

Anticipated acquisition by McGraw-Hill of Cengage
Summary of the CMA's decision on relevant merger situation and
substantial lessening of competition

ME/6849/19 SUMMARY

1. On 1 May 2019, McGraw-Hill Education, Inc. (**MHE**) and Cengage Learning Holdings II, Inc. (**Cengage**) (together the **Merged Entity**) entered into an agreement under which MHE and Cengage will merge and the current controllers of MHE, investment funds managed by affiliates of Apollo Management, L.P. (**Apollo**), will acquire approximately 50% of the votes in the Merged Entity (the **Merger**). Apollo will also have the ability to exercise veto rights over decisions of the Merged Entity's board of directors. Apollo, MHE and Cengage 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 Apollo, MHE and Cengage is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. The CMA believes that Apollo's shareholding in the Merged Entity, together with its ability to exercise veto rights over decisions of the Merged Entity's board, will give Apollo (at least) the ability to exercise material influence over the Merged Entity. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. MHE and Cengage are both educational publishers, focusing on the supply of higher education (**HE**) textbooks and ancillary materials (**titles** and together **HE titles**). HE titles can be grouped by reference to different degrees of specificity, including: (i) discipline (eg engineering); (ii) subject (eg mechanical engineering); and (iii) course (eg, mechanical engineering: fluid mechanics). A course is a unit of instruction within a subject.
4. The CMA assessed the Merger using separate product frames of reference for the supply of HE titles for individual courses. The CMA found that titles from courses within the same subject are not typically considered substitutes from a customer perspective. The CMA did not find sufficient evidence of supply-side substitutability to widen the product frame of reference. In particular, the CMA found substantial barriers to launching a new title in a course and limited evidence of actual new entry in recent years.
5. In relation to the geographic frame of reference, the CMA assessed the impact of the Merger on a UK-wide basis. While not all HE titles are produced

specifically for the UK, the CMA found that prices for HE titles are typically set for the UK market and are likely to differ relative to other countries.

6. The CMA has therefore assessed the impact of the Merger in the supply of HE titles for individual courses in the UK, with each course comprising a separate product frame of reference.
7. The Parties identified 379 courses where they both offer HE titles in the UK. Of these, there are 84 courses where the Merger will result in a material increment by value. In respect of these 84 courses, the CMA applied a cautious filter to screen out (subject to receiving evidence indicating otherwise) overlaps where there is no realistic prospect of a substantial lessening of competition (**SLC**). The filter identified for further assessment courses where the Parties would have a combined share of supply (estimated based on revenue) of more than 30% and the Merger would result in a material increment to that share of supply. After application of the filter, the CMA identified 53 courses for further assessment.
8. In respect of the 53 courses remaining after application of the filter the CMA analysed the Parties' shares of supply and those of competitors, the Parties' submissions, and evidence from internal documents and third parties provided to the CMA in respect of these courses.
9. In 42 courses, the CMA found that the Parties would have a combined share of supply exceeding 40%. The CMA considers that the Merger gives rise to *prima facie* competition concerns in respect of these courses in the light of the combined share of supply alone. Further:
 - (a) In a large number of these courses, the CMA found that the Parties' combined shares of supply were high or extremely high, including over 80% for some courses. Moreover, for more than half of the 42 courses, the second and/or third competitor to the Merged Entity would have an extremely small or negligible market presence. In almost all of the courses, the CMA found that there would be fewer than three remaining competitors, in addition to the Merged Entity, with a share of supply of at least 10% each, which the CMA considers further indicates *prima facie* competition concerns.
 - (b) In all 42 courses, the CMA received either: (i) evidence supporting (or consistent with) its *prima facie* competition concerns (for instance, internal documents indicating closeness of competition between the Parties or the market strength of the Parties, or third party concerns about the Merger); or (ii) insufficient evidence to alleviate the *prima facie* competition

concerns identified by the CMA such that there would be no realistic prospect of an SLC.

10. In 11 courses, the CMA found that the Parties would have a combined share of supply of between 30% and 40%. Further:
 - (a) In ten courses the CMA found that there would be fewer than three other competitors with a share of supply of at least 10% each, which the CMA considers indicates *prima facie* competition concerns. Of these:
 - (i) In nine courses, the CMA received either: (i) additional evidence, for example on closeness of competition, which supported its *prima facie* competition concerns; or (ii) did not identify sufficient evidence to alleviate the *prima facie* competition concerns such that there would be no realistic prospect of an SLC.
 - (ii) In one course, Sociology: Introduction to Sociology, the CMA found that the increment of the Merger would be small, internal documents indicated that the Parties are not close competitors and that there were a number of material competitors to the Merged Entity, and sufficient suppliers would remain post-Merger to constrain the Merged Entity. Therefore, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to this course.
 - (b) In the eleventh course, Anthropology: Introduction to Cultural and Social Anthropology, there are three other competitors with a share of supply of at least 10% each. The CMA considered the shares of supply, the Parties' submissions, internal documents and third party evidence. The CMA found that the Merger does not give rise to a realistic prospect of an SLC in relation to this course due to the small increment in share of supply that would arise from the Merger and the fact that sufficient suppliers would remain post-Merger to constrain the Merged Entity.
11. The Parties submitted that students had many alternatives for their titles, such as learning materials produced by university lecturers (**lecturers**), second-hand textbooks and open educational resources (**OERs**) on the Internet. However, the CMA found these alternatives did not represent important enough constraints on educational publishers to offset the CMA's concerns about the loss of competition arising from the Merger.
12. Additionally, the CMA considered whether there would be sufficient entry, or expansion of existing firms, to offset the competition concerns identified. However, the CMA found that entry or expansion would not be likely, and if

entry or expansion were to occur, it would not be timely or sufficient to offset the competition concerns identified.

13. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of HE titles for 51 HE courses in the UK, as listed in Annex 2 to the Decision.
14. The CMA also considered whether, as a result of the Merger, the Parties could foreclose competitors by bundling HE titles for different courses, for example through the launch of a digital subscription service in the UK (ie, conglomerate effects). For instance, the CMA considered whether the Merger would give rise to a realistic prospect of an SLC as a result of rival publishers being unable to compete effectively against the Merged Entity's larger bundled portfolio. This could arise if the Parties stopped selling certain HE titles unless as part of the bundle, or if they increased the price of the HE titles when sold on their own. The CMA did not identify evidence which indicated that the Parties intended to launch a UK multi-title subscription service in the foreseeable future. The CMA also found that lecturers were unlikely to consider restricting their HE title recommendations in response to the offer of a single subscription across a range of subjects. Additionally, the CMA found that there are subscription services present in the market which provide access to the HE titles offered by several small publishers. The CMA therefore found that the Parties would not have the ability to foreclose competition by bundling HE titles.
15. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects.
16. The Parties submitted that the CMA should apply the *de minimis* exemption in this case. The CMA considers that clear-cut undertakings in lieu of a reference (**UILs**) can, in principle, be offered by the Parties to resolve the concerns identified in this case. In addition to the availability in principle of structural UILs (such as the divestment of titles), the CMA considers that such a divestment would not be tantamount to a prohibition, nor would it be wholly disproportionate in relation to the concerns identified. The CMA will therefore, in accordance with its general policy, not apply the *de minimis* exemption in this case.
17. The CMA is therefore considering whether to accept undertakings under section 73 of the Act. The Parties have until 17 March 2020 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

Annex 2 to the Decision – The SLC Courses

	Subject	Course
1	Accounting	<i>Accounting Information Systems</i>
2	Accounting	<i>Introduction to Cost Accounting and Control</i>
3	Accounting	<i>Introduction to Financial Statement Analysis</i>
4	Accounting	<i>Introduction to Managerial Accounting</i>
5	Accounting	<i>Principles of Auditing</i>
6	Art	<i>Art Appreciation</i>
7	Business	<i>Business and Society</i>
8	Business	<i>Business Communications</i>
9	Business	<i>Introduction to Business</i>
10	Business	<i>Introduction to Business Statistics</i>
11	Chemistry	<i>General Chemistry</i>
12	Communication	<i>Interpersonal Communication</i>
13	Communication	<i>Public Speaking</i>
14	Economics	<i>Economic Principles</i>
15	Economics	<i>International Macroeconomics</i>
16	Economics	<i>Introductory Econometrics</i>
17	Economics	<i>Managerial Economics</i>
18	Economics	<i>Principles of Microeconomics</i>
19	Education	<i>Curriculum to Early Childhood</i>
20	Education	<i>Introduction to Early Childhood</i>
21	Engineering	<i>Mechanical Engineering: Thermodynamics</i>
22	English	<i>Introduction to Rhetoric</i>
23	Environmental Science	<i>Environmental Science: Introductory</i>
24	Finance	<i>Advanced Undergraduate & MBA Corporate Finance</i>
25	Finance	<i>Corporate Finance</i>
26	Finance	<i>Financial Markets and Institutions</i>
27	Finance	<i>International Corporate Finance</i>

	Subject	Course
28	Foreign Languages and literature	<i>Elementary Italian</i>
29	Health & Related Professions	<i>Introduction to Nutrition</i>
30	Interdisciplinary studies	<i>Orientation to College</i>
31	Management	<i>International Business</i>
32	Management	<i>Organizational Behaviour: Leadership</i>
33	Management	<i>Organizational Behaviour: Organization Development</i>
34	Management	<i>Principles of Management</i>
35	Marketing	<i>International marketing</i>
36	Marketing	<i>Principles and Concepts of Marketing</i>
37	Marketing	<i>Salesmanship</i>
38	Mathematics	<i>Mathematics: All Other</i>
39	Mathematics	<i>Discrete Math</i>
40	Mathematics	<i>Numerical Analysis</i>
41	Music	<i>Music Theory: Harmony</i>
42	Philosophy	<i>Ethics</i>
43	Philosophy	<i>Introduction to Philosophy</i>
44	Psychology	<i>Developmental Child - Chronological</i>
45	Psychology	<i>Developmental Lifespan</i>
46	Psychology	<i>Introduction to Cognitive Psychology</i>
47	Psychology	<i>Introduction to Counselling Psychology</i>
48	Psychology	<i>Introduction to Psychology</i>
49	Quantitative business	<i>Production/Operations Management (Project Management)</i>
50	Social work	<i>Introduction to Social Work</i>
51	Sociology	<i>Marriage & Family/Sociology of the Family</i>