

Anticipated acquisition by Yorkshire Purchasing Organisation of Findel Education Limited

Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

ME/ 6874/19

SUMMARY

1. On 15 December 2019 Yorkshire Purchasing Organisation (**YPO**) agreed to acquire the whole of the issued share capital of Findel Education Limited (**Findel**) (the **Merger**). YPO and Findel are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of YPO and Findel is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. YPO is a local authority purchasing consortium (also called a public sector buying organisation (**PSBO**)) and Findel is a private company. The Parties overlap in the distribution of a wide range of educational resources in the UK. They supply a variety of product categories including stationery, furniture, art and craft materials, sport, science and special educational needs (**SEN**) equipment and other curriculum products. The Parties supply to nurseries (also referred to as early years institutions) primary and secondary schools, all of which are collectively referred to as **Educational Institutions**.
4. Educational resources are supplied by several types of distributors. Certain distributors (including the Parties) offer a broad range of educational resources on a UK-wide or regional basis (**Generalist Distributors** or **Generalists**). Other distributors specialise in particular categories of educational resources (**Specialist Suppliers** or **Specialists**). Educational Institutions also source from online-only retailers, such as Amazon.com Inc (**Amazon**), which offer a variety of products (including educational resources).

5. The CMA considered the impact of the Merger on the supply of educational resources to Educational Institutions by Generalist Distributors, which is consistent with the CMA's previous Phase 1 decision of 1 June 2017 in relation to the anticipated acquisition by RM plc of Hedgelane Ltd (ME6678/17).
6. The CMA has found that it would not be appropriate to include Specialist Suppliers in the product frame of reference. Third party evidence and internal documents indicate that Generalist Distributors do not consider Specialist Suppliers to be a strong competitive constraint and that Specialist Suppliers are largely seen as complementary to Generalist Distributors by customers who value the one-stop-shop service offered by Generalist Distributors. In addition, Specialist Suppliers often supply through Generalist Distributors, which is consistent with the view that Generalists and Specialists have different offer propositions. Further, third party evidence indicates that supply side substitution by Specialist Suppliers into the Generalist Distributor space is unlikely. Similarly, the evidence received by the CMA does not support the inclusion of online-only retailers, such as Amazon, or other retailers such as stationery and office retailers and supermarkets in the relevant product frame of reference. The CMA has, however, taken into account the competitive constraints from these other types of distributors in its competitive assessment.
7. The CMA did not consider it appropriate to distinguish the supply of educational resources by Generalist Distributors, by type of customer or category of products.
8. With respect to the geographic frame of reference for the supply of educational resources to Educational Institutions by Generalist Distributors, the CMA found that while some elements of competition differ on a regional basis, the main competitive parameters are set nationally and, therefore, it assessed the effects of the Merger by reference to a UK-wide frame of reference, while taking into account any regional differences in its competitive assessment.
9. The CMA's investigations focused on horizontal unilateral effects and horizontal coordinated effects in the supply of educational resources to Educational Institutions by Generalist Distributors in the UK.

Horizontal unilateral effects

10. The CMA considers that the Parties have high combined shares of supply of [40-50]% with an increment of [10-20]% brought about by the Merger. YPO and Findel are the second and third largest Generalist Distributors of

educational resources in the UK and would become the largest after the Merger. The Merger will result in particularly high levels of concentration in certain UK regions, such as London, the North East and North West of England, Yorkshire and the Humber and Scotland.

11. The CMA found that the Parties are close competitors with a large product overlap which monitor and benchmark each other extensively. Although the Parties have their respective strongholds in different regions of the UK, there are significant overlaps between them in some regions.
12. The CMA also found that there would be limited remaining competitive constraints on YPO after the Merger. Internal documents and third party evidence indicate that the Parties would be constrained mainly by two Generalist Distributors – RM Plc (**RM**, which operates across the UK) and Eastern Shires Purchasing Organisation (**ESPO**, a large regional PSBO) – and, to a lesser extent, Kent County Supplies (**KCS**, a smaller regional PSBO). The CMA further found that out-of-market constraints from smaller local Generalist Distributors, Specialist Suppliers, online-only retailers (in particular Amazon, which is mainly used for top-up purchases) and other retailers are limited.
13. Internal documents and third party evidence indicate that entry and/or expansion will not be timely, likely or sufficient to counter any substantial lessening of competition (**SLC**) from arising. In particular, entry and expansion barriers include customer loyalty driven in part by historic ties to some of the Generalist Distributors. The CMA did also not see evidence of recent entry and/or expansion.
14. The CMA recognises that YPO is under public ownership and operates under the Public Services (Social Value) Act 2012 as a result of which it may have a different focus compared to a private company. Nonetheless, the CMA found that YPO is profit-oriented and reacts to competition, for instance by flexing its offer to its customers as a result of competition. Therefore, the CMA does not believe that YPO's public ownership status would preclude a realistic prospect of an SLC from arising as a result of the Merger.
15. The CMA therefore believes that it is or may be the case that the anticipated Merger between YPO and Findel may be expected to result in a SLC as a result of horizontal unilateral effects in the supply for educational resources to Educational Institutions by Generalist Distributors in the UK.

Horizontal coordinated effects

16. The CMA also considered whether coordinated effects would arise, whereby the Merger would make it more likely that, in the UK, or certain areas of it, the Parties and other Generalist Distributors would recognise they can reach a more profitable outcome if they align their behaviour by competing less strongly.
17. In line with its standard approach to assessing whether coordinated effects could arise as a result of the Merger, the CMA considered whether there is evidence of pre-existing coordination. The CMA found evidence of a high degree of transparency in the market, as a result of frequent communications between Generalist Distributors and provision of sales data to a trade association on a monthly basis which is disseminated to educational resource distributors in an aggregated format. This transparency and other market characteristics, including limited customer switching and relatively stable shares of supply, could be consistent with pre-existing coordination.
18. Whether or not such coordination currently exists, the CMA found that the Merger could increase the likelihood of coordination and increase its sustainability due to the removal of Findel, an important competitor (one of two private Generalist Distributors that currently constrain other Generalists across the UK).
19. Despite the asymmetry in the size of some Generalist Distributors, there are features in the supply of educational resources to Educational Institutions by Generalist Distributors in the UK that make reaching and monitoring an agreement feasible, including high concentration of Generalist Distributors, transparency, strong customer loyalty, and structural links between Generalist Distributors. Following the removal of Findel, these features could make coordination more likely whereby Generalist Distributors focus on customers in their core regions and do not compete strongly in the regions of their rivals (even if, in some cases, regional boundaries may be blurred, as coordination does not need to be perfect).
20. Finally, the CMA also found few external constraints which could destabilise coordination due to high barriers to entry and expansion, as explained above in relation to the unilateral effects theory of harm.
21. The CMA therefore believes it is or may be the case that the anticipated Merger between YPO and Findel may be expected to result in an SLC as a result of horizontal coordinated effects in the supply for educational resources to Educational Institutions by Generalist Distributors in the UK.

DECISION

22. As mentioned above, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the UK.

23. The CMA is, therefore, considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 26 June 2020 to offer undertakings to the CMA that may be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to 33(1) of the Act.