<sup>12</sup>
24. The CMA considers that, post-Merger, CPPIB may have the ability to exercise material influence on the merged entity on the basis of a combination of three key factors, namely:
  - (i) the ability of CPPIB to block special resolutions;
  - (ii) CPPIB's particular status and expertise, particularly given its experience as the sole shareholder with an active role in Liberty; and
  - (iii) CPPIB's right to appoint a director to the board, which will give it access to certain confidential information not available to other shareholders.

### *Ability of CPPIB to block special resolutions*

25. The CMA will consider not only whether the acquiring party has the right to block special resolutions but also whether, given other factors, it is able to do so as a practical matter. This gives effect to the general principle that the purpose of UK merger control is to enable the CMA to consider the commercial realities and results of transactions and that the focus should be on substance rather than legal form.<sup>13</sup>

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<sup>10</sup> Draft Relationship Agreement, Annex 81 of the Merger Notice, clauses 2.1.1-2.1.2.

<sup>11</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 4.15.

<sup>12</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 4.16.

<sup>13</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 4.20 and 4.21.

26. In this case, the CMA notes that a 20% shareholding does not give CPPIB an automatic right to block special resolutions at the merged entity's shareholders' meetings and CPPIB will not have any special or veto rights attached to the shares acquired. The CMA also notes the existence of a draft Relationship Agreement between the Parties.
27. As set out in the CMA's Guidance, one of the factors relevant to the assessment of a minority shareholding is: '*the distribution and holders of the remaining shares, for example whether the entity's shareholding makes it the largest shareholder*'.<sup>14</sup> CPPIB's expected initial post-Merger shareholding in the merged entity will be approximately 20% (which will correspond to an equivalent share of voting rights). Unite provided a list of the company's top 20 shareholders as at 27 August 2019. This indicates that CPPIB's 20% stake would make it the largest shareholder of the merged entity post-Merger by some margin, being more than twice that of the next largest shareholder, APG, which has a stake of 8.3%. All other shareholders hold shareholdings of less than 5%. The CMA therefore considers that the size of CPPIB's shareholding, combined with the other factors described below, may in practice facilitate the adoption of decisions (including special resolutions) at shareholders' meetings.
28. Another factor relevant to the assessment of minority shareholdings is whether: '*voter attendance is such that a shareholder holding 25% of the voting rights or less would be able in practice to block special resolutions*'.<sup>15</sup> Unite provided voter turnout figures for the last 4 years (2016-2019) for Unite's Annual General Meetings (**AGMs**). Average voter turnout at the last four AGMs was 84%, the lowest being 81% in 2017 and the highest being 85% in 2016.
29. CPPIB's 20% shareholding would give CPPIB voting rights close to 25% based on these voter attendance patterns. Such voting rights would not have given CPPIB the right to block special resolutions acting alone at the four most recent AGMs. However, there has been some fluctuation in voter attendance, and voter attendance would only need to fall very modestly (and, in percentage terms, by a similar amount to fluctuations observed over recent meetings) for CPPIB to have the ability to block special resolutions acting alone at future meetings. In addition, the CMA considers that CPPIB could block special resolutions if a limited number of shareholders voted in accordance with CPPIB. The CMA considers that CPPIB may be able rely on

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<sup>14</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014.

<sup>14</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.21.

<sup>15</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.21.

its particular status and expertise (see below) to obtain the required level of support.

30. These conclusions are not affected by the existence of the Relationship Agreement between the Parties. The Relationship Agreement would not prevent CPPIB from exercising its rights in the way described above. Further, the CMA notes that there is a degree of uncertainty concerning the application of the Relationship Agreement to unknown future events. This agreement may also be terminated by CPPIB by notice in writing at any time after 12 months from the date of completion.

#### *CPPIB's particular status and expertise*

31. When assessing a minority shareholding, the CMA may also have regard to *'the status and expertise of the acquirer, and its corresponding influence with other shareholders'* and may consider *'whether, given the identity and corporate policy of the target company, the acquirer may be able to materially influence policy formulation at an earlier stage through, for example, meetings with other shareholders'*.<sup>16</sup>
32. In this case the CMA considers that CPPIB, as the owner of Liberty for the past 4 years, is a large and experienced investor with significant expertise in the student accommodation sector in general and specifically in the Liberty business. CPPIB submitted that student accommodation represents [redacted].<sup>17</sup> The evidence also shows that CPPIB has played an active role in the oversight of Liberty's management.<sup>18</sup> The CMA notes that the Current Unite Shareholders may be sophisticated institutional investors. However, they have shareholdings below 10% in Unite pre-Merger and at least some of these shareholders may not have the same level of expertise and active involvement in the industry as CPPIB as the current sole shareholder in Liberty. The CMA considers that CPPIB may be able to use its particular status and expertise (along with its access to certain confidential information, as described below) to influence other shareholders. This may allow CPPIB to materially affect a policy that may require a special resolution through, for instance, meetings and discussions with other shareholders.

#### *CPPIB's right to appoint a director to the board*

33. CPPIB will have the right to appoint one non-executive director to the board of the merged entity. The board will be made up of two executive and 6 non-

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<sup>16</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraph 4.22.

<sup>17</sup> Supplementary response to the Issues Letter dated 18 October 2019.

<sup>18</sup> [redacted].



executive directors. The CMA considers that, of itself, CPPIB's board representation is insufficient to confer on it material influence over the merged entity.

34. However, CPPIB's director will have access to commercially sensitive information of the merged entity necessary to discharge its duties. The CMA considers that access to this information may enhance CPPIB's ability to exercise material influence over the merged entity, as CPPIB could use this information to influence other shareholders and, therefore, to affect a policy that may be require a special resolution. The CMA understands that no other shareholder will have a dedicated nominee to the board.

#### *Conclusion on material influence*

35. For the reasons set out above, and on the particular facts of this case, the CMA considers that CPPIB's 20% shareholding in the merged entity, along with other factors, may give CPPIB the ability to exercise material influence over the merged entity. Therefore, the CMA considers that CPPIB and the merged entity will also cease to be distinct as a result of the transaction.

#### **Turnover test**

36. The UK turnover of each of Liberty and Unite exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

#### **Conclusion**

37. The CMA therefore currently believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
38. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 September 2019 and the statutory 40 working day deadline for a decision is therefore 6 November 2019.

#### **Counterfactual**

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

a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>19</sup>

40. 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 prevailing conditions of competition to be the relevant counterfactual.

## Background

### ***Student Accommodation***

41. The Parties<sup>i</sup> submitted that student accommodation consists of rooms that are available to be let by students on a short-term basis (typically on 40-51 week terms).<sup>20</sup>
42. Student accommodation comprises two main types:
- (i) PBSA, which consists of properties developed specifically for students. Bedrooms are typically single occupation, while kitchens and common areas are typically shared, as are bathrooms in the case of 'standard' or 'non-ensuite' rooms. Frequently, PBSA consists of large developments, accommodating hundreds of students;<sup>21</sup> and
  - (ii) HMO.<sup>22</sup> A house (or flat) in multiple occupation is traditionally a property where different individuals who are not family members share a single residence, typically with individual bedrooms and shared use of that residence's common areas (kitchen, bathrooms etc). For the purposes of the CMA's investigation, HMO includes any non-purpose-built houses, flats and studios rented by FTSSA from a private landlord. HMO therefore captures all properties at which FTSSA<sup>23</sup> reside, other than PBSA.
43. HEIs are often significant providers of PBSA to their students (HEI PBSA). However, there is also a wide spectrum of corporate PBSA providers across the country, including the Parties.

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<sup>19</sup> [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).

<sup>20</sup> Merger Notice, paragraph 13.76.

<sup>21</sup> Merger Notice, paragraph 13.10.

<sup>22</sup> The Parties estimate c.57% of FTSSA live in HMO. This includes any students renting non-purpose built flats and studios. Merger Notice, paragraph 13.34.

<sup>23</sup> FTSSA excludes those students who live in their own/family residence. Merger Notice, paragraph 13.2.

44. In relation to corporate PBSA, students will either rent a room (i) in accordance with a nomination agreement, under which the students' HEI has arranged access to corporate PBSA beds on their behalf (**nomination agreement**);<sup>24</sup> or (ii) directly from a corporate PBSA provider (**direct let**).<sup>25</sup>
45. According to a third party market report (Cushman & Wakefield), the average pricing differential between HEI and corporate PBSA beds is falling significantly and average costs of ensuite rooms in 2018/19 are almost identical.<sup>26</sup> Unite told the CMA that the pricing of corporate PBSA under a nomination agreement will generally be [X] % less than for direct let.<sup>27</sup>
46. The Parties submitted that the average rent per room on a weekly basis for HMO is cheaper than both HEI PBSA and corporate PBSA.<sup>28</sup>
47. The CMA conducted a survey of direct let students. Online questionnaires were sent to 18,816 students. In total, 998<sup>29</sup> students completed the survey. The results of the survey are referred to below.

### ***The provision of student accommodation***

48. For the purposes of the CMA's investigation, the end users of student accommodation are taken to be FTSSA.
49. Most HEIs that the CMA contacted offer first-year students and international students an accommodation guarantee.<sup>30</sup> HEI accommodation managers noted that HMO accommodation is generally considered less suitable for these students, as they would typically be new to the city and may be living away from home for the first time. Such students would commonly have a preference for HEI-arranged PBSA accommodation, as this ensures that they

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<sup>24</sup> Nomination agreements come in the following main forms:

- (i) referral nomination agreements – the tenancy agreement is between the PBSA provider and the student with the student paying rent directly to the PBSA provider. In the event that not all nominated rooms are filled, the HEI may have to pay a void rent, but this is not the case for all such agreements;
- (ii) third party nomination agreement – the PBSA provider contracts to set aside a defined number of rooms to be occupied by the HEI's students. The HEI pays the PBSA provider for these rooms by way of a guaranteed payment, with all student rent then being collected and retained by the HEI. The tenancy agreement is between the student and the PBSA provider; and
- (iii) lease or licence – the PBSA provider grants a licence or lease of rooms directly to the HEI in return for a licence fee/rent. The HEI then grants a sub-licence to students in its own name and collects rent directly from the students. Merger Notice, paragraph 13.13.5.

<sup>25</sup> Merger Notice, Executive Summary, paragraph 7.

<sup>26</sup> A Liberty email [X]. The Cushman & Wakefield 'UK student accommodation Report 2018' is available at <http://www.cushmanwakefield.co.uk/en-gb/research-and-insight/2018/uk-student-accommodation-report-2018>. The 2018 headlines, including the abovementioned, are listed on pages 2 and 13.

<sup>27</sup> Response to question 11 of RFI 2.

<sup>28</sup> Response to question 11 of RFI 2 and Annex 11 (version 2).

<sup>29</sup> At least as far as question 8 of the survey.

<sup>30</sup> Most HEIs that the CMA contacted also offer accommodation guarantees to students with disabilities.

are living close to other students and benefit from a degree of assurance about security, amenities, and service levels. According to a number of HEIs, accommodation guarantees are a key parameter of competition between HEIs when seeking to attract students.

50. In order to meet the capacity demands of these accommodation guarantees, HEIs will typically offer their own PBSA (where available). If their own PBSA is insufficient to meet this demand, HEIs will typically contract with corporate PBSA providers through nomination agreements to secure a set number of beds.
51. Returning students are usually not covered by an accommodation guarantee. These students are generally responsible for finding their own accommodation and will typically elect to let a room directly from a corporate PBSA provider or to rent HMO accommodation.<sup>31</sup>
52. Therefore, in relation to corporate PBSA, students will obtain a bed either:
  - (i) directly from a corporate PBSA provider through the 'direct let' channel (either directly through their websites or through, for instance, agents); or
  - (ii) indirectly through their HEI, where the latter has entered into a nomination agreement with the PBSA provider.
53. The Parties told the CMA that their immediate customers therefore comprise both individual students and HEIs.<sup>32</sup>

## Frame of reference

54. 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.<sup>33</sup>

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<sup>31</sup> Some HEIs also work to some extent with HMO providers (albeit to a lesser extent than corporate PBSA providers), both by running housing lists (which in some circumstances are accredited) and by entering into both formal (head lease schemes) and informal agreements with local HMO providers.

<sup>32</sup> The CMA notes that c.62% Unite's beds and [X] % of Liberty's beds across the UK are in nomination agreements with HEIs (CMA calculations based on Merger Notice, Annex 097 and Parties' response to RFI 5, Table 1).

<sup>33</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

55. The Parties overlap in the provision of corporate PBSA in the UK.

### **Product scope**

56. The Parties<sup>ii</sup> submitted that the relevant product market comprises all forms of accommodation available to FTSSA (i.e. excluding those students who live in their own/family residence) in each of the cities in which the Parties are both present.<sup>34</sup> The Parties believe that FTSSA have several accommodation options within the following broad categories: (a) renting a room/bed in PBSA (either HEI PBSA or corporate PBSA); and (b) renting a room/bed in HMO, either individually or collectively from private landlords.<sup>35</sup>

57. On the basis of the evidence received in its investigation, the CMA does not believe that the Parties' proposed market definition is appropriate for the reasons set out below.

58. The CMA's usual starting point is to look at the Parties' overlapping products and/or services and then to consider whether to widen the frame of reference.<sup>36</sup> The CMA pays particular regard to demand-side factors (i.e. the behaviour of customers and its effects). However, it may also consider supply-side factors (i.e. the capabilities and reactions of suppliers in the short-term) and other market characteristics.<sup>37</sup>

59. As stated above, the Parties overlap in the provision of corporate PBSA. The CMA has considered whether the product frame of reference should be widened to include HEI PBSA and HMO.

### **HEI PBSA**

60. As outlined above, customers of corporate PBSA comprise both individual students seeking rooms for themselves (direct lets) and HEIs seeking additional rooms on behalf of their students by means of nomination agreements in order to meet their accommodation guarantees.

61. The CMA notes that HEIs will typically seek to secure corporate PBSA beds for their students when their own PBSA stock is insufficient to meet their requirements. HEIs have told the CMA that they are often materially reliant on corporate PBSA to source appropriate accommodation for their students.

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<sup>34</sup> Merger Notice, paragraph 13.2.

<sup>35</sup> Merger Notice, paragraphs 13.8 and 13.9.

<sup>36</sup> [Merger Assessment Guidelines](#), paragraph 5.2.11.

<sup>37</sup> [Merger Assessment Guidelines](#), paragraph 5.2.6.

62. The CMA therefore believes that HEIs enter into nomination agreements to meet accommodation requirements that cannot be met from their own PBSA stock, in particular to meet the guarantees they offer to certain student groups; and in that context their own PBSA is not a direct constraint on corporate PBSA.
63. The CMA believes that HEI PBSA may not be substitutable with corporate PBSA for most students booking through the direct let route. Many students in this category would not be eligible for a room in HEI PBSA as such accommodation is typically restricted to certain groups of students such as first year undergraduates.<sup>38</sup> The CMA's survey (which was sent exclusively to direct let students) also indicated limited substitutability between HEI PBSA and corporate PBSA. In response to the question asking respondents what they would have done if the relevant party's property had been fully booked, only 21% would have rented a room in an HEI PBSA property.
64. However, the CMA recognises that HEI PBSA may be an alternative to corporate PBSA for direct let students who qualify for HEI accommodation guarantees.
65. As such, whilst the CMA does not believe that HEI PBSA should be included within the product frame of reference, it will consider the extent to which it provides a competitive constraint within the competitive assessment.<sup>39</sup>

### *HMO*

66. The CMA also considered whether HMO should form part of the product frame of reference.
67. For HEIs entering into nomination agreements, the evidence does not suggest that HMO is considered suitable for these purposes (see paragraph 49 above). The CMA has seen little evidence of HEIs entering into nomination agreements with HMO providers.
68. The CMA believes that HMO may not be considered as substitutable with corporate PBSA for most students booking through the direct let route. As outlined in paragraph 49, third parties indicated that HMO is often not suitable for first year and international students and data from the Parties showed that the majority of their students in academic year 2019/20 fall into these

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<sup>38</sup> The Parties submitted that the applicability of accommodation guarantees to international students varies from HEI to HEI but some will only guarantee accommodation for their first year of undergraduate or post-graduate study. Parties' response to RFI 2.

<sup>39</sup> This constraint may be larger where there is spare HEI PBSA capacity.

categories.<sup>40</sup> In response to the CMA's survey question asking respondents what they would have done if the relevant Party's property had been fully booked, only 24% indicated that they would have used HMO.<sup>41</sup>

69. The CMA notes that HEI accommodation managers confirmed that the price levels of PBSA are to some extent constrained by the rents for HMO and rents for rooms or flats from private landlords. In addition, the Parties have provided internal documents that show that the strength of HMO is monitored [redacted],<sup>42</sup> and demonstrated an example in Aberdeen where a supply shock in the HMO market impacted demand (and prices) for corporate PBSA.<sup>43</sup> The CMA considers that conditions in Aberdeen were exceptional, involving a large amount of high quality private accommodation becoming available due to a decline in demand from the oil industry, and do not necessarily reflect competitive conditions in other areas.
70. The CMA therefore considers that HMO should not be included within the product frame of reference, but will consider the extent to which it provides a competitive constraint within the competitive assessment.

#### *Corporate PBSA room type and type of customer*

71. The CMA has also considered whether the product scope should be narrower than corporate PBSA.
72. In respect of room type, the Parties and their corporate PBSA competitors typically provide different types and quality of room in individual properties and/or across different properties. Although the CMA does not consider that the product frame of reference should be narrowed in this respect, it has taken differences or similarities in the Parties' offerings in specific locations into account in the competitive assessment.
73. As noted above (see paragraph 52), there are two groups of PBSA customers: HEIs via nomination agreements and students via direct lets. Average prices for the two groups are similar (see paragraph 45), with prices for nomination agreements being slightly lower, which the CMA understands is linked to lower marketing costs. The CMA therefore considers it appropriate to assess the two customer groups within a single frame of reference.

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<sup>40</sup> Annex 4 of the Issues Letter Response shows that in AY 2019/20 [redacted]% and [redacted]% of Unite's and Liberty's direct lets respectively were either first year or international students.

<sup>41</sup> This includes those renting with other students in a shared house or flat and those renting a studio/apartment themselves.

<sup>42</sup> Issues Letter Response, Annex 3, [redacted].

<sup>43</sup> Supplementary note on Aberdeen, Annex 85 to the Merger Notice.

However, the CMA recognises that there are differences in these two customer sets and will take this into account in the competitive assessment.

74. In addition, as outlined in paragraph 49, the CMA notes that different types of student (including first years, returners and international students) have different demand preferences and different levels of reliance on (corporate) PBSA. The CMA will take these differences into account in the competitive assessment but considers it appropriate to assess all types of student within a single frame of reference.
75. The CMA has, therefore, not further narrowed the product frame of reference of corporate PBSA.

#### *Conclusion on product scope*

76. For the reasons set out above, the CMA believes that it is appropriate to consider the impact of the Merger on the provision of corporate PBSA. The CMA will consider the constraint from other forms of student accommodation as part of its competitive assessment. The CMA will also consider the impact on different customer segments within its competitive assessment.

#### ***Geographic scope***

77. Unite owns or manages 130 properties in 22 cities across the UK while Liberty's portfolio consists of 51 properties in 19 UK cities. The Parties both operate PBSA in the 14 Overlap Cities.
78. The Parties submitted that the CMA should assess the Merger within local frames of reference and that a national geographic scope would not be appropriate. Although they take certain national considerations into account when making commercial decisions, they consider that providers of all forms of accommodation to FTSSA compete on a local basis. The Parties submit that decisions on pricing and quality are always taken in the context of the individual asset and its relative position within the city<sup>44</sup> and that, from a demand perspective, accommodation must be located in the broader local area of the HEIs attended by FTSSA.<sup>45</sup>
79. The Parties submitted that the CMA should assess the Merger on a city-wide basis. They consider that it is not appropriate to determine 'catchment areas' for student accommodation in any given Overlap City because there will be no

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<sup>44</sup> Paragraph 2.5 of Annex 91 of the Merger Notice: 'Therefore while Unite's price in a given Overlap City is ultimately set centrally, it will always be based on local input from local city managers'.

<sup>45</sup> Merger Notice, paragraph 13.2.



single focal point for the location of student accommodation. When choosing where to live, students will consider a variety of factors, including proximity to their campus (which may not be a single site), proximity to amenities and proximity to established 'student neighbourhoods'.

#### *National frame of reference*

80. The CMA believes that the level of competition between providers of corporate PBSA on a national basis is likely to be relatively limited. On the demand side, students and HEIs are geographically constrained to corporate PBSA within their local area.
81. However, on the supply side, many of the corporate PBSA providers (including the Parties) operate nationally. There is evidence of competition at a national level to acquire sites and to develop corporate PBSA properties. Additionally, there is some evidence that the national offering of providers may be a relevant competitive parameter. Some third parties indicated that the decisions of students and HEIs may be influenced by the national branding and reputation of corporate PBSA providers. In addition, although the Parties' internal documents show that prices vary locally in response to local factors, there is some central influence and control over price setting.
82. The CMA has therefore considered the effect of the Merger on the provision of corporate PBSA on a UK-wide<sup>46</sup> basis.

#### *Local frame of reference*

83. The CMA believes there is substantial evidence that proximity to the HEI campus is the primary factor when choosing corporate PBSA accommodation (although other factors, such as those mentioned in paragraph 79, may be taken into account as well).
84. The CMA's customer survey found that 'distance to university' was given as the reason for choosing the Parties' properties more often than any other reason. 34% of respondents gave 'distance to university' as the main reason for choosing their residence rather than any other accommodation, and 74% gave it as a reason.<sup>47</sup> In regard to distance from university accommodation, 86% of respondents stated that they would seek accommodation within 30

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<sup>46</sup> The Parties do not operate any beds in Northern Ireland.

<sup>47</sup> Respondents were asked the one main reason for choosing their residence rather than any other accommodation and then for other reasons. The next most popular reason after distance to university was cost/price (20% of respondents gave this as their main reason and 51% as a reason).

minutes' walk of their university campus and 55% of respondents wanted accommodation within no more than 15 minutes' walking distance.

85. Almost all HEI accommodation managers told the CMA that the location of PBSA relative to campus was important for students and that the HEI would commonly only consider corporate PBSA sites that are within a certain area around the HEI campus(es).<sup>48</sup>
86. Many HEI responses specified an upper limit for the area in which they would consider corporate PBSA for nomination agreements, in the form of a discrete number of minutes, or miles, from the relevant university campus. Responses ranged from 7.5 minutes (0.4 miles) to 100 minutes (5 miles) with an average of 26 minutes (1.3 miles), and a median of 20 minutes (1.0 miles).
87. The majority of third party competitors that responded to the CMA's merger investigation also indicated that proximity to campus was a key factor for students when choosing their accommodation.
88. The CMA notes that evidence from the Parties' internal documents also supports the view that competition takes place at a local (intra-city) level, although the CMA has also seen some internal documents with a city-level focus.<sup>49</sup>
89. On a cautious basis, the CMA therefore believes it is appropriate to use a local geographic frame of reference based on catchment areas around each affected HEI campus.

### ***Conclusion on geographic scope***

90. In light of the evidence set out above, the CMA has considered the impact of the Merger on the basis of (i) a UK-wide frame of reference and (ii) local frames of reference based on catchment areas of 20 minutes' and 30 minutes' walking distance from the affected HEI campuses. The CMA recognises that other factors such as public transport options may also be relevant in some cities and this will be taken into account within the local competitive assessments.

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<sup>48</sup> Some of the HEI accommodation managers in London that the CMA consulted had different definitions, including travel time on public transport and proximity to an underground station. Other HEI accommodation managers told the CMA that they also take into account specific local circumstances, e.g. whether students would need to cross major transport routes on their way to and from the campus.

<sup>49</sup> For example, a Liberty document that [REDACTED], and a Unite [REDACTED] document that [REDACTED].

## ***Conclusion on frame of reference***

91. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (i) a UK-wide frame of reference for the provision of corporate PBSA; and
  - (ii) local frames of reference for the provision of corporate PBSA within (a) 20 minutes' walking distance and (b) 30 minutes' walking distance from the relevant HEI campuses in each Overlap City.

## **Competitive assessment**

### ***Horizontal unilateral effects***

92. 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 corporate PBSA at both a national and local level.
93. 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.<sup>50</sup> After the merger, it is less costly for the merging company to raise prices or lower quality because it will recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company.<sup>51</sup>

### ***National competitive assessment***

94. In order to consider the effect of the Merger at a national level, the CMA has first examined the national competitive parameters on which the Parties may compete and the importance of such parameters.
95. The CMA has then assessed:
- (i) shares of supply;
  - (ii) closeness of competition between the Parties; and
  - (iii) competitive constraint from alternative corporate PBSA providers.

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<sup>50</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>51</sup> [Merger Assessment Guidelines](#), paragraph 5.4.8.

### *National competitive parameters*

96. The Parties acknowledge that some limited national considerations are taken into account when making decisions on pricing and quality – e.g. the cost of borrowing may affect pricing of an individual site and renovations at an individual site may be affected by views on which cities nationally/regionally should be prioritised for capital investment.
97. However, the Parties submitted that competition between providers of student accommodation does not occur on a national basis and that decisions are always taken in the context of the individual asset and its relative position within the relevant city.
98. The evidence seen by the CMA confirms that there is limited competition between student accommodation providers at a national level for the following reasons:
- (i) as outlined in paragraphs 84 to 86, students are geographically constrained – they will only be willing to travel a certain distance between their accommodation and their HEI. Similarly, HEIs would only consider entering into nomination agreements with providers who can offer accommodation within a certain distance of the campus; and
  - (ii) although there is some central influence and control over price setting, prices are primarily determined by local ‘asset specific’ or ‘city specific’ factors including location, quality and range of services available (e.g. on-site amenities).
99. Competition at the national level therefore appears to be confined to a relatively small number of non-local factors<sup>52</sup> including (i) market positioning, (ii) brand/reputation and (iii) site acquisition and development of PBSA properties.
100. We consider the evidence on the importance of each of these factors within the corporate PBSA market before assessing the closeness of competition between the Parties and the competitive constraints imposed on the Parties.

### *Market positioning*

101. The CMA has received evidence that there is relatively limited differentiation in the quality of the rooms supplied by the majority of corporate PBSA providers. Some providers (e.g. Vita) have a greater focus on providing

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<sup>52</sup> Noting that there may also be some local variations in these factors (e.g. the quality of the Parties’ properties varies to an extent by city and by asset).

higher-end properties with a greater number of studio and more expensive ensuite rooms, but third parties told the CMA that there is a large middle ground of the market where most providers compete.<sup>53</sup> An internal strategy document from Unite indicates that [redacted]<sup>54</sup> [redacted].

102. Market positioning therefore appears to be of limited importance within the corporate PBSA market.

#### *Brand/reputation*

103. The CMA received mixed evidence on the importance of branding in the corporate PBSA market. Some third parties indicated that the decisions of students and HEIs can be influenced by the national branding and reputation of corporate PBSA providers while others considered it to be of little importance.
104. The customer survey results indicated that brand is relatively unimportant for direct let students with only 7.4% of respondents selecting 'brand of operator' as a reason for selecting their Unite or Liberty accommodation.<sup>55</sup>
105. Some HEI accommodation managers indicated a preference to secure further beds by contracting with larger, more established corporate PBSA providers with whom they had an existing relationship but data on existing nomination agreements demonstrated that HEIs are also willing to offer nomination agreements to smaller local operators.
106. The CMA notes that there are examples of corporate PBSA providers that have strong local presences in certain cities only (e.g. Ardmuir in Aberdeen and Dwell Student Living in Manchester), which indicates that national presence is not necessary to compete.

#### *Site acquisition and corporate PBSA development*

107. Competition also appears to take place at the national level to acquire sites and to develop corporate PBSA properties.

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<sup>53</sup> E.g. [redacted] Third party call note: 'The offering from provider to provider is generally very similar'. [redacted] Third party call note: 'those that offer traditional student accommodation all generally offer similar types of accommodation.' University of Birmingham Third party call note: 'A lot of student accommodation is comparable. The majority of accommodation is made up of cluster flats'.

<sup>54</sup> Unite document, [redacted].

<sup>55</sup> The main reasons given by respondents to the customer survey for choosing their Unite/Liberty residence over any other accommodation were distance to university (34%), cost/price (20%) and having their own bathroom (9%). Distance to the city centre, living with other students, living in a modern building and on-site facilities were also considered as important.

108. The Parties submitted that Liberty is not engaged in the development of new properties as Liberty only purchases already developed PBSA.<sup>56</sup> However, the CMA considers that, as the prospect of Liberty acquiring PBSA may affect others' incentives to develop, the merger may nevertheless affect this aspect of national competition.

#### *Shares of supply*

109. The Parties provided their share of supply estimates based on number of beds.<sup>57</sup> Internal documents and third party responses indicate that the use of the number of beds as a measure of the size of PBSA properties and providers is appropriate and common practice in the industry.
110. Table 1 contains the Parties' estimates of the national shares of supply of the top 12 providers of corporate PBSA beds in the UK.

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<sup>56</sup> The CMA notes that corporate PBSA providers have different business models. Some providers (e.g. CRM) are operators only and do not own the underlying properties whilst others (including the Parties) are both owners and operators.

<sup>57</sup> The Parties believe that shares on the basis of revenues would not be materially different from the reported volume shares in each Overlap City (see sections below): Response to RFI 1, paragraph 5.3. However, they believe that UK value shares would differ materially from volume shares due to the presence of different operators in London and the significantly higher rent levels in London compared to the rest of the UK: Response to RFI 1, paragraph 5.4.

**Table 1: Estimated national shares of supply in corporate PBSA 2018/19<sup>58</sup>**

Provider	Number of Beds	National Share of Supply
Unite	[REDACTED]	[10-20]%
iQ Student Accommodation	[REDACTED]	[5-10]%
Liberty	[REDACTED]	[5-10]%
CRM Students	[REDACTED]	[5-10]%
Student Roost	[REDACTED]	[5-10]%
Homes For Students	[REDACTED]	[5-10]%
Fresh Student Living	[REDACTED]	[5-10]%
Campus Living Villages	[REDACTED]	[0-5]%
Host Students	[REDACTED]	[0-5]%
Sanctuary Students	[REDACTED]	[0-5]%
Hello Student	[REDACTED]	[0-5]%
The Student Housing Co	[REDACTED]	[0-5]%
Total market size	[REDACTED]	[REDACTED]%

Source: Parties' estimate; Parties' response to RFI 5, Table 1.

111. The Parties' dataset and internal documents<sup>59</sup> show that the Parties are two of the three largest corporate PBSA providers in the UK. They have a combined share of supply of 25% with the Merger bringing about an increment of 8%.
112. However, there are a large number of other corporate PBSA competitors with a presence across multiple cities. These competitors include iQ Student Accommodation, CRM, Student Roost, Homes for Students, Fresh Student Living, Host, Hello Student, Sanctuary Students, Campus Living Villages (CLV), The Student Housing Company, Downing Students and Vita Students. In addition to these national players, there are multiple corporate PBSA providers (such as Ardmuir and Dwell Student Living) that compete successfully with the national providers at local level.

### *Closeness of competition*

113. The Parties submitted that both Liberty and Unite describe themselves as 'mid-market' operators in terms of their overall property portfolios. However, the Parties stated that Unite's property portfolio is of a slightly higher average

<sup>58</sup> The CMA does not consider UPP to be a relevant Corporate PBSA provider for the purposes of its investigation and has therefore excluded it from national and local share of supply tables. This is because UPP has a different business model whereby it designs, builds, finances and operates on-campus PBSA properties through long-term partnerships with HEIs. The on-campus properties are owned and marketed by HEIs and are branded as HEI accommodation. UPP do not typically directly let beds. Call with UPP, 12 September 2019 and <https://www.upp-ltd.com/our-approach/>.

<sup>59</sup> For example: Unite document, [REDACTED].

quality (e.g. because its properties were more recently built) than that of Liberty, which leads to slightly higher prices.

114. This suggests that the Parties may be close competitors at a national level, although evidence received by the CMA suggests that many providers are operating in the mid-market space. Third parties told the CMA that the offerings of the Parties are similar, but other national players such as iQ, CRM and Student Roost were also identified as being similar.
115. The Parties also submitted that the level of competition between Unite and Liberty on the supply side is limited due to their different business models. Unite builds its own PBSA properties but Liberty does not engage in property development activity. An internal Liberty strategy document<sup>60</sup> confirmed this key difference.
116. Only a limited number of the Parties' internal documents discussed competition at the national level. These documents show that they frequently refer to each other<sup>61</sup> and that on average they have similar prices in most of the Overlap Cities (albeit with a range of rooms at different price points).<sup>62</sup> However, as discussed below, these documents also suggested that the Parties were assessing multiple national players, not just each other.<sup>63</sup>
117. The Parties submitted that [REDACTED].<sup>64</sup> The CMA has not received any evidence suggesting that competition between the Parties is likely to increase in the future absent the Merger.

#### *Competitive constraint from alternative suppliers*

118. The Parties have submitted that there is a large number of strong corporate PBSA competitors with a presence across multiple Overlap Cities, giving customers (both students and HEIs) a wide range of choice.
119. The lack of differentiation for the majority of traditional 'mid-market' corporate PBSA, as outlined in paragraph 101, indicates that the Parties compete closely not only with each other but also with the large number of other corporate PBSA providers operating in this space.

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<sup>60</sup> Liberty document, [REDACTED].

<sup>61</sup> The CMA notes that comparisons to the other merging Party in internal documents are typically made at a city or asset specific level, indicating that competition between the Parties at a national level is of limited importance.

<sup>62</sup> See Unite document [REDACTED].

<sup>63</sup> For example, Unite document, [REDACTED], discussed at paragraph 121 below.

<sup>64</sup> Merger Notice, paragraph 18.9.



120. National competitors such as iQ, CRM and Student Roost were regularly mentioned as strong competitors by HEI accommodation managers alongside the Parties.
121. The Parties' internal documents frequently consider other corporate PBSA competitors in addition to the other merging party.<sup>65</sup> One internal Unite document [redacted].<sup>66</sup>
122. The CMA also notes that many of the competitors listed in Table 2 below are established players with significant expertise and resources available to them. The value of their corporate PBSA assets is significant and many are funded by institutional investors such as Goldman Sachs (iQ), GIC (the Student Housing Company), Corestate Capital Holding (CRM Students), the DWS Group (Vita) and Brookfield (Student Roost).

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<sup>65</sup> The CMA notes that comparisons to competitors in internal documents are typically made at a city or asset specific level, indicating that competition between providers at a national level is of limited importance.

<sup>66</sup> Unite document, [redacted].

**Table 2: List and further details of certain national competitors**

Competitor	Number of UK cities active in	Further information
<b>iQ Student Accommodation</b>	27	iQ has been active since 2009 and currently provides accommodation to over 28,000 students. It is owned by Vero Group, which is a joint venture, owned by Goldman Sachs Group and the Welcome Trust (with Greystar Real Estate Partners as an intermediate shareholder).
<b>CRM Students</b>	30	Formed in 2003 as 'Corporate Residential Management Limited' and becoming independent in 2004, CRM Students describes itself as the UK's leading independent student accommodation management company. As of 2018, CRM Students is backed by Corestate Capital Holding S.A., a leading European real estate investment manager.
<b>Student Roost</b>	19	Formed in 2012, Student Roost has grown rapidly since its incorporation. In Leicester alone it owns 6 properties. It is currently structured as 49 private limited companies, which are owned by various Brookfield Asset Management funds.
<b>Homes For Students</b>	27	Formed in 2015, Homes for Students is the trading name of Homes for Students Ltd. It describes itself as a leading operator in student accommodation managing over 20,000 beds across 82 properties in the UK.
<b>Fresh Student Living</b>	26	Formed in 2010, Fresh Student Living provides accommodation to over 16,000 students in the UK and Ireland. Fresh Student Living is a subsidiary of the Fresh Property Group, which manages purpose-built residential accommodation.
<b>Campus Living Villages</b>	10	Formed in 2003 and entering the UK market in 2008, Campus Living Villages is a global student accommodation provider, active across six countries and providing beds for 45,000 students worldwide.
<b>Host Students</b>	20	Host Students is a brand for Victoria Management Ltd, which is a student accommodation developer and manager, founded in 1996. It operates over 11,000 student beds across Europe.
<b>Sanctuary Students</b>	10	Sanctuary Students operates beds for 10,000 students across the UK. It forms part of the Sanctuary Group, a not-for-profit organisation which has been providing a range of property related services since 1969.
<b>Hello Student</b>	26	Formed in 2016, Hello Student is the trading name of Hello Student Management Limited, which is a subsidiary of Empiric Student Property plc, which is a national provider of student accommodation in the UK and listed on the Main Market of the London Stock Exchange in 2014.
<b>The Student Housing Co</b>	13	In 2016, the Student Housing Company was bought by GSA, a global student accommodation provider that was founded in 1991, in partnership with GIC, Singapore's sovereign wealth fund. GSA now operates in 33 cities across 8 countries in Europe and Asia. Nationally, the Student Housing Company is currently expanding, having recently completed construction of further accommodation in Cambridge and having acquired a new management contract in Bristol.

Sources: Annex 2 of the Parties' response to the Issues Letter (including each competitors' website footnoted therein), Companies House and GSA Press Release (28 September 2016), [GSA and GIC Acquire Portfolio of 7,150 UK student beds from Oaktree](#).

123. One competitor raised a national concern citing the Parties' increased ability to offer lower rents when approaching HEIs for tenders due to their additional scale.<sup>67</sup> However, the CMA notes that relatively small players have successfully entered and expanded in recent years without the benefit of such economies of scale. The CMA has not found any evidence that there is anything unique about the offerings of the Parties which gives them a distinct

<sup>67</sup> [X] Third party response to questionnaire.

competitive advantage and did not receive any clear evidence that the ability of national competitors to compete will be harmed by the Merger.

### *Out of market constraint*

124. As outlined above (paragraphs 60 to 70) the CMA also recognises that there is evidence of HEI PBSA and HMO providing some constraint on the Parties. However, the Parties' internal documents show that they monitor corporate PBSA more closely than HMO and consider corporate PBSA properties to represent closer competitors.<sup>68</sup>

### *Conclusion on national competitive assessment*

125. While the Parties are close competitors and will have the largest share of supply in the UK, they will continue to be constrained by a significant number of established and credible corporate PBSA competitors. The CMA therefore believes that there is no realistic prospect of an SLC at a national level.

### *Local competitive assessment*

#### *Share of supply filter for HEI campus catchment areas*

126. The shares of supply and increments brought about by the Merger for the local competitive assessment have been calculated for properties within 20 minutes' and 30 minutes' walking distance of HEI campuses<sup>69</sup> within the Overlap Cities. This is based on data supplied by the Parties for each Overlap City detailing the number of beds of all corporate PBSA properties,<sup>70</sup> the location of HEI campuses, the Parties' properties and corporate PBSA competitors.<sup>71</sup>
127. In merger investigations involving a large number of local overlaps, it is common practice for the CMA to use a filtering methodology 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, which are each analysed in more detail in an assessment that is informed by an understanding of the nature of competition.<sup>72</sup>

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<sup>68</sup> For example, a Liberty internal document: [REDACTED]. A Unite internal document: [REDACTED].

<sup>69</sup> As set out in footnote 1, the CMA's local analysis included HEIs with FTSSA >1,000, based on location data, bed numbers and FTSSA estimates provided by the Parties.

<sup>70</sup> Data supplied by the Parties for each Overlap City detailing the number of beds provided by all corporate PBSA providers' properties for the academic year 2019/20; excluding beds operated by UPP (see footnote 58 above).

<sup>71</sup> Walking times were calculated using the OS Highways network (i.e. not straight lines) and assuming 3 miles per hour walking speed.

<sup>72</sup> [Retail mergers commentary](#) (CMA62), paragraph 3.2.

128. The CMA applied a filter to the results to exclude HEI campus catchment areas where either the Parties' total share of supply or the increment arising from the merger is sufficiently low that the CMA believes there can be no realistic prospect of competition issues. Any given HEI campus is considered to 'fail' the filter, i.e. to warrant closer scrutiny, when both the Parties' combined share of supply and the Parties' combined share of supply increment exceed 30% and 5% respectively.
129. The resulting set of HEI catchment areas have been considered more closely by the CMA to identify whether there is a realistic prospect of an SLC arising in these local areas as a result of the Merger. Consistent with established practice, the CMA's analysis is not carried out through a mechanistic assessment of catchment areas and the CMA has also taken into account the constraint provided by alternative forms of student accommodation and corporate PBSA providers located outside the local catchment areas to the extent relevant.<sup>73</sup>
130. As set out in Table 3, the CMA's filter was failed for either the 20 minutes' or 30 minutes' walking distance catchment areas for 14 campuses, across 12 HEIs, in eight of the Overlap Cities.

**Table 3: HEI campus catchment areas that failed the CMA's filter**

<b>Aberdeen</b>	1. Main Campus (University of Aberdeen)
<b>Birmingham</b>	2. Edgbaston Campus (University of Birmingham)
<b>Leeds</b>	3. City Campus (Leeds Beckett University) 4. Main Campus (University of Leeds)
<b>Leicester</b>	5. Main Campus (University of Leicester)
<b>Liverpool</b>	6. City Campus (Liverpool John Moores University) 7. Creative Campus (Liverpool Hope University)
<b>London</b>	8. West Smithfield Campus (Queen Mary University of London) 9. Whitechapel Campus (Queen Mary University of London) 10. Guys Campus (Kings College London) 11. Waterloo Campus (Kings College London)
<b>Manchester</b>	12. Main Campus (Manchester Metropolitan University) 13. South Campus, Oxford Road (University of Manchester)
<b>Newcastle</b>	14. Main Campus (Newcastle University)

131. Based on the characteristics of the corporate PBSA market and the provision of student accommodation in the UK, the CMA believes that there is no realistic prospect of an SLC in relation to campus catchments where the filter is passed. The filters were set on a cautious basis based on (i) corporate PBSA beds alone and (ii) beds located within 20 minutes' and 30 minutes' walking distance from the campus. Even on this cautious basis, either the

<sup>73</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

share of supply or the increment is sufficiently low to exclude any realistic prospect of an SLC in these areas.

*Campus catchment areas cleared before the Case Review Meeting*

132. For the campuses in Aberdeen and Birmingham that failed the filter, the CMA found mitigating evidence that enabled the CMA to conclude that the Merger will not give rise to a realistic prospect of an SLC prior to the Case Review Meeting stage of the investigation.

*Aberdeen*

133. The CMA received clear evidence that the constraint from HMO and HEI PBSA was particularly strong in Aberdeen for the following reasons:
- (i) Aberdeen has a large stock of high-quality HMO due to the need to house oil industry workers in the city. A sharp decline in the oil price in 2014 resulted in both an increase in availability of high-quality HMO and a reduction in prices for HMO;
  - (ii) Data from the Parties demonstrated that the HMO supply shock had a knock-on impact on the demand for corporate PBSA (resulting in lower PBSA occupancy and a subsequent decrease in PBSA prices) as more students chose to live in HMO. Third parties confirmed that this transfer of accommodation from PBSA to HMO was not confined to returners but also applied to first year students;
  - (iii) An HEI in the city confirmed that it has excess capacity of beds in its university halls, thereby strengthening the HEI PBSA constraint imposed on the Parties in Aberdeen; and
  - (iv) Third parties indicated that the extent of the excess supply in the city meant that direct let students were in a strong position given the wide range of accommodation options available at a wide range of prices.
134. Accordingly, the CMA believes there is no realistic prospect of an SLC in relation to HEI campus catchments in Aberdeen and has therefore not conducted a detailed competitive analysis in relation to the University of Aberdeen's Main Campus.

*Birmingham*

135. A number of key factors contributed to the conclusion that the Merger will not give rise to a realistic prospect of an SLC in Birmingham including the following:

- (i) The CMA's review of internal documents indicated that the Parties were not close competitors in Birmingham, reflecting the fact that the Parties' properties were primarily located in different locations within the city;
- (ii) The absence of close competition between the Parties due to their focus being different parts of the city was consistently supported by third parties; and
- (iii) The Parties provided evidence of a constraint from competing corporate PBSA properties beyond 30 minutes' walking distance from the University of Birmingham's Edgbaston campus due to the availability of public transport.

136. Accordingly, the CMA believes there is no realistic prospect of an SLC in relation to HEI campus catchments in Birmingham and has therefore not conducted a detailed competitive analysis in relation to the University of Birmingham's Edgbaston campus.

#### ***Detailed competitive assessment by local areas***

137. The CMA conducted a detailed competitive assessment for the remaining campus catchment areas that failed the filter.<sup>74</sup> The CMA has assessed:

- (i) Shares of supply and increments for the 20 minutes' and 30 minutes' walking distance catchments areas for each campus that failed that filter;
- (ii) The closeness of competition between the Parties within the catchment areas;
- (iii) The competitive constraint from alternative corporate PBSA providers within the catchment areas (including the extent to which alternative corporate PBSA beds to those of the Parties are available to HEIs to meet their commitments, e.g. to guarantee beds to 1<sup>st</sup> year students); and
- (iv) The out of market constraint from properties located outside the catchment areas, HMO and HEI PBSA.

138. In addition, the CMA considered any evidence indicating that the shares of supply and increment results do not reflect competition between the Parties for the HEI campus relevant to the catchment area.

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<sup>74</sup> Each of which were considered at the Case Review Meeting.

## *Market context*

139. The CMA notes that there are certain market features that are relevant to its competitive assessment of all relevant local catchment areas. These features, which are summarised in the sub-section below, have been taken into account in all local areas subject to more detailed investigation.

### *Price sensitivity and flexing of price, location, quality*

140. As set out in the Merger Assessment Guidelines, if customers are insensitive to changes in the price of the merger firms' products, unilateral effects are more likely because the price rise will not lead to many lost sales, making the price rise less costly.<sup>75</sup>
141. The CMA received evidence from third parties, internal documents and the Parties that students are price sensitive.<sup>76</sup> Students will typically compare prices across student accommodation providers, which are generally transparent on websites, and weigh up price against other property specific characteristics including location, quality and facilities. A number of HEI accommodation managers<sup>77</sup> also indicated that price is an important factor when sourcing nomination agreements.<sup>78</sup> Accordingly, this reduces the likelihood that the Parties would be able to profitably increase prices following the Merger for a given level of capacity.

### *Constraint from HMO and HEI PBSA for certain direct let students*

142. Based on the evidence set out in paragraphs 60 to 70 above, the CMA considers that HMO and, to a lesser extent, HEI PBSA, provide some constraint on corporate PBSA providers at a local level. Specifically:
- (i) **HMO** may be a viable alternative for certain direct let students, specifically returning students and postgraduate students. The CMA received evidence from the Parties and third parties that returning students may consider HMO as an alternative, including because some see living away from HEIs in HMOs as a 'rite of passage'.<sup>79</sup> The CMA has not received any evidence that the Parties are able to price discriminate between different groups of direct let students, so the effects of any constraint from

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<sup>75</sup> [Merger Assessment Guidelines](#), 5.4.9 (c).

<sup>76</sup> For example, a Liberty [redacted] document notes that [redacted]. HEI accommodation managers also noted the price-sensitivity and cost-consciousness of students.

<sup>77</sup> [redacted] Third party response to questionnaire. [redacted] Third party response to questionnaire and [redacted] Third party response to questionnaire.

<sup>78</sup> For example, a HEI accommodation manager noted that when sourcing nomination agreements and students would be prepared to travel a little more for a cheaper price. [redacted] Third party call note.

<sup>79</sup> Merger Notice, paragraph 13.41. Third party call notes [redacted], [redacted].

HMO will be shared across all direct let students. The CMA has taken into account the constraint from HMO in its local assessments, and set out city-specific information on the constraint from HMO in the local assessments below where relevant.

- (ii) **HEI PBSA** may be a viable alternative for certain direct let students eligible for accommodation guarantees (generally first year undergraduates and, in some cases, international students). As with the constraint from HMO, the CMA has not received any evidence that the Parties are able to price discriminate between different groups of direct let students, so the effects of any constraint from HEI PBSA will be shared across all direct let students. However, the CMA remains of the view that HEI PBSA provides a relatively limited constraint on the Parties. As noted above, the CMA's survey (which was sent exclusively to direct let students) also indicated limited substitutability between HEI PBSA and corporate PBSA. Further, HEIs in the relevant cities source corporate PBSA beds to supplement their own stock. Other than in Aberdeen (see paragraph 133), the CMA did not see evidence of HEIs being unable to fill their PBSA beds and hence actively competing with corporate PBSA providers. The CMA has taken into account the relatively limited constraint from HEI PBSA when assessing the competitive conditions in each of the local catchment areas.

## **Leeds**

### *Local context*

143. The CMA's filter was failed in relation to two HEI campus catchment areas in Leeds: Leeds Beckett University (**LBU**), City Campus and the University of Leeds (**UoL**), Main Campus – but in each case only at the 20 minutes' walking distance catchment area level.<sup>80</sup>
144. In Leeds there are two main HEIs: LBU and UoL, which the Parties submitted account for the majority of demand for student accommodation in Leeds.<sup>81</sup> LBU and UoL are less than one-minute walking distance from each other and their catchment areas nearly perfectly overlap (bar a single small

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<sup>80</sup> The CMA received one concern from a third party about the impact of the Merger in Leeds. However, the third party HEI – Leeds College of Music (**LCM**) – is a small specialised institution with an estimated FTSSA of under 1,000 (substantially smaller than LBU (14,339 FTSSA) and UoL (31,494 FTSSA)) and accordingly was not considered to be a relevant HEI for the CMA's assessment. Only a relatively small number of students from that HEI stay in the Parties' properties, suggesting that the Parties do not focus on competing to supply accommodation to students attending LCM.

<sup>81</sup> Issues Letter Response, Annex 1, paragraph 12.1.



property in the 20 minutes' catchment area). The CMA considers that it is appropriate to consider these catchment areas together.

145. The increment from the Merger for the catchment areas for both campuses relates to a single property [redacted]. Liberty has only one property within the 20 minutes' and 30 minutes' catchment areas of both the relevant LBU and UoL campuses, [redacted].<sup>82</sup>

### *Shares of supply*

146. Table 4 below shows the Parties' combined shares of supply and increments from the Merger for the AY 2019/20 for both campuses. The CMA's filter is only failed in relation to the 20 minutes' walking distance catchment area; the increment falls below 5% at the 30 minutes' walking distance catchment area. The CMA also notes that Unite's share of supply is likely to increase in AY 2020/21 due to a new Unite property – this has been taken into account in the assessment.

**Table 4: LBU, City Campus and UoL, Main Campus, catchment areas shares of supply, AY 2019/20**

HEI	Unit	20 minutes' walk		30 minutes' walk	
		Combined	Increment	Combined	Increment
LBU	Number of beds	[redacted]		[redacted]	
	Share of supply	[30-40]%	[5-10]%	[30-40]%	[0-5]%
UoL	Number of beds	[redacted]		[redacted]	
	Share of supply	[30-40]%	[5-10]%	[30-40]%	[0-5]%

Source: Parties' revised response to RFI 6, 29 October 2019.

### *Closeness of competition*

#### *Differentiation between the Parties*

147. As referred to at paragraph 145 above, the increment for the catchment areas for both the LBU and UoL campuses arises from a single Liberty property, [redacted]. By contrast, Unite has eight properties in the 30 minutes' catchment area for both the LBU and UoL campuses [redacted].<sup>83</sup> [redacted].<sup>84</sup> [redacted], and that the Parties

<sup>82</sup> Issues Letter Response, Annex 1, paragraph 12.4.

<sup>83</sup> Issues Letter Response, Annex 1, paragraph 12.5.

<sup>84</sup> Issues Letter Response, Annex 1, paragraph 12.4.

do not appear to be close competitors for students from the same HEIs in the catchment areas in Leeds.

148. Further, Unite does not offer non-ensuite rooms in Leeds while Liberty does.<sup>85</sup>

#### *Internal documents*

149. The CMA notes that there are some internal documents which suggest that certain Unite properties are considered by Liberty to be competitors for certain Liberty properties, in addition to other corporate PBSA properties provided by Unipol, Unite and Parklane Properties.<sup>86</sup> Other internal documents show that the Parties track all PBSA competitors in Leeds.<sup>87</sup>

#### *Conclusion on closeness of competition*

150. The CMA considers that the Parties do not appear to be close competitors for students from the same HEIs in the catchment areas in Leeds, but some internal documents suggest that the Parties do consider each other to be rivals. The CMA has therefore considered the competitive constraints that will exist post-Merger.

#### *Competitive constraints*

##### *Alternative corporate PBSA providers*

151. The Parties submitted that post-Merger, Unite will remain constrained by a number of significant rival corporate PBSA providers in the relevant catchment areas, including national players with significant financial backing and the ability to expand.<sup>88</sup> Tables 5 and 6 below show bed numbers and shares of supply for the Parties and competitor corporate PBSA providers with shares of supply above 3%.

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<sup>85</sup> Merger Notice, paragraph 15.144.

<sup>86</sup> For example, [REDACTED]. Liberty document: [REDACTED] Liberty internal document: [REDACTED].

<sup>87</sup> For example, a Liberty internal document: [REDACTED]. A Unite internal document: '[REDACTED]'. Moreover, a Unite document: [REDACTED].

<sup>88</sup> Issues Letter Response, Annex 1, paragraphs 12.15 to 12.16.

**Table 5: Shares of supply of top (>3%) corporate PBSA providers for LBU, City Campus, AY 2019/20<sup>89</sup>**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Unite	[✂]	[20-30]%	[✂]	[20-30]%
iQ Student Accommodation	[✂]	[10-20]%	[✂]	[10-20]%
Mansion	[✂]	[5-10]%	[✂]	[5-10]%
Liberty	[✂]	[5-10]%	[✂]	[0-5]%
Campus Living Villages	[✂]	[5-10]%	[✂]	[5-10]%
Downing students	[✂]	[5-10]%	[✂]	[0-5]%
Vita Student	[✂]	[0-5]%	[✂]	[0-5]%
Hello Student	[✂]	[0-5]%	[✂]	[0-5]%
Fresh Student Living	[✂]	[0-5]%	[✂]	[0-5]%
Northend Management Ltd	[✂]	[0-5]%	[✂]	[0-5]%
UrbanStudentLife	[✂]	[0-5]%	[✂]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

**Table 6: Shares of supply of top (>3%) corporate PBSA providers for UoL, Main Campus, AY 2018/2019**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Unite	[✂]	[20-30]%	[✂]	[20-30]%
iQ Student Accommodation	[✂]	[10-20]%	[✂]	[10-20]%
Mansion	[✂]	[5-10]%	[✂]	[5-10]%
Liberty	[✂]	[5-10]%	[✂]	[0-5]%
Campus Living Villages	[✂]	[5-10]%	[✂]	[5-10]%
Downing Students	[✂]	[0-5]%	[✂]	[0-5]%
Vita Student	[✂]	[0-5]%	[✂]	[0-5]%
Hello Student	[✂]	[0-5]%	[✂]	[0-5]%
Fresh Student Living	[✂]	[0-5]%	[✂]	[0-5]%
Northend Management Ltd	[✂]	[0-5]%	[✂]	[0-5]%
Carr Mills	[✂]	[0-5]%	[✂]	[0-5]%
UrbanStudentLife	[✂]	[0-5]%	[✂]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

152. Tables 5 and 6 above show that there are multiple alternative corporate PBSA properties within the catchment areas for LBU and UoL, with iQ Students and

Mansion having more beds than Liberty within the 30 minutes' catchment areas for both HEIs.

153. The Parties submitted that LBU<sup>90</sup> and UoL are not dependent on the Parties for beds due to their own HEI PBSA stock and alternative corporate PBSA providers. The Parties highlighted to the CMA five competitor corporate PBSA properties within 30 minutes' walking distance from LBU and UoL that would appear to be 'particularly suitable alternatives' [REDACTED].<sup>91</sup> These properties together account for 2,636 beds and an estimated 2,179 non-nominated beds, in excess of [REDACTED]. The CMA considers there will be sufficient alternative corporate PBSA providers for LBU and UoL to source beds from under nomination agreements.
154. Accordingly, the CMA considers that the merged entity will continue to be constrained by numerous alternative corporate PBSA suppliers.

#### *Out of market constraints*

155. The Parties submitted that the 20 minutes' and 30 minutes' catchment areas for LBU and UoL fail to capture the competitive constraints imposed on the Parties by PBSA located outside the relevant catchment areas.
156. The Parties provided evidence that:
- (i) [REDACTED],<sup>92</sup> suggesting that corporate PBSA properties outside of the catchment area may be suitable alternatives to the Parties' properties within the LBU and UoL catchment area.
  - (ii) On a city-wide basis, the Parties' combined shares of supply fall to 31% due to the presence of other competitor PBSA properties.
157. The CMA considers that this evidence shows that corporate PBSA outside of the catchment areas should be taken into account as part of the local competitive assessment of the LBU and UoL campus catchment areas.

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<sup>89</sup> For all local assessments, Corporate PBSA providers have been listed in order of their share of supply at the 30 minutes' walking distance catchment areas unless the CMA's filter was only failed at the 20 minutes' walking distance catchment areas.

<sup>90</sup> LBU does not have its own HEI PBSA stock and relies on partnerships with corporate providers to source bed spaces required for its accommodation needs. Issues Letter Response, Annex 1, paragraph 12.17.

<sup>91</sup> Unite identified these properties that would appear to be 'particularly suitable' in Leeds and the other cities considered below based on its own market knowledge and public sources taking into account (i) the location of the property for the HEI in question; (ii) the quality/specification of the property, (iii) the track record of working with HEIs through nomination agreements and (iv) the extent to which beds in the properties are already nominated to the relevant HEI. Issues Letter Response, paragraph 3.1.6.

<sup>92</sup> Issues Letter Response, Annex 1, paragraph 12.21.

158. The Parties also submitted that the merged entity would be constrained by HMO post-Merger. They submitted that:

- (i) An internal Unite document [REDACTED];<sup>93</sup> and
- (ii) Unipol also runs an accreditation scheme for HMO that is recommended by both LBU and UoL.

159. As set out in paragraph 142 above, the CMA believes that HMO and, to a lesser extent, HEI PBSA will provide some degree of constraint on the Parties as they may be viable alternatives for certain direct let students.

#### *Conclusion on horizontal unilateral effects in Leeds*

160. In Leeds, there is currently limited competitive interaction between the Parties. Liberty has a single property that [REDACTED] and the Parties do not appear to be close competitors for students for the same HEIs. The Parties will also continue to be constrained by several alternative corporate PBSA providers post-Merger (from both within and outside the relevant catchment areas). Accordingly, for these reasons and the other factors set out above, the CMA found 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 corporate PBSA in the HEI campus catchment areas for LBU and UoL.

### **Leicester**

#### *Local context*

161. The CMA's filter was failed in relation to the University of Leicester (**UoLe**), Main Campus at the 30 minutes' catchment area level only.

162. In Leicester there are two HEIs: UoLe and De Montfort University (**DMU**). They are located to the south east and south west of the city centre respectively and are only 1.2 miles apart, such that there is a degree of overlap in their catchment areas. The corporate PBSA properties in Leeds are generally centred around DMU. However, the Parties' combined shares of supply for DMU do not fail the CMA's filter.

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<sup>93</sup> Issues Letter Response, Annex 3, Income Optimisation Summary.

### *Shares of supply*

163. Table 7 below shows the Parties' combined shares of supply and increments from the Merger for the AY 2019/20 for the UoLe catchment areas.

**Table 7: UoLe, Main Campus catchment areas shares of supply, AY 2019/20**

HEI	Unit	20 minutes' walk		30 minutes' walk	
		Combined	Increment	Combined	Increment
UoLe	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[10-20]%	[0-5]%	[30-40]%	[10-20]%

Source: Parties' revised response to RFI 6, 29 October 2019.

### *Closeness of competition*

#### *Differentiation between the Parties*

164. The Parties submitted that the Parties' corporate PBSA properties are not close competitors in the relevant catchment areas for UoLe,<sup>94</sup> [REDACTED].<sup>95</sup> Unite has four properties in Leicester and [REDACTED].<sup>96</sup> Similarly, Liberty has three properties in Leicester [REDACTED].<sup>97</sup>

165. There is also evidence of some potential differentiation in room type and pricing. Based on the Parties' analysis of direct let pricing for AY 2019/20 for properties within the UoLe 30 minutes' catchment area (but noting that the [REDACTED]), Liberty's studio pricing was higher than Unite's and closer to that of other corporate PBSA competitors.<sup>98</sup> Further, Unite does not offer non-ensuite rooms in Leicester while Liberty does; Liberty does not offer apartments in while Unite does.<sup>99</sup>

#### *Internal documents*

166. The CMA notes that there are some internal documents which suggest that Liberty considered certain Unite properties to be competitors to certain of their own properties in Leicester.<sup>100</sup> However, other internal documents also name

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<sup>94</sup> Issues Letter Response, paragraph 11.

<sup>95</sup> The CMA notes that UoLe did not respond to the CMA's questionnaire or requests for a call.

<sup>96</sup> Issues Letter Response, paragraph 11.8.1.

<sup>97</sup> Issues Letter Response, paragraph 11.8.2.

<sup>98</sup> RFI 6 response, Annex 7.3.

<sup>99</sup> Merger Notice, paragraphs 15.162 – 15.163.

<sup>100</sup> [REDACTED]; Liberty document, [REDACTED].

iQ and Sulets/Student Roost properties as comparable properties,<sup>101</sup> while others show that the Parties track all PBSA competitors in Leicester.<sup>102</sup>

*Conclusion on closeness of competition*

167. The CMA considers that whilst the Parties compete with each other in Leicester, they do not compete closely in the relevant catchment area for UoLe. The CMA has also considered the competitive constraints that will exist post-Merger.

*Competitive constraints*

*Alternative corporate PBSA providers*

168. The Parties submitted that post-merger, Unite will remain constrained by a number of significant rival corporate PBSA providers in the 30 minutes' catchment area, including national players with significant financial backing and the ability to expand. Table 8 below shows bed numbers and shares of supply for the Parties and competitor corporate PBSA providers with shares of supply above 3%.

**Table 8: Shares of supply of top (>3%) corporate PBSA providers for UoLe, AY 2019/20**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Unite	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Liberty	[REDACTED]	[0-5]%	[REDACTED]	[10-20]%
Student Roost	[REDACTED]	[5-10]%	[REDACTED]	[10-20]%
Hello Student	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%
CRM Students	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%
Spectrum Housing	[REDACTED]	[20-30]%	[REDACTED]	[5-10]%
Homes For Students	[REDACTED]	–	[REDACTED]	[5-10]%
Fresh Student Living	[REDACTED]	–	[REDACTED]	[5-10]%
Host Students	[REDACTED]	–	[REDACTED]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

<sup>101</sup> Liberty internal document: [REDACTED].

<sup>102</sup> For example, a Liberty internal document: [REDACTED]. A Unite internal document: [REDACTED]. Moreover, a Unite document: [REDACTED].

169. Table 8 above shows that there are multiple alternative corporate PBSA providers within the 30 minutes' catchment area, with Student Roost having a broadly similar number of beds to Liberty.
170. [REDACTED], indicating that it is not reliant on the Parties for beds due to its own HEI PBSA stock and alternative corporate PBSA suppliers.<sup>103</sup>
171. Accordingly, while one third party ([REDACTED]) expressed concerns about the impact of the Merger in Leicester (because of the post-Merger position of the Parties), the CMA ultimately considers that the available evidence indicates that multiple alternative corporate PBSA providers will remain (both within the UoLe catchment area and within the catchment areas of other HEIs that did not fail the CMA's filter).

*Out of market constraints*

172. The Parties submitted that the 20 minutes' and 30 minutes' catchment areas for UoLe fail to capture the competitive constraints imposed on the Parties by PBSA located outside the catchment areas.
173. The Parties submitted that:
- (i) The UoLe Main Campus occupies a large geographic area and a marginal shift in calculating the catchment area to the central campus location (three minutes north) would lead to the inclusion of additional competitor PBSA providers, reducing the Parties' combined shares of supply to below 30%.<sup>104</sup>
  - (ii) A substantial number of UoLe students do not live within 30 minutes' walking distance of the UoLe Main Campus, based on the Parties' analysis of data from HESA.<sup>105</sup>
  - (iii) A significant amount of UoLe's own PBSA beds are located outside the catchment area for UoLe: for example, UoLe has six properties located 45 minutes' walk from its campus.<sup>106</sup>
174. The CMA considers that this evidence shows that corporate PBSA outside the 30 minutes' catchment area should be taken into account. When corporate PBSA immediately outside the 30 minutes' catchment area for UoLe is added, the Parties' combined share of supply falls to below 30%.

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<sup>103</sup> Issues Letter Response, Annex 1, paragraph 11.12.

<sup>104</sup> Issues Letter Response, Annex 1, paragraph 11.

<sup>105</sup> HESA data provided in Annex 4 of the Parties' RFI 6 Supplementary Submission dated 7 October 2019.

<sup>106</sup> Annex 6.2 of the Parties' response to RFI 6 and the Issues Letter Response, Annex 1, paragraph 11.10.



175. The Parties also submitted that the merged entity would be constrained by HMO post-Merger. The Parties submitted that Leicester is well-supplied with HMO, with 50% of FTSSA staying in HMO. There is HMO available through the student portal 'Sulets', which has been approved by both the UoLe and DMU student unions.<sup>107</sup> The CMA notes that a Liberty internal document [redacted].<sup>108</sup>
176. As set out in paragraph 142 above, the CMA believes that HMO and, to a lesser extent, HEI PBSA will provide some degree of constraint on the Parties as they may be viable alternatives for certain direct let students.

#### *Conclusion on horizontal unilateral effects in Leicester*

177. In Leicester, the Parties will continue to be constrained post-Merger by several alternative corporate PBSA providers (both within and outside the UoLe catchment areas). Further, the Parties currently do not appear to significant competitors for students attending UoLe. Accordingly, for these reasons and the other factors set out above, the CMA has found 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 corporate PBSA in the HEI campus catchment area for UoLe.

### **Liverpool**

#### *Local context*

178. The CMA's filter was failed in relation to HEI campus catchment areas for the Liverpool John Moores University (**LJMU**), City Campus and Liverpool Hope University (**LHU**), Creative Campus.
179. In Liverpool there are three main HEIs: LJMU, LHU and the University of Liverpool. LJMU is located in the city centre and LHU is located close to the city centre.

#### *Shares of supply*

180. Table 9 below shows the Parties' combined shares of supply and increments for the academic year 2019/20 for the LJMU and LHU catchment areas.

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<sup>107</sup> Merger Notice, paragraph 15.154.

<sup>108</sup> Liberty internal document: [redacted].

**Table 9: LJMU, City Campus and LHU, Creative Campus catchment areas shares of supply, AY 2019/20**

HEI	Unit	20 minutes' walk		30 minutes' walk	
		Combined	Increment	Combined	Increment
LHU	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[30-40]%	[10-20]%	[20-30]%	[10-20]%
LJMU	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[30-40]%	[10-20]%	[30-40]%	[10-20]%

Source: Parties' revised response to RFI 6, 29 October 2019.

### *Closeness of competition*

#### *Limited competition for LHU, Creative Campus*

181. The Parties submitted that there is virtually no existing competition between the Parties for students attending the LHU, Creative Campus (which failed the filter at the 20 minutes' walking distance catchment area only). [REDACTED].<sup>109</sup>
182. The CMA considers that the Parties are not significant competitors in relation to LHU.

#### *Differentiation*

183. The Parties submitted that their corporate PBSA properties are not close competitors in Liverpool due to differences in pricing and room composition. Based on the Parties' analysis of direct let pricing for AY 2019/20, Liberty's range of pricing for ensuite rooms is lower than Unite's and closest to other corporate PBSA providers,<sup>110</sup> and the Parties' range of pricing for studios is closer to the prices offered by other Corporate PBSA providers.<sup>111</sup> Unlike Unite, Liberty does not provide non-ensuite rooms in Liverpool.<sup>112</sup>

#### *Internal documents*

184. The CMA notes that there are some internal documents which suggest that both Parties considered certain of the other Party's properties to be competitors to certain of their own properties.<sup>113</sup> However, other internal documents do not identify any Unite properties as being top competitors to

<sup>109</sup> Issues Letter Response, Annex 1, paragraphs 9.1 and 9.2.

<sup>110</sup> Specifically, Sanctuary Students and Urban Student Life: Merger Notice, paragraph 15.179.

<sup>111</sup> Unite's pricing is closer to the prices offered by Downing Students and Hello Student; Liberty's pricing is closest to Fresh Student Living and The Student Housing Company: Merger Notice, paragraph 15.179.

<sup>112</sup> Merger Notice, paragraph 15.179.

<sup>113</sup> For example, [REDACTED]. Liberty internal document, [REDACTED].

Liberty's properties in Liverpool, instead naming other corporate PBSA competitors including Fresh, Student Roost and Sanctuary properties.<sup>114</sup> Other internal documents show that the Parties track all PBSA competitors in Liverpool.<sup>115</sup>

#### *Conclusion on closeness of competition*

185. The CMA considers that the Parties compete with each other in Liverpool, although only to a limited extent in relation to the catchment area for LHU. Whilst there is some evidence of product differentiation, the CMA believes that the Parties' internal documents suggest they do see each other's properties as rivals in Liverpool. The CMA has therefore considered the competitive constraints that will exist post-Merger in the LJMUC catchment areas.

#### *Competitive constraints*

##### *Alternative corporate PBSA providers*

186. The Parties submitted that post-Merger, the merged entity will remain constrained by a large number of significant rival corporate PBSA providers in the relevant catchment areas for LJMUC, including national players with significant financial backing that have grown rapidly in recent years.<sup>116</sup>

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<sup>114</sup> [REDACTED]: Liberty document, [REDACTED].

<sup>115</sup> For example, a Liberty internal document: [REDACTED]. Moreover, a Unite document: [REDACTED].

<sup>116</sup> Issues Letter Response.

**Table 10: Shares of supply of top (>3%) corporate PBSA providers for LJMU, City Campus, AY 2019/20**

LJMU	20 minutes' walk		30 minutes' walk	
Competitor	Beds	Share	Beds	Share
Unite	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Liberty	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Fresh Student Living	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%
Urban Student Life	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Student Roost	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Sanctuary Students	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%
X1 Lettings	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Homes For Students	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Campus Living Villages	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

187. Table 10 above shows that there are multiple alternative corporate PBSA providers within the catchment areas for LJMU, with Fresh Student Living and Urban Student Life having a similar number of beds to Liberty.
188. The Parties submitted that LJMU is not dependent on the Parties for beds due to the wide range of alternative corporate PBSA providers in Liverpool.<sup>117</sup> LJMU identified eight competitor corporate PBSA providers other than the Parties as viable alternative corporate PBSA providers.<sup>118</sup> The Parties highlighted to the CMA thirteen competitor corporate PBSA properties within 20 minutes' walking distance from LJMU that would appear to be 'particularly suitable alternatives' [REDACTED]. These properties together account for 4,344 beds and an estimated 3,133 non-nominated beds, in excess of [REDACTED].<sup>119</sup> The CMA considers there will be sufficient alternative corporate PBSA providers from which LJMU may source beds for its nomination agreements.
189. The CMA notes that a third party raised a concern that the Merger could reduce the range of student accommodation available and lead to higher prices.<sup>120</sup> However, the evidence above indicates that multiple alternative corporate PBSA providers will remain within the catchment areas for LJMU post-Merger.

<sup>117</sup> Issues Letter Response.

<sup>118</sup> LJMU response to questionnaire.

<sup>119</sup> Issues Letter Response, Annex 1, paragraph 10.12.

<sup>120</sup> [REDACTED] Third party response to questionnaire. In addition, a third party competitor [REDACTED] raised a concern that the merged entity could control the student accommodation market in Liverpool by leveraging funding on the back of higher prices. However, the CMA considers that the merged entity would be sufficiently constrained from raising prices and 'controlling the student accommodation market'.

### *Out of market constraints*

190. The Parties also submitted that the merged entity would be constrained by HMO post-Merger. There is a significant volume of affordable HMO in established student neighbourhoods in Liverpool and the universities in Liverpool fund 'Liverpool Student Homes',<sup>121</sup> which provides advice and a search service for students seeking HMO.<sup>122</sup>
191. As set out in paragraph 142 above, the CMA believes that HMO and, to a lesser extent, HEI PBSA will provide some degree of constraint on the Parties as they may be viable alternatives for certain direct let students.

### *Conclusion on horizontal unilateral effects in Liverpool*

192. In Liverpool, the Parties do not currently compete to a material extent to supply beds to LHM students and will continue to be constrained post-Merger in respect of LHM. Several alternative corporate PBSA providers will constrain the merged entity. Accordingly, for these reasons and the other factors set out above, the CMA found 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 corporate PBSA in the HEI campus catchment areas for LHM and LHM.

## **London**

### *Local context*

193. The CMA's filter was failed in relation to four HEI campus catchment areas: Queen Mary University of London (**QMU**) West Smithfield Campus; QMU Whitechapel Campus; Kings College London (**KCL**), Guys Campus; and KCL Waterloo Campus.
194. The Parties submitted that walking distance catchment areas are not an appropriate measure for London, as the high number of HEIs and campuses spread across London mean that every PBSA property in the catchment areas for QMU and KCL is also in the catchment of several other campuses. The Parties also submitted that London has the high number of corporate PBSA properties and a well-developed public transport system. The CMA has considered the relevance of these factors in its assessment of out of market constraints below.

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<sup>121</sup>An internet platform which offers PBSA alongside HMO. Merger Notice, paragraph 13.53.

<sup>122</sup> Issues Letter Response, Annex 1, paragraph 10.14.

## Shares of supply

195. Table 11 below shows the Parties' combined shares of supply and increments for the academic year 2019/20 for the QMU and KCL catchment areas.

**Table 11: KCL Guys Campus, KCL Waterloo Campus, QMU West Smithfield Campus and QMU Whitechapel Campus catchment areas shares of supply, AY 2019/20**

HEI	Unit	20 minutes' walk		30 minutes' walk	
		Combined	Increment	Combined	Increment
KCL, Guy's Campus	Number of beds	[REDACTED]	-	[REDACTED]	
	Share of supply	[30-40]%	-	[30-40]%	[5-10]%
KCL, Waterloo Campus	Number of beds	[REDACTED]	-	[REDACTED]	
	Share of supply	[40-50]%	-	[30-40]%	[5-10]%
QMU, West Smithfield Campus	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[30-40]%	[5-10]%	[10-20]%	[5-10]%
QMU, Whitechapel Campus	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[30-40]%	[10-20]%	[20-30]%	[10-20]%

Source: Parties' revised response to RFI 6, 29 October 2019.

## Closeness of competition

### Limited competition for KCL and QMU Campuses

196. The Parties submitted that only a minority of one or both of the Parties' overlapping properties are actually used by students attending the relevant KCL or QMU campuses:

- (i) For KCL Guys Campus, [REDACTED].<sup>123</sup>
- (ii) For KCL Waterloo Campus, [REDACTED].<sup>124</sup>
- (iii) For QMU West Smithfield Campus, [REDACTED].<sup>125</sup>
- (iv) For QMU Whitechapel Campus, [REDACTED].<sup>126</sup>
- (v) [REDACTED].<sup>127</sup>

<sup>123</sup> Issues Letter Response, Annex 1, paragraph 3.5.1.

<sup>124</sup> Issues Letter Response, Annex 1, paragraph 5.2.2.

<sup>125</sup> Issues Letter Response, Annex 1, paragraph 3.5.3.

<sup>126</sup> Issues Letter Response, Annex 1, paragraph 3.5.4.

<sup>127</sup> Issues Letter Response, Annex 1, paragraphs 4.9, 4.11 and 7.10.

197. The CMA notes that the above evidence shows the Parties are not close competitors in relation to students attending the relevant KCL and QMU campuses; and that the Parties do not currently compete in the supply of corporate PBSA to students attending the KCL Waterloo Campus.

*Internal documents*

198. The CMA notes that there are some internal documents which suggest that both Parties considered certain of the other Party's properties to be competitors to certain of their own properties.<sup>128</sup> However these internal documents also name other corporate PBSA providers including iQ, Sanctuary and Student Housing Company as competitors. Other internal documents show that the Parties track all PBSA competitors in London.<sup>129</sup>

*Conclusion on closeness of competition*

199. The CMA considers that the Parties compete with each other in London. The CMA believes the Parties' internal documents suggest that they do see each other's properties as rivals in London. The CMA has therefore considered the competitive constraints that will exist post-Merger.

*Competitive constraints*

*Alternative corporate PBSA providers*

200. The Parties submitted that post-Merger, Unite will remain constrained by a large number of significant rival corporate PBSA providers, including national players with significant financial backing and the ability to expand.

*KCL Guys Campus*

201. Table 12 below shows bed numbers and shares of supply for the Parties and competitor corporate PBSA providers located within the 30 minutes' catchment area of KCL's Guys Campus with shares of supply above 3%.

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<sup>128</sup> For example, [REDACTED]: Liberty document, [REDACTED].

<sup>129</sup> For example, a Liberty internal document: [REDACTED]. A Unite internal document: [REDACTED]. Moreover, a Unite document: [REDACTED].

**Table 12: Shares of supply of top (>3%) corporate PBSA providers for KCL Guys Campus, AY 2019/20**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Chapter Living	[REDACTED]	[5-10]%	[REDACTED]	[20-30]%
Unite	[REDACTED]	[30-40]%	[REDACTED]	[20-30]%
Urbanest	[REDACTED]	[20-30]%	[REDACTED]	[10-20]%
Sanctuary Students	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Liberty	-	-	[REDACTED]	[5-10]%
iQ Student Accommodation	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%
CRM Students	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Campus Living Villages	-	-	[REDACTED]	[0-5]%
Fresh Student Living	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019

202. Table 12 above shows there are multiple alternative corporate PBSA properties within the catchment area for KCL, with Chapter Living, Urbanest and Sanctuary having more beds than Liberty.
203. The Parties submitted that KCL is not dependent on the Parties for beds due to their own HEI PBSA stock and alternative corporate PBSA suppliers.<sup>130</sup> The Parties highlighted examples of nine suitable corporate PBSA properties for KCL that would be suitable alternatives [REDACTED].<sup>131</sup> The CMA notes that only 3 of these properties are located within the 30 minutes' walking catchment area for KCL's Guys Campus. However, even within the catchment areas, corporate PBSA properties are marketed by reference to proximity to public transport links. The CMA therefore considers there will be sufficient alternative corporate PBSA providers from which KCL may source beds for its nomination agreements.

#### *QMU Whitechapel Campus*

204. Table 13 below shows bed numbers and shares of supply for the Parties and competitor corporate PBSA providers located within the 20 minutes' catchment area of QMU's Whitechapel Campus with shares of supply above 3%.

<sup>130</sup> Issues Letter Response, Annex 1, paragraphs 4.7 to 4.13.

<sup>131</sup> Issues Letter Response, Annex 1, Table 7.



**Table 13: Shares of supply of top (>3%) corporate PBSA providers for QMU, Whitechapel Campus, AY 2019/20**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Chapter Living	[REDACTED]	[30-40]%	[REDACTED]	[30-40]%
Unite	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Sanctuary Students	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Liberty	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Scape	-	-	[REDACTED]	[10-20]%
Host students	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
iQ Student Accommodation	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Urbanest	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

205. Table 13 above shows there are multiple alternative corporate PBSA properties within the catchment area for QMU, including Chapter Living which has more beds than either of the Parties.

206. The Parties submitted that QMU is not dependent on the Parties for beds to meet its accommodation guarantee due to their own HEI PBSA stock and alternative corporate PBSA providers. [REDACTED].<sup>132</sup> The Parties highlighted examples of seven suitable corporate PBSA properties for QMU that would be suitable alternatives [REDACTED].<sup>133</sup> The CMA notes that five of these properties are located within 36 minutes' walking distance from QMU's Whitechapel Campus, a total of 1,617 non-nominated beds, well in excess [REDACTED]. The CMA therefore considers there will be sufficient alternative corporate PBSA providers from which QMU may source beds for its nomination agreements.

#### *QMU West Smithfield Campus*

207. Table 14 below shows bed numbers and shares of supply for the Parties' and competitor corporate PBSA providers located within the 20 minutes' catchment area of QMU's West Smithfield Campus with shares of supply above 3%.

<sup>132</sup> Issues Letter Response, Annex 1, paragraphs 7.6 to 7.12.

<sup>133</sup> Issues Letter Response, Annex 1, Table 13.

**Table 14: Shares of supply of top (>3%) corporate PBSA providers for QMU, West Smithfield Campus, AY 2019/20**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
iQ Student Accommodation	[REDACTED]	[20-30]%	[REDACTED]	[10-20]%
Liberty	[REDACTED]	[20-30]%	[REDACTED]	[5-10]%
Chapter Living	[REDACTED]	[10-20]%	[REDACTED]	[20-30]%
The Student Housing Company	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Unite	[REDACTED]	[5-10]%	[REDACTED]	[10-20]%
CRM Students	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Dig Student	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Urbanest	-	-	[REDACTED]	[5-10]%
Scape	[REDACTED]	-	[REDACTED]	[0-5]%
Sanctuary Students	-	-	[REDACTED]	[10-20]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

208. Table 14 above shows there are multiple alternative corporate PBSA properties within the catchment area for QMU, including iQ which has more beds than either of the Parties.
209. The Parties submitted that QMU is not dependent on the Parties for beds to meet its accommodation guarantee due to its own HEI PBSA stock and alternative corporate PBSA suppliers.<sup>134</sup> [REDACTED].
210. No third party concerns were raised about the impact of the Merger by HEIs in the relevant catchment areas for KCL and QMU. A third party did raise a concern about the impact of the Merger regarding potential price increases.<sup>135</sup> However, the evidence above indicates that multiple alternative corporate PBSA providers will remain within the catchment areas post-Merger.

*Out of market constraints*

211. The Parties submitted that the 20 minutes' and 30 minutes' walking catchment areas for QMU and KCL fail to capture the competitive constraints imposed on the Parties by corporate PBSA located outside these catchment areas.

<sup>134</sup> Issues Letter Response, Annex 1, paragraph 6.6.

<sup>135</sup> A concern was raised by an HEI that did not fail the CMA's filter regarding possible rent increases. [REDACTED] response to questionnaire.

212. The Parties provided evidence that:

- (i) Given the highly developed public transport system in London, the Parties' analysis of HESA data indicates that 80% catchment areas of KCL and QMU is a very large geographical area across London.<sup>136</sup>
- (ii) A large proportion of corporate PBSA in London is located outside a 30 minutes' walking distance of any London HEI. For example, 34 non-Party corporate PBSA properties fall outside this catchment area accounting for circa 7,247 beds.<sup>137</sup>
- (iii) [X] which would be a 2 hour walk to the nearest KCL campus (Guys Campus).<sup>138</sup>
- (iv) Corporate PBSA providers market themselves on the basis of their proximity to public transport connections.<sup>139</sup>
- (v) KCL has its own stock of PBSA located outside the 20 minutes' and 30 minutes' catchment areas, for example its Champion Hill property is 28 minutes' bus ride from Guys Campus and 35 minutes' bus ride from KCL's Waterloo Campus.<sup>140</sup>
- (vi) For both QMU campuses the Parties' shares of supply fall below 30% in the 30 minutes' catchment areas. With a city-wide catchment area, the Parties' combined share of supply falls to 22% with an increment of 3% in AY 2019/20.<sup>141</sup>

213. The CMA believes that corporate PBSA located outside the catchment areas for KCL and QMU and readily accessible via public transport should be taken into account as part of the local competitive assessment, although it does not believe that city-wide shares of supply are an appropriate measure given the size of London. The CMA notes that Liberty's properties are all within a confined area of central London and expanding the catchment area to account for properties accessible by public transport therefore tends to reduce Liberty's competitive importance and expand that of competing corporate PBSA providers.

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<sup>136</sup> HESA data. Parties' response to RFI 6 supplementary response, Annex 4.

<sup>137</sup> Out of a total of 41,095 non-Party corporate PBSA beds. Issues Letter Response, Annex 1, paragraph 3.3.3.

<sup>138</sup> Issues Letter Response, Annex 1, paragraph 3.3.3.

<sup>139</sup> Issues Letter Response, Annex 1, paragraph 3.3.4.

<sup>140</sup> Issues Letter Response, Annex 1, paragraph 3.3.2.

<sup>141</sup> Issues Letter Response, Annex 1, paragraph 3.7.

214. The Parties also submitted that the merged entity would be constrained by HMO post-Merger. [REDACTED].<sup>142</sup> The University of London Housing Service provides a range of services accessible by all students of its member colleges, including KCL and QMU and lists circa 12,900 HMO beds.<sup>143</sup>
215. As set out in paragraph 142 above, the CMA believes that HMO and, to a lesser extent, HEI PBSA will provide some degree of constraint on the Parties as they may be viable alternatives for certain direct let students.

#### *Conclusion on horizontal unilateral effects in London*

216. In London, there is currently limited competitive interaction between the Parties. The Parties are not close competitors for students attending the relevant KCL or QMU campuses. The Parties will also continue to be constrained post-Merger by the high number of alternative corporate PBSA providers, including properties readily accessible by public transport that fall outside the walking distance catchment areas. Accordingly, for these reasons and the other factors set out above, the CMA has found 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 corporate PBSA in the HEI campus catchment areas for QMU and KCL.

### **Manchester**

#### *Local context*

217. The CMA's filter was failed in relation to two HEI campus catchment areas: the University of Manchester (**UM**), South Campus and Manchester Metropolitan University (**MMU**), Main Campus.
218. In Manchester there are two main HEIs: UM and MMU, which the Parties submitted account for the vast majority of demand for student accommodation in Manchester. UM and MMU are both located south of Manchester city centre and are adjacent to one another across a single road, such that there is a high degree of overlap between their catchment areas. The CMA considers that it is appropriate to assess these catchment areas together.
219. The 20 minutes' and 30 minutes' walking distance catchment areas for UM and MMU do not capture accommodation in Fallowfield to the south of the city centre, which the Parties submitted is Manchester's most popular student

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<sup>142</sup> Issues Letter Response, Annex 3, Income Optimisation Summary.

<sup>143</sup> Issues Letter Response, Annex 1, paragraph 2.3.2.

area. The CMA considers the relevance of Fallowfield in its assessment of out of market constraints below.

### *Shares of supply*

220. Table 15 below shows the Parties' combined shares of supply and increments for the academic year 2019/20 for the UM and MMU catchment areas.

**Table 15: UM and MMU catchment areas shares of supply, AY 2019/20**

		20 minutes' walk		30 minutes' walk	
HEI	Unit	Combined	Increment	Combined	Increment
UM	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[30-40]%	[10-20]%	[30-40]%	[10-20]%
MMU	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[40-50]%	[20-30]%	[30-40]%	[10-20]%

Source: Parties' revised response to RFI 6, 29 October 2019.

### *Closeness of competition*

#### *Differentiation between the Parties*

221. The Parties submitted that the Parties' corporate PBSA properties are not close competitors in Manchester due to differences in pricing, room composition and student composition.
222. Both Parties supply all the main types of PBSA accommodation in Manchester, including ensuite, non-ensuite and studios. The Parties submitted that Liberty properties are priced higher than Unite's properties, reflecting differences in its premium product offering compared to Unite's product offering. Based on the Parties' analysis of direct let pricing for AY 2019/20, the Parties submitted that in the ensuite segment, Unite's pricing is more closely aligned to other corporate PBSA providers such as CRM Students, Sanctuary Students and Campus Living Villages. The Parties submitted that in the direct let segment, the Parties are not close competitors, as their offerings have materially different prices, catering to students with different budgets.<sup>144</sup>
223. The Parties submitted that the HEIs attended by students staying in the Parties' direct let properties are different. [REDACTED].<sup>145</sup>

<sup>144</sup> Issues Letter Response, Annex 1, paragraphs 1.33 and 1.34.

<sup>145</sup> Issues Letter Response, Annex 1, paragraph 1.3.4.

### *Internal documents*

224. The CMA notes that there are some internal documents which suggest that both Parties considered certain of the other Party's properties to be competitors to certain of their own properties.<sup>146</sup> However, other internal documents show that in addition to Liberty, Unite considers a number of other corporate PBSA providers to be competitors, including Vita and Dwell Student Living;<sup>147</sup> and both Parties track numerous other corporate PBSA providers in Manchester.<sup>148</sup> For example, an internal Liberty document [REDACTED].<sup>149</sup>

### *Conclusion on closeness of competition*

225. The CMA considers that the Parties compete with each other in Manchester. Whilst there is some evidence of product differentiation, the CMA believes that the Parties' internal documents suggest that they see each other's properties' as rivals in Manchester. The CMA has therefore considered the competitive constraints that will exist post-Merger in the UM and MMU catchment areas.

### *Competitive constraints*

#### *Alternative corporate PBSA providers*

226. The Parties submitted that post-Merger, the merged entity will remain constrained by a number of significant rival corporate PBSA providers in the relevant catchment areas for UM and MMU, including national players with significant financial backing and the ability to expand.<sup>150</sup> Tables 16 and 17 below show bed numbers and shares of supply for the Parties and competitor corporate PBSA providers with shares of supply above 3%.

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<sup>146</sup> For example, [REDACTED]. Liberty document: [REDACTED]; and a Unite document [REDACTED].

<sup>147</sup> For example, Unite Internal document [REDACTED].

<sup>148</sup> For example, a Liberty internal document: [REDACTED]. A Unite internal document: [REDACTED]. Moreover, a Unite internal document: [REDACTED].

<sup>149</sup> Liberty internal document: [REDACTED].

<sup>150</sup> Issues Letter Response, Annex 1, paragraphs 1.35 and 1.36.

**Table 16: Shares of supply of top (>3%) corporate PBSA providers for MMU, AY 2019/20**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Liberty	[REDACTED]	[20-30]%	[REDACTED]	[10-20]%
Unite	[REDACTED]	[20-30]%	[REDACTED]	[10-20]%
iQ Student Accommodation	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Dwell Student Living	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Vita Student	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Sanctuary Student	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Hello Student	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
CRM Students	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Homes For Students	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

**Table 17: Shares of supply of top (>3%) corporate PBSA providers for UM, AY 2019/20**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Liberty	[REDACTED]	[20-30]%	[REDACTED]	[10-20]%
Unite	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
iQ Student Accommodation	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Dwell Student Living	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Vita Student	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Sanctuary Students	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Hello Student	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
CRM Students	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Homes For Students	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

227. Tables 16 and 17 above show that there are multiple alternative corporate PBSA properties within the catchment areas, with iQ having a similar number of beds to Unite, and each of Dwell Student Living and Vita also offering over 1,000 beds.
228. Third parties [REDACTED], [REDACTED] told the CMA that they consider iQ, Sanctuary, Dwell Student Living and Vita to be viable alternative corporate PBSA providers.<sup>151</sup>
229. The Parties submitted that UM and MMU are not dependent on the Parties for beds due to their own HEI PBSA stock and alternative corporate PBSA

<sup>151</sup> [REDACTED], [REDACTED] Third party responses to questionnaires.

suppliers. The Parties highlighted to the CMA six competitor corporate PBSA properties within 30 minutes' walking distance from UM that would appear to be 'particularly suitable alternatives'<sup>152</sup> [REDACTED]. These properties together account for 3,834 beds and an estimated 3,636 non-nominated beds, well in excess of [REDACTED]. The CMA considers there will be sufficient alternative corporate PBSA providers from which UM and MMU may source beds for its nomination agreements.

230. The CMA notes that some third parties expressed concerns about the impact of the Merger in Manchester.<sup>153</sup> For example, one third party told the CMA that it was concerned decreasing local competition may adversely affect rent levels and affordability.<sup>154</sup> The CMA notes however that, as set out above, the available evidence indicates that multiple alternative corporate PBSA providers will remain within the catchment areas post-Merger.

#### *Out of market constraints*

231. The Parties submitted that the 20 minutes' and 30 minutes' catchment areas for MMU and UM fail to capture the competitive constraints imposed on the Parties by PBSA and HMO located outside the catchment areas, in Fallowfield.
232. The Parties provided evidence that:
- (i) Fallowfield is well-connected to UM by a 13 minutes' bus journey, with buses departing every 2 minutes.<sup>155</sup>
  - (ii) Public transport and cycling are widely used by students in Manchester: a 2017 UM survey showed that only 37% of students walked, while 48% travelled by bus and 9% cycled.<sup>156</sup>
  - (iii) Corporate PBSA properties are marketed with reference to their proximity to the Fallowfield area, including iQ, Dwell Student Living and Hello Students.<sup>157</sup>

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<sup>152</sup> Issues Letter Response, paragraph 3.1.6.

<sup>153</sup> [REDACTED] Third party call note. [REDACTED] Third Party call note. [REDACTED] Third party call note.

<sup>154</sup> [REDACTED] Third party response to questionnaire.

<sup>155</sup> Issues Letter Response, Annex 1, paragraph 1.

<sup>156</sup> Issues Letter Response, Annex 1, paragraph 1.8.

<sup>157</sup> Issues Letter Response, Annex 1, paragraph 1.11 and 1.12.



(iv) Fallowfield is the second most densely populated area in terms of student population for MMU and the most densely populated area for UM, based on the Parties' analysis of data from HESA.<sup>158</sup>

(v) UM has seven HEI PBSA properties with 4,440 beds in Fallowfield, representing 49% of its own PBSA.

233. The CMA considers that this evidence shows that corporate PBSA within the Fallowfield area should be considered a relevant constraint for corporate PBSA properties within the UM and MMU campus catchment areas. When the Fallowfield area is added to the 30 minutes' catchment areas for UM and MMU, the Parties' combined shares of supply of corporate PBSA falls to 35% (with a 16% increment), as shown in Table 18 below.

**Table 18: Shares of supply of corporate PBSA providers within a 30 minutes' walk of MMU and UM and in Fallowfield, AY 2019/20**

Competitor	30 minutes' walk + Fallowfield	
	Beds	Share
Liberty	[REDACTED]	[10-20]%
Unite	[REDACTED]	[10-20]%
iQ Student Accommodation	[REDACTED]	[10-20]%
Dwell Student Living	[REDACTED]	[10-20]%
Vita Student	[REDACTED]	[5-10]%
Sanctuary Students	[REDACTED]	[5-10]%
Hello Students	[REDACTED]	[5-10]%
CRM Students	[REDACTED]	[0-5]%
Homes for Students	[REDACTED]	[0-5]%
Mezzino	[REDACTED]	[0-5]%

Source: Parties' response to the Issues Letter (Table 4)

234. The Parties also submitted that the merged entity would be constrained by HMO post-Merger:<sup>159</sup>

(i) [REDACTED] in their internal documents,<sup>160</sup> and there is a large stock of HMO available on the Fallowfield area which is 'materially cheaper' than HEI PBSA and corporate PBSA.<sup>161</sup>

<sup>158</sup> Parties' supplementary submission on RFI 6 dated 7 October 2019, Annex 4 – the Parties generated 'heat maps' based on HESA student data to illustrate the density of the student population across relevant areas in the city.

<sup>159</sup> In relation to the constraint from HEI PBSA, the Parties also submitted that UM has sufficient HEI PBSA to meet its guarantee requirements and has the ability to self-supply all of its PBSA requirements. However, contrary to the Parties' submissions, the CMA understands that UM does not have sufficient HEI PBSA stock to meet its accommodation guarantee.

<sup>160</sup> Issues Letter Response, Annex 3, Income Optimisation Summary.

<sup>161</sup> Issues Letter Response, Annex 1, paragraphs 1.30 to 1.32.

(ii) Further, the Manchester Student Homes portal, which has been approved by both UM and MMU, advertises accredited HMO.

235. Third parties confirmed that Fallowfield is a popular student area with a large amount of HMO.<sup>162</sup>

236. As set out in paragraph 142 above, the CMA believes that HMO and, to a lesser extent, HEI PBSA will provide some degree of constraint on the Parties as they may be viable alternatives for certain direct let students.

#### *Conclusion on horizontal unilateral effects in Manchester*

237. In Manchester, although the Parties are the two largest corporate PBSA providers in the MMU and UM catchment areas, they will continue to be constrained post-Merger by several large alternative corporate PBSA providers (including those in Fallowfield). HMO, particularly in Fallowfield, will also constrain the merged entity. Accordingly, for these reasons and the other factors above, the CMA has found 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 corporate PBSA in the HEI campus catchment areas for UM and MMU.

### **Newcastle**

#### *Local context*

238. The CMA's shares of supply filter was failed in relation to one HEI campus catchment area for Newcastle University (**NU**) Main Campus and for the 20 minutes' walking distance only.

239. In Newcastle there are two main HEIs, NU and Northumbria University, which the Parties submitted account for the vast majority of student accommodation demand in Newcastle. NU and Northumbria University are located adjacently, within a seven minutes' walking distance of each other. Northumbria University does not fail the CMA's filter, indicating there are a number of alternative corporate PBSA providers within its catchment areas.

#### *Shares of supply*

240. Table 19 below shows the Parties' combined shares of supply and increments for the academic year 2019/20 for the NU catchment areas.

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<sup>162</sup> [redacted] Third party call note.

**Table 19: NU Main Campus catchment areas shares of supply, AY 2019/20**

		20 minutes' walk		30 minutes' walk	
HEI	Unit	Combined	Increment	Combined	Increment
NU, Main Campus	Number of beds	[REDACTED]		[REDACTED]	
	Share of supply	[30-40]%	[10-20]%	[20-30]%	[10-20]%

Source: Parties' revised response to RFI 6, 29 October 2019.

### *Closeness of competition*

#### *Differentiation*

241. The Parties submitted that their corporate PBSA properties are not close competitors in Newcastle due to differences in pricing for direct let students and room composition, with the Parties' pricing being as close, or closer, to other corporate PBSA providers for ensuite rooms based on the Parties' analysis of direct let pricing for AY 2019/20.<sup>163</sup> In relation to studios for direct let students, Liberty's pricing is concentrated at the lower and higher end, whereas Unite offers studios at a variety of mid-range prices.<sup>164</sup>

#### *Internal documents*

242. The CMA notes that there are some internal documents which suggest that Liberty considered certain Unite properties to be competitors to certain of their own properties in Newcastle.<sup>165</sup> <sup>166</sup> However, these internal documents also identify Downing, Student Roost, Fresh, iQ and Nido as comparable properties, while other internal documents show that the Parties track all PBSA competitors in Newcastle.<sup>167</sup>

#### *Conclusion on closeness of competition*

243. The CMA considers that the Parties compete with each other in Newcastle. Whilst there is some evidence of product differentiation, the CMA believes the Parties' internal documents suggest that they do see each other's properties as rivals in Newcastle in some instances. The CMA has therefore considered

<sup>163</sup> At the bottom of the pricing ladder for ensuites, the Parties' prices are close to those of other corporate PBSA providers, including the Student Housing Company, Prime Student Living and iQ, with Fresh and Downing providing further alternatives as prices rise. At the top of the ensuite pricing ladder, Liberty is closest in price to the rooms of Fresh Student Living, Downing, Prime Student Living and iQ. Merger Notice, paragraph 15.221.

<sup>164</sup> Merger Notice, paragraph 15.222.

<sup>165</sup> [REDACTED].

<sup>166</sup> [REDACTED]. Liberty internal document: [REDACTED].

<sup>167</sup> For example, a Liberty internal document: [REDACTED]. A Unite internal document: [REDACTED]. Moreover, a Unite document: [REDACTED].

the competitive constraints that will exist post-Merger in the NU catchment areas.

### *Competitive constraints*

#### *Alternative corporate PBSA providers*

244. The Parties submitted that post-Merger, Unite will remain constrained by a number of significant rival corporate PBSA providers in the relevant catchment areas for NU, including national players with significant financial backing and the ability to expand.<sup>168</sup> Table 20 shows bed numbers and shares of supply for the Parties and competitor corporate PBSA providers within the 30 minutes' catchment area of NU with shares of supply above 3%.

**Table 20: Shares of supply of top (>3%) corporate PBSA providers for NU, Main Campus, AY 2019/20**

Competitor	20 minutes' walk		30 minutes' walk	
	Beds	Share	Beds	Share
Liberty	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Unite	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Abodus Ltd	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Student Roost	[REDACTED]	[10-20]%	[REDACTED]	[5-10]%
Downing Students	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
iQ Student Accommodation	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Vita Student	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Exchange Residential	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%
Fresh Student Living	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
CRM Students	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%

Source: Annex 1 of Parties' revised response to RFI 6, 29 October 2019.

245. Table 20 above shows that there are multiple alternative corporate PBSA properties within the 30 minutes' catchment area of NU, with Abodus Limited and Student Roost having a similar number of beds to Unite and Exchange Residential also offering over 1000 beds within the relevant catchment area.

246. The Parties submitted that NU is not dependant on the Parties for beds due to their own HEI PBSA stock and alternative corporate PBSA suppliers. The Parties highlighted to the CMA seven competitor corporate PBSA properties

<sup>168</sup> Issues Letter Response, Annex 1, paragraphs 8.12 and 8.13.

within 30 minutes' walking distance from NU that would appear to be 'particularly suitable alternatives' [REDACTED]. These properties together account for 2,555 beds all of which are non-nominated, well in excess of [REDACTED].<sup>169</sup> The CMA considers there will be sufficient alternative corporate PBSA providers from which NU may source beds for its nomination agreements.

247. The CMA notes that a third party considered there to be an ongoing oversupply of corporate PBSA in Newcastle with evidence of lower prices being offered to increase occupancy rates.<sup>170</sup> Whilst another third party expressed concerns that the merged entity could have scope to increase prices and disadvantage students.<sup>171</sup> However, the evidence above indicates that multiple alternative corporate PBSA providers will remain within the catchment areas for NU post-Merger.

#### *Out of market constraints*

248. The Parties submitted that the 20 minutes' catchment area for NU fails to capture the competitive constraints imposed on the Parties by corporate PBSA located outside this catchment area.
249. The Parties provided evidence that:
- (i) NU has three HEI PBSA properties and there are two competitor PBSA providers' properties located outside the 20 minutes' catchment area, together amounting to 1,700 beds.<sup>172</sup>
  - (ii) Students are spread out across a much wider area than the 20 minutes' catchment area for NU, based on the Parties' analysis of data from HESA.<sup>173</sup>
  - (iii) The Parties combined share of supply falls to below 30% if the 20 minutes' catchment area is increased by 2 minutes further walking distance.<sup>174</sup>
250. The CMA believes that it is appropriate to consider corporate PBSA properties located more than 20 minutes' walking distance from NU.

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<sup>169</sup> Issues Letter Response, Annex 1, paragraphs 8.14 to 8.17.

<sup>170</sup> [REDACTED] Third party response to questionnaire.

<sup>171</sup> [REDACTED] Third party response to questionnaire.

<sup>172</sup> Issues Letter Response, Annex 1, paragraph 8.9.

<sup>173</sup> Issues Letter Response, Annex 1, paragraph 8.10.

<sup>174</sup> Issues Letter Response, Annex 1, paragraph 8.

251. The Parties also submitted that the merged entity would be constrained by HMO post-Merger. One Unite internal document indicates that [redacted],<sup>175</sup> and the Parties estimate that 48% of FTSSA in Newcastle live in HMO.<sup>176</sup>
252. As set out in paragraph 142 above, the CMA believes that HMO and, to a lesser extent, HEI PBSA will provide some degree of constraint on the Parties as they may be viable alternatives for certain direct let students.

#### *Conclusion on horizontal unilateral effects in Newcastle*

253. The Parties' combined share of supply fails the CMA's filter at the 20 minutes' walking distance catchment area only. The Parties will continue to be constrained post-Merger by several alternative corporate PBSA providers. Accordingly, for these reasons and the other factors set out above, the CMA found 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 corporate PBSA in the HEI campus catchment areas for NU.

#### ***Barriers to entry and expansion***

254. 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.<sup>177</sup>
255. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

#### ***Countervailing buyer power***

256. The Parties also submitted that they are constrained by the strong countervailing buyer power of HEIs which have strong incentives to exercise this power for the benefit of students by constraining prices, promoting quality and ensuring that student demand for accommodation is met.<sup>178</sup> The Parties submitted that HEIs can use their power to influence the composition of supply of PBSA through self-supply, sponsoring entry by other corporate providers through long-term nomination agreements, and supporting planning applications (which may be a requirement in some cities). The Parties

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<sup>175</sup> Issues Letter Response, Annex 3, Income Optimisation Summary.

<sup>176</sup> Merger Notice, paragraph 15.213.

<sup>177</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

<sup>178</sup> Merger Notice, Executive Summary, paragraph 8.

submitted that HEIs can further constrain prices for the benefit of their students through the negotiation of nomination agreements.

257. The CMA has received evidence that corporate PBSA providers are often keen to maintain good relationships with HEIs in order to be able to participate in new development opportunities and to procure rental incomes that are secured through nomination agreements.<sup>179</sup>
258. However, the CMA notes that a number of HEIs raised concerns about the effects of the Merger, notwithstanding any countervailing buyer power. More generally, the CMA notes that any buyer power of HEIs would be limited by the extent to which alternative corporate PBSA properties are available for nomination agreements; and that any buyer power of HEIs would not necessarily protect direct let students.
259. The CMA has taken into account in the competitive assessment above evidence on whether there are alternative corporate PBSA beds (to those of the Parties) available to meet HEIs' commitments. Beyond this, the CMA has not had to conclude on countervailing buyer power as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

260. The CMA contacted customers and competitors of the Parties as well as organisations that represent students.
261. Some of them raised concerns regarding an increase in concentration and the possibility of higher rents as a result of the Merger and these views have been considered within the competitive assessment where appropriate.
262. Some concerns were also received with respect to the cost of living for students and the affordability of student accommodation in general. The CMA found that these concerns were not Merger-specific and were not directly relevant to its investigation into whether it is or may be the case that the Merger may be expected to result in an SLC.

### **Decision**

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

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<sup>179</sup> Such secured income is attractive to shareholder/investors.

264. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Colin Raftery**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**6 November 2019**

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**End notes:**

<sup>i</sup>The following references to “Parties” or “Parties” should be replaced with “Unite” or “Unite’s”:

- in paragraphs: 41, 46, 53, 57, 69, 78, 79, 96, 97, 113, 115, 117, 133 (ii), 135 (iii), 144, 151, 155, 158, 165, 172, 175, 186, 190, 194, 200, 214, 218, 219, 234, 239, 251, 256;
- in footnotes 22, 32, 38, 57, 69, 70, 105, 106, 158; and
- in the source notes for Tables 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.

<sup>ii</sup> The references to “Parties” or “Parties” should be replaced with “Unite” or “Unite’s” in relation to the following phrases: “the Parties submitted that”, “the Parties believe that”; “evidence from the Parties and third parties”; “the Parties highlighted to the CMA”; “based on the Parties’ analysis”; “The Parties highlighted”; and “The Parties provided evidence”, in paragraphs 56, 142, 153, 164, 168, 173, 181, 183, 188, 203, 206, 209, 211, 221, 222, 223, 226, 229, 231, 232, 241, 244, 246, 248 and 249.