

# Anticipated acquisition by Yorkshire Purchasing Organisation of Findel Education Limited

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

**ME/6874/19**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 19 June 2020. Full text of the decision published on 27 July 2020.

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

### 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 (ME/6678/17).
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.
22. 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) and 34ZA(2) of the Act.

## ASSESSMENT

### Parties

23. 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 (**LAs**) which control YPO in equal parts.<sup>1</sup> The Council of the City of Wakefield<sup>2</sup> (**Wakefield Council**) 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 2018<sup>3</sup>, YPO had global revenues of £ [X] and UK revenues of £ [X].
24. Findel is currently controlled by The Studio Retail Group plc (**Studio**).<sup>4</sup> It supplies educational and related resources to educational and other institutions both in the UK and internationally (in over 130 countries). Findel had global revenues of £82,081,000 and UK revenues of £74,713,000 in the financial year ending 30 March 2019.

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<sup>1</sup> 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.

<sup>2</sup> Also referred to as Wakefield Metropolitan District Council.

<sup>3</sup> YPO latest set of audited accounts are for the financial year ending 31 December 2018.

<sup>4</sup> 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.

## Transaction

25. On 15 December 2019, Wakefield Council, acting in its capacity as the lead authority of YPO, entered into a share and loan purchase agreement (**SLPA**) with Studio under which it agreed to acquire, on trust for the other Founder Members of YPO, the entire share capital of Findel.

### *Transaction Rationale*

26. YPO's stated rationale for the Merger is the generation of efficiencies such as consolidation of product sourcing and premises, as well as auditing, legal and professional fees, rationalising staffing,<sup>i</sup> and sharing expertise and technology, transport costs, catalogue production and distribution costs.<sup>5</sup>
27. While some of YPO's internal documents are consistent with YPO's stated rationale for the Merger,<sup>6</sup> one internal document from YPO indicates that YPO views the Merger as a [redacted] and that the Merger is an [redacted].<sup>7</sup> Another YPO internal document mentions that 'for the last 5 years, YPO has been [redacted] in the education supplies sector' but that [redacted].<sup>8</sup>
28. YPO submitted that these internal documents were prepared for an audience without extensive business and competition law experience, using generalisations. Thus, the quotes about dominance and closeness of competition refer predominantly to the similarity in size (revenue) of YPO and Findel and to the fact that YPO's continuing ability to maintain and increase the value it provides to the public sector is reliant on its ability to increase purchase volumes.<sup>9</sup> YPO provided limited evidence to support this interpretation. The CMA believes that these documents are consistent with other evidence considered below that YPO is one of the largest distributors of educational resources and that, with the Merger, it is acquiring a close competitor.
29. Findel's stated rationale is that, even though Findel has been an important part of Studio's business in the past, it is no longer a strategic fit or the main focus or driver of Studio's future growth.<sup>10</sup>

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<sup>5</sup> Merger Notice, paragraph 2.19.

<sup>6</sup> For example, YPO's internal documents.

<sup>7</sup> YPO's internal document.

<sup>8</sup> YPO's internal document.

<sup>9</sup> The Parties' response to the CMA's Issues Letter, paragraphs 2.7-2.12.

<sup>10</sup> Merger Notice, paragraph 2.22.

## Procedure

30. The Merger was considered at a Case Review Meeting.<sup>11</sup>

## Jurisdiction

31. Each of YPO and Findel is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
32. The UK turnover of Findel exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
33. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
34. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 23 April 2020 and the statutory 40 working day deadline for a decision is therefore 19 June 2020.

## Counterfactual

35. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>12</sup>
36. The CMA saw evidence that [X] the CMA received no evidence indicating that a counterfactual scenario in which Findel would have been sold to [X] would be materially different to the current competitive conditions (ie more competitive).
37. The CMA therefore believes the prevailing conditions of competition to be the relevant counterfactual.

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<sup>11</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 7.34 and ff.

<sup>12</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, paragraph 4.3.5 and ff. 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

38. Educational resources encompass a variety of product categories including stationery, furniture, art and craft materials, sport, science and SEN equipment and other curriculum products.<sup>13</sup> A commonly used categorisation of products is the one used by the British Educational Suppliers Association (**BESA**)<sup>14</sup> (see paragraph 68), although the CMA understands that the Parties have their own approach and other Generalist Distributors may do too.<sup>15</sup>

### *Types of distributors and retailers*

39. Historically, Educational Institutions procured goods and services they required from their LAs. Over time, some LAs formed PSBOs, in order to provide Educational Institutions with better value goods and services and create efficiencies.<sup>16</sup> Private entities such as Findel also started supplying Educational Institutions.
40. Currently, Educational Institutions can purchase educational resources from different types of distributors and retailers, which include:
- (a) Generalist Distributors, such as the Parties, which 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. Currently, most Generalist Distributors are publicly owned, ie are PSBOs.
  - (b) Specialist Suppliers, which focus on particular subject(s), product categories or one type of Educational Institution.
  - (c) Online-only and other retailers,<sup>17</sup> which offer a variety of products (including educational resources). The main supplier which the CMA considered in this category was Amazon.
41. Mostly due to their PSBO origins, there is a substantial degree of variation in the extent to which each Generalist Distributor is present in each region of the UK.<sup>18</sup> There are national Generalist Distributors such as YPO, Findel and RM

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<sup>13</sup> Merger Notice, paragraph 3.2.

<sup>14</sup> BESA is the trade association covering the entirety of the UK educational suppliers sector. BESA is governed and accountable to an Executive Council of elected representatives from the UK education suppliers industry.

<sup>15</sup> See the Parties' response to the CMA Request for Information.

<sup>16</sup> Office of Fair Trading: [School suppliers provide assurances to OFT to ensure competition](#) (2011).

<sup>17</sup> Other retailers include office and stationery retailers and supermarkets. As discussed in paragraph 63, the CMA does not consider this a common source of supply.

<sup>18</sup> The Generalist Distributors' historic origins can be linked to the following regions: YPO: Yorkshire and the Humber, Findel: London and the South East of England; ESPO: East Midlands; RM (due to its acquisition of Consortium): the South West of England, KCS: the South East of England (Kent), although some have expanded beyond these regions.



plc,<sup>19</sup> as well as regional distributors, such as ESPO<sup>20</sup> and KCS.<sup>21</sup> There are also smaller general distributors such as the PSBO of East Riding of Yorkshire Council (**East Riding**), Herts Fullstop (**Herts**)<sup>22</sup> and Hampshire County Supplies<sup>23</sup> which focus largely on supplying their immediate localities.<sup>24</sup>

42. As discussed in paragraphs 102 to 104, due to customer loyalty, the remaining PSBOs (and those entities with PSBO origins now under private ownership) still have a strong position in their original area. Most recently, in 2019, one PSBO, Nottinghamshire County Supplies, started to collaborate with another PSBO, Herts.<sup>25</sup>

### **Types of customers**

43. There are currently around 32,100 schools in the UK, most of which are public sector mainstream schools (20,800 primary and 4,200 secondary).<sup>26</sup> This number also includes 3,000 public nurseries but the majority of early years establishments are private which are not included in published statistics.<sup>27</sup> Educational Institutions can be distinguished from each other by the following characteristics:

- (a) Level of education / Educational Institution sector: nurseries or early years, primary education and secondary education.<sup>28</sup>
- (b) Type of funding: privately funded or state-funded. Within state-funded schools, in England, a further distinction can be drawn between schools maintained by LAs and those - largely academies - funded directly by the Department for Education (**DfE**). More recently, academies in England

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<sup>19</sup> RM trades under its brands TTS and Consortium.

<sup>20</sup> ESPO is managed by six member authority councils: Leicestershire County Council, Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council, and Peterborough City Council.

<sup>21</sup> KCS is the PSBO of Kent County Council.

<sup>22</sup> Herts is the PSBO of Hertfordshire County Council. It also trades under County Supplies (for Nottinghamshire County Council).

<sup>23</sup> Hampshire County Supplies is the PSBO of Hampshire County Council.

<sup>24</sup> In recent years, there has been consolidation in this sector and some PSBOs have subsequently been purchased by private sector firms. For example, Findel purchased GLS Educational Supplies (**GLS**) and in 2017, the CMA investigated the acquisition by RM of privately owned Hedgelane (which owned Consortium – a former PSBO). See [Phase 1 Decision: Anticipated Acquisition by RM plc of Hedgelane Ltd \(ME6678/17\) \(1 June 2017\) \(RM / Hedgelane\)](#).

<sup>25</sup> On 7 May 2019, Nottinghamshire County Supplies and Herts (part of Hertfordshire County Council) joined together in a new collaborative agreement. See Nottinghamshire County Council's website, [County Supplies Privacy Notice](#).

<sup>26</sup> [Education and training statistics for the UK: 2019](#), Department for Education.

<sup>27</sup> The wider early years sector is fragmented and includes other, mostly privately funded, early years settings. All types of settings are estimated by some sources at 15,600 establishments in total; see Findel's internal document.

<sup>28</sup> Some schools host pupils of all ages, from early years to the end of secondary school. See third party sources.

have increasingly consolidated under Multi Academy Trusts (**MATs**), inter alia to increase financial efficiencies.<sup>29</sup> There are currently 1,170 MATs in England and the majority – 598 – include five or fewer schools.<sup>30</sup> Educational resources are still mostly chosen by individual academies rather than procured at MAT level.<sup>31</sup>

### ***Procurement of educational resources***

44. There is some heterogeneity in how procurement takes place across customers, but the vast majority of Educational Institutions in England make procurement decisions independently and on an ad-hoc basis rather than through tenders or fixed-term contracts. There is a tendency to place large orders prior to the start of the academic year and on an ad-hoc basis throughout the year which creates two peaks in demand a year (Generalists' sales are recorded as peaking in July with a smaller peak in September).<sup>32</sup>
45. In contrast, Framework Agreements<sup>33</sup> are of significance in Scotland, Northern Ireland and, to some extent, Wales, where there is a greater centralisation of the procurement process:
  - (a) In Scotland, the principal agreement is the Scotland Excel Educational Materials Framework Agreement which is tendered and awarded by the Scottish procurement body Scotland Excel (**SXL**) for four years.<sup>34</sup> This Framework Agreement is not exclusive, and is discussed further in paragraphs 223 and 228).
  - (b) In Northern Ireland, Framework Agreements are exclusive, ie Educational Institutions are not permitted to purchase outside of Framework Agreements.<sup>35</sup>

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<sup>29</sup> MATs are legal entities comprising several academies, whose scope is mainly to increase efficiencies and economies of scale. The composition of MATs varies and may include more than 50 Educational Institutions at one or more levels of education. Each MAT has a board, an executive and a financial officer. See DfE, [Multi-academy trusts Good practice guidance and expectations for growth](#), December 2016. See also <https://www.gov.uk/government/news/ofsted-let-us-inspect-multi-academy-trusts-mats>.

<sup>30</sup> [BESA Key education statistics](#).

<sup>31</sup> The Parties' internal document.

<sup>32</sup> Merger Notice, paragraph 15.4 and 15.42; the CMA's analysis of data submitted by Findel; third party source. There appears to be one large peak in July, before the schools break for summer. There is then another smaller one in September when they are back.

<sup>33</sup> A Framework Agreement is an overarching agreement put in place by procurement body or LA that is then used by a contracting authority, such as a school, to create a contract with the most suitable supplier for their needs (**Framework Agreement**). There is a tender process for a Framework Agreement, in which suppliers of educational resources submit prices at which they will offer educational resources. If the distributor's bid is successful, it will be awarded the Framework Agreement and is able to supply to certain state-funded Educational Institutions determined within the Framework Agreement.

<sup>34</sup> Third party source.

<sup>35</sup> Third party source.

- (c) In Wales, educational resources are purchased primarily through agreements set up by individual LAs, although the National Procurement Service also tenders and awards Framework Agreements.<sup>36</sup>

## **Frame of reference**

46. 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 took these factors into account in its competitive assessment.<sup>37</sup>
47. While the boundaries of the relevant product market are generally determined by reference to demand substitution alone,<sup>38</sup> the CMA may widen the scope of the market where there is evidence of supply side substitution.
48. The Parties are Generalist Distributors who overlap in the supply of educational resources across all product categories to Educational Institutions across most regions in the UK.
49. The CMA took this overlap as the starting point for its frame of reference and considered whether it should be i) widened to include other types of distributors; and ii) segmented into customer groups and product categories. The CMA also considered whether the geographic frame of reference should be the UK as whole or individual regions of the UK.

## **Product scope**

50. The Parties submitted that the product frame of reference should be defined as the supply of educational resources to all types of Educational Institutions in the UK and that the constraints imposed by smaller generalist educational resource distributors, Specialist Suppliers and online-only retailers should be included as they have increased since the *RM / Hedgelane* decision.<sup>39</sup>

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<sup>36</sup> Merger Notice, paragraph 15.34.

<sup>37</sup> [Merger Assessment Guidelines](#), September 2010, paragraph 5.2.2 and ff.

<sup>38</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.

<sup>39</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.1. and Merger Notice, paragraphs 12.21 to 12.22; see also [RM / Hedgelane](#).

51. In *RM / Hedgelane*, the CMA assessed the effects of the Merger against the product frame of reference of the supply of educational resources by Generalist Distributors, excluding Specialist Suppliers. The CMA did not 'consider it necessary to define separate frames of reference on the basis of any characteristics of supply.'<sup>40</sup> However, the CMA did not have to conclude on the product frame of reference.<sup>41</sup>

*Possible widening of the frame of reference to include other types of distributors*

*Specialist Suppliers*

52. The Parties submitted that Specialist Suppliers (including several online-only Specialist Suppliers, such as Office Depot Europe (**Office Depot**)/Viking Direct UK (**Viking**)<sup>42</sup> and Lyreco UK Limited (**Lyreco**))<sup>43</sup> compete within product categories, and collectively exert a strong constraint on Generalists.<sup>44</sup> They also submitted that Findel benchmarks extensively against sports and science specialist brands and that YPO considers Wall Family Europe Limited (**WFE**, which owns several specialist brands) to be [✂] in secondary schools.<sup>45</sup> The Parties further noted that no individual supplier needs to be able to supply all of a customer's demand as customers source their products from various suppliers/distributors.<sup>46</sup> This is discussed further in paragraphs 97 to 101.

- *Demand side substitution*

53. Third party evidence indicates that it is common for customers to order their core products from Generalist Distributors to fulfil their everyday needs and supplement these orders with additional products they purchase from Specialist Suppliers. As discussed in paragraphs 98 and 99, a one-stop-shop service is important to Educational Institution customers, who are not likely to respond to small price differences, and is a key selling point for Generalist Distributors.
54. Evidence indicates that the generalist and specialist offers are to some extent complementary. Although there will be a degree of overlap across ranges and

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<sup>40</sup> *RM / Hedgelane*, paragraph 31.

<sup>41</sup> *Ibid.*

<sup>42</sup> Viking is part of Office Depot Europe,

<sup>43</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.3 (e).

<sup>44</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.3-4.

<sup>45</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.21.

<sup>46</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.3(c).

there are not always clear boundaries between the two,<sup>47</sup> some Specialist Suppliers sell products that are either not commonly supplied by Generalist Distributors (such as textbooks and ICT equipment which are largely sourced from publishers and ICT manufacturers respectively)<sup>48</sup> or are supplied by them to a more limited extent (eg specialist sports and science equipment).<sup>49</sup> Some specialist equipment would be ordered more infrequently or required only by some types of Educational Institutions.<sup>50</sup>

55. The Parties' internal documents also indicate that the Parties' sales and marketing efforts are mostly directed at customers of other Generalists<sup>51</sup> and most large customer gains appear to have come from customers switching from other Generalist Distributors.<sup>52</sup> The Parties' internal documents also show that benchmarking is mainly done against other large Generalist Distributors and less frequently against other suppliers and retailers including Specialist Suppliers.<sup>53</sup> Findel monitors Specialist Suppliers (including WFE brands) to some extent, given it has its own specialist brands.<sup>54</sup> However, YPO does not benchmark to any great extent against, for instance, sports and science Specialists (like WFE) and the CMA saw only infrequent mentions of other retailers.

- *Supply side substitution*

56. Third party evidence indicates that supply side substitution from Specialist Suppliers into the Generalist Distributor space is unlikely.<sup>55</sup> Several third parties told the CMA that they would find it difficult to widen their product portfolio to create a product offering comparable to the Generalist Distributors (see eg paragraph 311 in the Barriers to entry and expansion section). Another third party told the CMA that it would take up to three years to expand into a new product segment and that [REDACTED], was only able to enter the generalist space by purchasing [REDACTED] another Generalist.<sup>56</sup> The same third

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<sup>47</sup> The distinction between specialist and Generalist Distributors is not always clear cut and also complicated by the fact that some Generalists own specialist brands as part of their portfolio (eg Findel's Philip Harris, Davies Sport and LDA and, to a lesser extent, RM's TTS can be considered more specialist).

<sup>48</sup> Third party sources.

<sup>49</sup> Third party source. [REDACTED], a third party indicated that while it sells directly to schools and through Generalists, only a small selection of its products [REDACTED] appear in the generalist catalogue and the products not included are the more specialist products. The CMA also notes that Findel appears to operate slightly differently as a Generalist Distributor with its own specialist brands such as Davies Sport, Philipp Harris and LDA.

<sup>50</sup> Third party source.

<sup>51</sup> See for example Findel's campaigns Like YPO/ Consortium / KCS but cheaper; Findel's internal document and YPO's internal documents.

<sup>52</sup> See for example YPO's internal document which sets out [REDACTED].

<sup>53</sup> See for example Findel's internal documents. See also for example YPO's internal documents.

<sup>54</sup> Findel's internal document.

<sup>55</sup> Third party sources.

<sup>56</sup> Third party source.

party told the CMA that Specialist Suppliers are constrained from supplying directly to schools due to the high cost of marketing to the large number of schools spread across the UK.<sup>57</sup>

57. One third party told the CMA that large stationery companies (eg Lyreco, Office Depot/Viking etc.) have tried to enter by setting up dedicated divisions for the supply of educational resources but without significant progress, because customers tend prefer dealing with dedicated educational resource distributors.<sup>58</sup> The CMA also saw no evidence of Specialist Suppliers entering the generalist space in recent years.

#### *Online-only and other retailers*

58. The Parties submitted that they are constrained by online-only retailers, in particular, Amazon.<sup>59</sup> The Parties also submitted that they are constrained by other retailers which warrants their inclusion in the product frame of reference.<sup>60</sup>
59. The CMA considered that with regard to online-only retailers such as Amazon, while Amazon offers a broad range of products, the evidence is not consistent with their presence exerting a substantial competitive constraint on Generalist Distributors.
60. Third party evidence from customers and competitors indicates that customer purchases from Amazon are different in nature to purchases from Generalists and that Amazon is more likely to be used to purchase equipment not sold by Generalist Distributors and / or for top-up purchases.<sup>61</sup> This is supported by research commissioned by the Parties.<sup>62</sup> The CMA understands that Amazon has not made any notable inroads in replacing Generalist Distributors as the go-to distributor for Educational Institutions.<sup>63</sup>
61. On the supply-side, evidence from the Parties' internal documents also indicate that Amazon [✂].<sup>64</sup>
62. The role of Amazon is discussed further in paragraphs 191 to 200 in the Competitive assessment section.

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<sup>57</sup> Third party source.

<sup>58</sup> See third party sources.

<sup>59</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.3 (e).

<sup>60</sup> For example, Ryman Limited (**Ryman**). See Merger Notice, paragraphs 12.3 (b), 12.11 and 15.22.

<sup>61</sup> Third party sources.

<sup>62</sup> Findel's internal documents; YPO's internal documents.

<sup>63</sup> Third party sources; see also YPO's internal documents.

<sup>64</sup> Findel's internal document.

63. As regards other retailers, the evidence indicates that they do not constrain Generalists to a significant extent.<sup>65</sup> Customers told the CMA that it would be unlikely that they would purchase from those other retailers<sup>66</sup> and the CMA saw no evidence of other retailers entering the generalist space.

*Conclusion on widening the frame of reference to include other types of distributors*

64. Based on both the demand and supply side factors set out above, the CMA believes that it would not be appropriate to widen the frame of reference to include Specialist Suppliers and online-only or other retailers. However, the constraint they impose on the Parties and other Generalist Distributors is discussed in the competitive assessment.

*Possible segmentation by product category*

65. The CMA considered whether the frame of reference should be segmented by product category.
66. The Parties submitted that customers each have their own unique requirements in terms of the precise product portfolio and volumes, but many of the core products are sold by most distributors to most customers. The Parties also submitted that supply side substitution is possible, since many distributors offer a very wide range of products and can easily add additional products or product categories to their portfolio as needed.<sup>67</sup>
67. The CMA considered that the Parties and other Generalist Distributors, by definition, supply a full range of products across a variety of categories of educational resources.<sup>68</sup> In fact, as discussed in paragraph 53 above, being able to supply a full product range as part of a one-stop-shop service is what differentiates Generalist Distributors from Specialist Suppliers.<sup>69</sup>
68. Data submitted to BESA<sup>70</sup> by the six distributors taking part in a monthly sales monitoring scheme<sup>71</sup> shows that – when Specialist Suppliers/ specialist

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<sup>65</sup> Only very few customers who responded to the CMA's questionnaire indicated that if the merging Parties were not available they would purchase educational resources from other retailers. On the contrary, the large majority of customers indicated that they would purchase from another Generalist Distributor, should the merging Parties no longer be available. Similarly, the majority of suppliers who responded to the CMA's questionnaire indicated that Generalist Distributors are a strong competitive constraint to the merging Parties.

<sup>66</sup> Third party sources.

<sup>67</sup> Merger Notice, paragraph 12.16.

<sup>68</sup> See third party sources.

<sup>69</sup> Further evidence is set out in the CMA's competitive assessment below.

<sup>70</sup> See footnote 14 above for details on BESA.

<sup>71</sup> See paragraphs 247 to 250 below.

brands of Generalist Distributors (ie Findel's specialist brands, RM's TTS brand and WFE<sup>72</sup>) are excluded - the composition of sales of Generalists across the different BESA product categories is similar to that of the Parties.<sup>73</sup> The CMA considered that this may reflect the composition of overall demand<sup>74</sup> and it is consistent with the fact that Generalists offer a one-stop-shop service, which would inevitably result in similarities across their product sales composition.

69. As discussed in paragraphs 53 to 56 above, the CMA considered that Specialist Suppliers should not be included in the frame of reference. Consistent with that conclusion, the CMA considered that it is not appropriate to segment the frame of reference by product category.

#### *Possible segmentation by customer type*

70. The CMA further considered whether there should be separate frames of reference for different customer groups, including by level of education or funding model.
71. The Parties submitted that, in line with the CMA's findings in *RM / Hedgelane*, it would not be meaningful to sub-divide the market by Educational Institutions because Generalist Distributors are active across all types of Educational Institution. The Parties further submitted that for the same reason, it would not be meaningful to segment the market by the funding type of the institution (private, public).<sup>75</sup>

#### *Level of education*

72. Sales to Primary and Secondary schools account for the majority of the Parties' sales of educational resources to Educational Institutions. This partly reflects the fact that the spend with all Generalist Distributors in early years is small (accounting for around 10% overall), as well as RM's greater presence in the early years sector.

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<sup>72</sup> WFE operates specialist brands for the supply of educational resources: Technology Supplies Ltd, Timstar, Maude Sport and Demco Europe.

<sup>73</sup> These ten categories are: Core Curriculum (inc. SEN), Foundation Curriculum, Sport, Art & craft, Furniture, ICT & A/V, EY/EYFS/Outdoor, Stationery, Consumables and Other/unclassified.

<sup>74</sup> Third party sources. See also Findel's internal documents; and YPO's internal document.

<sup>75</sup> Merger Notice, paragraphs 12.18 and 12.20.



Table 1 – Generalist Distributors’ sales (in %) by Educational Institution

|                            | YPO      | Findel   | TTS                    | Consortium | ESPO     | KCS      | WFE       | Total    |
|----------------------------|----------|----------|------------------------|------------|----------|----------|-----------|----------|
| <b>Early Years</b>         | [0-5]%   | [10-20]% | [20-30]% <sup>ii</sup> | [20-30]%   | [0-5]%   | [0-5]%   | [0-5]%    | [5-10]%  |
| <b>Primary education</b>   | [60-70]% | [60-70]% | 60-70)%                | [40-50]%   | [60-70]% | [60-70]% | [5-10]%   | [60-70]% |
| <b>Secondary education</b> | [20-30]% | [10-20]% | [0-5]%                 | [20-30]%   | [30-40]% | [20-30]% | [90-100]% | [20-30]% |
| <b>Total</b>               | 100%     | 100%     | 100%                   | 100%       | 100%     | 100%     | 100%      | 100%     |

Source: Parties’ and third party data supplied to BESA

73. All Generalist Distributors supply to all three Educational Institution sectors which implies that a single frame of reference capturing all types of customer would be appropriate.
74. In addition, regarding the supply side substitutability of educational resource products, as set out in paragraphs 67 to 68 above, the CMA understands that Generalist Distributors can change or extend their range of products fairly easily.
75. However, as discussed in paragraphs 102 to 104, the CMA considers that gaining new customers is difficult due to customer loyalty and this may be a barrier for Generalist Distributors to expanding sales into specific sectors, even if they already make some sales to those sectors.
76. The CMA considers that the nature of competition or the competitive constraints do not vary substantially in the primary and secondary sectors to justify the segmentation. For the early years sector, however, the CMA notes there are differences in approaches to procurement due to most establishments being owned privately and customer loyalty being weaker due to the lack of historical ties to LAs. On balance, and in light of the relatively small size of the early years sector, the CMA still found it appropriate to assess it as part of a single product frame of reference. However, the CMA examined the shares of supply in each Educational Institution sector as part of the competitive assessment.

### *Financing model of Educational Institutions*

77. Private Educational Institutions are not subject to the same procurement rules as state-funded institutions.<sup>76</sup> In addition, some of the smaller PSBOs are not able to supply institutions outside the public sector,<sup>77</sup> because they do not have a private procurement arm.<sup>78</sup> However, the CMA has not found any evidence in the Parties' internal documents or in the evidence submitted by third parties that indicate that parameters of competition or competitor sets were sufficiently different to warrant segmenting the frame of reference for state-funded and private Educational Institutions.<sup>79</sup> As discussed above, the CMA notes that private ownership is much more common in the early years segment.
78. One customer group mentioned frequently in the Parties' internal documents is MATs, which appear to have the ability to place large bulk orders and receive larger discounts.<sup>80</sup> MATs can get involved in the purchasing decisions made by their academies, which can be subject to MATs' overarching rules and/or final approval. Some third parties indicated that the increased academisation of schools in England may bring about changes in the market and there appears to be some support for this in the Parties' internal documents.<sup>81</sup> However, the Parties' internal documents and customer evidence<sup>82</sup> indicate that there does not appear to be a consistent approach to procurement across all MATs and parameters of competition to supply these customers do not currently seem to differ substantially between MATs and other types of Educational Institutions. Therefore, the CMA has not considered MATs as a separate customer group for the purposes of the relevant product frame of reference.

### *Conclusion on product scope*

79. For the reasons set out above, the CMA considered the impact of the Merger in the product frame of reference for the supply of educational resources by Generalist Distributors.

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<sup>76</sup> See for example BESA's report [Procurement in English Schools](#), slides 10 and 11.

<sup>77</sup> Third party sources. See also a YPO's internal document: 'the member authorities agreed to form YPO Procurement Holdings Limited, a separate limited company. Its first trading subsidiary, YPO Supplies Ltd, was launched in September to enable customers outside the public sector to buy goods and services from YPO'.

<sup>78</sup> For example, larger PSBOs such as YPO and ESPO have established private procurement arms which enables them to sell to all types of customers.

<sup>79</sup> For example, there does not appear to have been any demand for separate research into the purchasing behaviour of private Educational Institutions recently; third party source; BESA's report [Procurement in English Schools](#), slides 10 and 11.

<sup>80</sup> See for example Findel's internal document.

<sup>81</sup> Third party source. See also a YPO's internal documents.

<sup>82</sup> Third party sources and the Parties' internal document, among others.

80. The CMA took into account the constraint from other types of distributors and retailers, such as Specialist Suppliers and online-only retailers, in its competitive assessment where the evidence supports the existence of such a constraint.

### **Geographic scope**

81. The Parties submitted that the relevant geographic frame of reference for the assessment of this Merger should be at least UK-wide<sup>83</sup> citing the following reasons:
- (a) Generalist Distributors offer a UK-wide supply of educational resources, outside their core regions with transport logistics in place and have UK-wide catalogues price lists and marketing;
  - (b) Customers source UK-wide and UK distributors to quote or tender, irrespective of the location of the distributor or of its region of origin;
  - (c) Distributors and retailers have an online presence.<sup>84</sup>
82. In *RM / Hedgelane*, the CMA assessed the impact of the Merger in the supply of educational resources by Generalist Distributors in the UK. The CMA found in that case that the parties and their main competitors operated across the whole of the UK, that the parties had a UK-wide catalogue and website price and UK-wide pricelists.<sup>85</sup>
83. Mostly due to their PSBO nature or origins, there is a substantial degree of variation in the extent to which each Generalist Distributor is present in certain regions<sup>86</sup> of the UK:
- (a) Apart from the Parties, the only Generalist Distributor which appears to have substantial presence across most regions of the UK is RM, which operates TTS and Consortium as separate brands.<sup>87</sup>
  - (b) The next group of Generalist Distributors includes smaller regional distributors: ESPO and KCS. Both have significant presence within their

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<sup>83</sup> Merger Notice, paragraph 12.36.

<sup>84</sup> Merger Notice, paragraphs 12.36 to 12.50.

<sup>85</sup> [RM / Hedgelane](#), paragraph 34.

<sup>86</sup> The Generalist Distributors' historic origins can be linked to the following English regions: YPO - Yorkshire and the Humber, Findel - London and South East; ESPO – East Midlands; RM (due to its acquisition of Consortium) – South West, KCS –South East (Kent), although some have expanded beyond these regions.

<sup>87</sup> While RM sells nationally, its presence is stronger in the South West of England (where it has its origins), West Midlands, Wales, London and the South East. It has a minor presence in the East and North of England. Third party source.

'heartland' regions (the East Midlands for ESPO and the South East for KCS) but limited presence or no presence outside of these regions.

- (c) The third group of Generalist Distributors are referred to as local distributors, ie what the CMA considers to be a subgroup of regional distributors with a narrower local presence such as East Riding, Herts and Hampshire County Supplies. These PSBOs focus largely on supplying their immediate localities. Some are also characterised by a different ownership model<sup>88</sup> and a different business structure to the larger PSBOs which precludes them from selling to privately owned institutions.<sup>89</sup>

- 84. Given the differences above, the CMA considered whether Generalist Distributors compete nationally or on a regional basis.
- 85. The CMA notes that to retain and attract customers in a particular region, Generalist Distributors mostly compete with other Generalists who are active in that region. On the other hand, many factors that affect competition appear to be decided and applied on a national basis. The CMA considered each of these aspects.
- 86. As regards national parameters:
  - (a) The Parties have national catalogues and set their catalogue prices, as well as some other key elements of their competitive offer (such as product quality, range and own-label offering) nationally;
  - (b) Benchmarking of competitors appears to mostly take place on a national basis;<sup>90</sup>
  - (c) The broad advertising and marketing strategies are set nationally;<sup>91</sup> and
  - (d) The Parties have centralised warehousing and delivery operations.<sup>92</sup>
- 87. As regards regional parameters:

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<sup>88</sup> For example, smaller PSBOs are governed by a single LA, while larger PSBOs are usually governed by a committee of multiple LAs.

<sup>89</sup> Third party source. For example, larger PSBOs such as YPO and ESPO have established private procurement arms which enables them to sell to all types of customers.

<sup>90</sup> See for example the internal documents listed in footnotes 53 and 228.

<sup>91</sup> See for example [redacted] mentioned in Findel's internal document and the Back to Schools campaign mentioned the Findel's internal document.

<sup>92</sup> See the Parties' responses to the CMA's Request for Information; see also a third party source.

- (a) Bespoke prices can be offered through Framework Agreements in some parts of the UK (most notably Scotland,<sup>93</sup> Northern Ireland<sup>94</sup> and, to a lesser extent, Wales) and bespoke discounts can be applied to individual customers which would allow the Parties to price discriminate between customers in different regions.<sup>95</sup>
- (b) The Parties have area sales managers<sup>96</sup> and adopt specific strategies to gain customers in certain regions, for which marketing materials have been customised accordingly.<sup>97</sup> The Parties can also focus their sales and marketing spend/staff resource in a particular region, as YPO have done in [REDACTED] in recent years.<sup>98</sup>
- (c) Some parts of the UK are characterised by the presence of Framework Agreements, which to some extent change the nature (for example by limiting the frequency) of competitive interactions.
- (d) Customers mostly appear to choose their main Generalist Distributor based on the options they perceive to be available to them in their region or local area. This appears to be driven by familiarity and purchasing habits and, by catalogue distribution coverage which is quite limited for the smaller Generalists.<sup>99</sup> iii This is discussed further in paragraphs 102 to 104.

88. In terms of supply side substitution, there is limited evidence of expansion by regional distributors (except by acquisition). Generalist Distributors told the CMA that there are high costs to expanding with little chance of success to due to low customer switching (see in particular discussions in the Barriers to entry and expansion section below).<sup>100</sup>

89. Some third party Generalist Distributors perceive there to be logistical barriers to expanding into new regions and have told the CMA that they are

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<sup>93</sup> Third party source. Pricing continues to be under severe pressure and profit in this area [REDACTED] is traditionally lower than other geographies. YPO's internal document.

<sup>94</sup> Third party source.

<sup>95</sup> See for example Findel's internal document in which Findel's 'recommendation on the core product is to price [REDACTED].

<sup>96</sup> See YPO's internal document.

<sup>97</sup> See for example Findel's internal document and the table in the Parties' response to the CMA Section 109 Notice of 28.02.2020. See also for example YPO's internal documents.

<sup>98</sup> 'The [REDACTED] area is separated out and treated as a campaign area (in the same way as [REDACTED]). Additional resource in the form of three new ASM's were recruited in 2016 providing a joined up approach across food, procurement services and supplies. Market share and new business will be core to the plans and includes development of appropriate sales and marketing resources.' See YPO's internal document. The key areas of growth are highlighted by geography, category and sector, all of these areas have individual marketing plans with timelines, follow up actions and measures, see YPO's internal documents.

<sup>99</sup> For example, [REDACTED] only supplies catalogues in [REDACTED], [REDACTED] does not supply its catalogues in [REDACTED] and [REDACTED] only supplies in the [REDACTED].

<sup>100</sup> Third party source.

constrained by the limits of their distribution facilities and the high cost of courier services<sup>101</sup> (see paragraph 315(b) Barriers to entry and expansion section below). On the other hand, evidence submitted by the Parties and another generalist supplier indicates that they currently make extensive use of courier services for distribution in conjunction with centralised warehousing operations.<sup>102</sup>

90. The CMA considers that customer loyalty, reflecting historic ties between Educational Institutions and their regional distributors, rather than logistical constraints, is likely the most important barrier to regional expansion and a key reason for regional disparities in shares of supply (discussed in detail in paragraph 207).
91. In addition, as discussed further below, limited competition between some of the distributors may be contributing to competition parameters appearing more regional in an industry which would otherwise be characterised by more competition at the national level.

#### *Conclusion on geographic scope*

92. For the reasons set out above, the CMA considered the impact of the Merger on a national level but has also, where appropriate, taken into account regional differences in competitive dynamics in the competitive assessment.

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

93. For the reasons set out above, the CMA considered the impact of the Merger for the supply of educational resources to Educational Institutions in the UK by Generalist Distributors, taking into account any regional differences and the competitive constraints from other types of distributors in the competitive assessment.

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<sup>101</sup> Third party sources.

<sup>102</sup> See the Parties' responses to the CMA's Request for Information; see also third party source.

## Competitive Assessment

### *Background to the competitive assessment*

94. In assessing the effects of the Merger on competition, the CMA started by considering customer behaviour and preferences, the existence of customer loyalty and potential recent changes towards online ordering for the supply of educational resources to Educational Institutions by Generalist Distributors.

### *Customer behaviour and preferences*

95. On the basis of the evidence received, the CMA believes that the following characterises most of the Parties' customers:
- (a) Educational Institutions have a preference to procure the bulk of their educational resource requirements from a single or a small number of distributors, ie favouring a one-stop-shop approach to purchasing.
  - (b) Educational Institutions are generally loyal customers and do not switch their main Generalist Distributors or shift large amounts of spend frequently. Customer loyalties are driven by Generalists' historic or current links with local authorities and vary by region.

### *One-stop-shop*

96. The Parties submitted that customer preferences for one-stop-shopping are changing and the fact that a large number of their customers purchase from a small number of product categories is evidence of customers' lack of preference for one-stop-shopping.<sup>103</sup>
97. The CMA considers that offering a broad range of educational resource products tailored specifically to Educational Institutions' day-to-day needs is a service that Generalist Distributors offer which differentiates them from other types of suppliers in the market. The CMA's view is that this does not preclude Generalists from also having customers who use them for top-up, complementary shopping and purchase smaller amounts.

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<sup>103</sup> The Parties' Issues Meeting's presentation, slide 22. The Parties' analysis of their customer dataset shows that [30-40]% of Findel's and [20-30]% of YPO's customers purchase from only one or two product categories (out of ten categories) and [60-70]% of Findel's and [40-50]% of YPO's customers purchase from five or fewer product categories. See paragraph 4.42 and 11.7 response to post IM RFI.

98. The CMA considers that the following factors drive customer preferences for one-stop-shopping:
- (a) Internal documents from the Parties indicate that teachers, who have a key role in determining what resources they need for their lessons, and School Business Managers (where a school has one – see paragraph 103(f)) are time constrained.<sup>104</sup> This was confirmed by a number of customers who told the CMA that customers do not usually shop around for low value items or respond to small price differences.<sup>105</sup> The fact that time constraints are a key factor in customer preferences for one-stop-shop services offered by Generalists was also supported by a number of competitors.<sup>106</sup>
  - (b) Educational Institutions have specific service requirements. Several third parties said that Educational Institutions prefer to place bulk orders with one distributor to avoid having multiple deliveries from multiple suppliers.<sup>107</sup> Some competitors highlighted that good service was important because customers need simple, prompt and timely solutions, including ease of ordering offline and online.<sup>108</sup> A customer told the CMA that a one-stop-shop service is important when buying large quantities of small items.<sup>109</sup>
99. The CMA believes that the following evidence indicates that customer preferences for one-stop-shopping are strong:
- (a) The importance of offering a one-stop-shop to customers as part of their business models was highlighted in the Parties' internal documents. For example:
    - (i) A YPO document shows that YPO's model is built around a one-stop-shop approach and it is key to retaining its customers, as customers do not wish to multi-source.<sup>110</sup>

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<sup>104</sup> The Parties' internal document.

<sup>105</sup> Third party sources.

<sup>106</sup> Third party sources; a third party said that schools tend to use a one-stop-shop, because they do not have time to shop around. Another third party said that: 'Schools often purchase the majority of educational resources from one (or 2) [distributors] and value a one-stop-shop service that Generalists offer. Schools then supplement their order with products from specialist [distributors] that they could not purchase from Generalist Distributors.'

<sup>107</sup> Third party sources.

<sup>108</sup> Third party sources. This was also confirmed by the Parties' internal documents, see for example Findel's internal document.

<sup>109</sup> Third party source.

<sup>110</sup> YPO's internal document.



- (ii) Findel's strategy included a project, [X] which was set up to design a one-stop-shop-offering for Findel's customers.<sup>111</sup>
- (b) Customer responses to the CMA's questionnaire highlighted that product range was one of the most important competitive parameters for customers.
- (c) As stated above in paragraph 98(a), competitors said that the one-stop-shop model is important due to time constraints of customers. Educational Institutions value the one-stop-shop model and often buy the majority of their products from one supplier.<sup>112</sup> The range of products offered to customers was highlighted as a very important parameter of competition in a number of competitor questionnaire responses.<sup>113</sup>
- (d) It is common for Specialists to sell through Generalists.<sup>114</sup> One Specialist Supplier explained that it cannot compete with Generalists as schools want a one-stop-shop service and this is why it sells its products through generalist catalogues.<sup>115</sup>
- (e) As highlighted in the Competitive constraints section below, the Parties' internal documents and competitor evidence imply that Generalists consider themselves to be closer competitors to each other than to Specialist Suppliers.

100. The CMA believes that the Parties' customer dataset supports the view that customers prefer a one-stop-shop approach, for the following reasons:

- (a) Some product categories are very broad and purchasing from five or fewer product categories (out of a total of ten<sup>116</sup>) can still constitute one-stop-shopping.
- (b) In addition, the analysis submitted by the Parties includes all customers. The majority of large customers (by spend) purchase across a large number of broad categories.<sup>117</sup>

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<sup>111</sup> See for example Findel's internal document.

<sup>112</sup> Third party sources.

<sup>113</sup> Third party sources.

<sup>114</sup> Large specialist suppliers such as Bishop Sports, Cosy Direct and Community Playthings have products listed in YPO's catalogue.

<sup>115</sup> Third party source.

<sup>116</sup> Effectively there are nine BESA product categories (Core Curriculum (inc. SEN), Foundation Curriculum, Sport, Art & craft, Furniture, ICT & A/V, EY/EYFS/Outdoor, Stationery and Consumables) with the Parties also recording spend against 'Unclassified/Other' category.

<sup>117</sup> Analysis of 2019 data submitted by the Parties shows that when customers are grouped into deciles according to their spend with the Parties, those in the higher deciles (ie those with higher spend) mostly spend across a large number of product categories (5 or more). For YPO this is the case for customers in all deciles from [%] (ie

101. The CMA considers that both Parties have a large number of customers and alongside the customers who buy a range of educational resources there are those that make smaller purchases from a narrower range of product categories. This is still consistent with preferences for one-stop-shopping as small customers may have another main generalist from whom their purchase most of their educational resources. This view is supported by the following:
- (a) According to their customer datasets,<sup>118</sup> the Parties have a large customer overlap and within that group of customers, the tendency is to spend more with one of the Parties and ‘top-up’ by purchasing from the other Party rather than split purchases more evenly between the two. Each Party is much more likely to be the ‘main’ supplier in their respective core region.
  - (b) The Parties’ smaller customers tend to be from outside their ‘heartland’ regions.<sup>119</sup>
  - (c) Findel, which has specialist brands, has a larger proportion of customers spending smaller amounts.<sup>120</sup>

#### *Customer loyalty*

102. The Parties submitted that customers frequently shop around, exhibit heterogenous behaviour that cannot be generalised, and that loyalty to PSBOs is breaking down.<sup>121</sup> The Parties submitted that this is evidenced by low average customer tenure,<sup>122</sup> a large number of the Parties’ customers (slightly over half) significantly changing their purchasing behaviour,<sup>123</sup> the recruitment of specialist personnel to make purchasing decisions and increasing online purchases. The Parties said that stable shares of supply mask significant switching.<sup>124</sup>

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the largest [redacted]% of its customers). For Findel, this is the case for customers in deciles [redacted] (ie the largest [redacted]% of its customers).

<sup>118</sup> The Parties have provided the CMA with a dataset of all their sales to Educational Institutions for the period from 2017 to 2019. The CMA’s analysis shows that YPO had [redacted] and Findel [redacted] customers in 2019. Each year, around [redacted] customers could be purchasing from both Parties and around [redacted] customers have purchased from both Parties at some point during the 2017-2019 period.

<sup>119</sup> For example, (i) YPO’s customers in Yorkshire and the Humber, North East and North West spent on average between [redacted] and [redacted] in 2019 with YPO and between [redacted] with Findel; and (ii) Findel’s customers in London spent on average around [redacted] with Findel in 2019 and around [redacted] with YPO.

<sup>120</sup> The Parties’ response to the CMA’s questions following the Issues Meeting.

<sup>121</sup> The Parties’ Issues Meeting’s presentation, slides 39 and 41.

<sup>122</sup> The Parties submitted that Findel’s average customer tenure is [redacted] years while YPO’s is [redacted] years. The Parties’ Issues Meeting’s presentation, slide 40.

<sup>123</sup> That is, they either stop purchasing the next year or change spend substantially (ie purchase 50% more or less (by value)). The Parties presented this analysis for 2018 to 2019 but state that the findings are similar for earlier years.

<sup>124</sup> The Parties’ response to the CMA’s Issues Letter, paragraph 5.13.

103. The CMA believes that that there is a strong element of customer loyalty and Educational Institutions are tending to purchase from the distributors they have historically purchased from, based on the following evidence:

- (a) Both Parties have high proportions of Educational Institutions as their customers, especially with primary and secondary schools in their core regions - YPO appears to sell to nearly all schools in Yorkshire and the Humber, North East and North West and Findel to nearly all schools in London;<sup>125</sup>
- (b) The data provided by the Parties support the view that there is a strong element of customer loyalty among larger customers (ie those more likely to be using them as a one-stop-shop):
  - (i) [the majority] of YPO's top 20% of customers by value have been their customer for at least 7 years;
  - (ii) [the majority] of Findel's top 20% of customers by value have been their customer for at least 8 years;<sup>126</sup>
- (c) Customer data analysis shows that the likelihood of a large customer from either of the Parties (top 30% by spend value) in one year not purchasing from the supplier in the following year is very low ([0-5]% for YPO and 0-5]% for Findel between 2018 and 2019).<sup>127</sup>
- (d) Competitors told the CMA that it is difficult to gain new customers due to historic ties that some schools have with their distributors due to their PSBO status or origins.<sup>128</sup> The competitors echoed the Parties' submissions that some customers have so called 'preferred supplier lists' which can be contractual or informal (eg based on purchasing habits).<sup>129</sup> This is further evidenced by stable shares of supply, as discussed in paragraphs 127.
- (e) Customer loyalty is partly driven by the fact (discussed in para 98(a) above) that teachers are often short on time and are unlikely to shop around for best offers for smaller items.
- (f) School business managers may have greater involvement in selecting suppliers for larger purchases, for example furniture. However, customer

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<sup>125</sup> This appears to be in line with the Parties' own assessment of their regional strengths. See for example YPO's internal document.

<sup>126</sup> This is based on the Parties' sales data for 2013 to 2019. See the Parties' internal documents.

<sup>127</sup> The Parties' response to the CMA's Request for Information.

<sup>128</sup> Third party source.

<sup>129</sup> Merger Notice, paragraph 15.39; third party sources.

evidence indicates that even for larger purchases, customers compare prices of suppliers that they are already familiar with and do not always consider the full range of options available. Even for larger purchases, only two to three quotes may be compared.<sup>130</sup> In addition, the evidence submitted by the Parties shows that even among the MATs, it is mostly the largest ones that have dedicated procurement officers.<sup>131</sup>

- (g) Customer evidence indicates that whilst some customers do not always explore the full range of options beyond their usual 'go-to' distributor(s) they are sometimes influenced by recommendations from the DfE or MATs.<sup>132</sup> Customers are less likely to be aware of Generalists that originated in regions distant from their own, even if they now sell nationally.<sup>133</sup>
- (h) The CMA considers that for larger purchases, customers value the fact that PSBO catalogues are procurement rule compliant.<sup>134</sup> Almost half of YPO customers who responded to the CMA's questionnaire saw this factor as being important.
- (i) Some Educational Institutions use systems which integrate directly with the distributors' systems which generally only larger companies will set up.<sup>135</sup> The CMA understands that there is a specific system ('punchout') used by some Educational Institutions in Scotland who order through the SXL Framework Agreement.<sup>136</sup> Internal documents suggest that these systems increase loyalty.<sup>137</sup>
- (j) The CMA's analysis of the Parties' customer dataset shows that customers that spend with both Parties in a particular year are likely to retain a similar proportion of spend in the following year. However, there is some shifting of spend and this is more pronounced in certain regions. In Scotland, the Parties' customers were more likely to have changed how they split their spend between the two Parties in the period between 2017 and 2019 than those in other regions.<sup>138</sup>

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<sup>130</sup> Third party sources.

<sup>131</sup> See the Parties' internal document.

<sup>132</sup> Third party source.

<sup>133</sup> Third party sources.

<sup>134</sup> Third party sources.

<sup>135</sup> Third party sources.

<sup>136</sup> Third party source.

<sup>137</sup> [REDACTED]. See Findel's internal document.

<sup>138</sup> This is evidenced by greater movement between spending categories than customers in the UK as a whole or other regions.

(k) Brand names are usually retained following acquisitions (eg. RM kept TTS and Consortium as separate brands and Findel still operates the GLS brand separately).

104. In conclusion, the CMA identified strong customer loyalty resulting from time and resource constraints which affect willingness to shop around, historic ties related to PSBO status or origins, a desire to have integrated financial management systems and other parameters such as procurement compliance and a one-stop-shop offer.

#### *Online ordering*

105. The Parties submitted that customers are increasingly shopping online and that this move to online shopping makes supplier location less relevant and facilitates increasingly dynamic and transparent pricing, ease of switching, and entry of new players (eg Amazon).<sup>139</sup>

106. The Parties further submitted that due to increased online shopping a wider range of supplier options are considered to find best prices,<sup>140</sup> which increases the importance of Specialists as a competitive constraint as customers search the market by individual product category.<sup>141</sup>

107. The CMA considered that while there is some evidence of a shift towards online ordering by customers of some Generalist Distributors<sup>142</sup> (ie orders placed online with Generalist Distributors which also offer a paper based catalogue), the CMA does not believe this is yet having a significant impact on the customer behaviour described above or reducing the importance of paper catalogues.

108. The CMA understands that paper catalogue distribution is still a key factor driving purchasing behaviour and may contribute to the regional disparities in sales among the distributors (not all distributors send catalogues to schools outside their core regions<sup>143</sup>). As already highlighted in paragraph 98(a), the day-to-day purchasing decisions are often made by teachers selecting products from paper catalogues, and orders may then be placed online by school business managers. In addition, the need for paper sign-off on orders

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<sup>139</sup> The Parties' response to the CMA's Issues Letter, paragraph 2.6.

<sup>140</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.3 (d).

<sup>141</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.39.

<sup>142</sup> Some suppliers, like Findel, have focused more on growing online orders than others.

<sup>143</sup> Third party sources.

at some schools is limiting the extent of customer migration to online ordering.<sup>144</sup>

109. The Parties' internal documents support that catalogues are still regularly used (often in conjunction with using Generalists' websites) and online orders can be placed following product selection from catalogues.<sup>145</sup>
110. Whilst customers can purchase from any of the Generalist Distributors online, this does not appear to be a common approach adopted by customers who tend to place their large online orders (those that can be characterised as one-stop-shops) with Generalist Distributors they are familiar with already. Some evidence does, however, suggest that increased online ordering may mean that Generalists may receive smaller orders outside their core areas.<sup>146</sup>
111. As mentioned in paragraph 103(i), financial management systems that integrate with customers' purchasing systems facilitate online ordering, but may in fact increase loyalty and lower switching.
112. The CMA has not seen any evidence that online ordering has had an impact on the Parties' shares of supply or those of their competitors. As paragraph 127 suggests, shares of supplies have been stable in recent years.
113. The Parties told the CMA that Findel focused on transforming its business model away from catalogue-led marketing and towards an online approach as it is believed to improve customer retention and loyalty rates, which indicates that the Findel was not concerned with the possibility of a move to online would facilitate switching.<sup>147</sup> The CMA has not found any evidence in Findel's internal documents that its concerted efforts to move customers online resulted in a loss of customers and a risk to Findel's business model, which the arguments in paragraphs 105 and 106 would imply. Indeed, it is unlikely Findel would have pursued such a strategy had it believed it would result in greater competition and switching.
114. The CMA also considers that increased online ordering may not necessarily facilitate greater switching because, as the following evidence suggests, alongside product range and price, quality of product and service are also important parameters of competition:

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<sup>144</sup> Third party source. In addition, a customer survey [redacted].

<sup>145</sup> See YPO's internal document.

<sup>146</sup> Third party source.

<sup>147</sup> Merger Notice, paragraph 2.23.

- (a) There are frequent references in internal documents to both product range and service being important for retaining customers.<sup>148</sup>
  - (b) Competitors said that that they do not necessarily compete on price<sup>149</sup> and that service is a way for distributors to differentiate themselves.<sup>150</sup> The majority of competitors that responded to the CMA's questionnaire indicated that service is a very important competitive factor.<sup>151</sup> A competitor told the CMA that past reliability and service quality factor into customer decisions.<sup>152</sup>
  - (c) All customers who responded to the CMA questionnaire stated that product quality is the most important competitive parameter. A good level of service, ease of ordering and brand name were mentioned as important competitive parameters.<sup>153</sup>
115. Overall, the CMA considers that although online ordering has become more common, for the reasons explained above this has not translated into greater levels of customer switching or reduced importance of catalogues.

*Public sector entities – YPO's public nature*

116. YPO submitted that, as a public sector body, it has a different focus and ethos compared to a private company. In particular it submitted that its main purpose as a PSBO is to aggregate purchasing volumes to drive better prices and quality of products and services, to help schools and other public bodies save funding required for other aspects of public services.<sup>154</sup>
117. YPO also submitted that it is obligated under the Public Services (Social Value) Act 2012 to factor in economic, social and environmental well-being in connection with its operating activities.<sup>155</sup> It submitted that PSBOs have become much more commercial in their operations whilst seeking to uphold public sector values.<sup>156</sup>

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<sup>148</sup> For example, YPO [redacted], see YPO's internal document. As regards the early years segment an YPO document indicates that [redacted]. See YPO's internal document.

<sup>149</sup> Third party sources.

<sup>150</sup> Third party sources; this was also confirmed by the Parties' internal documents, see for example Findel's internal document.

<sup>151</sup> Third party sources.

<sup>152</sup> Third party source.

<sup>153</sup> All customers who responded to the CMA's questionnaire stated that a good quality of product is the most important competitive parameter. One customer specifically pointed out that it would pay a higher price if the quality of product would justify it. A good level of service, the ease of ordering and the brand name were also mentioned as important competitive parameters.

<sup>154</sup> The Parties' response to the CMA's Issues Letter, paragraph 2.1.

<sup>155</sup> The Parties' response to the CMA's Issues Letter, paragraph 2.6.

<sup>156</sup> The Parties' response to the CMA's Issues Letter, paragraph 5.6.

118. The CMA recognises YPO's public ownership status and its public sector obligations. However, this is not incompatible with the fact that YPO is profit-oriented and reacts to competition, as supported by evidence from internal documents. In fact, YPO's stated rationale for Merger is [redacted] <sup>157</sup> and potentially increasing these. <sup>158</sup> In addition, the internal documents referred to in the closeness of competition and competitive constraint assessment in the horizontal unilateral effects section, show that YPO monitors and conducts price benchmarking exercises against competitors, indicating that YPO reacts to competition by improving its offer.
119. The PS Act requires certain local authorities to consider when procuring, how what is procured might 'improve the economic, social and environmental well-being' of an area, and how to secure that improvement. The CMA considers that this general duty would not prevent YPO from offering a worse price or quality of service than what it would absent the Merger.
120. The CMA therefore does not believe that YPO's public ownership status would prevent an SLC from arising as a result of the Merger.

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

121. 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>159</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 educational resources to Educational Institutions by Generalist Distributors in the UK.
122. In its assessment the CMA looked at:
- (a) Shares of supply;
  - (b) Closeness of competition between the Parties;

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<sup>157</sup> YPO's internal document.

<sup>158</sup> YPO's internal document.

<sup>159</sup> [Merger Assessment Guidelines](#), paragraph 5.4.1 and ff.



- (c) Competitive constraints from Generalist Distributors and out-of-market constraints from local Generalist Distributors, Specialist Suppliers, online-only retailers and other retailers.

### *Shares of supply*

123. The Parties submitted that the educational supplies market is widely recognised to be worth £1.2 billion in 2019, reflecting the spend by Educational Institutions on educational resources from suppliers of all types.<sup>160</sup>
124. The CMA considers that the Parties' estimate of the market size does not correspond to the frame of reference used by the CMA in this decision and includes spend on specialist products that the Parties and most other Generalist Distributors do not sell.
125. Furthermore, third party evidence indicates that the £1.2bn figure was estimated using a survey that is not well suited for this purpose.<sup>161</sup> In addition, the Parties' internal documents indicate the Parties have a substantially higher share of spend than this figure would imply.<sup>162</sup> Although the Parties submitted that the internal documents only contain brief comments with a high level of generality, the CMA considers that these documents indicate the Parties' views and are consistent with a significantly smaller market size than £1.2 billion. The CMA also has not seen any evidence in the Parties' internal documents that a large part of the market remains untapped by the Generalists and the focus of sales and marketing efforts are most often the customers of other Generalists (see paragraph 55).
126. The CMA based its share of supply estimates (see Table 2 below) on value of sales data submitted by the educational resource distributors to BESA.<sup>163</sup> The CMA estimated that based on 2019 data, the Parties would have a combined share of supply of [40-50]% in the supply of educational resources

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<sup>160</sup> The Parties' response to the CMA's Issues Letter, paragraph 4.5.

<sup>161</sup> The CMA understands that (at least some of) the survey respondents are asked about changes in their spend on previous years rather than what their actual spend is and that absolute spend is inferred indirectly from these responses. The CMA's view is that the total estimate of spend derived using this method is likely to be unreliable; third party source.

<sup>162</sup> For example, see YPO's internal document where YPO assessed that the majority of schools in its heartland areas were spending their available budget with YPO. Also, Findel assessed its position [redacted]; see Findel's internal document. It also noted '[redacted]'

<sup>163</sup> All national and regional Generalist Distributors supply sales data to BESA on a monthly basis. WFE also supplies these data but has not been included in the shares of supply calculation as it sells through a number of specialist catalogues rather than offering a one-stop-shop service.

by Generalist Distributors in the UK with an increment of [10-20%] as a result of the Merger.

127. The shares of supply of all Generalists have remained very stable over the past four years. The Parties' internal documents are broadly consistent with the CMA's share of supply estimate and the estimated market size.<sup>164</sup>

Table 2: Total shares of supply of Generalist Distributors in the UK (by value), 2016-2019

|                                      | 2016     | 2017                   | 2018     | 2019     |
|--------------------------------------|----------|------------------------|----------|----------|
| YPO                                  | [20-30]% | [20-30]%               | [20-30]% | [20-30]% |
| Findel <sup>165</sup>                | [20-30]% | [10-20]% <sup>iv</sup> | [10-20]% | [10-20]% |
| YPO & Findel                         | [40-50]% | [40-50]%               | [40-50]% | [40-50]% |
| RM (TTS & Consortium) <sup>166</sup> | [20-30]% | [20-30]%               | [20-30]% | [20-30]% |
| ESPO                                 | [10-20]% | [10-20]%               | [10-20]% | [10-20]% |
| KCS                                  | [5-10]%  | [5-10]%                | [5-10]%  | [5-10]%  |
| <b>Total</b>                         | 100%     | 100%                   | 100%     | 100%     |

Source: Sales data submitted to BESA provided by the Parties and their competitors, data provided by third parties, CMA's own calculations

128. All national and large regional Generalist Distributors are included in the share of supply estimates. As discussed further in paragraphs 144 to 161, RM is the only Generalist Distributor, apart from the Parties, which is present in most regions and can be considered as a true national competitor to the Parties. ESPO (and to some extent KCS) appear to be sufficiently strong regionally for them to exercise a constraint on the Parties nationally.
129. The Parties have submitted that the definition of Generalist Distributors should include RM, ESPO, KCS, Herts and WFE (who competes with the Parties across its multiple - and increasing number of - product categories).<sup>167</sup>
130. As discussed in the Competitive constraints section below, the CMA considers that local distributors Herts, East Riding and Hampshire County Supplies do not constrain Generalists at the national level, but in any event, including them in the shares of supply would not significantly alter the findings.<sup>168</sup> Similarly, the CMA does not consider WFE to be a Generalist

<sup>164</sup> See for example YPO's internal document where BESA data is used by YPO to infer its market share. See also the Parties' internal documents [REDACTED]. See also the Parties' response to the CMA's Request for Information.

<sup>165</sup> Sales attributed to Findel's specialist brands have been removed.

<sup>166</sup> As discussed in the Frame of reference section above, the boundaries between Generalist Distributors and Specialist Suppliers are not always clear-cut. For example, [REDACTED]; see third party source. If the [REDACTED] sales were excluded, the Parties' combined shares would be higher at [50-60]% in 2019 with an increment of [20-30%].

<sup>167</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.3(a).

<sup>168</sup> A third party told the CMA that their educational resource sales to Educational Institutions amounted to [REDACTED]. [REDACTED] sales were estimated by the CMA to be in the region of [REDACTED]. If they were included in the shares of supply

Distributor but rather, a collection of specialist brands, and finds that it poses only a limited constraint on Generalists. However, its inclusion in the shares of supply would not significantly alter the findings.<sup>169</sup>

131. The CMA also estimated shares of supply by reference to the Educational Institution sector. The Parties' combined shares of supply are lower in the early years sector [30-40] with an increment of [10-20]% and higher in the primary school sector [50-60]%, with an increment of [20-30]%.

Table 3: Shares of supply by Educational Institution sector, 2019

|                       | All                   | Early years | Primary  | Secondary |
|-----------------------|-----------------------|-------------|----------|-----------|
| YPO                   | [20-30]%              | [10-20]%    | [20-30]% | [30-40]%  |
| Findel <sup>170</sup> | [20-30]% <sup>v</sup> | [20-30]%    | [20-30]% | [10-20]%  |
| YPO & Findel          | [40-50]%              | [30-40]%    | [50-60]% | [40-50]%  |
| RM (TTS & Consortium) | [20-30]%              | [50-60]%    | [20-30]% | [10-20]%  |
| ESPO                  | [10-20]%              | [0-10]%     | [10-20]% | [20-30]%  |
| KCS                   | [5-10]%               | [0-5]%      | [5-10]%  | [5-10]%   |
| Total                 | 100%                  | 100%        | 100%     | 100%      |

Source: Sales data submitted to BESA provided by the Parties and their main competitors, CMA's own calculations

### *Conclusion on shares of supply*

132. The CMA considers that the Parties' combined shares of supply are high enough to raise prima facie competition concerns. The increment resulting from the Merger is also significant overall (greater than [10-20]%) and in all three Educational Institution sectors. The shares of supply show that, as a result of the Merger, the second largest Generalist Distributor of educational resources is acquiring the third largest Generalist Distributor. The Merged Entity will become the largest Generalist Distributor of educational resources overall and in all levels of education (with the exception of nursery/early years), followed – at some distance – by RM and ESPO.

### *Closeness of competition*

133. The Parties submitted that they are not closer competitors to one another than other Generalist Distributors. In addition, the Parties submitted that YPO has

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analysis, the shares would be slightly lower, with the Parties having [40-50]% combined shares of supply in 2019 with an increment of [10-20]%

<sup>169</sup> If WFE were included in the shares of supply analysis, the Parties' shares would be slightly lower at [40-50]% combined share in 2019 with an increment of [10-20]%

<sup>170</sup> Findel's total sales including specialist brands have been used here as a breakdown by type of Educational Institution was not available.

a public sector ethos while Findel is a private sector business with a private sector ethos and their businesses are complementary in a number of respects such as geographic focus, product range and customer type.<sup>171</sup> The Parties also submitted pricing analysis that they argue shows that Findel [REDACTED]. In addition, the Parties submitted that their data does not show any tenders lost to each other.<sup>172</sup>

*The Parties' service proposition and pricing*

134. The CMA considers that the Parties' service propositions are very similar in a number of respects:
- (a) Evidence from internal documents indicates that the Parties' product ranges are similar. This is reflected in Findel's senior management's assessment of the product overlap between Findel and YPO being approximately [70-80]%.<sup>173</sup> In addition, the vast majority of Findel's sales is derived from its school catalogues which cater for the basic commodity needs of all Educational Institutions and is therefore comparable to YPO's product offer. Findel's sales through its specialist sports, science and SEN catalogues account for a small proportion of its annual sales.<sup>174</sup>
  - (b) Both Parties supply a wide range of products to all Educational Institution sectors and their sales profile across Educational Institution sectors is similar - both Parties derive between [60- 70]% of their total share of revenue from their primary education customers.
  - (c) While both YPO and Findel have higher sales in their respective core territories, there are substantial customer overlaps between the Parties in most regions (see paragraph 101(a) and discussions in the Regional assessment section).
135. In relation to the analysis of YPO and Findel's pricing submitted by the Parties, the CMA considers that due to product differentiation, evidence of differences in price does not necessarily imply a lack of closeness of competition. In addition:
- (a) The CMA considers that the analysis shows that there is a wide variation in price difference across products and [REDACTED] is more expensive for some

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<sup>171</sup> The Parties' response to the CMA's Issues Letter, paragraphs 4.16 - 4.19.

<sup>172</sup> The Parties' response to the CMA's Issues Letter, paragraph 4.28.

<sup>173</sup> YPO's internal document.

<sup>174</sup> [REDACTED] in 2019. Findel's response to CMA's request for information.

or the Parties' prices are similar. Both Parties make use of discounts.<sup>175</sup> Some benchmarking analyses show different results when discounts are included.<sup>176</sup>

- (b) The Parties' internal documents and competitor evidence indicate that price competition is strongest on a narrow range of products or 'known value items' (**KVIs**).<sup>177</sup> The following documents indicate that the Parties are competing closely on price, particularly in relation to these KVIs.
  - (i) A Findel board pack describes the price matching exercise Findel conducted in relation to [REDACTED]. The document states that [REDACTED].<sup>178</sup>
  - (ii) Likewise, [REDACTED] states that the Findel brands 'GLS and Hope are now promoting [REDACTED] as being cheaper than YPO, TTS, KCS and Consortium'.<sup>179</sup>
- (c) As discussed in the Background to the competitive assessment section, factors other than price are also important to customers and customer loyalty is strong.

136. Finally, the CMA considers that the tender information submitted by the Parties is not informative in terms of inferring closeness of competition, mainly because the Parties' data set is incomplete and tenders are not widely used. It has therefore placed very limited weight on this evidence, More specifically:

- (a) Over the period for which the Parties provided data, there were few tenders accounting for a relatively small proportion of revenue (less than [10-20]%) for both Parties.<sup>180</sup> For both Parties, this revenue is mostly driven by a single Framework Agreement in Scotland, where they have high shares of supply (Scotland is discussed separately in paragraphs 219 to 228). Findel also generates significant sales through Framework Agreements in Northern Ireland (YPO is present on some of these

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<sup>175</sup> The discount types used by YPO include [REDACTED]. Findel uses [REDACTED]. See the Parties' response to the CMA's Request for Information.

<sup>176</sup> For example, one benchmarking analysis by Findel showed that a) Findel was cheaper for [REDACTED] of the products matched with [REDACTED] and cheaper for [REDACTED] of the products matched with [REDACTED]; b) [REDACTED] is only [REDACTED] cheaper on net prices (once discounts are accounted for) - the smallest price differential when compared to the other benchmarked competitors. See Findel's internal document.

<sup>177</sup> For example, Findel refers to investing in prices on known value items in order to compete. See the Parties' internal documents. Also, one supplier told the CMA that 'all companies appear to offer similar ranges without too much price variation for core products'; another supplier told the CMA that most of its turnover derives from [REDACTED] bestselling items and it [REDACTED]; third party sources.

<sup>178</sup> See Findel's internal document which states: [REDACTED].

<sup>179</sup> YPO's internal document.

<sup>180</sup> Merger Notice, paragraph 16.3.

Framework Agreements, [REDACTED]) and another sole-supply Framework Agreement in Wales.<sup>181</sup>

- (b) Frameworks and formal contracts with Educational Institutions in England accounted for £[REDACTED] of YPO's sales<sup>182</sup> and £[REDACTED] of Findel's sales.<sup>183</sup>
- (c) YPO tender data is incomplete and for most tenders recorded as lost, the successful supplier is unknown.<sup>184</sup>
- (d) Findel's data on informal tenders largely covers the early years sector which accounts for a small proportion of the Parties' sales. Both Parties have a much stronger presence in primary and secondary levels of education.<sup>185</sup>

### *Internal Documents*

137. The Parties' internal documents indicate that the Parties see each other as close competitors and that they frequently compare, monitor and benchmark their prices against each other (alongside some of the other Generalist Distributors).<sup>186</sup> For example:

- (a) One internal document from YPO indicates that it views the Merger as an [REDACTED].<sup>187</sup>
- (b) In YPO's [REDACTED] is identified as the 'main area of growth for YPO in 2019'.
- (c) YPO's [REDACTED] show that YPO regularly monitors [Generalists and local generalists] [REDACTED].<sup>188</sup>

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<sup>181</sup> Tenders accounted for £[REDACTED] of Findel's sales in 2019, of which around £[REDACTED] was through Scotland Excel and just over £[REDACTED] through the Framework Agreements in [REDACTED]. Findel also generated £ [REDACTED]. YPO's sales in [REDACTED] amounted to £ [REDACTED] in 2019 and CMA is not aware of any sales generated by YPO through Framework Agreements in [REDACTED].

<sup>182</sup> CMA's calculations based on YPO's internal document. One contract included in the list - [REDACTED] - is excluded in these calculations.

<sup>183</sup> [REDACTED].

<sup>184</sup> Of the 23 SXL mini-competition tenders recorded by YPO, [REDACTED] are recorded as lost (with others either won, declined or outcome not recorded) and of these awarded suppliers are only known for [REDACTED]. Of the three NPS Wales Framework Agreements [REDACTED]. Of 46 other bids recorded for the period of 2017-2019, [REDACTED] were lost, of which only [REDACTED] are known.

<sup>185</sup> Findel has supplied data on [REDACTED] informal tenders, all of which it won. [REDACTED] of these are for the early years sector where [REDACTED]. See Findel's internal document.

<sup>186</sup> See for example YPO's internal documents.

<sup>187</sup> See YPO's internal document.

<sup>188</sup> See for example YPO's internal documents.

- (d) Some of YPO's marketing material is based on product price comparisons specifically with [REDACTED].<sup>189</sup>
- (e) Findel's [REDACTED] show that Findel regularly monitors YPO [REDACTED], alongside a small number of other Generalist Distributors (see paragraph 145(b)) and (likely due to Findel's ownership of specialist catalogues) [REDACTED] Specialist Suppliers (see paragraph 176).<sup>190</sup> Findel's [REDACTED] identify YPO as one of its key competitors.<sup>191</sup>
- (f) The extent to which the Parties benchmark each other (in terms of number of products) also indicates close competition. For example, in Findel's benchmarking analysis, it [REDACTED].<sup>192</sup>

138. Evidence submitted by the Parties about their past marketing strategies, indicates that they have recently focused on entering each other's territories.<sup>193</sup>

- (a) YPO's internal documents show that YPO made substantial efforts to gain customers in [REDACTED] by focussing their sales and marketing campaign on [REDACTED].<sup>194</sup>
- (b) Findel's internal documents show that they have tried to gain customers from YPO by launching campaigns such as 'Like YPO but cheaper'.<sup>195</sup>

### *Third party views*

- 139. The vast majority of Generalist Distributors and Specialist Suppliers that responded to the CMA's questionnaire said that the Parties are 'strong' or 'very strong' competitors to each other.<sup>196</sup>
- 140. Competitors commented that the Parties compete closely due to being two of the largest players in the market, with a large product overlap and a presence across all of the UK and levels of education, as well their overlap in specific regions.<sup>197</sup> The Parties' suppliers also echoed this view, commenting that the

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<sup>189</sup> YPO's internal document.

<sup>190</sup> See for example Findel's internal document.

<sup>191</sup> See for example Findel's internal documents.

<sup>192</sup> Findel's internal document.

<sup>193</sup> As explained in paragraph 257, evidence that YPO and Findel are close competitors is not incompatible with evidence implying that competition between some Generalist Distributors may be weak and that some Generalist Distributors focus mainly on its core region.

<sup>194</sup> See for example YPO's internal document

<sup>195</sup> See for example Findel's internal document.

<sup>196</sup> Third party sources.

<sup>197</sup> Third party sources.

Parties were major industry players, had comparable ranges and aspirations to enter each other's geographical strongholds.<sup>198</sup>

### *Conclusion on closeness of competition*

141. On the basis of the above evidence, the CMA believes that the Parties are close competitors. Both Parties have a significant product overlap and are two of three Generalist Distributors present across all regions in the UK. The internal documents show that the Parties monitor each other closely and sometimes specifically target each other's customers. Third party evidence also indicates that the Parties are close competitors. Although their strongholds are in different geographic areas of the UK there is substantial evidence of recent attempts to enter each other's territories and that this has been successful to some extent, especially in the context of strong customer loyalty and low switching in this industry overall. The removal of Findel as an independent competitor may lead to an important loss of rivalry to YPO.

### *Competitive constraints*

142. The Parties submitted that there is a wide range of competitors in the supply of educational resources in the UK, which strongly compete with them. These include generalist (national and regional) distributors, Specialist Suppliers, online-only and other retailers.<sup>199</sup>
143. In particular, the Parties submitted that they are constrained by:
- (a) RM, ESPO, KCS, Herts and WFE on a national level;
  - (b) Specialist Suppliers in every product category and every region; and
  - (c) Amazon.<sup>200</sup>

### *Generalist Distributors*

144. The CMA considered to what extent Generalist Distributors constrain the Parties.
145. The Parties' internal documents show that they frequently compare, monitor and benchmark their prices in relation to other Generalist Distributors, ie each other, RM (with its brands TTS and Consortium) and ESPO, and to a

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<sup>198</sup> Third party sources.

<sup>199</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.6.

<sup>200</sup> The Parties' response to the CMA's Issues Letter, paragraphs 3.6, 3.28 and 3.49.



more limited extent, KCS (monitored more closely by Findel than by YPO).  
For example:

- (a) In addition to other benchmarking exercises where a range of Generalists' prices are compared (see paragraph 137(c)), YPO specifically benchmarks its top products against the [REDACTED] biggest Generalist Distributors, namely [REDACTED];<sup>201</sup>
- (b) As mentioned in paragraph 137(e), in its [REDACTED] Findel regularly monitors YPO and other Generalist Distributors. These include RM (TTS and Consortium), YPO, ESPO and KCS. Alongside YPO, Findel's [REDACTED] identify RM (TTS and Consortium), ESPO, KCS and Herts as key competitors.<sup>202</sup> However the CMA notes that the monitoring of KCS and Herts is likely to be with respect to their common regional focus on London and the South of England.<sup>203</sup> Findel mostly benchmarks against Generalist Distributors.<sup>204</sup>

146. The CMA asked competitors to list YPO's and Findel's competitors and indicate the strength of this competition:

- (a) The majority of respondents listed RM (or TTS / Consortium or both) as a very strong to strong competitor to both YPO and Findel.
- (b) A material number of responses listed ESPO as a very strong to strong competitor to YPO and five responses indicated this for Findel.
- (c) A few respondents listed KCS as a very strong / strong competitor to YPO and Findel. Three further respondents listed KCS as a very weak to moderate competitor to both Parties.
- (d) A single respondent said that Herts was a very strong competitor to YPO and a strong competitor to Findel.
- (e) One respondent said that Amazon was a strong competitor to both Parties. One other respondent listed it as a weak or medium competitor to YPO and Findel respectively.
- (f) None of the respondents considered WFE as a strong or very strong competitor to the Parties. One respondent indicated that they were a weak or moderate competitor to YPO and Findel respectively.

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<sup>201</sup> See for example YPO's internal documents.

<sup>202</sup> [REDACTED].

<sup>203</sup> Mentions of [REDACTED] are often absent in other documents discussing pricing, see for example Findel's internal documents.

<sup>204</sup> See for example Findel's internal document.

- *RM*

147. RM operates two brands: TTS and Consortium. TTS is a full curriculum supplier and Consortium focuses on commodity products.<sup>205</sup> RM distributes its paper catalogues to [REDACTED].<sup>206</sup>
148. The Parties submitted that RM is a strong competitor to the Parties on a national basis.<sup>207</sup>
149. The CMA considers that internal documents indicate that RM is a close competitor of YPO and Findel. As noted above, both Parties regularly benchmark to and monitor RM brands. Some internal document evidence indicates that YPO is a closer competitor to Findel than RM.<sup>208</sup>
150. According to one third party the only distributors who supply educational resources nationally (or more than regionally) are RM, YPO and Findel.<sup>209</sup>
151. Responses to the CMA's questionnaire indicated that most customers have heard of or purchased from one of the RM brands (TTS and Consortium) in the past two years.

- *ESPO*

152. The Parties submitted that ESPO is a strong competitive constraint, frequently underpricing both Parties and expanding into new regions.<sup>210</sup>
153. The CMA considers that internal documents indicate that ESPO is a reasonably close competitor, particularly in its core regions and competes with the Parties.<sup>211</sup> There is some evidence of ESPO trying to gain customers in Findel's heartlands<sup>212</sup> but it appears from other evidence that it is a weaker competitor to Findel than YPO.<sup>213</sup>

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<sup>205</sup> ie stationery, office supplies, cleaning materials, sports and games and educational furniture; third party source.

<sup>206</sup> Third party source.

<sup>207</sup> The Parties' response to the CMA's Request for Information; see also Findel's internal document.

<sup>208</sup> Findel conducted a survey in [REDACTED] asking its customers inter alia about their brand awareness of competitors: [REDACTED] had the highest awareness across all regions. Customers were significantly less aware of [REDACTED]. See Findel's internal document.

<sup>209</sup> Third party source.

<sup>210</sup> The Parties' response to the CMA's Issues Letter, paragraphs 3.15 and 3.16.

<sup>211</sup> [REDACTED]. Findel's internal document. [REDACTED]; YPO's internal document.

<sup>212</sup> One Findel internal document mentions [REDACTED]. Findel's internal document.

<sup>213</sup> For example, the price matching document discussed in paragraph 137(e) above, which indicates that Findel matched fewer products against [REDACTED]; see Findel's internal document.

154. A third party told the CMA that [REDACTED] and that beyond these [REDACTED] distributors the market is significantly fragmented.<sup>214</sup> However, other third parties told the CMA that despite being a recognised national supplier, [REDACTED].<sup>215</sup> Another third party said that [REDACTED].<sup>216</sup>
155. Responses to the CMA's customer questionnaire indicated that most customers had heard of ESPO and/or had purchased from them in the past two years.
- KCS
156. The Parties submitted that KCS imposes a strong constraint. The Parties noted that it has sales representatives outside its core regions and it is in the process of setting up an early years arm.<sup>217</sup>
157. The CMA considers that KCS has most [REDACTED] of its customers in four core regions: [REDACTED]. In addition, [REDACTED].<sup>218 vi</sup>
158. The CMA further considers that the Parties' internal documents [REDACTED] show that they monitor KCS<sup>219</sup> but the extent of this monitoring is more limited than the monitoring of other Generalist Distributors. This is consistent with KCS imposing a more limited constraint on the Parties which may be due to its limited geographic footprint.
159. This is also supported by the price matching document discussed in paragraph 135(b) above, which indicates that Findel matched fewer products against [REDACTED].<sup>220</sup>
160. Responses to the CMA's customer questionnaire indicated that not many customers had heard of KCS or purchased from them in the past two years.

#### *Conclusion on constraints from Generalists*

161. On the basis of the above evidence, the CMA believes that, after the Merger, YPO would be constrained mainly by two Generalist Distributors – RM and ESPO – and, to a lesser extent, KCS. RM is the only competitor with a national reach and, although ESPO's geographic reach is more confined, its regional presence appears to be substantial enough to constrain the Parties

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<sup>214</sup> Third party source.

<sup>215</sup> Third party sources. A third party told the CMA that [REDACTED]. Another third party, told the CMA that [REDACTED].

<sup>216</sup> Third party source.

<sup>217</sup> The Parties' response to the CMA's Issues Letter, paragraphs 3.17 to 3.18.

<sup>218</sup> Third party source.

<sup>219</sup> [REDACTED]. Findel's internal document.

<sup>220</sup> Findel's internal document.

nationally. This is true to a more limited extent for KCS, given its mostly regional presence.

#### *Out-of-market constraints*

162. As noted above, the Parties said that, as well as Generalist Distributors, they are constrained by various types of suppliers such as local Generalists, Specialists, online-only suppliers such as Amazon and other suppliers (such as office and stationery retailers and supermarkets).
163. At a late stage in the phase 1 process, the Parties submitted a map of the UK, several tables and a corresponding list with a large number (around 60) of Generalist Distributors (both national and regional), Specialists and online-only suppliers active in each region. However, apart from the competitors mentioned in the generalist supplier section above and the out-of-market constraint section below, the CMA was unable to verify to what extent the majority of the suppliers mentioned in the map and list constrain the Parties. As a general point, the CMA considers that very few regional Generalist Distributors, Specialist Suppliers and other retailers listed in the newly submitted material are mentioned in the Merger Notice and in the Parties' internal documents. The Parties have also submitted no contemporaneous evidence supporting the map, tables and list. Moreover, third parties have not identified the vast majority of the suppliers mentioned in the list as competitors of the Parties. The CMA therefore placed limited weight on those particular pieces of evidence submitted by the Parties.
164. The CMA assessed to what extent each type of supplier constrains the Parties below.
- *Local Generalist Distributors*
165. As noted above, the Parties submitted that some previously-regional PSBOs have grown into 'ever-stronger, national competitors'. In particular, the Parties argue that Herts [X] <sup>221</sup> and has undergone significant transformation, becoming increasingly active outside its traditional area, partly due to its collaboration with Nottinghamshire County Supplies. <sup>222</sup>
166. The CMA assessed whether local Generalist Distributors impose a meaningful competitive constraint on the Parties.

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<sup>221</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.4.

<sup>222</sup> The Parties' response to the CMA's Issues Letter, paragraphs 3.19 to 3.22.

167. Local Generalist Distributors with a limited geographic footprint are mentioned to a much more limited extent in internal documents than national and regional distributors and the mentions are mostly limited to [X] in Findel's documents.<sup>223</sup> Some of the Parties' internal documents state explicitly that smaller suppliers, including [X], are struggling in the marketplace.<sup>224</sup> Another document indicates that [X] has a very low level of brand awareness.<sup>225</sup>
168. As set out in paragraph 137(c) and 145(b), Herts and East Riding were only mentioned by a few competitors and a considerably lower number of competitors than KCS and WFE for example.
169. Responses to the CMA's customer questionnaire indicated that most customers had neither heard of Herts nor purchased from them in the past two years.
170. The CMA considers that the only new area where there is evidence of Herts becoming more active is primarily the East Midlands, where it has entered into a collaboration with Nottinghamshire County Supplies. The other area where the Parties have noted activity from Herts is in North London,<sup>226</sup> close to its core region.
171. As noted above, at a late stage in the phase 1 process, the Parties submitted a map of the UK, several tables and a corresponding list with a number of local generalist suppliers in each region. For the reasons set out above, the CMA placed limited weight on those pieces of evidence.
172. On the basis of the above evidence, the CMA considers that local Generalist Distributors only pose a limited constraint on the Parties on a national level.
- *Specialist Suppliers*
173. The CMA assessed whether Specialist Suppliers impose a meaningful competitive constraint on the Parties.
174. The Parties submitted that there are numerous Specialist Suppliers in every product category and every region which, taken together, constrain the Parties and other Generalist Distributors.<sup>227</sup> In that regard, the Parties said that around [X] of the time, the Parties only supply five or fewer product

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<sup>223</sup> YPO's internal documents. [X].

<sup>224</sup> See for example YPO's internal document stating that '[t]he smaller suppliers [...] both public such as [X] and private suppliers such as [X] are struggling in this marketplace.' [X] indicates that the local Generalist Distributor [X] has a significantly lower turnover than [X] and that it is '[X]'. See Findel's internal document.

<sup>225</sup> In Findel's customer survey, no local distributors were mentioned except [X], which has a very low level of brand awareness; see Findel's internal document.

<sup>226</sup> The Parties' response to the CMA's Issues Letter, paragraphs 3.19 to 3.22.

<sup>227</sup> The Parties' response to the CMA's Issues Letter, paragraph 3.29

categories to their customers which means they often purchase products from multiple suppliers, including Specialists.

175. The CMA considers that various sources of evidence indicate specialist competitors constitute a limited constraint on the Parties and are likely to continue being a limited constraint for the Merged Entity after the Merger.
176. The Parties' internal documents indicate that, although each Party sometimes monitors specialist competitors, they do so much less frequently than for Generalist Distributors.<sup>228</sup> As discussed in paragraph 137(e), Findel monitors Specialist Suppliers in sports and science (these include [X]), as it has its own sports and science specialist catalogues – Davies Sport and Philip Harris. YPO's Specialist Supplier monitoring is more limited than Findel's.
177. When looking to expand, the Parties have looked to do so by targeting each other's or other Generalist Distributors' customers, rather than targeting customers of alternative suppliers such as Specialist Suppliers.<sup>229</sup> This suggests that customers are largely using these alternative suppliers for different types of purchases.
178. The CMA considers that the above is consistent with third party views:
- (a) Customers told the CMA that the size of a supplier affects its ability to compete. Some customers stated that it is advantageous for suppliers to offer a one-stop-shop and that customers do not usually shop around for low value items or if there are only small price differences between a Generalist Distributor or a Specialist Supplier.<sup>230</sup>
  - (b) Competitor responses to the CMA questionnaire did not mention specialist brands as competitors to the Parties and responses from the Parties' suppliers rarely mentioned them.<sup>231</sup>
  - (c) Other Generalist Distributors have told the CMA that they do not see Specialist Suppliers as direct competition,<sup>232</sup> that most schools buy

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<sup>228</sup> See for example Findel's internal documents. See also for example YPO's internal documents. The CMA also considers that YPO submitted only limited/anecdotal evidence that it monitors specialist suppliers such as [X], which were briefly mentioned and only in very few documents.

<sup>229</sup> For example, Findel's internal documents.

<sup>230</sup> Third party sources.

<sup>231</sup> Third party sources. In particular, only a few respondents to the CMA's questionnaire mentioned few Specialist Suppliers as competitors to the Parties.

<sup>232</sup> Third party sources.

nearly everything from a single longstanding supplier<sup>233</sup> and that the specialist end of the market is fragmented.<sup>234</sup>

(d) Specialist Suppliers told the CMA that they cannot compete with Generalist Distributors, because:

(i) Specialist Suppliers do not have or only have limited opportunity to expand into other product categories.<sup>235</sup>

(ii) Generalist Distributors have more buyer power and can supply their products with lower margins.<sup>236</sup> The only way to compete is through product differentiation, eg by developing their own products.<sup>237</sup>

179. The CMA further notes that, as set out above, Educational Institutions do not consider Specialist Suppliers to be good substitutes for Generalists, on the basis that they do not supply the full range of products which a Generalist Distributor is able to offer.

180. As noted above, at a late stage in the phase 1 process, the Parties submitted a map of the UK and a corresponding list with a large number of active Specialists in each region. For the reasons set out above, the CMA placed limited weight on this piece of evidence.

181. As noted in paragraph 101, low spend customers of the Parties who do not use the Parties as a one-stop-shop may be purchasing from other Generalist Distributors. The CMA considers that there is some supporting evidence for this, as some small customers of one of the Parties do indeed make larger purchases from the other.

182. The CMA also considers that Specialist Suppliers sell product categories that sit outside of what most Generalist Distributors would supply. Textbooks for instance are a product that schools spend a lot of resources on but are mostly supplied by Specialist Suppliers. Schools would typically get most of their supplies from two to five suppliers for the bulk of their supplies and use two to three Specialist Suppliers if they require specialist items.<sup>238</sup>

183. Despite the Parties' submission that Specialist Suppliers impose an increasing competitive constraint, the evidence shows that the total revenue

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<sup>233</sup> Third party source.

<sup>234</sup> Third party source.

<sup>235</sup> Third party sources. In particular one Specialist mentioned that it cannot compete with Generalist Distributors and therefore decided to supply Generalist Distributors. Another supplier told the CMA that it can take up to three years to expand into other product categories.

<sup>236</sup> Third party source.

<sup>237</sup> Third party source.

<sup>238</sup> Third party source.

of the Generalist Distributors has stayed fairly stable between 2016 and 2019, with a 2% decline in total over the four year period. This does not provide evidence of a strong increase in the constraint from Specialists.

184. In conclusion, the CMA finds that Specialists do not exert a significant constraint on Generalists. As explained above, evidence indicates that one-stop-shopping is an important factor in customers' choice and the CMA has not found evidence demonstrating significant switching from Generalist Distributors to Specialist Suppliers.

- *WFE*

185. The Parties submitted that WFE should be treated as a Generalist Distributor and competes with the Parties across all of its multiple product categories. YPO also said that WFE is its main competitor in secondary schools.<sup>239</sup>

186. WFE offers specialist brands such as Maude Sport, Timstar, Technology Supplies and Demco (each of which has a standalone catalogue / website) rather than offering a one-stop-shop service. As discussed above in paragraphs 53 to 56, the CMA found that Specialist Suppliers, such as WFE, provide only a limited constraint on Generalist Distributors.

187. As noted above, Findel benchmarks against [X], due to Findel's ownership of specialist brands Davies Sport and Philip Harris.<sup>240</sup> As discussed previously, these account for a small proportion of Findel's sales. The CMA considers that YPO has submitted very limited/anecdotal evidence in the form of internal documents that support the assertion that WFE is a close competitor.

188. The view that WFE is best seen as a limited constraint on the Parties is supported by third party evidence.<sup>241</sup> None of the Parties' main generalist competitors told the CMA that they saw WFE as a strong competitor.<sup>242</sup> Only one of the Parties' competitors listed WFE or any of its brands as a competitor to the Parties and it said it was a weak to moderate competitor.<sup>243</sup>

189. Responses to the CMA's customer questionnaire indicated that not many customers had heard of Maude Sport, Demco or Timstar or had purchased from them in the past two years.

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<sup>239</sup> The Parties' response to the CMA's Issues Letter, paragraphs 3.24-3.26.

<sup>240</sup> See Findel's internal document. Findel matched [X].

<sup>241</sup> Third party source.

<sup>242</sup> Third party sources.

<sup>243</sup> Third party source.



190. Therefore, on the basis of the above evidence, the CMA believes that Specialist Suppliers only exert a very limited constraint on the Parties.

- *Online-only retailers (Amazon)*

191. The Parties submitted that online-only retailers are now established competitors in the supply of educational resources in the UK and that Amazon has increased its presence in the market, with a significant revenue increase and a dedicated sales team.<sup>244</sup>

192. The evidence received by the CMA indicates that Amazon is not currently an effective competitor to the Parties.

193. Third party evidence shows that whilst many schools shop with Amazon, Amazon does not [redacted].<sup>245</sup> In addition, the nature of products that Educational Institutions are buying from Amazon is [redacted]. The top suppliers to Educational Institutions through Amazon are [redacted].<sup>246</sup>

194. A competitor told the CMA that although schools purchase from Amazon their spend is low on average.<sup>247</sup>

195. Customers told the CMA that they use Amazon for top-up purchases or products not available or higher priced from their main Generalist Distributor such as tablets.<sup>248</sup>

196. The Parties' own internal documents support this finding:

(a) Research commissioned by YPO indicates that [redacted].<sup>249</sup>

(b) Findel's assessment of Amazon's position in the market is that [redacted]<sup>250</sup> and that Educational Institutions are not using Amazon for large purchases and that 'there is little evidence that this is likely to change soon.'<sup>251</sup>

(c) Another internal document of Findel shows that [redacted].<sup>252</sup>

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<sup>244</sup> Merger Notice, paragraphs 12.31 and 12.32. and the Parties' response to the CMA's Issues Letter, paragraphs 3.51 to 3.56.

<sup>245</sup> [redacted] Third party source.

<sup>246</sup> Third party source.

<sup>247</sup> Third party source.

<sup>248</sup> Third party source.

<sup>249</sup> YPO's internal document and Findel's internal document.

<sup>250</sup> Findel's internal document.

<sup>251</sup> Findel's internal document.

<sup>252</sup> See Findel's internal document.

(d) YPO's internal documents confirm that [REDACTED].<sup>253</sup>

197. The Parties mentioned that their internal documents of 2018 are outdated and that Amazon has now [REDACTED].<sup>254</sup>
198. The CMA considers that the internal documents listed above are supported by contemporaneous evidence by third parties (see also above). In addition, [REDACTED] told the CMA [REDACTED].<sup>255</sup>
199. In 2019, Amazon and YPO launched the Amazon Business Framework Agreement through which its customers could sign up for Amazon Business [REDACTED].<sup>256</sup> The CMA considers that this implies that YPO sees the Amazon offer as complementary to its own and that Amazon [REDACTED]. The CMA considers that the fact that YPO assessed that entering the agreement would be commercially advantageous indicates that it does not believe Amazon to be competing directly with it at the moment (or to be in that position in the near future) and sees Amazon to be comparable to other suppliers whose products YPO lists in its catalogues (eg Cosy).<sup>257</sup>
200. While there is some evidence that that Amazon could become a stronger competitive force in the market (see Barriers to Entry and expansion section below), the CMA has not seen any notable evidence (in the Parties' internal documents or third party evidence) that Amazon or other online-only suppliers will present a meaningful competitive threat to the Parties in the foreseeable future.
  - *Other retailers*
201. The CMA has not received evidence indicating that other retailers, such as office and stationery retailers and supermarkets are constraining the Parties in any significant sense.
202. The Parties' internal documents showed very limited benchmarking or monitoring against other retailers and no discussion of the threat of entry of these other retailers into the supply of educational resources to Educational Institutions in the UK.

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<sup>253</sup> See YPO's internal document.

<sup>254</sup> The Parties' response to the CMA's Issues Letter, paragraphs 3.52 and 3.53.

<sup>255</sup> Third party source.

<sup>256</sup> See YPO's internal document.

<sup>257</sup> A third party told the CMA that [REDACTED].

203. Only a very limited number of customers indicated that they would purchase their supplies from other retailers. The majority of customers indicated that they did not see these as a viable alternative to the Parties.
204. Competitors told the CMA that other retailers are not generally perceived as strong competitors to the Parties.<sup>258</sup> One competitor said that previous attempts on the part of large office and stationery retailers to enter the supply of educational resources to Educational Institutions have been unsuccessful due to lack of understanding of relationships with customers.<sup>259</sup>

*Conclusion on out-of-market competitive constraints*

205. On the basis of the above evidence, the CMA believes that out-of-market constraints in aggregate from smaller local Generalist Distributors, Specialist Suppliers (including WFE), online-only retailers (in particular Amazon, which is mainly used for top-up purchases) and other retailers are limited.

*Regional assessment*

206. As stated above in paragraph 93, the CMA considered the competition effects of the Merger in the different regions of the UK. As noted in paragraph 41, due to a substantial variation in presence of Generalist Distributors across UK regions, the Parties face different constraints from region to region.
207. The CMA focused on the regions in which the Parties' combined share of supply is 30% or higher and where the Merger increment is 5% or higher.<sup>260</sup>

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<sup>258</sup> Only a very limited number of respondents saw other retailers such as stationery and office retailers and supermarkets as a competitive constraint to the Parties.

<sup>259</sup> Third party source.

<sup>260</sup> The CMA has used Government Office Region (**GOR**) boundaries for the purposes of this part of the competitive assessment. Whilst in reality, the boundaries around geographical regions in which competitive interactions take place may be more fluid and not fully align to GOR boundaries, the CMA considers that for the purposes of this analysis GOR definitions provide a reasonable approximation and align with how the Parties view UK regions for the purposes of their commercial activities.

Table 4: Regional shares of supply by Generalist Distributors

|                                 | YPO      | Findel   | Combine<br>d shares | RM       | ESPO     | KCS      |
|---------------------------------|----------|----------|---------------------|----------|----------|----------|
| <b>East Midlands</b>            | [10-20]% | [5-10]%  | [10-20]%            | [10-20]% | 70-80]%  | [0-5]%   |
| <b>East of England</b>          | [0-5]%   | [10-20]% | [20-30]%            | [20-30]% | [40-50]% | [5-10]%  |
| <b>London</b>                   | [5-10]%  | [50-60]% | [60-70]%            | [20-30]% | [0-5]%   | [5-10]%  |
| <b>North East</b>               | [70-80]% | [5-10]%  | [80-90]%            | [10-20]% | [0-5]%   | [0-5]%   |
| <b>North West</b>               | [70-80]% | [5-10]%  | [80-90]%            | [10-20]% | [0-5]%   | [0-5]%   |
| <b>Northern Ireland</b>         | [0-5]%   | [80-90]% | [80-90]%            | [10-20]% | [0-5]%   | [0-5]%   |
| <b>Scotland</b>                 | [30-40]% | [30-40]% | [70-80]%            | [20-30]% | [0-5]%   | [0-5]%   |
| <b>South East</b>               | [10-20]% | [10-20]% | [20-30]%            | [20-30]% | [5-10]%  | [30-40]% |
| <b>South West</b>               | [10-20]% | [5-10]%  | [20-30]%            | [60-70]% | [0-5]%   | [5-10]%  |
| <b>Wales</b>                    | [10-20]% | [10-20]% | [20-30]%            | [50-60]% | [20-30]% | [0-5]%   |
| <b>West Midlands</b>            | [10-20]% | [5-10]%  | [20-30]%            | [40-50]% | [30-40]% | [0-5]%   |
| <b>Yorkshire and the Humber</b> | [80-90]% | [5-10]%  | [80-90]%            | [10-20]% | [0-5]%   | [0-5]%   |

Source: CMA calculations based on third party submissions and BESA sales data.

*Yorkshire and the Humber, North East and North West*

208. The CMA considered together the three adjacent regions where YPO has the highest shares of supply. The Merged Entity will have combined shares of [80-90]%, [80-90]% and [80-90]% in Yorkshire the North East and the North West respectively with increments of [5-10]%, [5-10]% and [5-10]%.  
 209. The Parties submitted that Findel's share is only limited in these regions, that its revenues as a share of YPO's revenue have fallen and that YPO's share was significantly larger. The Parties also mentioned that the following competitors were active in these regions: Amazon, WFE, Normans Musical

Instruments, CCL Office Limited, Egan Reid Group, Office Depot/Viking, East Riding and OSI Limited.<sup>261</sup>

210. The CMA found that between 2017 and 2019, across all three regions, the number of Findel customers has increased and the customer overlap between the Parties has also increased.<sup>262</sup> This is consistent with the evidence from internal documents showing that Findel have been targeting YPO's core regions.<sup>263</sup> The CMA also found that there have been some changes in the profile of spend of customers, with significant numbers of customers who spent only with YPO in 2018 making purchases with Findel in 2019. The CMA considers that these findings are consistent with the evidence that Findel has been targeting customers in YPO's core territories.<sup>264</sup>
211. RM is the only other Generalist Distributor which has a notable presence in the three regions, with ESPO reporting very limited sales. One local Generalist Distributor, East Riding, is also present but operates [X] in the East Riding region of Yorkshire. East Riding's sales amount to around [X] of all sales by Generalist Distributors in the Yorkshire region.
212. The Parties have not submitted any supporting evidence that the suppliers listed in paragraph 209 have a material presence in these three regions to sufficiently constrain the Merged Entity post-Merger.

### *London*

213. The Parties have a combined share of supply of [60-70]% with an increment of [5-10]% in London.
214. The Parties submitted that YPO is not the next largest competitor to Findel, having a smaller share than RM and a comparable share to KCS and that London is the largest contestable region in the UK and there is strong and diverse competition with a range of suppliers.<sup>265</sup>
215. Between 2017 and 2019, both YPO and Findel had an increase in the number of customers in London and their customer overlap also increased, which is consistent with the fact that the Parties' are close competitors.<sup>266</sup>

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<sup>261</sup> The Parties' response to the CMA's Issues Letter, paragraphs 4.53 to 4.61.

<sup>262</sup> The CMA's analysis of customer data provided by the Parties.

<sup>263</sup> See for example the following extract from YPO's internal document.

<sup>264</sup> See Findel's internal documents.

<sup>265</sup> In the Parties' response to the CMA's Issues Letter, paragraphs 4.51 and 4.52, the Parties submitted that these suppliers included RM, HBS and Half Moon Group, Office Depot/Viking, Amazon, Herts, Hampshire County Supplies, ESPO, KCS, WFE, SLS Select Education, Bishop Sports, Community Playthings, Ryman, Redbox, and Lyreco.

<sup>266</sup> The CMA's analysis of customer data provided by the Parties.

Customers' spend profile has changed with a significant number of customers which spent only with Findel in 2018, making purchases from YPO in 2019.

216. The Parties' internal documents suggest that YPO has targeted London aggressively over the past few years with a specific aim to gain customers in that region and targeting Findel's customers (see paragraph 138).
217. [REDACTED] Generalist Distributor active in London is RM, which has a share of around [20-30]%. KCS has only a very small presence in London. Smaller local suppliers such as Hampshire Council Supplies and Herts which are operating in the neighbouring regions of the South East and East of England may impose additional constraints, although the CMA placed limited weight on these due to uncertainties around their shares of supply in each of these regions. The CMA understands these local suppliers to be small and focused on their core regions (notwithstanding the Herts's partnership with Nottinghamshire Country Supplies).
218. The CMA considers that the Parties have not submitted any supporting evidence that the listed suppliers have a material presence in London to sufficiently constrain the Merged Entity post-Merger.

### *Scotland*

219. In Scotland, the Parties have a combined share of more than [70-80]% with an increment of [30-40]%. RM is the main competitor to the Parties in Scotland with a share of [20-30]% and is the only other Generalist listed on the SXL Framework Agreement on the main generalist lot. [REDACTED] competed for the main generalist lot as well as some specialist lots but was only awarded the specialist lots and therefore has very limited sales in Scotland currently.<sup>267</sup>
220. Scotland is different to other regions of the UK in that its educational resource procurement is largely done through a Framework Agreement to which all 32 Scottish LAs (and therefore LA-funded schools) are signed up. SXL manages the Framework Agreement, which is renewed every four years.<sup>268</sup>
221. The Parties submitted that while they are equal in size, many other competitors constrain them, such as various Specialists. In addition, competition takes place for the SXL Framework Agreement every four years

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<sup>267</sup> Third party source.

<sup>268</sup> A third party told the CMA that the Framework Agreement is not exclusive, ie its use is not mandatory. However, the CMA's analysis of the Parties' customer data shows that the Framework Agreement accounts for almost all of Findel's and the majority of YPO's sales in Scotland.

and Educational Institutions can purchase outside that Framework Agreement, as shown by YPO's revenue of which only [60-70]% is generated from the Framework Agreement. The Parties also submitted that there are four other Framework Agreements in Scotland.<sup>269</sup>

222. The CMA found evidence that the Parties are close competitors in Scotland. Over the period 2017 to 2019, the number of YPO customers in Scotland fell by a small amount, whilst Findel increased its number of customers.<sup>270</sup> There is a substantial customer overlap between the Parties and customers in Scotland are more likely to split their spend between YPO and Findel than in other regions.<sup>271</sup>
223. There is evidence in internal documents that the Parties are close competitors in the SXL Framework Agreement.<sup>272</sup> The SXL Framework Agreement is not exclusive, ie its use is not mandatory. However, the CMA's analysis of the Parties' customer data shows that it accounts for the majority of sales of both Parties.<sup>273</sup> vii SXL supplied the CMA with a detailed dataset of spend with each supplier through the Framework Agreement in 2019, which showed that the majority of spend [70-80]% was with Generalist Distributors - YPO, Findel and RM – and that Findel had the largest share of spend of the three.<sup>274</sup>
224. The remaining [20-30]% spend is fragmented between 19 mostly small specialist<sup>275</sup> suppliers of sports, music and paper products. One third party referred to the specialist lots as 'fringe' lots.<sup>276</sup>
225. The CMA considered whether the fact that firms engage in a competitive process in order to be listed on the SXL Framework Agreement (competition for the market) could mean that there is a greater level of competition for customers in Scotland than indicated by the shares of supply.
226. The CMA found that, in addition to RM and the Parties, the only other Generalist [§].<sup>277</sup>

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<sup>269</sup> The Parties' response to the CMA's Issues Letter, paragraphs 4.62 to 4.65.

<sup>270</sup> The CMA's analysis of customer data provided by the Parties.

<sup>271</sup> The CMA's analysis of customer data provided by the Parties.

<sup>272</sup> [§]. See Findel's internal document.

<sup>273</sup> For Findel the SXL contract accounts for [a very large proportion] of sales each year. YPO's average annual revenue from purchases via SXL [accounts to more than half of sales].

<sup>274</sup> Of £[§] spend in 2019 on educational resources through the Framework Agreement in Scotland, [70-80%] or [§] was with Generalist Distributors. The [§] of spend was accounted for by three Generalist Distributors: YPO, Findel and RM (TTS and Consortium). Within this, Findel has the largest spend at [§] or [40-50%].

<sup>275</sup> In addition, [§] was assigned to two specialist lots through which it [§].

<sup>276</sup> Third party source.

<sup>277</sup> Third party source

227. Another third party told the CMA that [redacted].<sup>278</sup> Furthermore, being on the Framework Agreement does not guarantee sales which may deter smaller competitors from bidding as they would still need to incur costs to market and distribute their products to schools in Scotland.
228. The CMA considered that this implies that the Generalist Distributors bidding for the SXL Framework Agreement – already a small group - will be further reduced as a result of the Merger. In addition, for the remainder of the existing term of the Framework Agreement, the listed suppliers will be reduced from three to two which may lead to a reduction in their incentives to compete in terms of quality and service.

### *Regional analysis conclusion*

229. The CMA considers that in Yorkshire and the Humber and the North East and the North West of England, YPO has extremely high shares of supply and Findel has been an important competitive constraint on YPO over the past three years. Findel has a high share of supply in London and there is evidence of intense competition for customers between the Parties. Finally, in Scotland, both Findel and YPO have a high combined share of supply with the increment also being very high, with customer switching between the two common and only one other Generalist Distributor remaining. Given the strength of customer loyalty discussed in paragraphs 103 to 104, the CMA considers that the effects of the Merger may be particularly acute in these regions.

### *Third party views regarding impact of the Merger*

230. The Parties' competitors commented that the market is concentrated.<sup>279</sup> A number of third parties submitted concerns with the proposed Merger, highlighting that the Merger brings together two of the main brands in the UK market for the supply of educational resources and the Merged Entity would capture a large market share.
231. Third parties are also concerned about the ability of smaller suppliers to compete in an increasingly consolidated industry with a smaller number of major players, which could ultimately force them out of the market. Specifically, the CMA has heard that the strength of the Merged Entity's scale

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<sup>278</sup> Third party source.

<sup>279</sup> Third party source. Some respondents to the CMA's questionnaire provided clues that the market might be concentrated already.



and pooled resources would make it much more difficult for smaller players to compete.<sup>280</sup>

### ***Conclusion on horizontal unilateral effects***

232. The CMA found 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 Scotland. For the reasons set out above, the CMA considers that the Parties are close competitors who have a large product overlap and 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.
233. 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 and ESPO – and, to a lesser extent, KCS (a smaller regional generalist PSBO). 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. These different suppliers will not sufficiently constrain YPO after the Merger, in particular because of the high degree of customer loyalty.
234. Accordingly, the CMA found that the Merger may raise competition concerns as a result of horizontal unilateral effects in relation to the supply of educational resources by Generalist Distributors to Educational Institutions in the UK.

### ***Coordinated effects***

235. 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 to limit their rivalry.<sup>281</sup> A merger may raise competition concerns as a result of coordinated effects if it affects

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<sup>280</sup> Third party sources.

<sup>281</sup> [Merger Assessment Guidelines](#), paragraph 5.5.1.

the market structure such that the conditions for sustaining coordinated effects are created or enhanced.

236. When assessing whether or not coordinated effects may arise as a consequence of a merger, the CMA has regard to whether (a) there is evidence of pre-existing coordination in the relevant market(s), (b) firms are able to reach and monitor the terms of coordination, (c) coordination would be internally sustainable, and (d) coordination would be externally sustainable.<sup>282</sup> The CMA has considered these factors below, but first considered how coordination could work in this market.
237. The CMA considered the potential mechanism for coordination by Generalist Distributors. Given the concentrated nature of the industry, the CMA considered that coordination could take place between all or some of the Generalist Distributors. Strong regional footprints could form the basis for coordination, with firms avoiding competing in the 'heartland' regions of their rivals, thereby reducing the competitive constraints that they impose on each other. Coordinating on the basis of price would be a less likely choice of mechanism (although it could be supplementary<sup>283</sup>). Coordination would be supported by strong customer loyalty which diminishes the incentive for deviation from a coordinated outcome. The CMA assessed whether the removal of Findel may make it easier to reach and sustain this type of coordination.

#### *Pre-existing coordination*

238. Evidence relating to pre-existing coordination is considered when assessing whether a merger gives rise to coordinated effects.<sup>284</sup> If the pre-merger market shows (tacitly or explicitly) coordinated outcomes, the CMA will consider whether the conditions for coordination have been strengthened or weakened as a result of the merger.<sup>285</sup>
239. The Parties submitted there is no prospect of the Parties or other Generalist Distributors engaging in tacit or explicit coordination.<sup>286</sup> The Parties stressed that they are conscious of their obligations under competition law and that discussions for instance about the supply of products under Framework Agreements are limited to the public procurement aspects of these

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<sup>282</sup> [Merger Assessment Guidelines](#), paragraphs 5.5.4 and 5.5.9.

<sup>283</sup> There is evidence of methods such as web scraping already being considered in the Parties' internal documents: see the Parties' internal document.

<sup>284</sup> [Merger Assessment Guidelines](#), paragraph 5.5.5.

<sup>285</sup> [Merger Assessment Guidelines](#), paragraph 5.5.8.

<sup>286</sup> The Parties' response to the CMA's Issues Letter, paragraph 5.3.

Framework Agreements. The Parties further submitted that since 2011 when the OFT opened an investigation<sup>287</sup> and sent warning letters to several PSBOs, YPO has complied with the series of voluntary assurances and improved competitive conditions. They also submitted that the market has changed significantly, with PSBOs and suppliers competing intensively on a regional and national level, such that it would not be feasible to reach or maintain coordination.<sup>288</sup>

240. In line with its standard approach to investigating coordinated effects,<sup>289</sup> the CMA assessed the likelihood of coordination being present by observing market outcomes and examining whether they are consistent with a competitive market. In particular, the CMA assessed whether there is evidence of:
- (a) Behaviour consistent with coordination (see paragraphs 241 to 246).
  - (b) Transparency and communication (see paragraphs 247 to 250).
  - (c) Outcomes consistent with coordination such as the trends in shares of supply of Generalist Distributors over time (see paragraphs 251 to 258).

*Evidence of behaviour consistent with coordination*

241. The CMA found that the Parties' internal documents show frequent communication between the senior management of some of the distributors.<sup>290</sup> Frequent contact between organisations was also confirmed separately in a call with [redacted] competitors.<sup>291</sup>
242. The CMA considers that PSBOs may have valid reasons for communication in relation to setting up Framework Agreements. However, this broader relationship between rivals could facilitate coordination. In addition, communications appear at times to involve the discussion of potentially sensitive information.

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<sup>287</sup> In 2011, the OFT reminded five PSBOs, including YPO, that were part of the so called 'Pro5 Group' to comply with competition law, following a complaint which highlighted possible competition concerns about the way in which they marketed their goods and services to Educational Institutions. The OFT made no finding of an infringement and closed its preliminary inquiry in response to the PSBOs voluntary assurances without opening a formal investigation. The members of the Pro5 group were the Central Buying Consortium (CBC); Eastern Shires Purchasing Organisation (ESPO); the North East Procurement Organisation (NEPO); West Mercia Supplies (WMS) and; the Yorkshire Purchasing Organisation (YPO). For the CBC assurances were received from Hampshire County Supplies, Hertfordshire Business Services, and Kent County Supplies. OFT: [School suppliers provide assurances to OFT to ensure competition](#).

<sup>288</sup> The Parties' response to the CMA's Issues Letter, paragraphs 5.4 and 5.6.

<sup>289</sup> [Merger Assessment Guidelines](#), paragraph 5.5.4.

<sup>290</sup> For example YPO's internal documents; see also for example Findel's internal documents.

<sup>291</sup> Third party sources.

243. Furthermore, the Generalist Distributors are all BESA members and meet on a regular basis in this context which provides a further opportunity for communication. YPO, Findel and RM have representatives on the board of BESA.
244. The CMA considers that there is evidence which indicates that some Generalist Distributors may not compete strongly with one another.
- (a) Internal documents indicate that YPO benchmarks against [redacted] more than other [redacted].<sup>292</sup>
- (b) Internal documents show that YPO sees certain PSBOs [redacted] as 'external partners' in its plans to drive growth in the supply of educational resources.<sup>293</sup> There is a reference in one of YPO's documents to [redacted] targeting [redacted] customers rather than [redacted] customers within a specific region.<sup>294</sup>
- (c) Correspondence between [redacted] describes their relationship as [redacted].<sup>295</sup> Similarly, [redacted].<sup>296</sup>
245. These documents are consistent with there being weak competition between PSBOs.
246. Concerns were raised previously by one of the CMA's predecessor organisations in relation to how PSBOs competed.<sup>297</sup> The Parties submitted that this investigation took place almost a decade ago and the OFT did not open a formal investigation or make a finding of an infringement.<sup>298</sup> The Parties also explained that the market has changed significantly since then. The CMA has based its analysis of coordinated effects on evidence relating to the current structure of the market and behaviour of firms, but considers that the prior investigation illustrates that the market for the supply of educational resources to Educational Institutions by Generalist Distributors in the UK may be conducive to coordination.

*Evidence of transparency and communication*

247. The Parties, some other Generalist Distributors and one Specialist Supplier (RM, ESPO, KCS and WFE) submit sales revenue data to a research

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<sup>292</sup> See for example YPO's internal documents, indicating that YPO monitored [Generalist Distributors] and to a much lesser extent [regional and local Generalist Distributors].

<sup>293</sup> See YPO's internal document, where the 2019 growth areas core headlines include the following point [redacted].

<sup>294</sup> [redacted]. See YPO's internal document.

<sup>295</sup> See YPO's internal document.

<sup>296</sup> Third party source.

<sup>297</sup> OFT: [School suppliers provide assurances to OFT to ensure competition](#).

<sup>298</sup> The Parties' response to the CMA's Issues Letter, paragraphs 5.4 to 5.6.

company commissioned by BESA to undertake a monthly sales monitoring report for the educational resource distributors sector. The revenues are broken down by product category and institution type and are combined by a research company to report total revenues which can be used by each distributor to infer its own shares of supply (by product category and Educational Institution sector) on a monthly basis.

248. The CMA asked the Parties to explain what the monthly sales data is used for and to provide examples of how it is used in their business. The Parties submitted that the data sharing exercise began in 2015 when school budgets were declining in order to allow suppliers to understand the impact this was having on their sales.<sup>299</sup> They stated that they use the data to understand market trends and their own performance in relation to those trends and that it is one of a number of factors taken into account when carrying out future forecasting.<sup>300</sup>
249. The CMA considers that the sharing of monthly sales revenue increases transparency and allows for frequent and timely monitoring of own shares of the Generalist Distributors by product category and sector. Although the distributors may not be able to directly observe competitors' shares, the CMA considers that customer loyalty and stickiness combined with the stable and predictable nature of demand for educational resources<sup>301</sup> mean that observing changes in own shares of supply provides greater insight into shares of supply of competitors. The CMA also considers that there is sufficient transparency in the market that distributors would be able to monitor deviations from coordination through a combination of observing own shares of supply and direct market intelligence acquired through its own sales and marketing efforts (even if not all distributors are part of coordination).
250. The CMA also considers that if the rationale is primarily to understand broad trends in spending by Educational Institutions and conduct financial forecasting, it is not clear why the suppliers require such timely, frequent and disaggregated data in an industry with stable demand (see further below) and strong customer loyalty.

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<sup>299</sup> The Parties' response to the CMA's Request for Information.

<sup>300</sup> The Parties' response to the CMA's Request for Information.

<sup>301</sup> One third party told the CMA that demand was highly predictable.

### *Evidence of outcomes consistent with coordination*

251. In order to examine the volatility of demand and the shares of supply of Generalist Distributors, the CMA has analysed the revenue data submitted by the distributors to BESA between 2016-2019.

- (a) The data shows that demand is stable.<sup>302</sup>
- (b) In terms of shares of supply, the CMA's analysis (as set out in above) shows that Generalist Distributors' shares of supply are stable over time when considered on an annual basis.
- (c) Within the overall picture of stability, the shares of PSBO distributors have been particularly stable. For example, when looking only at the portion of the market served by PSBOs (YPO, ESPO and KCS), their shares have remained extremely stable relative to one another (at around [50-60]%, [30-40]% and [10-20]% respectively of the PSBO part of the market) over the past four years.
- (d) While there is greater fluctuation in shares of supply month by month, the Parties explained that this volatility is caused by differences in the seasonality of revenues of distributors due to different school holidays in different regions.<sup>303</sup> There may also be systematic differences in how different distributors attribute sales to individual months.<sup>304</sup> When the same months in different years are compared, monthly shares are much more stable.

252. The Parties submitted that the stability of their revenues year by year conceal significant customer switching over the course of a year and that this is masked since, on average, similar shares of customers/revenues were lost and won.<sup>305</sup> They also explained that, the shares of Generalists would have

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<sup>302</sup> Over the 2016 to 2019 period, total annual sales of all distributors rose by [0-5]% in two of the three years and fell by [0-5]% in one year. Within the same group, sales to primary and secondary schools appear to be more stable than early years.

<sup>303</sup> Demand for educational resources appears to be highly seasonal and reflects the term start/end dates. For example, demand usually peaks in August and falls to its annual trough in December. These seasonal patterns are particularly pronounced for some product categories and some distributors. The Parties explained that differing school holidays by region may lead to differences in seasonal peaks for different distributors, given the differences in regional footprint (see the Parties' response to the CMA's Issues Letter, paragraph 24.1). In addition, at least some distributors allocate sales on the basis of invoice rather than order dates. Furthermore, the CMA understands that some distributors may invoice quicker than others resulting in more volatile shares month on month, compared to what they would have been had all distributors reported their sales on the basis of order dates.

<sup>304</sup> For example, Findel uses [§] whilst YPO uses shipment dates. Findel's response to the CMA's Request for Information and YPO's response to the CMA's Request for Information.

<sup>305</sup> The Parties' response to the CMA's Request for Information.

fallen if they had not responded to the increasing competitive threat of Specialists and Amazon by becoming more competitive.<sup>306</sup>

253. The CMA considers that the evidence is not consistent with this interpretation. As discussed in the Background to the competitive assessment section above, the CMA has found that there is limited switching by customers and that customer loyalty is strong. The CMA also considers that if there were significant switching and distributors were able to take large value of sales from one another, it is highly unlikely that shares would revert to similar levels consistently over a long period of time.
254. The CMA found evidence that Specialist Suppliers and online-only retailers (Amazon) exert a very limited competitive constraint on Generalists (see Competitive constraints section above ). In addition, the CMA considers that the total revenues of Generalist Distributors have remained stable over time (see paragraph 127).
255. The CMA recognises that the stability of shares could be a result of the lack of customer switching combined with barriers to expansion around logistics and distribution that some smaller Generalists have reported.<sup>307</sup> However, when combined with the evidence above regarding the level of transparency and communication between the Generalist Distributors, the CMA found that this could also be consistent with coordination between some or all distributors.
256. Furthermore, the CMA considers that the low level of customer switching may itself be an indicator of the presence of coordination in this market. One interpretation of low levels of switching is that the Generalists are not competing hard to win customers from each other. This is something the CMA would expect to see in a market with tacit coordination, particularly given the strong regional footprints of Generalist Distributors.
257. Notwithstanding the above findings, the CMA considers that there is currently competition between at least some Generalist Distributors. The CMA considers that the evidence presented in the Closeness of competition section above supports a finding that there is competition between the Parties and in particular that Findel has been competing particularly vigorously for customers and market share in the recent past, including with YPO.<sup>308</sup> Findel (alongside

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<sup>306</sup> The Parties' response to the CMA's Request for Information.

<sup>307</sup> Third party source.

<sup>308</sup> See for example Findel's internal documents. See also Findel's internal document; and YPO's internal document, where [X] are included in the geographic target area [X].

RM) is the only large Generalist Distributor that does not have existing structural links with rivals and has been pricing aggressively.<sup>309</sup>

258. The CMA considers that it is not inconsistent to find evidence of both coordination and competition, since coordination does not need to be perfect or include all firms in order to be profitable and there may also be some competition outside of the coordinating group that does not disrupt coordination. As will be discussed further below, the CMA considers that Findel is an important competitive constraint in the market currently and potential disruptor to coordination which would be removed from the market as a result of the Merger.

#### *Conclusion on pre-existing coordination*

259. On the basis of the above evidence, the CMA believes that evidence of weak competition and frequent communications between some Generalist Distributors, market transparency and stability in the shares of supply is consistent with pre-existing coordination in the supply of educational resources by all or some Generalist Distributors. At the same time, there is evidence consistent with competition between some Generalist Distributors, as well as evidence of strong existing competition between Findel and YPO.
260. The CMA has considered below whether the Merger may make coordination more likely and / or likely to be more effective, as a result of the removal of Findel as an important competitor.

#### *Market characteristics conducive to coordination*

##### *Ability to reach and monitor the terms of coordination*

261. For coordination to emerge, the firms involved need to be able to reach a common understanding.
262. As noted above, the CMA has considered whether the high concentration in some regions could provide a basis for coordination. Such coordination could involve all or some Generalist Distributors with high regional shares in their 'heartlands' not entering the regions of their rivals, thereby reducing the competitive constraints that they impose on each other.
263. The Parties submitted that Generalist Distributors could not reach agreement on the terms of coordination as they already operate in multiple regions to

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<sup>309</sup> See Findel's internal document which refers to Findel [§]. See also a Findel's internal document in which Findel explains its strategy to [§].



varying extents and for instance, dividing regions and/or refusing to supply certain customers would not be realistic due to the complexity of arrangements needed. In addition, the Parties and other Generalist Distributors face different competitive threats in each region which makes it more difficult to tacitly align to coordinate.<sup>310</sup>

264. The Parties further submitted that monitoring coordination would be extremely difficult due to high numbers of customers and products and significant movement of customer expenditure between suppliers. Moreover, monitoring competitors is highly unlikely given the number of suppliers and the significant differences in their size, structure and incentives.<sup>311</sup> The Parties further submitted that the data sharing exercise via BESA follows best practice guidelines, using an independent third party to receive the data and to aggregate it. The data is provided and reported on a national basis and there is no breakdown of regional shares of supply and thus, does not indicate a mechanism for pre-existing or future coordination, on a regional basis or otherwise.<sup>312</sup>
265. The CMA is aware that the Generalist Distributors sell in regions outside their heartlands. However, the CMA's view is that this would not prevent coordination from taking place, as the initial regional concentrations do not need to be perfect to be sustainable. As set out in paragraph 125, there is limited customer switching overall and Generalist Distributors have to make substantial efforts to gain market share in competitors' heartlands. There is evidence from third parties that some Generalists are not pursuing such strategies<sup>313</sup> as well as an internal document from Findel which mentions the difficulties in gaining market share outside its heartland.<sup>314</sup> The effect of the Merger could be that these efforts reduce, leading to even more limited switching and current regional disparities becoming entrenched. It is also the CMA's view that not all regions would necessarily be subject to coordination – for example, Scotland may be left out of any coordination.
266. As discussed in the Competitive constraints section above, national and regional Generalist Distributors face limited constraints from local and Specialist Suppliers and it is therefore unlikely that these constraints would prevent Generalist Distributors from reaching a (tacit) agreement leading to coordination (see paragraphs 288 to 293 for a further discussion of external sustainability). Coordination between larger Generalists may be supplemented

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<sup>310</sup> The Parties' response to the CMA's Issues Letter, paragraphs 5.11 to 5.12.

<sup>311</sup> The Parties' response to the CMA's Issues Letter, paragraphs 5.13 to 5.14.

<sup>312</sup> The Parties' response to the CMA's Issues Letter, paragraph 5.8.

<sup>313</sup> Third party sources.

<sup>314</sup> See Findel's internal document.

by coordination locally with the small number of local Generalists, in particular the PSBOs with whom they have existing links (for example, East Riding Council is an associate member of YPO).<sup>315</sup>

267. Although the market may have changed to some extent since then, the CMA considers that the voluntary assurances given to the OFT by the PSBOs in 2011 support that market sharing was deemed a potential problem in 2011 and that some of the market characteristics conducive to that outcome (eg market transparency and customer loyalty) still remain in the present day.<sup>316</sup>
268. To sustain coordination, firms will generally need to be able to monitor each other's behaviour sufficiently to ensure that deviation from the coordinated outcome can be detected.<sup>317</sup> As discussed above, transparency in terms of shares of supply is high due to regular communications and sticky customers. The coordinating firms could monitor adherence to market sharing using the following mechanisms:
- (a) Evidence indicates that Generalist Distributors can and do observe sales and marketing efforts of their rivals. The Parties' internal documents show that they are often aware of competitors' sales and marketing activities in different regions and, where they lose a customer, they are often aware of which distributor that customer has switched to.<sup>318</sup>
  - (b) Internal documents indicate that Generalists already monitor the activities of rivals closely. It appears from the Parties' internal documents that, although they have a large number of customers, the Parties routinely monitor the acquisition and loss of key customers on a regional basis through a combination of sales data analysis and the activity of regional sales representatives who are in contact with customers and attend sales events.<sup>319</sup> While such monitoring may be an indicator of competition, the CMA considers that this transparency could also support coordination on the basis of regional market sharing, as the participants would have

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<sup>315</sup> Third party source.

<sup>316</sup> The members of the Pro5 group committed to remain free 'to decide independently how, where and at what price to market goods and services to Educational Institutions and other customers'. The Pro5 group were the Central Buying Consortium (CBC); Eastern Shires Purchasing Organisation (ESPO); the North East Procurement Organisation (NEPO); West Mercia Supplies (WMS) and; the Yorkshire Purchasing Organisation (YPO). For the CBC assurances were received from Hampshire County Supplies, Hertfordshire Business Services, and Kent County Supplies.

<sup>317</sup> [Merger Assessment Guidelines](#), paragraph 5.5.12.

<sup>318</sup> [REDACTED]. For example, in YPO's internal document [REDACTED]. Also see Findel's internal document which shows that in the majority of cases, Findel was aware of which competitor won the business or was likely to have won the business and why.

<sup>319</sup> YPO monitors activity in each of its sales regions in [REDACTED]. These reports [REDACTED]. Findel's internal document which lists sales opportunities by customer which were lost by Findel to another supplier. This document demonstrates that Findel [REDACTED].

sufficient visibility to monitor deviations by rivals targeting customers in their stronghold regions.

- (c) Alternatively, or in addition to this, monitoring can also take place through channels of communications that are already established between senior managements of the different Generalist Distributors or through BESA meetings. Structural links between the firms, particularly PSBOs, could also make it easier to monitor a coordinated agreement. As discussed above, the firms cooperate on Framework Agreements which also requires communication between them.<sup>320</sup> In addition there is evidence of communication around sales of educational resources in the UK<sup>321</sup> and international sales.<sup>322</sup> Findel also noted that it discussed a potential agreement whereby [REDACTED] would supply products to each other in the UK.<sup>323</sup>
- (d) Furthermore, Generalist Distributors could observe their own shares of supply through the existing monthly revenue sharing exercise described at paragraph 247 above. The sales data already provides breakdowns by Educational Institution sector and product category and could be expanded to include sales by region. As noted above, presence of one or two small suppliers who are not part of coordination would not necessarily make this monitoring tool redundant.

269. Price transparency will typically assist such monitoring but is not a necessary factor for coordination to be sustained.<sup>324</sup> Product prices are listed in distributors' catalogues and are updated infrequently (usually annually). Although the CMA does not consider it likely that coordination would take place on the basis of price (or if it does, it would only supplement coordination on the basis of regional market sharing), this general transparency around product ranges and prices could aid in detecting deviation and help monitor the agreement.

270. Given the extent of transparency in this market and the existing regional footprints, the CMA considers that the Merger can facilitate Generalist Distributors achieving a tacit coordination mechanism.

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<sup>320</sup> See for example YPO's internal document [REDACTED].

<sup>321</sup> Email correspondence provided by Findel describes this in the following way [REDACTED]. See Findel's internal document.

<sup>322</sup> In one of its submissions to the CMA, Findel explained that it is working with [REDACTED]. See Findel's response to the CMA's Section 109 Notice of 27.03.2020, page 4.

<sup>323</sup> See Findel's response to the CMA's Section 109 Notice of 27.03.2020, paragraph 5.1 (ii). Evidence of [REDACTED].

<sup>324</sup> [Merger Assessment Guidelines](#), paragraph 5.5.12.

271. As the number of firms in the market falls, it becomes easier to reach agreement and monitor compliance.<sup>325</sup> As noted above, the Merger results in the number of competitors being reduced from five to four with Findel being an important competitive constraint. The CMA considers that the Merger not only reduces the number of firms but also exacerbates regional strengths in some regions. As highlighted in Table 4 and discussed in the regional assessment under horizontal unilateral effects above, the Merger would make YPO the largest distributor in Scotland, solidify YPO's presence in Yorkshire, the North West and North East of England and Findel's position in London. This could make reaching agreement on how markets are allocated easier. The regional dynamics also mean that in some regions, very few competitors will remain post-Merger (as few as two in some regions) which will also increase the ease of monitoring.
272. The CMA therefore considers that the characteristics of the market are conducive to reaching and monitoring coordination and that the Merger will make this easier.

#### *Internal sustainability*

273. The Parties submitted that coordination would not be internally sustainable given that it would require all Generalist Distributors (including those under private ownership such as RM and WFE) to participate. The Parties further said that the asymmetry and diverging incentives of the coordinating group make it difficult to align and coordinate - the larger suppliers have less to gain from coordination, and the smaller suppliers have more to gain from deviating. The Parties also reiterated that each Generalist Distributor faces different competitive constraints in each region making coordination more unlikely.<sup>326</sup>
274. Coordination will be sustainable only where the additional profit from coordination is sufficiently high, and there is an effective mechanism to punish deviation. If coordination is not sufficiently profitable, or the punishment is not sufficiently swift and painful, a firm may prefer to deviate. It might do so if the short-term gain that the firm makes from having a more competitive offer than the coordinating firms outweighs the costs to it of future punishment. Such punishment may take the form of a reversion to more intense competition by the other firms rather than a deliberate punitive strategy on their part.<sup>327</sup>

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<sup>325</sup> [Merger Assessment Guidelines](#), paragraph 5.5.19.

<sup>326</sup> The Parties' response to the CMA's Issues Letter, paragraphs 5.16 to 5.21.

<sup>327</sup> [Merger Assessment Guidelines](#), paragraph 5.5.15.

275. In assessing whether coordination would be internally sustainable, the CMA considered whether there would be strong incentives for coordinating firms to deviate and to what extent such deviation could be punished by rivals.
276. Firstly, as discussed previously, the CMA considers that the supply of educational resources is characterised by low switching rates and a tendency for customers to order from their preferred distributor. As the Parties' internal documents indicate, entering rivals' 'heartland' regions requires concerted effort in the form of sustained marketing campaigns and aggressive discounting.<sup>328</sup> This means that it would be difficult for a firm to deviate without being detected as any substantial sales and marketing efforts would be noticed by rivals. It also means that deviation is less likely to be a profitable strategy, as a deviating firm is unlikely to be able to quickly gain customers by undercutting its rivals. The CMA found that this increases the sustainability of potential coordination.
277. Secondly, as discussed above, demand in the supply of educational resources by Generalists is stable which makes deviation easier to detect. The market is also characterised by a low elasticity of industry demand, which also lowers the incentive to deviate.
278. The CMA has considered whether the existence of Framework Agreements which appoint distributors on a sole or shared supply basis for several years could increase the incentive to deviate. The CMA considers that this is unlikely to be a relevant destabilising factor of possible coordination. In England, the Framework Agreements account for a small proportion of distributors' sales. In Scotland and Northern Ireland, and to a lesser extent, Wales, Framework Agreements are of greater importance (see paragraphs 44 to 45). However, the CMA found that not all Generalist Distributors have bid for these Framework Agreements in the past and that being awarded a place on a Framework Agreement is not a guarantee of a certain volume of sales, rather distributors still have to market and compete for sales.<sup>329</sup> Also, some regions, where sales are mostly made through Framework Agreements (eg Scotland), could potentially be left out of any coordination to reduce incentives to deviate.
279. Thirdly, coordination will be harder to sustain where there is a firm with substantially different incentives to coordinate than its rivals, and with the capacity to take significant share from any group of firms that tried to

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<sup>328</sup> See paragraph 138 and 216 above.

<sup>329</sup> Third party source.

coordinate without its participation. Such a firm is sometimes termed a 'maverick'.<sup>330</sup>

280. A range of evidence indicates that Findel has been making efforts to grow and expand in recent years, which indicates that the Merger will result in the removal of a possible destabilising influence and may make coordination more likely:

- (a) Findel is one of only two competitors to YPO with a national footprint.
- (b) Findel has been actively trying to grow its business and win new customers.<sup>331</sup> Internal documents suggest that over the past two to three years, Findel has been making substantial efforts to break into the 'heartland' regions of its competitors, including targeting the customers of YPO, KCS and Consortium.<sup>332</sup>
- (c) Findel has won a significant number of new customers since 2017 and has increased its penetration in YPO's heartland regions as well as in other regions. It has been more successful than YPO in winning new customers.
  - (i) Over the past three years, the Parties, and Findel in particular, have increased their penetration of each other's core regions.
  - (ii) As noted above, customer loyalty is strong. However, the data indicates that both Findel and YPO have gained new customers in 2018 and 2019 across all regions of the UK and that Findel gained more new customers than YPO [REDACTED].
- (d) Findel has more pricing flexibility than PSBOs which allows it to price aggressively. Privately owned Generalists have greater ability to discount than PSBOs which the CMA understands may be unable to sell products at a loss, whereas [REDACTED].<sup>333</sup> The evidence indicates that Findel tends to price aggressively.<sup>334</sup>
- (e) Findel sees itself as differentiating itself through its focus on online sales.<sup>335</sup>

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<sup>330</sup> [Merger Assessment Guidelines](#), paragraph 5.5.18.

<sup>331</sup> See Findel's internal document which states: [REDACTED].

<sup>332</sup> See Findel's internal documents setting out [REDACTED]. See also Findel's internal document and YPO's internal document where [REDACTED] are included in the geographic target area [REDACTED]. See also Findel's internal document where Findel discusses offering core products at [REDACTED].

<sup>333</sup> See [REDACTED], where Findel states [REDACTED].

<sup>334</sup> See [REDACTED] which refers to Findel [REDACTED]. See also a Findel document [REDACTED].

<sup>335</sup> See [REDACTED] which states [REDACTED].

(f) Findel won all informal preferred supplier bids it submitted (mostly in the early years sector) in the period between 2017 and 2019 and a large contract in [REDACTED].<sup>336</sup> A major Framework Agreement for [REDACTED] was recently won by Findel.<sup>337</sup>

281. The CMA notes that Findel's sales revenues have not grown and in fact declined slightly from 2018 to 2019. This is, however, consistent with the trend in the market overall which grew slightly from 2017 to 2018 before falling in 2019. The aggressive pricing offered by Findel in an effort to expand may have led to stagnant or declining revenue in spite of growth in customers. Internal documents indicate that Findel had a business strategy aimed at building a base for future growth and pricing aggressively in competitors' heartlands.<sup>338</sup> This is consistent with other evidence around high barriers to expansion and customer stickiness.
282. Fourthly, the CMA considered whether there are asymmetries between the remaining Generalist Distributors which may make deviation more likely.
283. The CMA notes that following the Merger, the Parties will have a significantly larger share of supply than its nearest competitor, RM, which in turn is larger than ESPO and KCS. While this may provide the Parties' competitors with stronger incentives to deviate in order to grow their share, the CMA considers that this incentive is likely to be limited because of the strong customer loyalty and high barriers to expanding into new regions. The evidence, including from Findel's experience discussed above, indicates that undercutting rivals in their 'heartlands' is unlikely to result in a large switch in volumes in a short space of time. Acquiring new customers is a costly process as it requires marketing in a new region including catalogue printing and distribution and employing a local sales team. Generalist Distributors have highlighted these barriers to entry and expansion as discussed further below.<sup>339</sup> There is limited evidence of Generalists successfully expanding into new areas except through acquisition or in collaboration with an existing player. The CMA found that these factors are likely to result in a limited incentive to deviate, even for small rivals, as expansion is risky, costly and visible with limited chance of success.
284. In addition, there is substantial symmetry between the Generalist Distributors from a cost perspective because they sell similar products and, in some

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<sup>336</sup> Findel won [REDACTED] which was previously awarded to [REDACTED] for a number of years.

<sup>337</sup> Third party source.

<sup>338</sup> For example, the Parties' internal document contains the following: 'Operationally, the business continues to see good progress on hitting its customer recruitment, online penetration and Smart Ordering targets, which give it a strong base on which to build as we move into FY20.' See also Findel's internal document where Findel refers to its [REDACTED].

<sup>339</sup> Third party sources.

instances, even purchase from the same suppliers.<sup>340</sup> This makes coordination easier to sustain as it reduces the incentive to deviate.

285. Furthermore, the existence of factors consistent with pre-existing coordination discussed above imply that, despite their existing differences in scale and regional footprint, some Generalists at least may find it profitable to avoid competing strongly with one another. This illustrates the fact that market conditions do not have to be perfect in order for coordination to be profitable, and coordination does not have to involve all firms or all dimensions of competition.
286. Finally, the CMA considered whether rivals would be able to credibly punish a deviating firm. The CMA considers that a punishment strategy needs to be costly enough to outweigh the gains from deviation. In this case, given the low incentives for deviation from a coordinated agreement and high level of transparency such that deviations would be quickly detected by rivals, a reversion to competition could be sufficient punishment to maintain internal stability. In addition, rivals could punish deviation by targeting the customers of the deviating firm with discounts and by making efforts to enter their heartland regions. While the impact of this may be limited in terms of customer switching, targeting the customers of rivals can still be costly if it forces the incumbent to respond by offering better pricing or service.
287. Overall, the CMA considers that while not all features of the market make coordination easier, the transparency of the market, customer stickiness and barriers to expansion provide sufficient internal sustainability to support coordination between Generalist Distributors. The removal of Findel as an important independent competitor as a result of the Merger is significant both in terms of reducing the number of firms who must reach agreement and in removing a private competitor which has been an important competitive constraint. Therefore, the CMA believes that the Merger may make coordination more sustainable.

#### *External sustainability*

288. The Parties submitted that the CMA's frame of reference and the high shares of supply overstate the actual concentration in the supply of educational resources. They further submitted that customers increasingly shop around and have the ability to drive competition by tendering contracts or using competitions under public sector Framework Agreements. The Parties'

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<sup>340</sup> Third party source.



consider that these factors undermine the external sustainability of any coordination outcome.<sup>341</sup>

289. Coordination will be sustainable only if the outside competitive constraints on the firms involved in coordination are relatively limited. It is not necessary for all firms in the market to be involved in coordination but those firms which coordinate need to be able collectively to exercise a degree of market power.<sup>342</sup>
290. The CMA considers that the market is characterised by high barriers to entry and expansion, which are discussed in paragraphs 306 to 318 below, driven by several factors, including lack of switching on the customer side. This increases the external sustainability of potential coordination.
291. As outlined in the Competitive constraints section above, the CMA has considered whether there are possible external constraints which could impact on the sustainability of coordination:
- (a) The CMA considers that Amazon is a limited constraint on Generalist Distributors as the majority of its sales are of products that are not supplied by the Parties. It is unclear whether its ability to destabilise coordination could increase in future due to the agreement it has with YPO.
  - (b) The CMA considers that Specialists are unlikely to expand to supply a broad product range and represent a limited competitive constraint on Generalist Distributors.
  - (c) The CMA considers that the local Generalist Distributors active only in small parts of larger regions (eg East Riding, Herts) are unlikely to expand and represent a limited competitive constraint on Generalist Distributors. As discussed in paragraph 267, there may be local coordination to supplement coordination between larger Generalists.
292. As noted above, customer switching is limited, as is the use of tenders and Framework Agreements, especially in England. Framework Agreements already exist in Scotland and Northern Ireland and there is no evidence of growth in the use of these as a way for customers to drive competition anywhere in the UK.

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<sup>341</sup> The Parties' response to the CMA's Issues Letter, paragraph 5.22.

<sup>342</sup> [Merger Assessment Guidelines](#), paragraph 5.5.17.

293. Overall, the CMA found that external constraints may not be sufficient to disrupt a potential coordinated outcome facilitated by the Merger

#### *Conclusion on coordinated effects*

294. For the reasons set out above, the CMA believes that there are market characteristics – such the transparency of the market, stable market shares, customer stickiness and barriers to expansion – which could be consistent with pre-existing coordination. Given these market features, the CMA further believes that some Generalist Distributors could have the ability to reach and monitor coordination whereby some Generalist Distributors would focus on their own stronghold regions and not compete strongly in the regions of their rivals. Whether or not coordination currently exists, the Merger may increase the likelihood and sustainability (internal and external) of coordination by removing Findel as an important independent competitor.
295. Accordingly, the CMA found that the Merger may raise competition concerns as a result of coordinated effects in relation to the supply of educational resources to Educational Institutions by Generalist Distributors in the UK.

#### ***Vertical effects***

296. 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 or a downstream competitor of the supplier's customers.<sup>343</sup>
297. Mergers which are principally horizontal in character may have vertical effects if one or more of the merger firms also operate at a different level of the supply chain for a good or service. In assessing the vertical effects of a horizontal merger, the CMA will use the same approach as in assessing a purely vertical merger.
298. The CMA's approach to assessing vertical 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>344</sup>
299. As explained in paragraph 4, YPO is a Generalist Distributor who offers a wide range of products. YPO has contracts in place with Specialist Suppliers which list their products in the YPO's generalist catalogue. Findel trades

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<sup>344</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

under three main specialist brands - Philip Harris for science equipment, Davies Sport for sports equipment and LDA for SEN products.

300. The CMA has assessed whether Findel's ownership of specialist brands could result in the foreclosure of specialist rivals upstream whereby the Merged Entity would stop or significantly reduce purchasing from third parties and selling on third party specialist products to its customers and replace those sales with Findel's specialist products (customer foreclosure). In particular, the CMA considered the ability of the Merged Entity to engage in such a strategy and its incentive to do so.
301. The CMA found that Generalist Distributors are an important route to market for Specialist Suppliers and could have the ability to (at least partly) foreclose them.
302. Nonetheless, the CMA found that the Merged Entity would lack the incentive to foreclose mainly because Findel's sales through its specialist catalogues only make up a small proportion of its sales<sup>345</sup> and margins of Findel branded specialist products were not consistently [X] than non-branded products. Furthermore, given the preference of some customers for one-stop shopping, any foreclosure strategy that might lead to the Merged Entity's reducing their range and the brands that they offer to customers, could negatively affect the Merged Entity's overall sales.
303. The CMA found no evidence in Findel's internal documents that Findel attempted foreclosure of Specialists that compete with its specialist brands in the past.
304. As the CMA concluded that the Merged Entity will not have the incentive to foreclose Findel's specialist rivals upstream, the CMA did not assess the effect of a foreclosure strategy on competition.

#### *Conclusion on vertical effects*

305. For the reasons set out above, the CMA believes 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.

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<sup>345</sup> Findel's sales through specialist catalogues make up [X] of its total sales in 2019. See Findel's internal document.

## **Barriers to entry and expansion**

306. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>346</sup>
307. The Parties submitted that there are no significant barriers to entry and expansion<sup>347</sup> and that customer loyalty is declining with customers frequently switching suppliers and multisourcing. The Parties also submitted that the increased shift to online ordering lowers the barriers to entry and expansion as it increases the ability to compete on price in real time and that supplier location becomes increasingly irrelevant given the availability of third party logistics suppliers.<sup>348</sup>
308. The Parties said that despite a growing market in recent years, some of the largest Generalist Distributors saw reductions in their shares of supply over the past four years and those of Amazon, which recently entered the market as an online-only retailer, and of Specialist Suppliers increased,<sup>349</sup> thus indicating low barriers to expansion.<sup>350</sup>
309. The Parties further submitted that regional suppliers expand nationally. For instance, ESPO, KCS and Herts recently expanded their geographic coverage outside their heartlands inter alia evidenced by their respective marketing materials<sup>351</sup> and that WFE recently expanded its range and portfolio competing across the UK.<sup>352</sup> The Parties expect regional distributors, specialist and online-only retailers (Amazon) to continue to expand after the Merger.<sup>353</sup>
310. However, the evidence received by the CMA does not indicate that any notable entry or expansion has taken place or that any future entry or expansion will be timely, likely or sufficient to mitigate any SLC arising.
311. There are no examples of entry by new Generalist Distributors into the supply of educational resources in the recent years other than through acquisition. In

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<sup>346</sup> [Merger Assessment Guidelines](#), paragraph 5.8.1 and ff.

<sup>347</sup> Merger Notice, paragraphs 21.1 to 21.2.

<sup>348</sup> The Parties' response to the CMA's Issues Letter, paragraph 6.10.

<sup>349</sup> The Parties estimate that over four years that Amazon drastically expanded its revenues by [§] and gained a strong market position. Sport Specialists Bishop Sports and Sports Directory were able to increase their revenues by [§] and [§] respectively.

<sup>350</sup> The Parties' response to the CMA's Issues Letter, paragraphs 6.1 to 6.4.

<sup>351</sup> Merger Notice, paragraphs 22.1 to 22.12; the Parties' response to the Issues Letter, paragraph 6.5.

<sup>352</sup> Merger Notice, paragraph 22.9.

<sup>353</sup> Merger Notice, paragraph 22.17.

particular, there are no recent examples of a specialist distributor becoming a Generalist Distributor. In that regard, a third party told the CMA that previous attempts by [redacted] to expand its portfolio<sup>viii</sup> and customer base organically did not succeed, leading to the [redacted] acquisition of [a Generalist Distributor] [redacted]. Another third party also told the CMA that in recent years there has not been any notable entry and that office and stationery retailers (eg [redacted]) have tried to enter the market by setting up dedicated divisions for the supply of educational resources without significant progress because customers usually have preferred distributors and prefer dealing with dedicated educational resource distributors.

312. As stated above in paragraphs 191 to 200, competitors told the CMA that online-only retailers constrain the Parties to a certain extent.<sup>354</sup> In particular, some competitors stated that Amazon is growing in the supply of educational resources in the UK. However, those competitors said that Amazon is used to buy niche or low value and low volume products on an ad hoc basis,<sup>355</sup> which is also supported by internal documents from the Parties.<sup>356</sup> Some of these documents also mention that Amazon does not have [redacted] and has also [redacted].<sup>357</sup>
313. The CMA considers that Amazon has not made substantial inroads into the market as a Generalist and that its sales to Educational Institutions are mainly derived from products outside the relevant product frame of reference. Further, [redacted] told the CMA [redacted]. A third party told the CMA that it does not know how future growth in the online market may develop (from Amazon in particular) as there appear to be more lucrative markets which Amazon could enter more easily.<sup>358</sup>
314. The CMA considers that the fact that the absence of recent notable entry or expansion is a reflection of significant barriers to entry and expansion, as supported by evidence from third parties and the Parties' internal documents.
315. Third parties told the CMA that the following factors make entry and expansion in the supply of educational resources to Educational Institutions difficult:
- (a) The majority of competitors that responded to the CMA's questionnaire said that, due to the historical ties that customers have with their PSBO/Generalist Distributor, customers tend to be loyal (customer

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<sup>354</sup> Third party sources.

<sup>355</sup> Third party sources.

<sup>356</sup> Findel's internal documents. See also YPO's internal document.

<sup>357</sup> Findel's internal document.

<sup>358</sup> Third party source.

stickiness) and do not easily switch to a new supplier. The reasons for customer loyalty are discussed in detail in paragraphs 102 to 104.

- (b) Some Generalist Distributors said that they were constrained from actively targeting customers in more distant regions due to high transportation costs<sup>359</sup> and that investment in this would constitute a potential entry barrier.<sup>360</sup>
- (c) Another competitor told the CMA that it is more difficult to enter certain parts of the UK such as Northern Ireland, Scotland or Wales because of stricter procurement rules which tend to either favour large companies or local distributors.<sup>361</sup>
- (d) Finally, a few competitors said that it was necessary to offer a broad product portfolio required by Educational Institutions, but that due to the buyer power of the larger competitors, it was very difficult in financial terms to offer the same product portfolio at the same price.<sup>362</sup>

316. The Parties' internal documents indicate that the Parties faced difficulties in attracting customers in other regions:

(a) YPO's internal documents indicate that:

- (i) YPO tried to gain customers in [REDACTED], but succeeded only to a limited extent.<sup>363</sup>
- (ii) YPO perceived the Merger as [REDACTED] as it is not always easy to attract new customers nationally [REDACTED].<sup>364</sup>

(b) A number of Findel's internal documents also highlight [REDACTED].<sup>365</sup>

317. The CMA also notes that as set out in paragraphs 251 to 252 shares of supply have been very stable over the past years which also indicates that attempts from distributors to expand into new geographic areas were not particularly successful.<sup>366</sup>

318. For the reasons set out above, in particular the lack of any recent entry or expansion by the Parties' competitors and customer behaviour and loyalty,

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<sup>359</sup> Third party source.

<sup>360</sup> Third party source.

<sup>361</sup> Third party source.

<sup>362</sup> Third party sources.

<sup>363</sup> See YPO's internal document.

<sup>364</sup> YPO's internal document.

<sup>365</sup> See Findel's internal document.

<sup>366</sup> See for example Findel's internal document stating that [REDACTED].

the CMA believes that entry or expansion would not be sufficient timely or likely to prevent a realistic prospect of an SLC as a result of the Merger.

### Third party views

319. The CMA contacted customers, competitors and suppliers of the Parties. Third party comments have been taken into account where appropriate in the competitive assessment above.

### Conclusion on substantial lessening of competition

320. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral and horizontal coordinated effects in relation to the supply of educational resources to Educational Institutions by Generalist Distributors in the UK.

### Exceptions to the duty to refer

321. The Parties submitted that the Merger will give rise Merger-specific cost savings/efficiencies, such as increased purchasing volumes to drive purchasing efficiencies, rationalising warehousing, sharing / rationalising staff, sharing costs (catalogue production, professional fees, etc.), pooling expertise to drive innovation.<sup>367</sup>
322. These alleged benefits from the Merger, while not being rivalry enhancing, could lead to relevant customer benefits (**RCBs**).<sup>368</sup>
323. Section 33(2)(c) of the Act allows the CMA to exercise its discretion not to make a reference under section 33 if it believes that relevant customer benefits in relation to the creation of the relevant merger situation outweigh the SLC concerned and any adverse effects resulting from it.
324. The CMA considers the likeliness, timeliness and merger specificity of relevant customer benefits, in establishing whether they exist, and considers both quantitative and qualitative evidence of their likelihood and probability in deciding whether they outweigh the adverse effects of the SLC.<sup>369</sup>
325. The CMA does not consider that the Parties have provided compelling evidence showing that the Merger will result in RCBs that would be timely,

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<sup>367</sup> The Parties' response to the CMA's Issues Letter, paragraph 1.1.c

<sup>368</sup> See definition of RCBs of s30 of the Act. See also paragraphs 67-69 of the CMA's mergers guidance on *Exceptions to the duty to refer*, of December 2018 (CMA64).

<sup>369</sup> *Merger Assessment Guidelines*, paragraph 5.7.4.

likely and sufficient to prevent an SLC in the supply of educational resources to Educational Institutions in the UK. In particular, the alleged efficiencies were not quantified or backed up by any detailed analysis, including on whether and to what extent an increase in scale would translate into lower prices.

326. Therefore, the CMA does not consider that the evidentiary threshold for applying the RCB exception to its duty to refer is satisfied.

## **Decision**

327. Consequently, 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 United Kingdom.
328. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>370</sup> The Parties have until 26 June 2020<sup>371</sup> to offer an undertaking to the CMA.<sup>372</sup> The CMA will refer the Merger for a phase 2 investigation<sup>373</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>374</sup> by 3 July 2020 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Andrea Gomes da Silva**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**19 June 2020**

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<sup>370</sup> Section 33(3)(b) of the Act.

<sup>371</sup> Section 73A(1) of the Act.

<sup>372</sup> Section 73(2) of the Act.

<sup>373</sup> Sections 33(1) and 34ZA(2) of the Act.

<sup>374</sup> Section 73A(2) of the Act.



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<sup>i</sup> In relation to paragraph 26, YPO clarified that in the Merger Notice it referred to 'sharing/rationalising staffing'.

<sup>ii</sup> In relation to Table 1, TTS' shares of supply in the Early Years segment should be [10-20]%.  
[REDACTED]

<sup>iii</sup> In relation to footnote 101, last sentence the second third party clarified that the footnote relates to the supply of catalogues as opposed to supply more generally. In addition, that third party clarified [REDACTED].

<sup>iv</sup> In relation to Table 2, Findel's shares of supply in 2017 should be [20-30]%.  
[REDACTED]

<sup>v</sup> In relation to Table 3, Findel's shares of supply in 'All' Educational Institution sectors should be [10-20]%.  
[REDACTED]

<sup>vi</sup> In relation to paragraph 257, a third party clarified that [REDACTED].

<sup>vii</sup> In relation to paragraph 223 and footnote 275 in paragraph 223, the Parties clarified that the Scotland Excel Framework Agreement accounts for the majority of sales of both Parties in Scotland.

<sup>viii</sup> In relation to paragraph 311, a third party clarified that previous unsuccessful attempts by a competitor to expand its portfolio relates to the consumable product category only.