

ANTICIPATED ACQUISITION BY YORKSHIRE PURCHASING ORGANISATION OF FINDEL EDUCATION LIMITED

Issues statement

27 July 2020

The reference

1. On 30 June 2020, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition (the **Merger**) by Yorkshire Purchasing Organisation¹ (**YPO**), through The Council of the City of Wakefield acting as lead authority, of Findel Education Limited (**Findel**) (together, the **Parties**) for further investigation and report by a group of CMA panel members.
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom for goods or services.
3. In answering these two questions we will apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger will result in an SLC.²

Purpose of this issues statement

4. We are publishing this issues statement during the Coronavirus (**COVID-19**) pandemic, which is having significant impacts on consumers and business

¹ YPO is a public sector buying organisation which operates under the Local Authority (Goods & Services) Act 1970 and is a joint committee governed by 13 'Founder Member' local authorities which control YPO in equal parts. The Council of the City of Wakefield acts as the 'Lead Authority' agreed to acquire Findel Education Limited on trust for the other founder members of YPO.

² [Merger Assessment Guidelines](#) (CC2/OFT1254), paragraph 2.12. The Merger Assessment Guidelines have been adopted by the CMA board (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), Annex D).

across the world. The CMA has published a [statement](#) on its website on how it has adjusted its working arrangements in response and [guidance](#) on key aspects of its practice during the pandemic. Our approach to evidence-gathering will take into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the Merger might have on the markets at issue.

5. In this issues statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
6. The CMA's phase 1 decision (the **Phase 1 Decision**)³ contains much of the detailed background to this issues statement. We are publishing this statement in order to assist parties submitting evidence to our investigation. This statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should also consider.
7. At phase 2, we intend to focus our investigation on the areas in which the CMA found in the phase 1 investigation that the Merger gives rise to a realistic prospect of an SLC – that is, as a result of horizontal:
 - (a) unilateral effects;⁴ and
 - (b) coordinated effects,⁵in relation to the supply of educational resources to nurseries, primary and secondary schools (**Educational Institutions**) by distributors which offer a broad range of educational resources on a UK-wide or regional basis (**Generalist Distributors**) in the UK.⁶

³ [Phase 1 Decision, 19 June 2020](#).

⁴ See further, paragraph 23, below.

⁵ See further, paragraph 26, below.

⁶ The CMA found that the merged entity would not have an incentive to foreclose Findel's specialist rivals by stopping or reducing purchases from these Specialist Suppliers. 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 supply of educational resources to Educational Institutions by Generalist Distributors in the UK. (Phase 1 Decision, paragraph 305).

8. We intend to build on and use the evidence obtained during the phase 1 investigation. However, we will also be gathering and considering further evidence on these and any other issues which may be identified during the course of the investigation.

Background

9. On 15 December 2019, the Council of the City of Wakefield (**Wakefield Council**), acting in its capacity as the lead authority of the joint committee known as YPO, entered into a share and loan purchase agreement with The Studio Retail Group plc under which it agreed to acquire, on trust for the other Founder Members⁷ of YPO, the entire share capital of Findel.
10. The Merger is not yet complete and is conditional upon clearance by the CMA. The Merger is not being reviewed by any competition authorities other than the CMA.

The Parties

11. YPO is the largest formally constituted local authority purchasing consortium in the UK (also called a **PSBO**). YPO operates under the Local Authority (Goods & Services) Act 1970 and is governed by 13 'Founder Member' Local Authorities which control YPO in equal parts.⁸ Wakefield Council⁹ acts as the lead authority of YPO. In 2014, the founder members formed YPO Procurement Holdings Limited, a separate limited company to enable customers outside the public sector to buy goods and services from YPO. In 2018¹⁰, YPO had global revenues of £ [X] and UK revenues of £ [X].
12. Findel is currently controlled by The Studio Retail Group plc.¹¹ It supplies educational and related resources to educational and other institutions both in the UK and internationally (in over 130 countries). Findel supplies resources

⁷ The Founder Member local authorities are: (i) Barnsley Metropolitan Borough Council; (ii) The Borough Council of Bolton; (iii) City of Bradford Metropolitan District Council; (iv) Borough Council of Calderdale; (v) Doncaster Borough Council; (vi) The Council of The Borough Of Kirklees; (vii) Knowsley Metropolitan Borough Council; (viii) North Yorkshire County Council; (ix) Rotherham Borough Council; (x) St Helens Borough Council; (xi) Wakefield Metropolitan District Council; (xii) Wigan Borough Council; (xiii) Council of The City of York.

⁸ YPO is a Joint Committee and does not have a legal personality separate its Founder Member LAs. Merger Notice, paragraph 2.2. The Founder Member LAs are the following: (i) Barnsley Metropolitan Borough Council; (ii) The Borough Council of Bolton; (iii) City of Bradford Metropolitan District Council; (iv) Borough Council of Calderdale; (v) Doncaster Borough Council; (vi) The Council of The Borough Of Kirklees; (vii) Knowsley Metropolitan Borough Council; (viii) North Yorkshire County Council; (ix) Rotherham Borough Council; (x) St Helens Borough Council; (xi) Wakefield Metropolitan District Council; (xii) Wigan Borough Council; (xiii) Council of The City of York.

⁹ Also referred to as Wakefield Metropolitan District Council.

¹⁰ YPO latest set of audited accounts are for the financial year ending 31 December 2018.

¹¹ Studio is one of the largest online value retailers in the UK offering a broad range of fashion, home and leisure items, toys and gifts.

under brand names including, Hope Education, GLS, Philip Harries, Davies Sports and LDA. Findel had global revenues of £82,081,000 and UK revenues of £74,713,000 in the financial year ending 30 March 2019.

The Parties' overlap products/services

13. The Parties are Generalist Distributors who overlap in the supply of educational resources across all product categories to Educational Institutions across the UK. Educational resources encompass a variety of product categories including stationery, furniture, art and craft materials, sports equipment, science and special educational needs and other curriculum products.

Our intended inquiry

14. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will seek to establish key characteristics of how the industry operates, the appropriate counterfactual¹², the rationale for the Merger and any other relevant issues.

Market definition

15. Market definition provides a framework for assessing the competitive effects of a merger.¹³ It involves an element of judgement. The boundaries of a 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. We will take these factors into account in our competitive assessment.¹⁴

¹² [Merger Assessment Guidelines](#), section 4.3. We will assess the potential effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would be likely to prevail absent the Merger). In the Phase 1 Decision, the CMA found that the pre-Merger situation was the appropriate counterfactual. Our starting point for this phase 2 investigation is that the relevant counterfactual is the prevailing conditions of competition between the Parties. We will examine whether this is still the appropriate counterfactual, taking account of any further information that comes to light.

¹³ [Merger Assessment Guidelines](#), paragraph 5.2.1.

¹⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

16. In practice, the analysis of market definition and the competitive effects will overlap, with many factors affecting market definition being relevant to the assessment of competitive effects and vice versa.¹⁵
17. In the Phase 1 Decision, the CMA defined the frame of reference as the supply of educational resources to Educational Institutions in the UK by Generalist Distributors.¹⁶
18. In reaching this conclusion, the CMA considered whether the product frame of reference should be:
 - (a) widened to include non-Generalist Distributors:
 - (i) distributors that specialise in particular categories of educational resources (referred to in the Phase 1 Decision as **Specialist Suppliers**); or
 - (ii) other retailers – such as online-only retailers, stationery and office retailers, and supermarkets;¹⁷ or
 - (b) narrowed to reflect segmentation by type of customer or category of products.¹⁸
19. With respect to the geographic frame of reference, the CMA found that while some elements of competition differ on a regional basis¹⁹, the main competitive parameters are set nationally. 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.²⁰
20. We will use the frame of reference adopted in the Phase 1 Decision as a starting point for our analysis. We will consider any new evidence we receive which is relevant to the appropriate market definition for our assessment of

¹⁵ [Merger Assessment Guidelines](#), paragraph 5.1.1.

¹⁶ Phase 1 Decision, paragraph 5-6. Generalist distributors supply a wide range of educational resources across all or the majority of product categories to all types of Educational Institutions in the UK via catalogues and websites. Phase 1 Decision, paragraph 40(a).

¹⁷ The CMA found that it would not be appropriate to include Specialist Suppliers in the product frame of reference. The CMA did, however, take into account the competitive constraints from these other types of distributors in its competitive assessment. (Phase 1 Decision, paragraph 6.)

¹⁸ 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. (Phase 1 Decision, paragraph 7.)

¹⁹ The CMA found that there was a substantial degree of variation in the extent to which each Generalist Distributor is present in certain regions of the UK. The CMA considered that customer loyalty, reflecting historic ties between Educational Institutions and their regional distributors, was likely to be a key reason for regional disparities in shares of supply. (Phase 1 Decision, paragraph 83-90)

²⁰ Phase 1 Decision, paragraph 8.

the Merger. Irrespective of the market definition, where appropriate, we will consider constraints on the merged entity.

Assessment of the competitive effects of the Merger

Theory of harm

21. The term ‘theory of harm’ describes the possible ways in which an SLC could arise as a result of a merger.²¹ The theory of harm provides the framework for our analysis of the competitive effects of a merger.²² Identifying a theory of harm in this Issues Statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or following further work by us. We welcome views on the theories of harm described below.
22. Subject to the evidence we obtain regarding the market definition (described above), we intend to assess whether the Merger may be expected to result in an SLC in the supply of educational resources to Educational Institutions in the UK by Generalist Distributors as a result of horizontal:
 - (a) unilateral effects; and
 - (b) coordinated effects.

Horizontal unilateral effects

23. Unilateral effects can arise in a merger where one firm merges with a direct competitor that previously provided a competitive constraint. Through the Merger, removing one party as a competitor might allow the Parties profitably to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation.²³
24. To assess this theory of harm, we will use the data and information collected in the phase 1 investigation and seek to expand this evidence base as appropriate.
25. We expect to examine, among other matters:
 - (a) what factors customers or, if applicable, other parties in the supply chain consider when choosing between or recommending suppliers;

²¹ [Merger Assessment Guidelines](#), paragraph 4.2.1.

²² [Merger Assessment Guidelines](#), paragraph 4.2.6.

²³ [Merger Assessment Guidelines](#), paragraph 5.4.1.

- (b) customer behaviour, including the strength of loyalty and preference to purchase a range of different products from the same supplier;
- (c) the current and future closeness of competition between the Parties;
- (d) the current and future remaining competitive constraints post-Merger on the merged entity, including from other Generalist Distributors and non-Generalist Distributors, such as Specialist Suppliers and other retailers;
- (e) the market structure and the market position of the Parties and competitors;
- (f) any material regional variation in the constraints imposed by the Parties on each other or by third parties on the Parties.

Coordinated effects

- 26. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate, or align their behaviour, to limit their rivalry.²⁴ When investigating a coordinated effects theory of harm, the CMA will consider whether the Merger may make any pre-existing coordination between the Parties and other distributors more stable or effective or, in the absence of pre-existing coordination, may make such coordination more likely.²⁵
- 27. In the Phase 1 Decision, the CMA considered that strong regional footprints could form the basis for coordination between all or some Generalist Distributors, with firms avoiding competing in the ‘heartland’ regions of their rivals, thereby reducing the competitive constraints that they impose on each other.²⁶ The CMA also found that, whether or not Generalist Distributors currently coordinate, the Merger may increase the likelihood and sustainability (internal and external) of coordination by removing Findel as an important independent competitor.²⁷
- 28. We will assess whether there is evidence that coordination already exists, whether the characteristics of the market at issue are conducive to such

²⁴ [Merger Assessment Guidelines](#), paragraph 5.5.1. Coordination can be explicit or tacit. Explicit coordination is achieved through communication and agreement between the parties involved. Tacit coordination is achieved through implicit understanding between the parties, but without any formal arrangement. Both can be germane to an assessment of the effects of a merger. [Merger Assessment Guidelines](#), paragraph 5.5.3.

²⁵ [Merger Assessment Guidelines](#), paragraph 5.5.4

²⁶ Phase 1 Decision, paragraph 237.

²⁷ Phase 1 Decision, paragraph 294.

behaviour and what the effects of the Merger can be expected to be on the likelihood and/or effectiveness or stability of coordination.

29. This will include considering the ability of firms in a coordinating group (Generalist Distributors - or an alternative coordinating group) to arrive at an understanding of their competitors' behaviour, to reach a common understanding of the objectives of coordination, and to monitor the outcome of this coordination on an ongoing basis. We will then seek to understand the incentives of firms in any coordinating group to reach and maintain a coordinated outcome, including consideration of the costs and benefits of deviation. We will also consider whether firms from outside any coordinating group would have the ability and incentive to undermine coordination.
30. In assessing the pre-Merger situation, we expect to consider evidence on:
 - (a) the degree of market transparency;
 - (b) the extent to which Generalist Distributors monitor competitors' behaviour and how this is taken into account in their strategic decision-making;
 - (c) stability and concentration in the market, that is, whether a small number of firms account for a significant proportion of the market (or within parts of it, such as regions);
 - (d) the effect, if any, of links between Generalist Distributors, such as PSBOs;
 - (e) competitive constraints from outside any coordinating group, including from new entrants or expansion of other firms.
31. We will consider whether the Merger increases the likelihood or effectiveness of coordination, in particular by reducing the number of firms in the market, by more closely aligning the interests of the merged company and other firms, or eliminating a competitor with potential to disrupt any pre-existing or future coordination.
32. We welcome views and evidence from interested parties on each of the points set out above and on any other matters relevant to potential coordination or alignment of commercial conduct which respondents consider relevant to our assessment.

Countervailing factors

33. For all the theories of harm, we will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. We

will also consider evidence to the extent relevant, in our competitive effects assessment, such as:

- (a) evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger;²⁸ and
- (b) any evidence put to us in relation to countervailing buyer power;²⁹
- (c) any evidence put to us in relation to efficiencies arising from the Merger.³⁰

Possible remedies and relevant customer benefits

- 34. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
- 35. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.³¹

Responses to this issues statement

- 36. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on Monday 10 August 2020** by emailing YPO.FindelEducation@cma.gov.uk. Please note that, due to the ongoing COVID-19 pandemic, the CMA's offices across the UK are closed until further notice. We are no longer able to accept delivery of any documents or correspondence by post or courier to any of our offices.

²⁸ [Merger Assessment Guidelines](#), paragraph 5.8.3.

²⁹ [Merger Assessment Guidelines](#), section 5.9.

³⁰ [Merger Assessment Guidelines](#), paragraph 5.7.4. At phase 2, in order to form a view that claimed efficiencies will enhance rivalry such that an anticipated merger may not be expected to result in an SLC, the CMA must expect that the following criteria will be met: (a) the efficiencies must be timely, likely and sufficient to prevent an SLC from arising, having regard to the effect on rivalry that would otherwise result from the merger; and (b) the efficiencies must be merger-specific, ie a direct consequence of the merger, judged relative to what would happen without it.

³¹ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15 to 3.24.