

# Completed acquisition by Hasbro, Inc. of Entertainment One Limited

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

ME/6850/19

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

### SUMMARY

1. On 30 December 2019, Hasbro, Inc (**Hasbro**) acquired Entertainment One Limited (**eOne**) (the **Merger**). Hasbro and eOne 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 Hasbro and eOne is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of children character brand (**CCB**)<sup>1</sup> licences for the manufacture and wholesale supply of CCB-based consumer goods<sup>2</sup> in the United Kingdom (**UK**). In addition, the Parties overlap in the supply of film, television and digital (**FTD**) content, as well as gaming apps, based on their own CCBs in the UK. However, the CMA found that the Merger does not, prima facie, give rise to competition concerns in relation to the supply of FTD and gaming apps. Therefore, the CMA's competitive assessment is focused

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<sup>1</sup> CCB refers to a property right relating to the name and design of a fictional character targeted at children (in this Decision, the demographic segment comprising the ages of 0 to 11 years old).

<sup>2</sup> Consumer goods based on CCBs typically include product categories such as toys and games, apparel, footwear, houseware and publishing, among others.

on the supply of CCB licences for the manufacture and wholesale supply of CCB-based consumer goods in the UK.

4. The CMA has considered the Merger in the following frames of reference:
  - (a) Supply of CCB licences for the manufacture and wholesale supply of consumer goods in the UK;
  - (b) The manufacture and wholesale supply of CCB-based toys for pre-school children in the UK for the purpose of assessing the vertical effects of the Merger; and
  - (c) The manufacture and wholesale supply of toys and games in the UK for the purpose of assessing conglomerate effects of the Merger.
5. However, the CMA left open the exact definition of the frame of reference, because the Merger does not give rise to competition concerns on any plausible basis. The CMA has taken into account in its competitive assessment any differences in the conditions of competition related to the target demographics and product categories.
6. The CMA has assessed the following theories of harm:
  - (a) Horizontal unilateral effects in the supply of CCB licences for the manufacture and wholesale supply of consumer goods in the UK from the: (i) loss of existing competition; (ii) loss of potential competition; and (iii) dynamic loss of incentives to innovate and invest in CCBs;
  - (b) Vertical effects resulting from input foreclosure of eOne's CCBs to downstream rivals in the manufacture and wholesale supply of CCB-based toys in the pre-school category in the UK; and
  - (c) Conglomerate effects in the manufacture and wholesale supply of all toys in the UK.
7. As regards the loss of existing competition, the Parties' combined share of supply of CCB licences for the manufacture and wholesale supply of toys and games in the UK is around [10-20]% in the UK, with an increment of around [5-10]%.<sup>3</sup> In addition, evidence from third parties and internal documents indicated that Hasbro and eOne are not particularly close competitors

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<sup>3</sup> Based on the Parties' estimates of shares of supply of CCB licences for the manufacture and wholesale supply of toys and games, including for Hasbro's in-house manufacturing of toys and games (Table 2). The CMA took the share of supply as proxy for the Parties' share of supply of CCB licences for the manufacture and wholesale supply of consumer goods due to the similarity of competitive conditions. As set out below, the CMA placed limited weight on market shares in its competitive assessment.

because of the differences in their demographic target audience. eOne's CCBs are targeted at pre-school children, whereas Hasbro's presence in CCBs targeted at this age group is limited. The CMA found that, post-Merger, the merged entity will face sufficient competitive constraint from rival CCB licensors.

8. As regards the loss of potential competition, the CMA found that the competitive constraint exerted by Hasbro on eOne in the supply of CCB licences is unlikely to change materially in the foreseeable future as a result of Hasbro's pipeline [X] projects. Furthermore, the CMA identified a wide range of competitors with the capability and track record to continue developing new and existing CCBs that will continue exerting a constraint on the Parties' new and future CCBs.
9. As regards the dynamic loss of incentives to innovate, the CMA found that, prior to the Merger, the Parties' incentives to innovate and invest in the development of CCBs were not particularly driven by competitive constraints exerted by one another. The CMA found limited evidence of the Parties' plans to [X] and that other competitors will continue to provide Parties with incentives to invest and innovate in CCBs.
10. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of CCB licences.
11. The Merger will create a vertical relationship between the Parties, as Hasbro is active in the manufacture and wholesale supply of CCB-based toys.<sup>4</sup> The CMA found that, after the Merger, Hasbro may bring in-house the manufacture of toys using eOne's CCBs. Therefore eOne's CCBs may no longer be licensed to Hasbro's downstream competitors in the manufacture and wholesale supply of CCB-based toys.<sup>5</sup> The CMA found that, even if the merged entity may have the ability and incentive to move the manufacture of toys based on eOne's CCBs in-house, this will not have an adverse effect on competition in the supply of CCB-based pre-school toys to retailers in the UK. This is because the Parties are not particularly close competitors in the supply of CCB licences and there is a sufficient range of CCBs (and large vertically-integrated manufacturers) which would exert a competitive constraint on the merged entity.

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<sup>4</sup> Hasbro is also active in the manufacture and wholesale supply of CCB-based games, but due to the limited extent of its activity, the Merger will bring about only marginal increment (based on the shares of supply estimated by the Parties). Therefore, the CMA has found no plausible basis for competition concerns arising from the Merger in the supply of CCB-based games, which is not discussed further in this Decision.

<sup>5</sup> Including on the narrowest, pre-school CCB only, basis.

12. The CMA also considered whether the merged entity could use the strong position of eOne's CCBs in the wholesale supply of CCB-based toys for pre-school children to weaken its rivals in the wholesale supply of other toys and games, or vice versa (for instance by mixed bundling), thereby affecting competitors' ability to compete in each individual market (ie conglomerate effects). The CMA found that retailers' decisions with respect to purchasing individual toys and games are not materially affected by portfolio-wide discounts offered by manufacturers. Therefore, the CMA found that the merged entity would not have the ability to foreclose manufacturers and wholesale suppliers of toys and games.
13. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

14. Hasbro is a US publicly listed company operating in toys and games as well as entertainment globally, primarily engaged in the design, sale and marketing of toys and games based on Hasbro's owned brands<sup>6</sup> (including children's character and non-children's character brands)<sup>7</sup> and CCBs licensed-in<sup>8</sup> from third parties.<sup>9</sup> Hasbro is also active to a limited extent in certain aspects of the creation of film and television content and in the development of digital gaming. Hasbro's revenue in the financial year (**FY**) ending 30 December 2018 was approximately £3.5 billion<sup>10</sup> worldwide and approximately £[~~3.5~~] million<sup>11</sup> in the UK.
15. eOne is a Canadian incorporated company listed on the London Stock Exchange, operating in entertainment globally. eOne is active in: (i) the development, production, co-production, licensing and distribution of FTD content; (ii) the music production, distribution, licensing and publishing; and (iii) creation, management and licensing of broadcasting rights to pre-school

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<sup>6</sup> In this Decision, the term "brand" refers to all property rights which can be used to produce consumer goods, regardless of its links to any fictional character (by contrast to CCBs, which relate to fictional characters).

<sup>7</sup> These include Hasbro's franchise brands: *Baby Alive*, *Magic: The Gathering*, *Monopoly*, *My Little Pony*, *Nerf*, *Play-Doh*, and *Transformers*. In addition to these brands, Hasbro also owns or controls a series of brands which are yet to achieve franchise status.

<sup>8</sup> In this Decision, "licensing-in" refers to the licensing of brand(s) from a third party right-holder for self-manufacturing and/or self-production of a product.

<sup>9</sup> These include *Disney Frozen*, *Disney Princess*, *Disney Descendants*, *Beyblade*, *Star Wars* and *Marvel* (including *Spider-man* and *the Avengers*), *DreamWorks' Trolls* and *Sesame Street*.

<sup>10</sup> Revenue (€3.9 billion) converted to £ at a €:£ exchange rate of 0.88467 (the European Central Bank's (**ECB**) average €:£ exchange rate for the year to 30 December 2018).

<sup>11</sup> Revenue (€[~~3.5~~]million) converted to £ at a €:£ exchange rate of 0.88467 (the ECB's average €:£ exchange rate for the year to 30 December 2018).

children’s TV content, which gives rise to recognisable brands and CCBs. These brands and CCBs are in turn used licensed to third parties for use in consumer goods. eOne’s turnover in FY ending 31 March 2019 was approximately £944 million<sup>12</sup> worldwide and £[REDACTED] million in the UK.

## Transaction

16. The transaction relates to the acquisition by Hasbro of the entire share capital of eOne through Hasbro’s wholly-owned subsidiary 11573390 Canada, Inc. The Parties carried out the Merger by way of a statutory arrangement under the provisions of the Canadian Business Corporations Act. The consideration for the all-cash Merger was around £2.9 billion.
17. The Merger was conditional, inter alia, on the approval by competition authorities in UK, Canada, Germany and the United States.
18. After the Merger was cleared by the other competition authorities, the Parties waived the condition regarding the approval by the CMA and completed the Merger on 30 December 2019.

## Rationale for the Merger

19. The Parties submitted<sup>13</sup> that the Merger will combine two complementary businesses – eOne’s content generation and Hasbro’s toy and game manufacturing – to create a combined business positioned to capture a greater portion of franchise economics for brands owned by the merged entity.
20. Hasbro’s internal documents generally support the Parties’ submissions on the Merger rationale and indicate, among other things, that Hasbro’s plans to internalise the manufacturing of toys and games that use eOne’s CCBs,<sup>14</sup> expecting “in-sourcing and cost synergies” of “approximately \$130M by 2022”,<sup>15</sup> [REDACTED].<sup>16</sup>

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<sup>12</sup> Revenue (€1.07 billion) converted to £ at a €:£ exchange rate of 0.88202 (the ECB’s average €:£ exchange rate for the year to 31 March 2019).

<sup>13</sup> See page 9 of the Final Merger Notice (**FMN**).

<sup>14</sup> Hasbro’s document on strategic rationale refers to “in-sourcing synergies [REDACTED]” and, in particular, its plans to “replace toy licenses [sic] with captive production [REDACTED]” and [REDACTED].

<sup>15</sup> 002. Hasbro eOne 22 August 2019 announcement.PDF.

<sup>16</sup> [REDACTED].

## Jurisdiction

21. Each of Hasbro and eOne is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
22. The UK turnover of eOne exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
23. The Merger completed and was made public on 30 December 2019. The four month deadline for a decision under section 24 of the Act is 30 April 2020.
24. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
25. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 November 2019 and the statutory 40 working day deadline for a decision is therefore 21 January 2020.

## Counterfactual

26. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>17</sup>
27. In this case, the CMA found no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the pre-merger conditions of competition to be the relevant counterfactual.

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<sup>17</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).

## Background

### *Overlap and vertical relationship between the Parties' activities*

#### *Horizontal overlap between the Parties*

28. At the brand level, the Parties both license CCBs to third party wholesale suppliers of toys and other consumer goods (such as clothing, books and houseware), as well as to gaming app developers.
29. At the manufacturing or production level, the Parties both supply FTD content, as well as gaming apps, using their own CCBs.
30. The strength of a CCB (and therefore its potential licensing value across toys and other products) is reinforced by the production of FTD content, gaming apps and live events. Accordingly, both Parties told us they sometimes price licences for FTD content, apps and live events [~~✂~~] because they can act as [~~✂~~].<sup>18</sup>
31. The CMA found that the Parties' incentives to compete in the supply of CCB-based FTD content and gaming apps in the UK are mainly driven by their competition in the supply of CCB licences to manufacturers of consumer goods. Therefore, the CMA has focused its investigation on the effects of the Merger in the supply of CCB licences.
32. The CMA has therefore not assessed the effect of the Merger on the supply of FTD content and gaming apps separately in its competitive assessment on the basis of lack of any Merger effect, taking into account, in particular, that the Merger will not affect the Parties' incentives to invest and innovate in the creation and promotion of new and existing CCBs – discussed further in paragraphs 146 to 160 of the competitive assessment. Furthermore, the CMA found that the relevant competitor set in the supply of FTD content and gaming apps would be at least the same as in the supply of CCB licences, if not wider, regardless of any appropriate segmentation.

#### *Vertical relationship between the Parties' activities*

33. Hasbro is a vertically-integrated manufacturer and wholesale supplier of toys and games. It is active in the:

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<sup>18</sup> CMA's call with eOne of 22 October 2019.

- (a) Supply of CCB licences to manufacturers of consumer goods including toys and games (**out-licensing**);
  - (b) Manufacture and wholesale supply of toys and games based on its own CCBs (**in-house manufacturing**);
  - (c) Manufacture and wholesale supply of toys and games based on CCBs licensed from third parties (**in-licensed manufacturing**); and
  - (d) Manufacture and wholesale supply of non-CCB based toys and games.
34. Therefore, the Parties operate in vertically related activities. In particular, eOne is active upstream in the supply of CCB licences to manufacturers of consumer goods including toys and games, and Hasbro is active downstream in the manufacture and wholesale supply of toys and games which can incorporate CCBs (including its own CCBs and those in-licensed).

## **Frame of reference**

35. 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>19</sup>

## **Product scope**

### *Supply of CCB licences*

36. The Parties overlap in the supply of CCB licences for the manufacture and wholesale supply of consumer goods. The Parties submitted that “brand licensing” should not be sub-segmented by target audience and product category.<sup>20</sup>
37. The CMA starting point was the supply of CCB licences for the manufacture and wholesale supply of consumer goods, in which the Parties overlap. The CMA did not receive evidence from the Parties to support a wider frame of reference. In particular, the CMA notes that eOne is only active in the supply

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<sup>19</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>20</sup> FMN, paragraph 71.



of CCB licences. Moreover, the Parties submitted that it was reasonable to assume that the majority of out-licensed brands in the toys and games category are CCBs. Therefore, on a cautious basis, the CMA assessed the effect of the Merger on the basis of the supply of CCB licences.

38. The CMA then assessed whether it is appropriate to segment the supply of CCB licences by target demographics or by product category.

*Segmentation in the supply of CCB licences by target demographics (age and/or gender)*

39. The Parties submitted that there is no “bright line” age range for a target demographic of children that is applicable to CCBs. The Parties added that there is no industry standard for the demographic groups that may be targeted by CCBs and that, even within a single CCB, different toys or programmes can be targeted at different demographics.<sup>21</sup>
40. The CMA analysed the target demographics of the Parties’ CCBs and of their competitors’ CCBs, taking into account the Parties’ submissions, internal documents, and competitors’ submissions.
41. Evidence on the target demographics of Hasbro’s and eOne’s licensed CCBs, respectively, indicates that:
- (a) All eOne’s CCBs are gender-neutral and targeted to pre-school children. The Parties specified that the target age range for eOne’s CCBs is 2 to 5 years old;<sup>22</sup> and
  - (b) As noted by the Parties, Hasbro’s target age ranges vary by CCB with some of Hasbro’s CCBs targeting the same age group.<sup>23</sup> However, with the exception of *Power Rangers*, the majority of Hasbro’s CCBs are either targeted at children of ages below 5 - 6 years old (which the CMA considers to be broadly in line with eOne’s definition of “pre-school” children) or above 5 - 6 years old (which the CMA identifies as “older” children).<sup>24</sup>

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<sup>21</sup> FMN paragraphs 74-79.

<sup>22</sup> RF11, paragraph 6.

<sup>23</sup> RF11, paragraph 4.

<sup>24</sup> RF11, Annex 12.1.

- *Segmentation by age: Internal documents and third party evidence*

42. From a supply side, eOne's internal documents indicated that there is a distinction between pre-school children and older children with regard to the [REDACTED]. An internal document from eOne further segmented the pre-school segment into four segments: [REDACTED] and [REDACTED].<sup>25</sup> This was consistent with the segmentation used in a series of reports produced by Brand Trends Entertainment which monitors the popularity of different CCBs among children of different ages/gender groups.<sup>26</sup>
43. On the other hand, and in line with Hasbro's submission, competitors' submissions to the CMA indicated that some of their CCBs' target age bands may span pre-school and older children.<sup>27</sup> This suggests that, while eOne's existing portfolio includes only CCBs targeted at pre-school children, some of the Parties' main competitors in the supply of CCB licences (such as Disney and Mattel) have a track record of launching successful, lasting CCBs across demographic segments (see, for instance, paragraphs 149 to 151).
44. From a demand side, the CMA found that the parameters of competition are similar across different age segments (mainly around the popularity and perceived longevity of the CCB), and many manufacturers have the capabilities to switch capacity across demographic segments. Licensees' responses to the CMA indicated that brand popularity and brand longevity were the most important factors in determining their choice of CCB licences.<sup>28</sup> However, some manufacturers specialising in specific sub-types of products targeted at pre-school children (eg plush toys) may not be able to switch easily to CCBs targeted at older children (see paragraphs 193 and 196).

- *Segmentation by gender: Internal documents and third party evidence*

45. eOne's documents indicated that, while eOne's content is gender neutral, there are some gender trends in the consumer goods manufactured using [REDACTED] CCB licences, with [REDACTED] and [REDACTED] being more skewed towards girls, and [REDACTED] and [REDACTED] being more skewed towards boys.<sup>29</sup>

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<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> Three competitors indicated that their top CCBs' target age bands are wide and may include both pre-school and older children.

<sup>28</sup> 3 out of 5 applicable responses ranked brand popularity as the most important factor, and the remaining 2 out of 5 ranked brand longevity as the most important factor.

<sup>29</sup> [REDACTED].

46. However, some third parties indicated that the majority of toy retailers and manufacturers may categorise their toys based on age, but do not tend to categorise them based on gender, particularly for pre-school children.

*Conclusion on segmentation by target demographics*

47. Overall, the CMA found mixed evidence with regard to demand-side and supply-side substitutability between CCB licences targeted at pre-school children and CCB licences targeted at older children, as well as between CCB licences targeted at different genders. The CMA did not have to conclude whether the relevant product frame of reference for the supply of CCB licences should be defined narrowly by target demographics or widely across all target demographics, as the Merger does not give rise to competition concerns on any plausible basis.<sup>30</sup>

*Segmentation by product category*

48. The Parties submitted that the relevant market for the supply of CCB licences should not be sub-segmented by product category, or by content. The Parties submitted that the relevant market should comprise all merchandise and all types of content.<sup>31</sup> The Parties submitted that, from the supply-side perspective, licensed CCBs are identical, and CCB licensors typically have an interest in licensing across as many types of consumer goods as possible to maximise their exposure.<sup>32</sup>
49. The CMA considered whether the relevant product frame of reference should be further segmented by product category.
50. The Parties' submission included a report from Licensing International<sup>33</sup> which classifies royalty revenues into 22 different product categories, based on the type of consumer good associated with the licences. Such product categories include toys and games, as well as apparel, gifts and collectibles, housewares, music and video, publishing, software and videogames.
51. The CMA found that, if a CCB is appropriate for a given target demographic (in terms of age and gender), the CCB is likely to be adaptable to a wide

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<sup>30</sup> As set out in the competitive assessment, this is because evidence from the Parties, internal documents and third party submissions indicate that: (i) Hasbro's CCBs targeted at pre-school children are not close competitors to eOne's CCBs targeted at pre-school children; and (ii) Hasbro is not a close competitor to eOne in the supply of CCB licences across demographic segments relative to other competitors, neither with regard to the Parties' existing portfolios, nor with regard to their pipeline projects or dynamic innovation constraints.

<sup>31</sup> FMN, paragraph 71.

<sup>32</sup> FMN, paragraph 71.

<sup>33</sup> Previously known as the International Licensing Industry Merchandisers' Association (**LIMA**).

range of product categories targeted at that target demographic. Licensees' responses to the CMA's investigation indicated that most manufacturers specialise in one or a few product categories, and that not all CCBs may be appropriate for specific product types.<sup>34</sup>

52. This is also supported by evidence from the Parties and from competitors, which indicates that each CCB is licensed for the manufacture of a wide range of consumer goods, including not only different types of toys and games, but also apparel, footwear, houseware and publishing, among others.
53. Therefore, on the basis of supply-side substitutability, the CMA believes that further segmentation by product type is not appropriate in this case, regardless of whether the relevant product frame of reference is defined at the target demographics level or more widely across target demographics.

#### *Conclusion on the supply of CCB licences*

54. The CMA did not have to conclude on the exact product frame of reference in relation to the supply of CCBs, because the Merger does not give rise to competition concerns on any plausible basis. In the competitive assessment, the CMA considered the effects of the Merger in the supply of CCB licences for the manufacture and wholesale supply of consumer goods, taking into account any differences in the conditions of competition related to the target demographics and product categories.

#### *Manufacture and wholesale supply of toys and games to retail suppliers*

55. There is a vertical relationship between the Parties in the supply of CCB licences (in which the Parties overlap horizontally upstream) and the manufacture and wholesale supply of toys and games to retail suppliers, in which Hasbro is present (downstream). The CMA has therefore considered the appropriate frame of reference to assess the downstream effects of the Merger in the manufacture and wholesale supply of toys (vertical effects) and in the supply of toys and games to retail suppliers (conglomerate effects).<sup>35</sup>
56. The Parties submitted that the relevant product frame of reference is the manufacture and wholesale supply of all toys and games, but that the exact

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<sup>34</sup> For instance, one licensee indicated that it could not make Hasbro's *Transformers* CCB work with its core product line.

<sup>35</sup> For the reasons set out in paragraph 197 of this Decision, the possibility of the Merger giving rise to conglomerate effects is assessed by reference to Hasbro's overall portfolio of products supplied downstream, which includes both toys and games.

product market definition can be left open since the Merger will not raise any competition concerns under any alternative market definition.<sup>36</sup>

57. The CMA considered whether the relevant product frame of reference should be further segmented, by distinguishing between the types of toys and games, by demographics and between CCB-based and non-CCB based toys.

*Segmentation by type of toys and games*

58. With respect to distinguishing between toys and games, the Parties submitted that these are highly substitutable with each other and should therefore be viewed as a single market.<sup>37</sup>
59. In the Office of Fair Trading's (OFT)<sup>38</sup> investigation of the toys and games price fixing agreements,<sup>39</sup> the OFT identified games and puzzles as a distinct market segment from toys.<sup>40 41</sup>
60. Similarly, the CMA notes that analysis prepared by NPD Group (NPD)<sup>42</sup> provided to the CMA by Hasbro<sup>43</sup> categorises the industry into 11 "super categories" as follows: action figures, arts and crafts, building sets, dolls, games and puzzles, infant and preschool toys, youth electronics, outdoor and sports toys, plush, vehicles and explorative toys.
61. Customers (toy retailers) that responded to the CMA's investigation indicated that they make their purchasing decisions based on product categories, with several of them listing "games" as a stand-alone category. Evidence received by the CMA from manufacturers showed that there is some degree of specialisation, with some manufacturers specialising in the manufacture of games and puzzles.

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<sup>36</sup> FMN, paragraph 90.

<sup>37</sup> RF11 response, paragraphs 24-27.

<sup>38</sup> The OFT, together with the Competition Commission, are the predecessors of the CMA.

<sup>39</sup> OFT Decision of 21 November 2003 in case CP/0480-01, *Agreements between Hasbro U.K. Ltd, Argos Ltd and Littlewoods Ltd fixing the price of Hasbro toys and games*, paragraph 36.

<sup>40</sup> In addition, the OFT considered each of the following as distinct market segments: Infant and pre-school, Boys' toys, Girls' toys, Creative toys, Construction, Plush, Ride-ons, Electronic learning aids, Hand-held electronic games.

<sup>41</sup> In this regard, the CMA notes that Hasbro's sales of CCB-based games and puzzles (in-licensed and under its own CCBs) are marginal and are not considered in detail in this Decision (RF11 response, paragraph 31).

<sup>42</sup> NPD is a renowned source of industry-wide retail data which provides insights in [a number of industries](https://www.npdgroup.co.uk/) by combining consumer and retail point-of-sale data with analytic solutions to interpret market trends: <https://www.npdgroup.co.uk/>.

<sup>43</sup> [REDACTED].

### *Segmentation by target demographics of toys*

62. The manufacture and wholesale supply of toys and games could also be segmented by age band (eg pre-school and older children) and/or gender.
63. In the OFT's toys and games price-fixing investigation,<sup>44</sup> the OFT considered each of the following categories to be distinct market segments: (i) infant and pre-school toys; (ii) boys' toys; and (iii) girls' toys.
64. Retailers that responded to the CMA's investigation indicated that pre-school toys are typically perceived as a separate category in the industry. However, evidence from certain third parties showed that pre-school toys tend to be "gender-neutral", with no distinction where and how the toys are sold to retail customers based on gender. eOne's CCBs are targeted at pre-school children and are therefore used mainly for the manufacture and wholesale supply of pre-school toys.

### *Segmentation by reference to CCB-based toys vs other toys*

65. The Parties submitted that the definition of a "CCB" is subjective and fleeting since there are brands that are not clearly identifiable as CCB.<sup>45</sup> The CMA did not find this to be supported by the Parties' internal documents. For example, Hasbro's [REDACTED]<sup>46</sup> indicates that Hasbro's focus is on [REDACTED]. Similarly, eOne's [REDACTED] document shows [REDACTED].
66. Furthermore, there was a general consensus amongst the retailers who responded to the CMA's investigation that the market dynamics for CCB-based toys is very different from other types of toys, with CCBs being highly differentiated from the perspective of end customers, and retailers' purchases of CCB-based toys being largely driven by the popularity of the CCB (and less by the specific characteristics of the toy). Several manufacturers also indicated that their capacity allocation decisions are driven by trends in content, as opposed to specific types of toys. Furthermore, some licensees specialise in the manufacture of CCB-based toys.

### *Conclusion on the manufacture and wholesale supply of toys and games to retail suppliers*

67. The CMA has left open the exact definition of the product frame of reference in relation to the manufacture and wholesale supply of CCB-based toys,

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<sup>44</sup> OFT Decision of 21 November 2003 in case CP/0480-01, [Agreements between Hasbro U.K. Ltd, Argos Ltd and Littlewoods Ltd fixing the price of Hasbro toys and games](#).

<sup>45</sup> FMN, paragraph 183.

<sup>46</sup> [REDACTED].

because the Merger does not give rise to competition concerns on any plausible basis. As set out further below, the CMA assessed the effects of the Merger by reference to the narrowest candidate product frame of reference: the manufacture and wholesale supply of CCB-based toys for pre-school children. As the Parties only overlap in relation to the supply of CCBs for manufacture and wholesale supply of toys and games targeted at pre-school children, and Hasbro is only active in the manufacture and wholesale supply of CCB-based games to a limited extent,<sup>47</sup> no competition concerns arise from the Merger by reference to a wider frame of reference or in relation to the wholesale supply of CCB-based games.

## **Geographic scope**

### *Supply of CCB licences*

68. The Parties submitted that the relevant product frame of reference is global in nature, as both Parties operate their brand licensing business globally, and both Parties have a mix of global, regional, and country-specific licences.<sup>48</sup>
69. However, the Parties' internal documents indicated that the conditions of competition are different across countries, and that there is likely to be limited demand-side substitutability between CCB licences across countries.
70. An internal document from eOne<sup>49</sup> indicated that the popularity and maturity of its CCBs [redacted], and that the UK in particular is the country where its [redacted] is in a more mature phase relative to other countries. Similarly, an internal document from Hasbro<sup>50</sup> included a quantitative survey commissioned by Hasbro to assess the popularity of a range of pre-school CCBs in [redacted] countries, including the UK. The results indicated that the key performance indicators [redacted] varied materially by country.
71. With regard to competitive conditions in the promotion of CCBs through media content, an internal document from Hasbro<sup>51</sup> also indicated that consumer behaviours, market dynamics and Hasbro's spend in media content differ materially across countries.

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<sup>47</sup> See footnote 39 above.

<sup>48</sup> FMN, paragraphs 82 - 83.

<sup>49</sup> [redacted].

<sup>50</sup> [redacted].

<sup>51</sup> [redacted].

72. Therefore, the CMA found that it is appropriate to assess the effects of the Merger in the supply of CCB licences to manufacturers of consumer goods by reference to the UK.

#### *Manufacture and wholesale supply of toys and games*

73. The Parties submitted that the relevant market is at least EEA-wide in nature, and potentially global.<sup>52</sup>

74. In the CMA's investigation of VTech Holdings Limited's acquisition of LeapFrog Enterprises, Inc (**VTech/LeapFrog**), the CMA, on a cautious basis, concluded that the frame of reference for the supply of learning toys to retail suppliers was UK-wide in scope,<sup>53</sup> based on the evidence of specific considerations in supplying toys for the UK market.<sup>54</sup>

75. Evidence from the Parties' internal documents set out in paragraphs 69 to 71 above is consistent with the CMA's findings in *VTech/Leapfrog*,<sup>55</sup> in particular with regard to the differences in advertising and marketing strategies by country. The internal documents also indicate differences in consumer preferences that are likely to impact competitive conditions in the manufacture and wholesale supply of toys and games, particularly of CCB-based toys.

76. For the reasons set out above, on a cautious basis, the CMA has considered the impact of the Merger in the UK.

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

77. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

- (a) Supply of CCB licences for the manufacture and wholesale supply of consumer goods in the UK;
- (b) The manufacture and wholesale supply of CCB-based toys for pre-school children in the UK for the purpose of assessing the vertical effects of the Merger; and

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<sup>52</sup> FMN, paragraph 124.

<sup>53</sup> A report on the completed acquisition by VTech Holdings Limited of LeapFrog Enterprises, Inc of 12 January 2017 in case ME/6614/16, anticipated acquisition by [VTech Holdings Ltd of LeapFrog Enterprises Inc](#), paragraphs 7.73 to 7.75.

<sup>54</sup> For instance, most competitors surveyed in the investigation considered it important to have established relationships with key retailers, with the majority of competitors setting their price, advertising and marketing policy at a national level.

<sup>55</sup> A report on the completed acquisition by VTech Holdings Limited of LeapFrog Enterprises, Inc of 12 January 2017 in case ME/6614/16, anticipated acquisition by [VTech Holdings Ltd of LeapFrog Enterprises Inc](#).



- (c) The manufacture and wholesale supply of toys and games in the UK; for the purpose of assessing conglomerate effects of the Merger.

78. However, the CMA left open the exact definition of the frame of reference, because the Merger does not give rise to competition concerns on any plausible basis. The CMA has taken into account in its competitive assessment any differences in the conditions of competition related to the target demographics and product categories.

## **Competitive assessment**

79. The CMA has considered the following theories of harm:

- (a) Horizontal unilateral effects in the supply of CCB licences for the manufacture and wholesale supply of consumer goods in the UK resulting from the:
  - (i) Loss of existing competition;
  - (ii) Loss of potential competition; and
  - (iii) Dynamic loss of incentives to innovate and invest in CCBs;
- (b) Vertical effects resulting from the input foreclosure of eOne's CCBs to downstream rivals in the manufacture and wholesale supply of CCB-based toys in the pre-school category in the UK; and
- (c) Conglomerate effects in the manufacture and wholesale supply of all toys in the UK.

### ***Horizontal unilateral effects in the supply of CCB licences for the manufacture and wholesale supply of consumer goods in the UK***

80. 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>56</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of CCB licences for manufacture and wholesale of CCB-based

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<sup>56</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

consumer goods in the UK, and the manufacture and wholesale supply of toys and games in the UK.

81. The CMA considered whether the removal of one Party as a competitive constraint in the supply of CCB licences to manufacturers of consumer goods in the UK could allow the merged entity to profitably deteriorate its competitive offering by increasing licensing fees and/or deteriorating any other licensing terms which are important to CCB licensees. The effect of the Merger on competition will depend on the extent of competition between the Parties prior to the Merger based on the Parties' existing CCBs, as well as the competitive constraint imposed by other existing competitors prior to the Merger.
82. The prospect of loss of actual competition is assessed in the paragraphs 83 to 122 below. The CMA also assessed the extent of potential competition between the Parties' pipeline projects and the dynamic incentives for innovation in the creation and promotion of CCBs. These are assessed at paragraphs 123 to 160.

#### *Loss of actual competition*

83. In its analysis of whether the Merger could result in horizontal unilateral effects as a result of the loss of actual competition, the CMA assessed:
  - (a) Shares of supply;
  - (b) Closeness of competition; and
  - (c) Competitive constraints.

#### *Shares of supply*

84. Given that the supply of CCB licences is a highly differentiated market, shares of supply might not be fully indicative of the competitive constraints exerted on the Parties by each other and by competitors. Moreover, many CCB owners (such as Hasbro, [X]) are active in the in-house manufacturing, but also out-license their CCBs to third parties for the manufacture of specific types of toys which they do not manufacture and other types of consumer goods. Therefore, their shares of supply in the supply of CCB licences (out-licensing) may not be an accurate measure of their closeness of competition in terms of key parameters of competition in this market, such as popularity and perceived longevity of the CCB.
85. For these reasons, the CMA placed limited weight on the Parties' estimates of shares of supply in the supply of CCB licences, and instead placed more

weight on evidence on closeness of competition and relative strength of competitive constraints, including from internal documents and third parties.

86. However, as set out in paragraphs 97 to 102 below, the CMA placed some weight on the Parties' estimates of shares of supply in the retail sales of toys associated with each competing CCB, as a proxy for different CCB popularity among end customers. Popularity is one of the main factors determining different suppliers' competitive strength in the supply of CCB licences across product categories and demographic segments.

- *Shares of supply in the supply of CCB licences by product category*

87. The Parties submitted share of supply estimates based on:

- LIMA's estimates of total royalty revenues in the UK derived from rights in LIMA's "characters/entertainment" property rights category, broken down by LIMA's product categories;
- The Parties' estimates of their royalty revenues in each product category in the UK.

88. Table 1 below summarises the Parties' estimates for the top 10 product categories in terms of estimated market size based on the methodology set out above, as well as the corresponding figure for the total market for the supply of CCB licences. The estimates indicate shares of supply of less than 10% for both Parties in all categories, except for the software, video games and apps category, where Hasbro has an estimated share of [10-20]%. The small share of eOne is consistent with the fact that eOne develops most apps that are based on its own CCBs in-house (see footnote 58 to Table 1).

**Table 1: Parties' shares of supply based on the royalty revenues from the property rights associated with 'characters/entertainment' in the UK in 2018**

Product category	Hasbro share	eOne share	Market size est. (USD million)
Toys	[0-5]%	[0-5]%	[150-200]
Apparel	[0-5]%	[0-5]%	[150-200]
Fashion/accessories	[0-5]%	[0-5]% <sup>57</sup>	[50-100]
Software/ video games/ apps	[10-20]%	[0-5]% <sup>58</sup>	[50-100]

<sup>57</sup> The Parties submit that eOne does not have separate licensing revenues in the Fashion / Accessories category, and these are included in the Toy category.

<sup>58</sup> In a footnote to FMN Table 6, the Parties submit that "most" of eOne's products in this category are self-published, not licensed. Later, in FMN paras 128 and 129, the Parties clarify that [X]. The CMA considers that this indicates that eOne's out-licensing activities in the software/video games/apps sector are limited, and therefore there is limited overlap between the Parties in CCB out-licensing for this category.

Publishing	[0-5]%	[0-5]%	[50-100]
Gifts	[0-5]%	[0-5]%	[0-50]
Paper products	[0-5]%	[0-5]%	[0-50]
Health and beauty	[0-5]%	[0-5]%	[0-50]
Location based events/ similar	[0-5]%	[0-5]%	[0-50]
Food and beverage	[0-5]%	[0-5]%	[0-50]
<b>Total</b>	[0-5]%	[0-5]%	<b>[800-900]</b>

Source: Parties' FMN, Table 6.

89. The Parties noted that, where the Parties' licensing agreements are global or regional in scope, Hasbro applied "reasonable assumptions" to determine the corresponding UK share of revenues.<sup>59</sup> The CMA was not able to verify those assumptions, limiting its evidentiary value.
90. Furthermore, LIMA defines the "characters/entertainment" property rights category as all those properties "springing primarily from feature films, television shows, videogames, online entertainment and social media". The CMA considers that this definition is very broad and likely to include a wide range of property rights associated range of characters beyond just CCBs.
91. The CMA therefore considers that these estimates are likely to materially underestimate the Parties' shares of supply in the supply of CCB licences to manufacturers of consumer goods.
- *Shares of supply in the supply of CCB licences to manufacturers of toys and games*
92. The Parties further submitted their estimated shares of supply in respect of the supply of CCB licences to manufacturers of toys and games only (given the absence of data on other types of licensee customers).
93. These estimates were based on NPD retail sales data of only those toys and games manufactured under a third-party brand licence (ie excluding in-house manufacturing using own brands). The Parties submitted that it is reasonable to assume that close to 100% of out-licensed brands for the manufacture and wholesale supply of toys and games are CCBs.<sup>60</sup> The Parties further submitted that their estimates using retail sales data were at best an imperfect estimate for the Parties' activities, as they do not necessarily reflect brand licensing or manufacturing and wholesaling activities precisely.<sup>61</sup>

<sup>59</sup> FMN, Table 6.

<sup>60</sup> FMN, paragraph 186.

<sup>61</sup> FMN, paragraph 73.

94. The CMA considers that these estimates are likely to align more closely with the CMA's definition of CCBs than LIMA's estimates, and that the relative size of the Parties and their competitors in the supply of CCB licences for manufacture and wholesale supply of toys and games may be indicative of their size in the supply of CCB licences across the other consumer products.
95. On a cautious basis, the Parties also added Hasbro's sales of in-house manufactured toys based on its own CCBs, but not those of other vertically integrated competitors (such as Spin Master and Mattel), noting that this would lead to an overestimate of Hasbro's share of supply.
96. The Parties' estimates are shown in Table 2 below. Based on these estimates, eOne is the third largest CCB licensor to manufacturers of toys and games in the UK across segments, after Disney and Time Warner. However, eOne's share is less than 10%, and evidence received by the CMA from third parties indicated that the market is highly fragmented. The post-Merger increment from Hasbro's out-licensing activities would only account for [0-5]% of the total size of the market (as estimated by the Parties), excluding Hasbro's in-house manufacturing. The relative size of each CCB owner in the retail sale of CCB-based toys including in-house manufacturing of all competitors (as a proxy for CCB popularity) is assessed below.

**Table 2: Parties' estimates of shares of supply of CCB licences to manufacturers of toys and games in the UK, including Hasbro's in-house manufacturing under its own CCBs**

<b>CCB Licensor</b>	<b>Estimated Share (Retail Value)</b>
eOne	[5-10]%
Hasbro (out-licensed toys and games)	[0-5]%
Hasbro (manufactured in-house under own CCBs)	[0-5]%
<b>Combined share</b>	<b>[10-20]%</b>
Disney	[20-30]%
Time Warner	[10-20]%
NBC Universal	[5-10]%
Spin Master	[0-5]%
Nickelodeon	[0-5]%
Mattel	[0-5]%
World Wrestling Entertainment	[0-5]%
Pokémon	[0-5]%
Epic Games	[0-5]%
Others (shares below 1%)	[20-30]%

Source: Parties' FMN, Table 11.

- *Shares of supply in the retail sale of CCB-based toys (as a proxy for relative CCB popularity)*

97. Using retail-level NPD data as a proxy, the Parties further submitted shares of supply of CCB-based toys by CCB owner and demographic segment. This data included, for all CCB owners, both toys manufactured by third parties and toys manufactured in-house.

98. The CMA observes that these shares of supply are not necessarily representative of the shares in the supply of CCB licences, as they only relate to toys and they include the use of in-house CCBs. Therefore, the CMA considers that given that eOne is not a vertically-integrated manufacturer, the Parties are likely to underestimate eOne's position in the supply of CCB licences. The estimates are shown in Table 3 to Table 6:

**Table 3: Parties' estimates of shares in the retail supply of CCB-based toys for pre-school boys (age 3 to 5), by CCB owner**

<b>CCB owner</b>	<b>Estimated Share (Retail Value)</b>
eOne	[10-20]%
Hasbro	[0-5]%
<b>Combined share</b>	<b>[10-20]%</b>
LEGO	[20-30]%
Disney	[10-20]%
Spin Master (Paw Patrol)	[10-20]%
Time Warner (DC Universe)	[5-10]%
Universal	[5-10]%
BBC	[0-5]%
Nickelodeon	[0-5]%
Others (<1%)	[10-20]%

Source: Parties' FMN, Table 12.

**Table 4: Parties' estimates of shares in the retail supply of CCB-based toys for pre-school girls (age 3 to 5), by CCB owner**

<b>CCB owner</b>	<b>Estimated Share (Retail Value)</b>
eOne	[10-20]%
Hasbro	[0-5]%
Combined share	[10-20]%
MGA (L.O.L. Surprise)	[20-30]%
Disney	[10-20]%
Spin Master	[10-20]%
Mattel	[5-10]%
LEGO	[5-10]%

WowWee	[0-5]%
Moose Toys	[0-5]%
HIT	[0-5]%
BBC	[0-5]%
Nickelodeon	[0-5]%
Others (<1%)	[10-20]%

Source: Parties' FMN, Table 13.

**Table 5: Parties' estimates of shares in the retail supply of CCB-based toys for older boys (age 6 to 9), by CCB owner**

CCB owner	Estimated Share (Retail Value)
Disney	[30-40]%
LEGO	[10-20]%
Universal	[10-20]%
Time Warner	[5-10]%
Hasbro	[5-10]%
Pokémon	[0-5]%
Magic Box Toys	[0-5]%
Others (<1%)	[10-20]%

Source: Parties' FMN, Table 14.

**Table 6: Parties' estimates of shares in the retail supply of CCB-based toys for older girls (age 6 to 9), by CCB owner**

CCB owner	Estimated Share (Retail Value)
MGA	[20-30]%
Disney	[10-20]%
Mattel	[5-10]%
Universal	[5-10]%
LEGO	[5-10]%
Spin Master	[5-10]%
WowWee	[0-5]%
Hasbro	[0-5]%
Moose Toys	[0-5]%
Nickelodeon	[0-5]%
Others (<1%)	[10-20]%

Source: Parties' FMN, Table 15.

99. Based on these estimates, the CMA notes that:

- (a) eOne is the third largest CCB owner in the pre-school boys segment and the second largest in the pre-school girls segment<sup>62</sup> and is not active in the older children segments;

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<sup>62</sup> The Parties noted that, where a CCB targets more than one of the four demographic segments listed, they were unable to distinguish the target demographics of each individual toy sold, and therefore included all sales

- (b) Other CCB owners with comparable shares in the pre-school segment include LEGO, Disney, Spin Master, and MGA. However, the methodology used by the Parties is likely to overestimate the shares of these competitors.<sup>63</sup> Nevertheless, the large majority of Spin Master's retail sales in the pre-school segment are associated with its *Paw Patrol* brand, which is also targeted only at pre-school children, and its share of supply in the pre-school segment is very similar to that of eOne's CCBs;
- (c) Hasbro is the fifth largest CCB owner in the older boys (age 6 to 9) segment, and its position is lower in the other segments;
- (d) Other large CCB owners across segments include: Disney, LEGO, MGA, Spin Master, Mattel, Time Warner and Universal.

- *CMA's assessment of shares of supply*

100. The Parties' estimates of shares of supply of CCB licences to manufacturers of toys and games across demographic segments indicate that the merged entity does not have a share higher than 20% in any demographic segment, with a relatively small increment resulting from the Merger. eOne is the third largest licensor after Disney and Time Warner, albeit with a share of supply of less than 10%. The estimates also indicate that this is a highly fragmented market, and that the increment brought about by the Merger would only amount to [0-5]%.
  - (a) Hasbro's CCBs not having a particularly high share in any demographic segment;
  - (b) The Parties' CCBs being constrained by other large owners of successful CCBs across segments, including Disney, LEGO, MGA, Spin Master, Mattel, Time Warner and Universal; and
101. When taking into account the in-house manufacture of CCB-based toys by Hasbro and its competitors, the Parties' estimates of shares of supply by demographic segment are consistent with:
  - (a) Hasbro's CCBs not having a particularly high share in any demographic segment;
  - (b) The Parties' CCBs being constrained by other large owners of successful CCBs across segments, including Disney, LEGO, MGA, Spin Master, Mattel, Time Warner and Universal; and

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related to that CCB as part of all applicable segments. Given that the majority of pre-school CCBs are gender-neutral, the CMA has placed limited weight on the distinction between both and girls, and has focused on the overall conclusions for the pre-school segment.

<sup>63</sup> Some of the competitors' CCBs included in the estimates are also targeted at older children, and the Parties were not able to separate retail sales data associated with toys based on those CCBs but targeted at older children, while all toys based on eOne's CCBs are targeted at pre-school children.



(c) Spin Master's *Paw Patrol* being a strong constraint on eOne's CCBs in the pre-school segment.

102. However, the CMA notes that this is a highly differentiated market and that, therefore, shares of supply are not necessarily a good indicator of closeness of competition, which is discussed in the paragraphs below.

#### *Closeness of competition*

103. The Parties submitted that they are not close competitors in the supply of CCB licences because eOne's CCBs compete most closely with other gender-neutral pre-school brands, while Hasbro's main CCBs are gender-skewed and are generally more popular among the older children.<sup>64</sup>

- *Internal documents*

104. Overall, Hasbro's internal documents indicate that it does not monitor eOne's CCBs on a regular basis or particularly closely compared to other competitors.<sup>65</sup>

105. With regard to the pre-school segment, one Hasbro's internal document shows that Hasbro tracks [X] and [X] along with [X] in the pre-school segment, highlighting in particular the strong performance of [X] and [X].<sup>66</sup> This document also included a section focused only on [X], including [X], and [X], and [X]. However, taken in context, the CMA considers the focus on eOne's brands to reflect post-Merger planning and not necessarily to indicate that Hasbro considered eOne's CCBs as particularly close, relative to other successful CCBs.

106. Overall, eOne's internal documents indicate that it does not compete with Hasbro particularly closely.<sup>67</sup> For example, eOne's "[X]" presentation measures popularity and merchandise appeal of over [X] in Great Britain across four demographic segments: [X]. The document indicated that eOne's [X] and [X] and [X] consistently rank [X] across segments and measures of brand popularity. The document also included a wider analysis of a large set of competitors' CCBs, where [X] included in the sets for the girls' segments, and none of Hasbro's CCBs is included in the sets for the boys'

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<sup>64</sup> FMN, paragraph 78.

<sup>65</sup> For instance, a document called "[X]" provides a detailed overview of competitors such as [X], while eOne does not feature.

<sup>66</sup> [X].

<sup>67</sup> [X].

segments. The document indicated that [X] in comparison with the other competitors' CCBs in the relevant segments.

- *Third party views (licensees)*

107. The large majority of licensees of CCBs that responded to the CMA's investigation (across different types of consumer goods) indicated that the Parties are currently not close competitors in the supply of CCB licences. Some licensees that specialise in the pre-school segment indicated that Hasbro's CCBs are not a close alternative to eOne's CCBs in that segment.<sup>68</sup> Other licensees indicated that their product lines can be adapted to fit CCBs across demographic segments but that, nevertheless, the Parties are not particularly close competitors.<sup>69</sup>

- *Conclusion on closeness of competition*

108. Based on evidence from internal documents and licensees' responses, the CMA believes that the Parties are not close competitors in the supply of CCB licences to manufacturers and wholesale suppliers of consumer goods in the UK. This conclusion is independent of the frame of reference, as the internal documents and third party views were not predicated on a precise frame of reference.

### *Competitive constraints*

109. The Parties submitted that the supply of CCB licences to manufacturers of consumer goods is highly fragmented and characterised by the existence of many competing licensors of content. The Parties further submitted that they compete against a number of other well-known CCBs, owned by major players such as Disney, Time Warner, NBC Universal, Spin Master and Nickelodeon, as well as a handful of smaller players.<sup>70</sup>

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<sup>68</sup> For instance: (i) one licensee told the CMA that it manufactures a wide range of products mainly for children aged 2-6 years old. It told the CMA that eOne's *Peppa Pig* is an important pre-school license for its business, and that it used to license [X]; (ii) Another licensee specialises in [X] for children aged 0-6 years old. It licenses eOne's *Peppa Pig*, as well as other CCBs such as [X]. It told the CMA that Hasbro's CCBs do not fit its remit, which suggests that it may not identify Hasbro's pre-school CCBs as "classic" CCB; (iii) A third licensee specialises in [X] toys. It told the CMA that it had considered Hasbro's *Transformers* as an alternative to eOne's *PJ Masks*, but it decided not to go ahead with licencing the *Transformers* CCB because the [X].

<sup>69</sup> For instance: (i) one licensee that manufactures toys across demographic segments considered that eOne's *Peppa Pig* is much stronger than any of Hasbro's CCBs; (ii) another licensee that manufactures toys across demographic segments told the CMA that it typically first chooses a CCB, and then adapts its product range and target demographics and explained that there is no overlap between the Parties, (eg it cannot replace *Transformers* with *PJ Masks*).

<sup>70</sup> FMN, paragraph 227.

- *Internal documents*

110. As set out above, a review of the Parties' internal documents indicated that [X] is the closest competitor to eOne's CCBs in terms of the brand popularity among pre-school children. Hasbro's internal documents also indicated that it monitors a wide range of rival owners of CCBs, including [X] and many others.

- *Third party views (licensees)*

111. The majority of CCB licensees who responded to the CMA's investigation responded that if the CCBs of either Party were no longer available, they would try to obtain an alternative CCB, but did not specify which, as it would depend on the alternatives available at the time.

112. One licensee specified that it would probably consider other pre-school CCBs, and that *Paw Patrol* is the strongest CCB in that segment, but it noted that the main licences for *Paw Patrol* are not available to the market, as Spin Master is a vertically-integrated manufacturer.

113. Some licensees also mentioned the difficulty in finding alternative CCB licences, given that licensing agreements typically last 2-3 years, and most CCB owners typically do not license the CCB for the same narrowly defined type of toy to more than one licensee. The CMA notes that any existing barriers for CCB licensees, that make it difficult to switch to a new licensor, are common to all or most potential licensors (including the Parties). Therefore, this does not imply that other competitors pose a weaker competitive constraint than is posed by the Parties.

- *Third party views (retailers)*

114. The CMA also asked toy retailers to list their top three CCBs by target demographic segment, in terms of retail sales of toys based on those CCBs. While this evidence relates to the strength of CCBs in the retail sale of toys, rather than the supply of CCB licences to manufacturers of consumer goods, the CMA considers that it may be a useful proxy to assess the relative popularity of CCBs among end consumers and, therefore, the attractiveness of those CCBs to potential licensees upstream.

115. Table 7 summarises all the CCB owners whose CCBs were listed by at least one retail customer in each demographic segment, by order of frequency. The evidence indicates that CCBs from eOne, Spin Master, LEGO, MGA, Disney, Time Warner, Mattel and Nickelodeon are among the strongest CCBs in their corresponding demographic segments. By contrast, none of the respondents

mentioned a CCB from Hasbro as one of their top three CCBs in either segment, suggesting that Hasbro's CCBs are relatively weak in all segments.

**Table 7: Key CCB owners by segment, based on CCBs listed by retailers among their top three CCBs**

Demographic segment	Key market participants
Pre-school boys (age 0-5)	eOne, Spin Master, LEGO, Mattel, Nickelodeon, BBC
Pre-school girls (age 0-5)	eOne, Spin Master, MGA, Mattel, Nickelodeon, Epoch
Older boys (6-9)	Disney, Time Warner, LEGO, Nintendo, Sega
Older girls (6-9)	MGA, Disney, Mattel, Depesche, LEGO

116. Two retailers considered Hasbro's *Transformers* to be a successful CCB in the retail sale of toys, although they did not provide an indication of how highly it ranks relative to competitors.

- *Third party views (competitors)*

117. Evidence from rival CCB licensors indicated that Hasbro's CCBs are not perceived to be among the strongest CCBs in any demographic segment, while CCBs from eOne, Disney, Spin Master, MGA and Time Warner, among others, are perceived as stronger CCBs.

118. One competitor told the CMA that it identified the following competitors' CCBs as the top rivals by target demographics (based on the segmentation typically applied by market research companies and retailers):

- (a) Pre-school children (age 1 to 5): *Paw Patrol* (Spin Master), *Toy Story* (Disney), *Peppa Pig* (eOne);
- (b) Older girls (age 4 to 12+): *LOL Surprise* (MGA), *Barbie* (Mattel), *Disney Princess* (Disney); and
- (c) Older boys (age 4 to 12+): *Fortnite*, *Marvel Universe*, *Star Wars* (Disney).

119. Another competitor indicated that there are four main product 'super-categories' commonly referred to in the supply of CCB licences: (i) hardlines (toys, games and other hard goods); (ii) softlines (fashion, apparel, homeware); (iii) fast-moving consumer goods (food, beverage, health and beauty); and (iv) publishing (books). The top three CCBs mentioned for each

product super-category varied slightly, but they were all owned by: Disney, eOne, Spin Master and Time Warner.<sup>71</sup>

#### *Conclusion on competitive constraints*

120. Evidence from licensees, retailers, rival licensors and the Parties' internal documents indicates that *Paw Patrol* is the closest competitor to *Peppa Pig* in terms of popularity among pre-school children, and that there are a wide range of other strong competitors in the supply of CCB licences to manufacturers and wholesale suppliers of consumer goods across demographic segments, including Disney, Mattel, MGA and Time Warner, among others. This evidence is also broadly consistent with the conclusions from the Parties' estimates of shares of supply in the retail sale of CCB-based toys (as a proxy for brand popularity), as set out in paragraph 98.

#### *Conclusion on the loss of actual competition in the supply of CCB licences*

121. The CMA believes that the Parties are not particularly strong competitors and believes that with regard to consumer goods targeted at pre-school children, Hasbro's CCBs are not particularly strong in terms of brand popularity, while CCBs of other competitors exert a stronger competitive constraint on eOne's CCBs, in particular Spin Master's *Paw Patrol*. Moreover, with regard to all CCB-based consumer goods, there are a wide range of rival licensors of successful CCBs across segments, and the Parties are not particularly close competitors. For the reasons set out above, the CMA considers that it can place limited weight on the shares of supply provided by the Parties, although they appear modest and consistent with the evidence-base overall.
122. Accordingly, 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 CCB licences for the manufacture and wholesale supply of consumer goods in the UK.

#### *Loss of potential competition in the supply of CCB licences*

123. The CMA also considered whether the Merger may result in the loss of potential competition. It is possible that, even if the Parties are not currently close competitors in the supply of CCB licences through their existing CCBs, they may become closer competitors in the foreseeable future to the extent that their pipeline CCBs are likely to be close substitutes.

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<sup>71</sup> The CCBs mentioned for each of these competitors were: (i) for Disney, *Star Wars*, *Avengers*, *Marvel*, *Mickey Mouse*; (ii) for eOne, *Peppa Pig*; (iii) for Spin Master, *Paw Patrol*; and (iv) for Time Warner, *Harry Potter*.

124. The Parties submitted that, prior to the Merger, both Hasbro and eOne planned to continue to identify opportunities to and invest in the development of their existing CCBs in order to grow the awareness, brand licensing revenues, as well as broadcast licensing exposure and revenues.<sup>72</sup> The Parties also submitted that the entertainment industry is a fashion-based business where the next trend is difficult to predict.<sup>73</sup>

125. The CMA considered:

- (a) Whether and to what extent the Merger may result in a loss of potential competitive constraints: (i) on Hasbro by eOne; and (ii) on eOne by Hasbro; and
- (b) Whether and to what extent the potential future expansion of the Parties' rivals may constitute a competitive constraint on any of the Parties' pipeline projects.

*Loss of potential constraints on Hasbro by eOne*

126. The CMA assessed the likelihood of eOne becoming a close/closer competitor to Hasbro in the supply of CCB licences for the manufacture and wholesale supply of consumer goods through expansion or investment in its CCB portfolio. The CMA notes that eOne was planning to launch a CCB, *Ricky Zoom*, on broadcast and to grow [REDACTED], as well as "to develop a [REDACTED]".<sup>74</sup>

- *Internal documents*

127. The Parties' internal documents indicated that eOne had a pipeline [REDACTED]. In particular, eOne's documents suggested that [REDACTED]:

- (a) Presentation document dated [REDACTED]<sup>75</sup> [REDACTED];<sup>76</sup>
- (b) "[REDACTED]" indicated that eOne planned the "launch [of] *Ricky Zoom* [REDACTED] and [REDACTED]";<sup>77</sup>
- (c) The presentation document<sup>78</sup> suggested that [REDACTED].

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<sup>72</sup> FMN paras 289 and 291.

<sup>73</sup> Parties' response to RFI 3, paragraph 9.

<sup>74</sup> FMN paragraph 291.

<sup>75</sup> [REDACTED].

<sup>76</sup> [REDACTED].

<sup>77</sup> [REDACTED].

<sup>78</sup> [REDACTED].

128. Hasbro’s internal documents relating to the Merger indicated that Hasbro was generally confident in the strength of [REDACTED], particularly its [REDACTED], for example:
- (a) Its document on the strategic rationale of the Merger<sup>79</sup> mentioned that eOne’s “pipeline [REDACTED] substantially increase opportunity”;
  - (b) Its due diligence report<sup>80</sup> explains that Hasbro has confidence in the strength of [REDACTED] and ability to produce additional [REDACTED];
  - (c) Its press release announcing the Merger<sup>81</sup> refers to eOne’s “*robust pipeline of television and film projects.*”
129. By contrast, an internal document setting out Hasbro’s views in each of eOne’s pipeline projects individually indicated [REDACTED] targeted at older children, providing [REDACTED], respectively, compared to a [REDACTED] for [REDACTED].<sup>82</sup> None of Hasbro’s internal documents which are unrelated to the Merger indicated that Hasbro perceived eOne as a threat in terms of potential competition. As set out in paragraph 104, eOne was not among the competitors frequently monitored by Hasbro except in the context of Merger planning.

- *Third party views on eOne’s ability to successfully develop new CCBs*

130. Some licensees and retailers indicated that they perceive eOne as a strong competitor in the development of CCBs, particularly given the strong success of its CCB *Peppa Pig* in terms of both popularity and longevity, and its strengths in producing TV and social media content.<sup>83</sup>

*CMA’s conclusion of the loss of potential constraints on Hasbro by eOne*

131. Evidence from eOne’s internal documents indicates that eOne has clear plans to launch new [REDACTED], in particular [REDACTED]. Evidence from Hasbro’s internal documents indicates that it has confidence in the strength of those projects. eOne’s internal documents further indicated that eOne had further plans to

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<sup>79</sup> [REDACTED].

<sup>80</sup> [REDACTED].

<sup>81</sup> [REDACTED].

<sup>82</sup> [REDACTED].

<sup>83</sup> For instance: one toy retailer, considered that the fact that eOne’s *Peppa Pig* stories are available for free on YouTube helps the brand maintain its popularity and longevity among young children. Another toy retailer considered that what distinguishes eOne’s *Peppa Pig* from other CCBs is that *Peppa Pig* has remained popular for a very long time, ie it is an “evergreen” brand. On the other hand, this retailer considered that eOne’s *PJ Masks* was already starting to decline, and that the brand would keep losing popularity unless eOne ‘reinvents’ it or creates new content such as a movie or a TV programme. One licensee considered that the strong success and longevity of eOne’s *Peppa Pig* was largely due to eOne’s continuous investments on the CCB over a long period of time, particularly in the launch of movies, TV series and YouTube programmes.

develop new [REDACTED]. However, there was no additional evidence on [REDACTED] for those projects, and Hasbro's internal documents indicated [REDACTED].

132. Evidence from third parties indicates that eOne has the track record and capabilities for its pipeline projects to have considerable likelihood of success. However, as noted in paragraphs 103 to 108, eOne's existing CCBs are already strong in the supply of CCB licences, and the Parties are not particularly close competitors in the supply of CCB licences, even when some licensees can substitute between CCBs across demographic segments.
133. Therefore, the CMA found no evidence to indicate that eOne might become a closer competitor to Hasbro as a result of its pipeline projects. In particular, the Parties' internal documents do not indicate that the Parties consider each other as particularly close existing or potential competitors, and Hasbro's existing CCBs are relatively less strong in the supply of CCB licences.

*Loss of potential competitive constraints on eOne by Hasbro*

134. The Parties submitted that Hasbro had [REDACTED] in the pipeline targeted at [REDACTED]. The Parties submitted that Hasbro had not had any other [REDACTED] pipeline projects for the [REDACTED].<sup>84</sup>

- *Parties' internal documents about Hasbro's pipeline projects*

135. Hasbro's internal document<sup>85</sup> indicated that, while [REDACTED]<sup>86</sup> [REDACTED] that Hasbro is [REDACTED], *My Pet Monster* and *Popples* are CCBs Hasbro acquired from Saban Properties in May 2018 along with *Power Rangers*. Hasbro's Integration Plan for the Merger dated 9 September 2019 mentions that [REDACTED]. A leaflet containing information about Hasbro's acquisition of several CCBs from Saban Properties included a description of *My Pet Monster* and *Popples*. The document indicated that [REDACTED]. A document from Hasbro titled [REDACTED].<sup>87</sup> The CMA notes that those CCBs were not mentioned by any third party that responded to the CMA's investigation and they were not included in the set of CCBs tracked by eOne in its internal documents.<sup>88</sup>

136. Hasbro's internal documents further indicated that in early [REDACTED] it had plans to develop new [REDACTED] to expand and promote [REDACTED] in the [REDACTED], namely [REDACTED].<sup>89</sup> However, based on more recent evidence (see, for instance, paragraphs 100

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<sup>84</sup> Parties' response to RF13, paragraph 6.

<sup>85</sup> [REDACTED].

<sup>86</sup> With regard to the [REDACTED], see also the Hasbro's presentation called [REDACTED].

<sup>87</sup> [REDACTED].

<sup>88</sup> [REDACTED].

<sup>89</sup> [REDACTED].



to 107, to date, such CCBs have not become particularly strong in CCB licensing relative to competing CCBs.

- *Third party views on Hasbro's ability to successfully develop new CCBs*

137. Two toy retailers told the CMA that Hasbro's existing CCBs targeted at the pre-school segment are relatively weak, and that it has made several attempts to enter the pre-school segment in the past without significant success.<sup>90</sup> With regard to the development of new CCBs more generally across demographic segments, some toy retailers also indicated that Hasbro's capabilities in the creation of CCB-related content are relatively weak.<sup>91</sup>

138. Two out of four competitors listed Hasbro as one of their top three competitors in terms of their potential for future innovation that could be a threat to the future performance of their brands. One third party listed Hasbro among the manufacturers with the sufficient scale and track record to successfully launch new CCBs on an international basis. It also noted that other sources of CCB innovation include content production firms (such as movie producers, video game and book publishers). However, it did not indicate Hasbro's potential relative to those competitors. Similarly, another third party listed three toy manufacturers (including Hasbro) as the top competitors that could most threaten the future performance of its brands.

- *CMA's conclusion on the loss of potential constraints on Hasbro by eOne*

139. Hasbro has three pipeline [REDACTED] targeted at [REDACTED]. However, the Parties' internal documents indicated that only [REDACTED], while *My Pet Monster* and *Popples* were acquired by Hasbro from Saban Properties in May 2018. [REDACTED].

140. Furthermore, evidence from third parties indicated that Hasbro had tried to enter the pre-school segment previously, but had been unsuccessful. Some third parties also indicated that Hasbro was relatively weak in the production of CCB-related content.

141. The CMA therefore considers that the competitive constraint exerted by Hasbro on eOne in the supply of CCB licences is unlikely to change materially in the foreseeable future as a result of Hasbro's pipeline CCB projects.

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<sup>90</sup> One retailer indicated that Hasbro's *My Little Pony* is not performing particularly well at the moment and, [REDACTED]. Another retailer stated that Hasbro has tried to enter the pre-school segment in the past, but it was not able to develop a successful CCB in the segment.

<sup>91</sup> For instance, a retailer indicated that Hasbro is not very strong in producing content that can drive demand for toys. This customer noted that *Transformers* was Hasbro's most successful CCB, but that sales of *Transformers* toys were not particularly influenced by the *Transformers* movie and that the *My Little Pony* movie was not successful, having a negative impact on retail sales of related toys.

### *Potential competitive constraints from rivals' pipeline projects*

142. While the CMA has not received detailed evidence on competitors' pipeline projects, third parties indicated that several other competitors have a strong track record of developing popular CCBs and the capabilities to create successful CCBs across segments. The CMA also found evidence of successful entry by new players, such as MGA with *L.O.L. Surprise*.
143. In particular, retailers indicated that Disney and Mattel have a track record of launching successful, long-lived CCBs, and that Disney's and Nickelodeon's position in content creation enables them to influence trends at the retail level.<sup>92</sup> Similarly, competitors listed a range of other competitors which had the potential and track record to create new successful CCBs, including Disney, Time Warner, Nickelodeon, Mattel, Spin Master and MGA.

### *Conclusion on loss of potential competition in the supply of CCB licences*

144. For the reasons set out above, the CMA believes that the closeness of competition between the Parties in the supply of CCB licences is unlikely to change materially as a result of the Parties' pipeline projects, and that there is a wide range of competitors with the capabilities and track record to continue developing new and existing CCBs that will continue exerting a constraint on the Parties' new and future CCBs.
145. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of a loss of potential competition in the supply of CCB licences to manufacturers of consumer goods in the UK.

### ***Dynamic loss of incentives to innovate and invest in CCBs***

146. The CMA also considered whether the Merger may result in the dynamic loss of incentives to innovate and invest in CCBs. Firms can compete in different ways. One way is by improving short-run aspects of what they offer to customers such as their price, their quality, their product range, or their service levels. However, firms can also compete by making investments today that give them the ability to compete in new areas, or to compete more effectively in areas where they are already active (eg investing in the

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<sup>92</sup> One retailer distinguished between "stable" CCBs (with a longevity of 5 to 10 years on average) and "fashion concept" CCBs (which tend to have a success life of only 2 to 3 years). The retailer listed as stable CCBs from eOne (*Peppa Pig*) and Hasbro (*Transformers*), but also Mattel (*Barbie*) and Disney (*Frozen*, *Spiderman*, *Avengers*). Another retailer stated that it is common for movies to influence trends in the toy market, and specifically mentioned that Disney is typically able to generate new trends, such as through its recent release of *Frozen II*. A third retailer indicated that strong pre-school CCBs are usually owned by large media companies, such as Nickelodeon, which has its own TV channel.

development of new products, introducing new business models; or improving their production processes).

147. A merger can reduce the merged entity's incentives to make these (risky) investments in their future competitive strength. A diminished incentive to innovate or invest can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to make fewer investments on its own and without needing to coordinate with its rivals. A diminished incentive to innovate or invest tend to be more likely when the merging parties' innovations or investments tend to win customers from each other.
148. For the purpose of this case, the CMA considered the following factors:
- (a) Number of players in the segments in which the Parties are active;
  - (b) Parties' ability and incentive to successfully enter and expand into new demographic segments;
  - (c) Competitors' ability and incentive to successfully enter and expand into new demographic segments; and
  - (d) Parties' plans to enter each other's demographic segments.

*Number of players in the segments in which the Parties are active*

149. Evidence from the Parties and third parties indicates that there is a wide range of competitors in the development of CCBs, including CCB licensors as well as vertically integrated manufacturers and wholesale suppliers of consumer goods. In particular, as set out in paragraph 98, the Parties' estimates of shares of supply in the retail sale of CCB-based toys by CCB owner indicates that there is a considerable number of major players which own a range of successful CCBs across demographic segments, including: Disney, LEGO, MGA, Spin Master, Mattel, Time Warner and Universal. This is consistent with evidence from competitors and toy retailers (see paragraphs 114 to 119). Of these players, LEGO, MGA, Spin Master and Mattel are vertically integrated manufacturers and wholesale suppliers of toys and games (like Hasbro).
150. While the majority of top CCBs across demographic segments are owned by the major developers of CCBs, some retailers also mentioned a small number of top CCBs which are owned by other, smaller players. For instance, one retailer mentioned BBC's *Teletubbies*, and another retailer mentioned Epoch's *Sylvanian Families*, Nintendo's *Pokemon* and Depesche's *Top Model* as top CCBs in their corresponding demographic segments.

151. Therefore, the CMA considers that the markets and segments in which the Parties are active, particularly those related to the development of CCBs, are currently characterised by the existence of a considerable number of players.

*Parties' ability and incentive to successfully enter and expand into new demographic segments*

152. Based on the Parties' submissions, the CMA found that eOne's CCBs are targeted at pre-school children only, while Hasbro's CCBs target both pre-school children and older children.<sup>93</sup> However, the evidence indicated that Hasbro's CCBs are particularly weak in the pre-school segment (see, for instance, paragraph 140). Therefore, the CMA found that the Parties' CCBs are generally targeted at different demographic segments.
153. As set out in paragraphs 127 and 130, evidence from internal documents and third parties indicated that eOne has the capability and track record to develop new successful CCBs, particularly in the pre-school segment.
154. Evidence from Hasbro's internal documents (prepared as part of its due diligence exercise) indicated that it had [REDACTED] ability to expand into [REDACTED]. In particular, one internal document indicated that eOne expected that the required amount of [REDACTED].<sup>94</sup>
155. As set out in paragraphs 137 to 141, evidence from third parties indicated low confidence in Hasbro's capabilities to develop new successful CCBs, particularly in the pre-school segment.

*Competitors' ability and incentive to successfully enter and expand into new demographic segments*

156. As set out in paragraphs 149 to 151, evidence from third parties indicated that there is a wide range of competitors with the capability and track record to develop new and existing CCBs across demographic segments. The CMA found that CCB developers will continue to provide incentives for the merged entity to innovate and invest in the development of CCBs.

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<sup>93</sup> See, for instance, FMN tables 12 to 15.

<sup>94</sup> [REDACTED].

*Parties' plans to enter each other's demographic segments*

157. As set out in paragraphs 127 to 129 and 135 to 136, evidence from internal documents indicated that [REDACTED]. However, the CMA found no evidence that [REDACTED].

*CMA's conclusion on dynamic loss of incentives to innovate and invest*

158. For the reasons set out above, the CMA believes that, prior to the Merger, the Parties' incentives to innovate and invest in the development of CCBs were not particularly driven by competitive constraints exerted on one another. In particular, the CMA found limited evidence of [REDACTED], and evidence from internal documents and third parties indicated [REDACTED].
159. Furthermore, the CMA identified a wide range of competitors which are active across markets and demographic segments, and that have the track record and capability to continue developing new and existing successful CCBs, thereby providing incentives for the Parties to invest and innovate in the development of CCBs.
160. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of the dynamic loss of incentives to innovate and invest in the development of CCBs.

**Vertical effects**

161. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer. The Merger will create a vertical relationship: eOne licenses its CCBs to Hasbro's downstream competitors (in the manufacture and wholesale supply of CCB-based toys for pre-school children).
162. The CMA has therefore considered whether the merged entity would have the ability and incentive to weaken competition in the manufacture and wholesale supply of CCB-based toys for pre-school children by terminating (or not renewing) eOne's existing licensing agreements with Hasbro's competitors.<sup>95</sup> The CMA's approach to assessing vertical theories of harm is to analyse: (i) the ability of the merged entity to foreclose competitors; (ii) the incentive of it

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<sup>95</sup> As explained below, the CMA has found that the Merger will not give rise to an SLC as a result of vertical effects on the basis that any foreclosure strategy would not have a substantial effect on competition, even in a total foreclosure scenario. Therefore, the CMA did not have to assess whether the merged entity would have the ability and incentive to adopt a partial foreclosure strategy, such as raising prices of CCB licences.

to do so; and (iii) the overall effect of the strategy on competition.<sup>96</sup> This is discussed below.

### *Ability*

163. The CMA considered:
- (a) Whether Hasbro would have the ability to stop licensing eOne's CCBs to rival manufacturers; and
  - (b) The extent to which Hasbro's competitors who currently hold licensing agreements with eOne rely on those agreements to be able to compete in the manufacture and wholesale supply of CCB-based toys for pre-school children.
164. Hasbro's internal indicated that Hasbro plans to internalise the manufacturing of toys based on [X]. Hasbro's document on strategic rationale refers to "*insourcing synergies for [X] and [X]*" and, in particular, its plans to "*replace [X] with [X] to capture [X]*" and "*eliminate [X] to employ [X] model*". In the same documents, Hasbro specifies that its plan is to "*move toy production in-house for [X]*".
165. The fact that Hasbro plans to move the manufacture of toys based on [X] in-house indicated that Hasbro would have the ability to stop licensing [X] to rival manufacturers.
166. Views from existing licensees indicated that, if eOne's CCBs were no longer available, they would need to find an alternative licence and incur switching costs to adapt their product lines to the new CCBs:
- (a) One licensee told the CMA that, if eOne's *Peppa Pig* licence were not available, it would try to find another available licence, preferably in the pre-school segment as this was the area where it had more expertise. However, this licensee added that it would be difficult to find an available licence that sells as well as *Peppa Pig*, and noted that [X]; and
  - (b) Similarly, another licensee [X] told the CMA that switching to other CCBs would be possible but costly, given that toys are not standard items: to be able to use a new CCB, the manufacturer must go through a designing phase and adapt its processes to create new product lines based on that CCB.

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<sup>96</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

167. With regard to available alternatives, as set out in paragraphs 114 to 116, views from retailers indicated that eOne's *Peppa Pig* and *PJ Masks* are among the top three CCBs in the pre-school toys category, along with Spin Master's *Paw Patrol*. Other successful CCBs in the segment include BBC's *Teletubbies*, Nickelodeon's *Top Wings* and Mattel's *Thomas the Tank Engine*. *LEGO City* and MGA's *L.O.L. Surprise* were also highlighted as strong in the pre-school segment, although these are also targeted to older children, meaning that switching to any of these licences may reduce the competitive strength of the licensee in the wholesale supply of CCB-based toys to the preschool segment.
168. Furthermore, the CMA found that, although there may be some alternative CCB licences, the licensing rights for the manufacture of most types of toys that are based on these alternative CCBs might not be readily available. In some cases, most types of toy under a given CCB are manufactured in-house by the CCB's owner. For instance, *Paw Patrol*, one of the top three CCBs in the pre-school toys category, is owned by Spin Master, which is a vertically-integrated manufacturer of toys and games.
169. The available evidence also indicated that switching to another CCB licence may be difficult because of the long duration of some licences (2-3 years) and the CMA received evidence suggesting that CCB licenses are at least in some cases granted to manufacturers on a quasi-exclusive basis<sup>97</sup> for specific types of toys. For example, [REDACTED].<sup>98</sup> This view was expressed by third parties,<sup>99</sup> as well as eOne who said that [REDACTED].<sup>100</sup>
170. The above factors may limit the extent to which eOne's current licensees may be able to switch to a new licence without becoming a weakened competitor in the pre-school segment. However, eOne's licensees currently hold multiple licences, and may be able to expand their manufacturing of toys under their other licences.<sup>101</sup> Furthermore, under some circumstances manufacturers may be able to switch to alternative CCBs, for example if the toys they propose to manufacture differ from the toys currently manufactured by other licensees.

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<sup>97</sup> In this Decision, "quasi-exclusivity" refers to the practice where a licensee of a CCB becomes *de facto* the only manufacturer of a type of a product based on that CCB, regardless of whether the licence has been formally granted on an exclusive basis.

<sup>98</sup> RF12, paragraph 75.

<sup>99</sup> For example, [REDACTED] explained that whilst there may be a limited overlap with the other suppliers in the production of certain categories of toys, eOne's licences are "*substantively exclusive in practice*". Similarly, another eOne's licensee [REDACTED] told the CMA that whilst the contracts are formally non-exclusive, the licensee is usually confident that CCB owners will not license the CCB to other manufacturers for the same product line.

<sup>100</sup> CMA's call with eOne of 22 October 2019.

<sup>101</sup> For instance, the Parties submitted that, based on NPD data, Character Options also holds licences for other pre-school CCBs [REDACTED] (source: FMN Tables 16 and 17). Similarly, [REDACTED] also holds some licences [REDACTED] for Hasbro's *My Little Pony*, although it was not clarified whether the latter relate to the pre-school segment.

### *Conclusion on ability*

171. The CMA considers that the evidence with regard to the available alternatives to eOne's current licensees for the manufacture of CCB-based toys for pre-school children is mixed. The CMA has therefore left open the ability question. As set out below, the CMA concluded that any foreclosure strategy would not have the effect of substantial lessening of competition in the manufacture and wholesale supply of CCB-based toys for pre-school children in the UK (see paragraphs 175 to 191 below).

### *Incentive*

172. The CMA considered whether the merged entity would have the incentive to terminate (or not renew) eOne's existing licensing agreements with Hasbro's competitors and move the manufacture of the majority of toys based on eOne's CCBs in-house. By moving the manufacture of toys based on eOne's CCBs in-house, the merged entity would lose the upstream margin from licensing the CCBs to other manufacturers, but it would gain the downstream margin from the wholesale supply of toys.
173. To the extent eOne is not already capturing the full downstream margin through the design of its licensing agreements, and for those types of toys in which Hasbro has the required manufacturing capabilities, the merged entity would find it profitable to move the manufacture of those toys in-house. This is consistent with Hasbro's existing practices with its own CCBs, as well as with its internal plans for the Merger.<sup>102</sup>

### *Conclusion on incentives*

174. The CMA considers that the incentive criteria could be met, in that moving the manufacture of toys based on eOne's CCBs in-house could be profitable for the merged entity. However, the profitability of this strategy does not necessarily rely on anti-competitive effects, as it does not necessarily rely on inducing a weakening of competition in the downstream market.

### *Effect*

175. If the merged entity had both the ability and incentive to weaken some rivals in the manufacture and wholesale supply of CCB-based toys for pre-school

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<sup>102</sup> In 2018, Hasbro manufactured [70-80]% of the toys based on its own CCBs sold in the UK. Hasbro told us [REDACTED]. Hasbro's internal documents (eg [REDACTED]) similarly indicate that Hasbro intends to move eOne's toy business in-house and that this would result in "expected in-sourcing and cost synergies of approximately \$130m by 2022".



children by moving the manufacture of most toys based on eOne's CCBs in-house, this would have a negative effect on competition if:

- (a) The Parties' CCBs were close competitors at the wholesale level; and/or
- (b) Other competitive constraints would be insufficient to prevent a price increase or other deterioration of the offer by the merged entity in the wholesale market for CCB-based toys for pre-school children.

176. Given that the manufacture and wholesale supply of CCB-based toys is highly differentiated, shares of supply might not be fully indicative of the closeness of competition of the Parties' CCBs, relative to competitors' CCBs. Therefore, while the CMA took into account the Parties' estimates of shares of supply as part of its assessment, it placed more weight on evidence on closeness of competition and relative strength of competitive constraints, as set out below.

*Parties' estimates of shares of supply*

177. The Parties provided estimates of shares of supply of CCB-based toys by demographic segment, based on NPD's retail data (as a proxy for wholesale shares). The Parties submitted shares of supply estimates with respect to two dimensions: by CCB owner associated with the toy (regardless of the manufacturer), and by manufacturer (including both manufacturer-owned CCBs and in-licensed CCBs).

178. The Parties' estimates by CCB owner for the pre-school segment are shown in Table 3 and Table 4 above. These estimates indicated that the Parties' combined share of CCB-based toys for pre-school children based on their own CCBs is [10-20]% of CCB-based toys for pre-school boys and [10-20]% of CCB-based toys for pre-school girls. However, this does not fully reflect the Parties' combined shares of supply if the merged entity moved the manufacture of toys based on eOne's CCBs in-house, given that:

- (a) Hasbro manufactures [70-80]% of the retail value of its CCBs in-house. Assuming that this proportion is broadly constant across demographic segments, and that the merged entity would move a similar proportion of the manufacture of toys based on eOne's CCBs in-house, this would bring down the combined market shares to [10-20]% for boys and [5-10]% for girls; and
- (b) On the other hand, these estimates exclude Hasbro's manufacture of toys based on in-licensed CCBs from other CCB owners, such as Disney and Time Warner, which would bring up the above market share estimates.

179. With regard to the latter factor, the CMA notes that Hasbro only manufactures part of the toys based on those third party CCBs, and that there is a range of other manufacturers that also license those CCBs (for instance, third parties indicated that Mattel is also a large licensee from Disney). To account for that, the CMA also analysed shares of supply of each manufacturer by value. The tables below summarise the key figures in the Parties' submission:

**Table 8: Parties' share of supply estimates of CCB-based toys for pre-school boys, by manufacturer**

<b>Manufacturer</b>	<b>Estimated share by value (boys)</b>
LEGO	[30-40]%
Spin Master	[10-20]%
Hasbro	[5-10]%
Character Options	[5-10]%
Mattel	[5-10]%
Other (<1% share)	[20-30]%

Source: Parties' FMN, Table 16.

**Table 9: Parties' share of supply estimates of CCB-based toys for pre-school girls, by manufacturer**

<b>Manufacturer</b>	<b>Estimated share by value (girls)</b>
MGA	[20-30]%
Mattel	[10-20]%
Spin Master	[5-10]%
LEGO	[5-10]%
Character Options	[5-10]%
Hasbro	[0-5]%
Jazwares	[0-5]%
Prexiosi	[0-5]%
Other (<1% share)	[20-30]%

Source: Parties' FMN, Table 17.

180. Based on the above estimates and the estimates in Table 3 and Table 4, assuming that the merged entity would manufacture all toys based on eOne's CCBs, the merged entity's combined share in the manufacture and wholesale supply of CCB-based toys for pre-school children after the Merger could amount to [20-30]% for pre-school boys (increment of [10-20]%) and [10-20]% for pre-school girls (increment of [10-20]%). However, as set out in paragraph 178(a), it is unlikely that the merged entity would manufacture all toys based

on eOne's CCBs in-house. Therefore, the CMA considers that the merged entity's combined share would likely be lower.<sup>103</sup>

181. The estimates in Table 8: Parties' share of supply estimates of CCB-based toys for pre-school boys, by manufacturer and Table 9: Parties' share of supply estimates of CCB-based toys for pre-school girls, by manufacturer further indicate that LEGO and MGA would still be larger than the merged entity in the manufacture and wholesale supply of CCB-based toys for pre-school boys and girls, respectively. Mattel would be similarly sized in the girls' segment, and Spin Master would keep a significant share in the boys' segment. These competitors are vertically integrated manufacturers who do not license CCBs from eOne.

- *CMA's assessment of shares of supply*

182. The CMA considers that the manufacture and wholesale supply of CCB-based toys is a highly differentiated market, and therefore share of supply estimates may not be fully indicative of the competitive constraints exerted on the Parties' CCBs by each other or their competitors. Notwithstanding this, the CMA notes that the Parties' estimates and the CMA's analysis described above indicate that the merged entity's share of supply in the manufacture and wholesale supply of CCB-based toys for pre-school children would amount to less than 25%, with an increment of less than 15%. The estimates also indicate that there are similarly sized vertically integrated manufacturers in the market, and that the market is overall relatively fragmented.

*Closeness of competition between the Parties' CCBs in the manufacture and wholesale supply of CCB-based pre-school toys*

183. Evidence from the Parties and third parties indicated that toy retailers make their purchasing decisions for each toy they sell independently, and that the CCB on which a toy is based is more important in driving purchasing decisions than the type of toy or the manufacturer's brand. Furthermore, the CMA found that the number and identity of licensees for each CCB varies over time, as licensing agreements typically have a duration of 2-3 years.

184. Therefore, the CMA focused its assessment of closeness of competition in the manufacture and wholesale supply of CCB-based toys for pre-school children at the individual CCB level, as opposed to the manufacturer's full portfolio.<sup>104</sup>

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<sup>103</sup> For instance, assuming the same proportion of in-house manufacturing as per Hasbro's current in-house manufacturing based on its own CCBs ([70-80]%), the combined share estimates would amount to [10-20]% for pre-school boys (increment of [5-10]%) and [10-20]% for pre-school girls (increment of [5-10]%).

<sup>104</sup> See paragraphs 19494 and below for a full discussion of conglomerate effects.

185. As set out in paragraphs 114 to 119, third party views from retailers and toy manufacturers indicated that eOne's CCBs (*Peppa Pig* and *PJ Masks*) rank among the top three CCBs in the pre-school toys category. By contrast, none of the respondents considered that Hasbro's pre-school CCBs ranked among the top 3 in the pre-school toys category, and one customer specifically indicated that Hasbro has traditionally struggled in that category.
186. The above findings were also in line with more general evidence from the Parties' internal documents, which indicated that the Parties' CCBs were not particularly close competitors at the CCB level, particularly in terms of popularity among pre-school children (see paragraphs 104 to 106).
187. Based on the evidence above, the CMA considers that the Parties' CCBs are not particularly close competitors in the manufacture and wholesale supply of CCB-based pre-school toys.

*Competitive constraints on eOne's CCBs in the manufacture and wholesale supply of CCB-based pre-school toys*

188. The CMA assessed the competitive constraints on eOne exerted by competitors' CCBs in the manufacture and wholesale supply of CCB-based toys for pre-school children.
189. The views from the vast majority of third parties indicated that *Paw Patrol* from Spin Master is the closest competitor to eOne's CCBs. This was also consistent with the [REDACTED]. Other CCBs mentioned by third parties as alternatives to eOne's CCBs and/or as strong in the pre-school segment were: LEGO's *LEGO City*, MGA's *L.O.L. Surprise*, BBC's *Teletubbies*, Nickelodeon's *Top Wings*, Mattel's *Thomas the Tank Engine*, Disney's *Toy Story* and BBC's *CBeebies in the Night Garden*. As set out in paragraph 105 an internal document from Hasbro also highlighted the popularity of [REDACTED] among [REDACTED] children.
190. Therefore, the CMA has found that eOne's CCBs are constrained by a range of rival CCBs in the market for the manufacture and wholesale supply of CCB-based toys for pre-school children, with its closest competitor being Spin Master's *Paw Patrol*.

*Third party views*

191. Some third parties who responded to the CMA's investigation expressed concerns that the Merger may result in the merged entity increasing wholesale prices or reducing the range of toys based on eOne's CCBs post-

Merger.<sup>105</sup> However, these concerns do not provide evidence that Hasbro would face different incentives or face different competitive conditions in the manufacture and supply of CCB-based pre-school toys than the current licensees of eOne's CCBs do at the moment. Moreover, evidence from third parties indicated that there are alternative CCBs available, including in the pre-school segment. Therefore, for the reasons explained at paragraphs 175 – 190 above, the CMA believes that third party views do not alter the outcome of the CMA's competitive assessment of the Merger in relation to vertical effects.

#### *Conclusion on vertical effects*

192. For the reasons set out above, the CMA believes that the merged entity may have the incentive to move the manufacture of the majority of toys based on eOne's CCBs in-house, but the extent to which this could weaken the ability of some rivals to compete in the manufacture and wholesale supply of CCB-based toys for pre-school children is uncertain. Even if such a strategy could weaken some of eOne's current licensees post-Merger, the CMA found that this would not have an adverse effect on competition in the supply of CCB-based pre-school toys to retailers in the UK. This is because the Parties are not particularly close competitors in the supply of CCB licences and there is a sufficient range of rival CCB licensors (and large vertically-integrated manufacturers) which would continue to exert a competitive constraint on the merged entity.
193. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the manufacture and wholesale supply of CCB-based toys for pre-school children in the UK.

#### **Conglomerate effects**

194. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).<sup>106</sup> In certain circumstances, a

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<sup>105</sup> Some third parties, most notably licensees, expressed concerns that the merged entity would do "more in-house manufacture" of eOne's CCBs, "reduce [the number of] potential franchisors" and lead to "less licensing opportunities" for eOne's CCBs. One of eOne's [redacted] considered that Hasbro may "decide to reduce the number of lines for Peppa Pig branded toys after the merger" and that given that it will take the merged entity some time to develop a similar number of products lines (toys) [redacted].

<sup>106</sup> [Merger Assessment Guidelines](#), paragraph 5.6.2.

conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.

195. In the present case, the CMA has considered whether the merged entity could use the strong position of eOne's CCBs in the wholesale supply of CCB-based toys for pre-school children to weaken its rivals in the wholesale supply of other toys and games (or *vice versa*), for instance by offering discounts to retailers across their portfolio (mixed bundling), thereby affecting competitors' ability to compete in each individual market. In its assessment, the CMA assumed that Hasbro could move the manufacture and wholesale supply of the majority of toys based on eOne's CCBs in-house, as discussed in paragraphs 199 to 200.
196. The CMA's approach to assessing conglomerate theories of harm is to analyse: (a) the ability of the merged entity to foreclose competitors; (b) the incentive of it to do so; and (c) the overall effect of the strategy on competition.<sup>107</sup>

#### *Ability*

197. The CMA considered whether, as a result of the Merger, the merged entity would have the ability to weaken its rivals in any segment of the manufacture and wholesale supply of toys and games in the UK by offering discounts to retailers across their portfolio. In particular, the CMA considered whether the addition of toys and games based on eOne's CCBs to Hasbro's overall portfolio of toys and games would increase the merged entity's ability to engage in such a strategy.
198. In this regard, the CMA considered each of the following factors in turn:
- (a) The impact of the addition of toys and games based on eOne's CCBs on the value of Hasbro's total portfolio of toys and games; and
  - (b) The extent to which such addition would affect retailers' purchasing decisions across the merged entity's portfolio in light of Hasbro's (current or potential) portfolio-wide discounts.

#### *Impact of adding toys based on eOne's CCBs to Hasbro's portfolio*

199. The retail value of Hasbro's total sales of self-manufactured toys and games (including its own CCBs, in-licensed CCBs and other non-CCB brands)

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<sup>107</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

amounted to \$[REDACTED]m in the UK in 2018.<sup>108</sup> By contrast, the retail value of all toys and games based on eOne's CCBs was of \$[REDACTED]m in the UK in 2018.<sup>109</sup>

200. Therefore, assuming the merged entity moved the manufacture of all toys based on eOne's CCBs in-house,<sup>110</sup> this would increase the value of Hasbro's total portfolio by approximately [30-40]%. While this indicates that the increase in Hasbro's portfolio value brought about by the Merger could be considerable, the extent to which this may have adverse effects on competition depends on customers' sensitivity to portfolio-wide discounts, which is assessed below.

#### *Impact of Hasbro's rebates on retailers' purchasing decisions*

201. The Parties submitted that Hasbro's yearly commercial terms with its main retail customers in the UK typically include volume rebates. These rebates are negotiated [REDACTED], based on [REDACTED] as a starting point.
202. Hasbro's rebates are typically formulated as [REDACTED].<sup>111</sup> With very few exceptions, the Parties' submission indicates that, [REDACTED].<sup>112</sup> Therefore, Hasbro's [REDACTED] rebates are designed to [REDACTED].
203. However, the Parties' submission indicated that [REDACTED] many terms of trade that are negotiated with retailers, and that [REDACTED] who are able to negotiate such terms [REDACTED] with Hasbro.<sup>113</sup>
204. Hasbro told the CMA that, [REDACTED] retailers place orders for each individual toy [REDACTED] if they believe that there is consumer demand for those products. Furthermore, retailers typically have different buyers for different categories of toys and games. Hasbro submitted that it is therefore [REDACTED].<sup>114</sup> The Parties' submission was consistent with the evidence received by the CMA from the third parties discussed at paragraph 205 below.

#### *Third party views*

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<sup>108</sup> RFI 1 response, tables 5, 6 and 7.

<sup>109</sup> FMN, Table 8.

<sup>110</sup> This is an upper-bound estimate, on a cautious basis. However, the CMA considers that the merged entity would likely only move around 70% of the manufacture of toys based on eOne's CCBs in-house, in line with Hasbro's [REDACTED] (see, for instance, paragraphs 173 and 178(a)).

<sup>111</sup> Along with these [REDACTED] rebates, [REDACTED] and [REDACTED] also benefit from rebates [REDACTED]. Source: FMN paragraphs 300-301, and Annex RFI 4\_5.

<sup>112</sup> Annex RFI 4\_5.

<sup>113</sup> FMN, para 300 and RFI 4 question 5(a).

<sup>114</sup> CMA's call with Hasbro of 21 October 2019.

205. One licensee expressed a concern that, post-Merger, Hasbro will likely ask retailers to buy more of their products if they want to have *Peppa Pig* products on their shelves, for example by “bundling” *My Little Pony* toys with *Peppa Pig* toys. However, the majority of retailers who responded to the CMA’s investigation indicated that portfolio-linked rebates do not influence their purchasing decisions for individual toys.<sup>115</sup>
206. Therefore, for the reasons set out in paragraphs 197 to 204 above, the CMA believes that third party views do not alter the outcome of the CMA’s competitive assessment in relation to conglomerate effects.

#### *Conclusion on ability*

207. The CMA considers that the merged entity would not have the ability to foreclose rival manufacturers and wholesale suppliers of toys and games as a result of conglomerate effects arising from the Merger, as the evidence indicates that retailers’ purchasing decisions with respect to individual toys are not materially affected by portfolio-wide discounts offered by manufacturers. Given that the merged entity will not have the ability to foreclose competitors as a result of conglomerate effects, the CMA did not have to consider whether the merged entity would have the incentive or the effect of a foreclosure strategy.

#### *Conclusion on conglomerate effects*

208. For the reasons set out above, the CMA believes that the merged entity would not have the ability to foreclose rival manufacturers and wholesale suppliers of toys and games by engaging in mixed bundling as a result of adding toys and games based on eOne’s CCBs to Hasbro’s portfolio of toys and games. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the manufacture and wholesale supply of toys and games in the UK.

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

209. 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

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<sup>115</sup> In particular, retailers explained that their purchases of CCB-based toys are negotiated separately and driven by market trends and the retailers’ expectations of the potential success of each toy. Whilst one respondent retailer suggested that whilst Hasbro starting to supply most toys based on eOne’s CCBs would potentially increase the amount of other types of toys this retailer purchased from Hasbro, this depended on the financial incentive being “sufficiently large”.



considers whether such entry or expansion would be timely, likely and sufficient.<sup>116</sup> 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.

## Decision

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

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

**Alex Olive**  
**Director, Mergers**  
**Competition and Markets Authority**  
**16 January 2020**

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<sup>116</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.