



NON-CONFIDENTIAL

**ME/6874/19: ANTICIPATED ACQUISITION BY
YORKSHIRE PURCHASING ORGANISATION OF FINDEL EDUCATION LIMITED
RESPONSE TO STATEMENT OF ISSUES**

10 August 2020

1. Introduction

- 1.1. The Parties welcome the opportunity to respond to the Inquiry Group's Statement of Issues and are keen to assist the CMA throughout the Phase 2 process. As set out in the Parties' Response to the Phase 1 Decision, the Parties fundamentally do not recognise the market characterisations set out by the CMA within the Phase 1 Decision. The Inquiry Group requires additional evidence to answer the statutory questions to the relevant standard of proof at Phase 2 (as well as a careful evaluation of the evidence already presented during the Phase 1 review) and the Parties are keen to engage with the CMA on the best ways to gather that evidence.
- 1.2. The Parties have therefore set out below their initial responses to the issues set out in the Issues Statement and, in particular, have pointed to the evidence already submitted in Phase 2 which further substantiates the submissions and evidence put forward by the Parties at Phase 1.

2. Executive summary

- 2.1. The Parties have provided a wealth of evidence to the CMA which this Response re-iterates and develops.
- 2.2. Whilst the CMA did not make clear at Phase 1 how unilateral effects would actually arise, the evidence shows that they would not arise on any basis. The Parties operate in a fragmented marketplace where they are not only competing against strong generalists such as ESPO, KCS, Herts, WFE and Amazon, all of whom operate nationally but also a large field of specialist suppliers including very large players such as Lyreco, Viking and Banner. In addition, they compete against (and benchmark against) retailers such as Ryman, Argos, Tesco and others, as well as in the region of 100 manufacturers who supply end customers directly. All these suppliers target the same customers, to meet their various demands. Ignoring these competitors, both in considering the product frame of reference and in assessing the competitive dynamics of this market has led to the CMA failing to reflect the reality of this market.
- 2.3. The Phase 1 frame of reference and unilateral effects theory of harm could only be tenable if there is distinct demand from customers which is only met by Generalist Distributors who would therefore be unconstrained by this wide variety of other suppliers. The Phase 1 Decision arrived at this view by assuming that customers had a strong preference for loyal purchasing through a one stop shop.
- 2.4. However, as the evidence makes clear, this cannot be the case.
- 2.5. With the benefit of additional evidence, it is clear that the Parties and their competitors now operate in a world which is substantially different to the traditional catalogue model. As the wider economy has switched online, so too has this sector and customers demand both increased service levels and competitive pricing.
- 2.6. The Parties' transaction and delivery data clearly evidences not only this trend but also the fact that customers do not rely on the Parties as a one stop shop with [REDACTED]% of

the Parties' customers relying on more than just the Parties. Similarly, it shows that the Parties lose significant customer spend year on year even with their largest customers, but that this is lost to third parties with each of the Parties only recouping [REDACTED]% of spend from customers lost by the other Party. The data therefore confirms that the Parties are not particularly close competitors.

- 2.7. Taken together with the qualitative evidence from the large volume of internal documents which have now been provided to the CMA, it is clear that, far from the Parties being only somewhat constrained by two or three generalist suppliers and dependent on region, they are constrained by a very large number of suppliers, they react to competitive pressure and, ultimately, customers are able to benefit from a highly competitive marketplace.
- 2.8. The rationale for the Merger expressed in YPO's internal documents reflects this competitive pressure. Faced with increasing cost to service increasing demands on service levels and pressure on pricing, YPO must find efficiencies in order to maintain its current performance and to improve its offering to compete on a forward looking basis. Importantly, its financial modelling expressly notes that there will be no price rises (even until 2030). This cannot be ignored when considering both the evidence of the market dynamics but also the countervailing factors in this market.
- 2.9. The Parties therefore welcome the CMA's fresh assessment of both the frame of reference adopted at Phase 1 but also the horizontal unilateral effects theory of harm which is manifestly unsupported by the evidence. The Parties remain of the view that fully developed customer engagement which is designed to consider these factors with customers would also assist the CMA in assessing this theory of harm.
- 2.10. The Parties reject the CMA's conclusions in respect of coordinated effects. The evidence demonstrates that the data that does exist in this market is so high level that it is impossible for it to provide any level of transparency across the tens of thousands of customers and products sold by the Parties. In any event, the omission of the vast majority of suppliers in each category means that it is of no use for any form of coordination. Importantly, coordination of any kind would not be possible in circumstances where a large number of competitors (such as specialists and manufacturers) would undermine it and the incentives of Generalists are not aligned given their asymmetry. The Parties internal documents show actual expansion and competition from Suppliers which clearly evidences that coordination does not occur and there is nothing merger-specific which would alter that reality. Finally, the volatility of customer spend and the significant competitive constraint from large operators in adjacent markets means that any coordination would be entirely ineffective, including post-Merger. The Parties welcome the CMA's re-consideration of these points but maintain that it is not a credible theory of harm even on the basis of the standard of proof required at Phase 1, still less at Phase 2.
- 2.11. In reality, the Merger would have significant benefits for Educational Institutions at a time when budgets continue to be stretched and service requirements are increasing (in particular following COVID-19).

3. Market Context

- 3.1. The Parties both distribute a wide range of third party manufactured educational resources to Educational Institutions in the UK. They, together with a very wide range of other suppliers, seek to meet the various resource needs of these customers.

- 3.2. In the UK, educational resources represent around 3% of school budgets which is a relatively high proportion of the very small discretionary budget (after fixed costs have been removed).¹
- 3.3. Customers who purchase educational resources broadly fall into three different settings (although different schools can have a mixture of these settings depending on the type of school and location), namely:
- Early years (catering for pre-school children);
 - Primary (catering for school children attending primary schools); and
 - Secondary (catering for school children attending secondary schools).
- 3.4. Each of the above categories of Educational Institution are funded, managed and organised in a variety of different ways (e.g. privately owned, Local Authority controlled, church controlled, voluntary controlled, academies and multi academy trusts or "MATs"). These different forms of organisation lead to a variety of approaches to the purchase of educational resources ranging from completely de-centralised buying by individual institutions to more centrally organised buying at MAT or devolved nation levels.

England

- 3.5. In England, schools have autonomy over what they buy and who they buy from. Some local authorities seek to negotiate preferential deals with preferred suppliers which schools can take advantage of but there is no mandate at all for them to do so, thereby creating a competitive market. English Educational Institutions display a variety of buying behaviours with circa 90% of procurement done by an individual institution.² Within those institutions, purchasing practices vary widely with decisions being made by teachers, heads of department or by professional procurement officers (or school business managers) and this can vary between categories (with specialist teachers taking more of a role in specialist categories). This requires suppliers to have a business model that enables them to engage with a large number of customers and different stakeholders within those customers, each making/inputting into individual buying decisions. Increasingly, that procurement has become professionalised, as more Educational Institutions (both MATs and others) employ school business managers to manage budgets and ensure schools secure good value. 64% of schools now have a school business manager or bursar who has normal responsibility for purchasing.³
- 3.6. Legislative changes over 20 years ago mean that local authorities in England have not been able to mandate where schools can purchase for very many years and schools are used to and expect autonomy in their decision-making as to where and what to purchase.⁴ Consequently, unlike the position in Scotland, schools are not required to use suppliers from a government approved framework.

¹ Estimated spend per pupil by school type and by region is set out in the analysis prepared by EDCO at Annex 1 'Education Resources Market Sizing 07082020'. This ranges between £49-205 per pupil in primary schools and £16-166 per pupil in secondary schools.

² See paragraph 15.38 of the Merger Notice.

³ Please see YPO's response to question 1 of the Site Visit Follow Up Questions.

⁴ A very limited number of institutions in particular English regions benefit from formal procurement exercises conducted on behalf of local authorities to appoint suppliers to customer frameworks which set out the terms on which individual institutions may directly procure a selection of educational resources. Suppliers approved on these frameworks include large stationery providers such as Office Depot/Viking, Amazon, specialists such as Egan Reid and OSI, more local suppliers such as East Riding, Normans of Billingham and CCL Office as well as the larger generalist suppliers including ESPO and RM.

Scotland

- 3.7. The position is very different in Scotland which has a much more centrally organised, formal procurement process where the use of customer framework contracts can and is mandated.
- 3.8. The Scottish Government has several procurement bodies who issue contracts for specific categories. Public Contracts Scotland are responsible for 'category' A contracts, with high spend; these are national contracts and every government funded establishment in Scotland (including schools) must use these. For example, a contract for office stationery (worth circa £7.5m) has been awarded to Lyreco.
- 3.9. 'Category B' contracts are managed by Scotland Excel (**SXL**) which centrally negotiates a series of supplier contracts on behalf of the 32 Scottish Local Authorities. The stated objectives of these (also national) contracts include the creation of savings through increased buying power and buying efficiencies.⁵ Of the many contracts negotiated by SXL only two are relevant to Parties, namely the contracts for (i) Educational Supplies and (ii) Education and Office Furniture.
- 3.10. Under the SXL contract for Educational Supplies, nine separate lots⁶ are individually tendered for. Maintained Scottish Educational Institutions may only buy educational resources from suppliers who have been selected for the relevant lot (compliance is ensured through the mandatory use of a common electronic procurement system). The Parties (YPO and Findel) are among 29 suppliers selected for the various lots under this contract.⁷
- 3.11. Under the SXL contract for Education and Office Furniture, eleven separate lots⁸ are individually tendered for. Again, maintained Scottish Educational Institutions may only buy furniture from suppliers who have been selected for the relevant lot (compliance is ensured through the mandatory use of a common electronic procurement system). Both Parties are among 20 suppliers selected for the various lots under this contract.
- 3.12. The large value of the SXL contracts for Educational Supplies and Education and Office Furniture (estimated to be worth £35m and £9m per annum respectively⁹) means that suppliers who fail to be selected lose access to a very substantial proportion of customer demand in Scotland. Appointment under the Scotland Excel framework contracts does not provide any guarantees of purchases and the Parties face competition within the lots they have been selected for. Suppliers who are appointed to the contracts are ranked and those with a low score are unlikely to receive much business (since customers will naturally gravitate towards the higher ranking suppliers).
- 3.13. The dynamics of competition in Scotland are therefore periodic competition "for access to the market" through the tender process and in the meantime ongoing competition between those who are on the relevant panels to secure customer purchases. This also means that a regional snapshot of current market shares in Scotland is a relatively poor indicator of the Parties' overall market position in Scotland.

⁵ see <http://www.scotland-excel.org.uk/contract.aspx?contract=0916&pageNumber=3>

⁶ Lot 1 - General Education Materials, Lot 2 - Arts and Crafts Materials, Lot 3 - Board, Card and Drawing Paper, Lot 4 - Exercise Books, Lot 5 - Early Learning Materials, Lot 6 - Bespoke Homework Diaries, Lot 7 - Musical Instruments, Lot 8 - Science Equipment and Lot 9 - Sports Equipment.

⁷ See paragraph 15.27 and Table 8 Merger Notice (p.55) which identifies the lots which YPO and Findel are appointed to.

⁸ Lot 1 - Educational Seating, Lot 2 - Educational Tables / Desks, Lot 3 - Educational Storage Furniture, Lot 4 - Educational Dining Furniture, Lot 5 - Full Educational Kit Out, Lot 6 - Pre-5 Furniture (% off RRP), Lot 7 - Office Seating, Lot 8 - Office Tables / Desks, Lot 9 - Office Meeting Room & Reception Furniture, Lot 10 - Office Storage, Lot 11 - Full Office Furniture Kit Out.

⁹ see <http://www.scotland-excel.org.uk/contract.aspx?contract=0916&pageNumber=3> and <http://www.scotland-excel.org.uk/contract.aspx?contract=0216&pageNumber=3>

Northern Ireland

- 3.14. In Northern Ireland, procurement is overseen by the Education Authority which is attempting to formalise procurement into customer framework agreements for product category ranges and to mandate the Educational Institutions to use its frameworks. There are currently eight such framework agreements in place and both Parties are present on the framework agreement for arts and craft supplies.¹⁰ Findel (but not YPO) is on four more framework agreements (exercise books, educational play equipment, science equipment, home economics). YPO makes limited sales in Northern Ireland, which reflects its limited access to spend in Northern Ireland. Findel makes sales in Northern Ireland of £3.74m in maintained schools (excluding nursery and independent) with an estimated share of supply of 12.2%.

Wales

- 3.15. In Wales, procurement is centralised through the National Procurement Service although, as set out in the Merger Notice,¹¹ this has only been partially successful and the market in Wales is characterised primarily by agreements with individual Local Authorities and specific institutions. However, a wide range of suppliers are active in tendering for the specific lots with awards being made to a range of operators ranging from generalist Suppliers to retailers and distributors. As recognised in the Phase 1 Decision,¹² the extent to which Wales operates as a tendering market therefore falls somewhere between the position in England vs that in Scotland and Northern Ireland.

Customer priorities

- 3.16. Regardless of the procurement process followed in different parts of the UK, the Parties' customers are under severe pressure to maximise their budgets, whilst securing a wide range of good quality products and good service quality. As a consequence of this, the Parties are subject to strong competition on all aspects of PQRS which increasingly means that they must offer, within each educational resources category, a full range of quality products at competitive prices (compared to the many competing generalists and specialists), and an excellent, reliable service through a website, flexibility of ordering systems and quick delivery times which are as good as the market leading digital providers such as Amazon. As discussed further below, both Parties' and their competitors have sought to improve their offers in relation to all of these factors.

Customer purchasing behaviour

- 3.17. The market for the provision of educational resources has traditionally been a catalogue-driven business with catalogues being placed in Educational Institutions' staff rooms and orders being submitted by email, fax or telephone. However, this has changed dramatically over the past few years with the market having undergone a digital transformation and customers increasingly shopping online. This structural shift online has been accelerated and solidified by the COVID-19 pandemic.
- 3.18. For Findel, online sales now account for approximately [REDACTED]% of all customer purchases (across all Findel's brands) – this has grown from under [REDACTED]% one year ago and under [REDACTED]% two years ago. Of Findel's online sales, [REDACTED] (i.e. [REDACTED] of all sales, online and offline) is by customers who have accessed Findel's websites through browsing on search engines (Google, Bing); at brand level, [REDACTED]% of Hope sales and [REDACTED]% of GLS sales originated via a browser search on Google (mostly) or Bing. The remaining online sales are accounted for by: (i)

¹⁰ See para 15.30-15.33 of the Merger Notice.

¹¹ See paragraphs 15.34-15.35 of the Merger Notice.

¹² Phase 1 Decision, paragraph 87(b).

customers directly accessing Findel's websites without a browser search, i.e. typing the web address directly ([REDACTED]% of GLS' online sales; less than [REDACTED]% of Hope Education's online sales); (ii) customers accessing Findel websites via a link in a marketing email ([REDACTED]% of GLS' online sales; less than [REDACTED]% of Hope Education's online sales); and (iii) customers' accessing Findel's websites via some form of social media (well under [REDACTED]% for GLS and Hope Education).

- 3.19. As demonstrated in slides 17 – 19 of the Studio/Findel Site Visit slide deck and paragraph 7.9, below, customers browsing for Educational Supplies via Google/Bing, whether using product/SKU-specific search terms (slides 17 and 18) or generic search terms (e.g. "school supplies" or "school stationery" – slide 19) are choosing from a much broader universe of competitive offers than just the national generalists which the CMA's Phase 1 reference decision treated as the universe of direct competitors – top results for the most commonly used search terms include Amazon, Rymans, Egan Reid, Office Depot, Viking, Staples, plus dozens of education supply businesses such as Primary Classroom Resources, Supplies for Schools, Early Years Resources, Schoolstationery, and Morleys, to name but a few.
- 3.20. In contrast, the ways in which schools/nurseries have traditionally bought educational resources from Findel, i.e. catalogue-driven email, telephone and fax orders, have all dramatically reduced over the past two years: over that period, direct email orders are down by [REDACTED]%, telephone orders are down by [REDACTED]% and fax orders have almost disappeared entirely (down by [REDACTED]%).
- 3.21. These developments mirror changes across the economy. For example, Argos, the UK's best known multi-product catalogue producer, announced that it would cease production of its catalogue from January 2021 and that products will only be listed and displayed online.¹³ In parallel, the expansion of online retailing by Amazon in almost every sphere of the economy continues (as the CMA is no doubt aware). The Parties' own paper catalogues are on the same trajectory as those of Argos. COVID-19 has had a major impact on business in 2020 as schools are necessarily purchasing online. The Parties' expect that this will have a lasting effect as it will accelerate changes in customer behaviour that were evident before the pandemic. It is hard to imagine that the pandemic will not significantly affect customers' desires to order goods via a paper catalogue passed between people, or that once a habit of online ordering is established, customers will revert to paper based systems.
- 3.22. This trend explains why Findel has very significantly cut back on the amounts it spends on catalogues and the volume of catalogues sent to schools. As explained at Phase 1, Findel reduced the overall volume of main catalogues sent to schools between 2017 and May 2020 by at least [REDACTED]%¹⁴ while its annual spend on paper catalogues dropped from c. £[REDACTED] in 2017 to c. [REDACTED] in 2019¹⁵ and to an estimated [REDACTED] in 2020. The significant reduction in catalogue spend was prompted by Findel's migration to a digital platform which saw an increase in online order activity, therefore reducing the requirement for the volume of catalogues to be sent to schools and nurseries, and was driven by a large reduction in per-establishment book allocation, a change in customer recruitment strategy to no longer recruit by a big catalogue (Findel implemented this change in 2018) and the removal of in-year catalogue re-mailing (Findel implemented this change in 2017).¹⁶ As explained during the course of the YPO site visit,

¹³ It is worth noting that local authorities make significant purchases from Argos (typically furniture and office equipment) and will, as for other customers, purchase online. In total 146 public sector organisations reported spend with Argos in FY19/20, with 3 councils showing spend in excess of £100,000.

¹⁴ Paragraph 18.1 of Findel's response to the CMA's follow up questions of 28 May 2020.

¹⁵ See Document titled "Marketing and web costs" provided with Findel's response to the CMA's follow up questions of 28 May 2020.

¹⁶ Paragraph 16.1 of Findel's response to the CMA's follow up questions of 28 May 2020.

YPO has been on a similar trajectory, significantly reducing its catalogue range as use of those paper based resources has shrunk.

- 3.23. When it was the case that most customers' purchases were originating from a perusal of hard copy catalogues (updated annually by suppliers), there was more of tendency by some customers to rely on one or two main catalogues for multiple categories of educational resources and this favoured generalist suppliers. One consequence of the dramatic transition of customers from traditional catalogue-driven purchasing methods to online search-driven purchasing over the last 2 – 3 years, is that customers are increasingly viewing each category of educational resources individually, given the ease and speed with which customers can now compare the universe of competing offerings in each category, including with regards to price, quality and range of each Supplier's offerings. As a result, all Suppliers are facing a strong competitive constraint from a large number of specialist suppliers in each educational resources product category (including specialist suppliers of education supplies, general distributors and retailers in particular categories and manufacturers who supply customers directly).¹⁷
- 3.24. Both YPO and Findel's internal buying teams are organised around the individual educational resources categories, as there is a need for separate buyers for each category, familiar with the specialist features of the individual category, with the customers' expectations and with the competitive field. Some categories (e.g. curriculum) are more specialist and require larger specialist buying teams, but every category (even stationery and janitorial supplies) is a distinct specialism in its own right where the Parties must be competitive not only with respect to third party generalists but also compared to an increasingly large number of specialist suppliers, other retailers, general category distributors and manufacturers. Such specialists will often be servicing a considerably larger group of customers than just Educational Institutions and so can thereby achieve volume efficiencies and they also look to differentiate themselves via the depth of their offering in the specific category.
- 3.25. Each category features different market dynamics as detailed below:
- 3.25.1. The **school/classroom furniture category** is more bespoke in nature, divided into further big specialist areas such as classroom furniture, early years and nursery, office and with furniture items customised on the basis of a large number of variants in terms of sizes and colours and sold individually or in various pack sizes. The items are often shipped direct from the manufacturer rather than held in stock. Suppliers of school/classroom furniture range from smaller web-only companies (such as E-quip4education) to traditional education suppliers such as TTS, KCS, Consortium, YPO, ESPO and Findel.
- 3.25.2. The competitive landscape is markedly different for the more commoditised categories of **stationery & office, exercise books, arts & design categories**, which include a variety of consumables such as pens, pencils, crayons, tape, filing and paper and card materials, paint, crayons, glue, textiles etc. The market for the provision of educational resources in these categories is highly competitive with a vast number of both specialist and generalist distributors, including large stationers with increased online presence (such as Ryman, Viking, Paperstone) local stationers, supermarkets and online providers such as Amazon and eBay.
- 3.25.3. For the **facilities category**, which covers a variety **cleaning and site maintenance products** including catering, hygiene, protective workwear and first aid, service and frameworks are key drivers for customer choice, albeit

¹⁷ See the additional product category slide deck provided to the CMA in advance of the Studio/Findel Site Visit, which provides an overview of the competitive universe and dynamic for each of the BESA educational resources product categories.

the category is also commoditised to a certain extent and customers are well informed so pricing is competitive. There is a variety of suppliers for each facilities sub category, including Amazon, Viking Direct, Office Products, Catering Appliances, Hygiene Depot as well as traditional education suppliers such as KCS, TTS and Consortium.

- 3.25.4. For the **early years category**, suppliers include online retailers such as Costcutters UK, Amazon, Etsy, ebay, Gompels as well as traditional education suppliers Cosy, TTS, Consortium etc. Branded items are available at most national retailers such as Amazon, Argos, John Lewis and on the brand's own website e.g. Little Tikes.
 - 3.25.5. For the **sports category**, there is a broad range of suppliers ranging from larger retailers like Sports Direct, JD Sports, Kitlocker Nike, Umbro, Gilbert, Slazenger, Zoggs, to generalists like Amazon, SportsWarehouse, Decathlon and specialists like Lovell Rugby, Speedo, Maudesports, Stadia and Newitts.
 - 3.25.6. For the **curricular category** and **special education need (SEN) category**, which are more curriculum focused, teachers typically shop around for inspiration to teach a specific area or need, and tend to purchase branded equipment they trust. Suppliers for curriculum include both general educational suppliers like YPO, TTS, Consortium and ESPO and curriculum specialists like Smart kids, Scholastic and Oxford University Press. There is also a broad spectrum of software providers, online learning resources and subscription resources including 2simple, Classdojo, TT Rock Stars and BBC which are increasingly both supplementing and substituting for paper based resources. Schools are also increasingly shopping with general online traders like Amazon and Etsy. Similarly for SEN, suppliers include specialist suppliers such as Smart Kids, Sensory Education and Sense Toys, general educational suppliers such as YPO, TTS, Consortium and ESPO, while fidget toys and books are widely available from Amazon and other online retailers.
- 3.26. As described in paragraph 3.5, above, multiple stakeholders have input into purchasing across these categories. Commoditised categories like art & design, exercise books, office & stationery and facilities are predominantly bought by School Business Managers, while more curriculum focused educational resources such as curricular, SEN, sport and science are typically purchased by classroom teachers who can influence supplier choice, particularly for curricular products. In all areas, however, the increased professionalism and choice described above results in all stakeholders having the ability to utilize competitive levers against Suppliers.
- 3.27. As such, limiting the characterisation of the educational resources market in which YPO and Findel compete to a handful of national generalists competing for the business of nurseries/schools looking to purchase in bulk from incumbent one-stop-shop suppliers, could not be further from reality. Rather, the Parties are competing with a large number of both generalist and specialist suppliers (including a range of specialist suppliers of education resources, general distributors and retailers within particular categories and manufacturers) in a range of different categories.

Customers do not rely on a one stop shop

- 3.28. The Parties' submit that the evidence does not support the CMA's conclusion in the Phase 1 Decision that customer preferences for one-stop-shopping are strong.¹⁸ The Parties' Response to the Phase 1 Decision pointed to some of the evidence that shows this analysis does not hold, in particular by reference to the extent of top-up shopping, customers' use

¹⁸ Phase 1 Decision, paragraph 99 and 100.

of multiple suppliers and the significance of specialists as an alternative for almost all purchases, who cannot just be regarded as operating in wholly separate markets.¹⁹

- 3.29. As a generalist supplier, YPO's internal documents reflect its underlying business model and aspiration to capture more of a customer's shop in order to generate efficiencies in distribution and aim to secure a return over a basket of products purchased from it by customers. YPO in particular focuses on this in June and July with specific marketing campaigns at the end of the school year (when schools typically look to re-stock for the next year). This is a particularly busy period in the education supplies market where YPO's sales increase significantly. However, this does not amount to a preference for a one-stop shop and it is important not to overstate its impact.²⁰ As noted above, customers will certainly seek to obtain additional value (with respect to delivery, discounts etc. and take advantage of end of year offers when re-stocking but YPO does see consistent large levels of ordering across the year. However, that model under pressure and other market participants seek to generate efficiencies in different ways. For example, stationery retailers, or general category distributors (such as furniture providers) generate purchasing efficiencies by selling similar products both to Educational Institutions but also more widely to other kinds of customers such as offices, schools, private individuals etc. and in doing so can be very price competitive in their categories. The Parties' cannot ignore these constraints and as set out at paragraphs 7.14-7.16, below, they routinely benchmark key specialists and other providers (including specialist suppliers, general distributors in particular categories and retailers) in their relevant categories, with benchmarking tailored to each product category.
- 3.30. Closer analysis of both the Parties' data even more clearly reinforces the limited importance of a one-stop-shop and illustrates that the trends (as in society as a whole) are to more frequent and more fragmented buying by customers. As was evident in the customer comments in YPO's site visit video, customers seek to aggregate their orders and/or focus their purchases with a single supplier where it delivers value e.g. to avoid a delivery charge, or to secure discounts, but will not hesitate to disaggregate their purchasing and to switch suppliers for particular items where it delivers a better outcome either in terms of convenience/speed, price, or quality.

Delivery data demonstrates the erosion of one stop shopping

- 3.31. Indeed, whereas customer "one-stop-shopping" would be demonstrated by infrequent, large bulk orders to meet the majority of demand, Both YPO and Findel data show a clear trend towards smaller lines per consignment (multiple orders from the same premises received and combined to form a delivery).

Figure 1: [REDACTED]

¹⁹ Parties' Response to the Phase 1 Decision paragraphs 2.5, 2.8, 2.13-2.15 and 2.17.

²⁰ This 'peak' trading period saw YPO make [REDACTED] of YPO's annual sales of educational supplied in 2019 out of stock in its warehouse but clearly, the vast majority of its stock sales are made outside of this period. Direct sales (where the manufacturer delivers directly to the school, for example for furniture or ICT) do not show a pronounced seasonal peak.

- 3.32. Importantly, once customers increase the frequency of their shopping their incentives to continue buying from a single supplier reduce significantly, as they will turn to the supplier that best meets their specific needs at the time of the order. The COVID-19 pandemic in 2020 has accelerated this trend, as is evident from the above chart. However, the pandemic has simply accelerated the pre-existing trends towards online ordering, smaller order sizes and smaller consignment sizes as customers become more used to purchasing in this way. This, in turn, means that customers find it even easier to switch suppliers. Whilst the Parties retain relationships with customers, there is significant variation in customers' year on year expenditures within product categories, as described below.

Transaction data supports the absence of one stop shopping

- 3.33. Compass Lexecon conducted an analysis of the Parties' customers' purchasing patterns within a single month, conservatively assuming that each customer only places one order on a monthly basis. That analysis shows that:²¹

- 3.34. Customers typically purchase only a few product categories in a single month:

3.34.1. [REDACTED]% of YPO's customers in 2019 purchased at most two product categories within a single month. When limiting the analysis to the top 30% customers in revenue terms, [REDACTED]% of YPO's largest customers purchased at most four product categories within a single month.

3.34.2. [REDACTED]% of Findel's customers in 2019 purchased at most two product categories within a single month. When limiting the analysis to the top 30% customers in revenue terms, [REDACTED]% of Findel's largest customers purchased at most four product categories within a single month.

3.34.3. The share of the Parties' customers purchasing a limited number of products in a single month has been increasing over time:

3.34.3.1. The share of YPO's customers purchasing at most two categories in a single month has increased from [REDACTED]% in 2017 to [REDACTED]% in 2019. When limiting the analysis to the top 30% customers in revenue terms, the share of YPO's largest customers purchasing at most four categories within a single month increased from [REDACTED]% in 2017 to [REDACTED]% in 2019.

3.34.3.2. The share of Findel's customers purchasing at most two categories in a single month has increased from [REDACTED]% in 2017 to [REDACTED]% in 2019. When limiting the analysis to the top 30% customers in revenue terms, the share of Findel's largest customers purchasing at most four categories within a single month increased from [REDACTED]% in 2017 to [REDACTED]% in 2019.

3.34.4. This evidence is incompatible with the CMA's conclusion that customers favour a one-stop-shop approach. Customers typically place orders for a limited number of product categories and specialist suppliers offering single product categories can compete with the Parties.

3.34.5. Compass Lexecon also analysed the data to examine evidence of shopping around by customers, which would also be incompatible with a one-stop-shop model. If customers were 'sticky' and unwilling to shop around, one would

²¹ See Annexes 2-4 which set out further detail on Compass Lexecon's analysis and results.

expect to observe that the Parties' customers have relatively stable spending with each of the Parties over time (based on the assumption that school budgets have been relatively constant over the observed period of time). To test this, Compass Lexecon analysed the extent to which customers varied their spending with the Parties over time. In particular, they compared the Parties' sales databases in 2018 and 2019 and observed that:

3.34.5.1. Out of the [REDACTED] YPO customers in 2018:

- [REDACTED] customers ([REDACTED]%) decreased their spending or stopped purchasing from 2018 to 2019.
- [REDACTED] customers ([REDACTED]%) decreased their spending with YPO by at least 30% from 2018 to 2019 or stopped purchasing from YPO in 2019.
- [REDACTED] customers ([REDACTED]%) did not purchase any product from YPO in 2019.

3.34.5.2. Out of the [REDACTED] customers that Findel had in 2018:

- [REDACTED] customers ([REDACTED]%) decreased their spending or stopped purchasing from 2018 to 2019.
- [REDACTED] customers ([REDACTED]%) decreased their spending with Findel by at least 30% from 2018 to 2019 or stopped purchasing from Findel in 2019.
- [REDACTED] customers ([REDACTED]%) did not purchase any product from Findel in 2019.

3.34.6. This evidence is incompatible with the CMA's conclusion that customers are sticky and do not flex their purchasing with individual suppliers. It is therefore also incompatible with a "one-stop-shop" purchasing model. The data shows that a sizeable proportion of the Parties' customers materially decreased their spending with or stopped purchasing from the Parties between 2018 and 2019. Unless this is driven from a very significant contraction of school budgets between 2018 and 2019 (which the Parties are unaware of), this evidence demonstrates that customers do shop around and rely on multiple suppliers for all or part of their requirements.

Direct evidence suggests some customers purchase from many suppliers

3.34.7. As indicated in the Findel site visit, the Parties are aware of schools purchasing from multiple suppliers, sometimes as many as 23.²²

4. The Current and Future Challenge

4.1. A number of significant changes are apparent in the market, which are changing the core business model for suppliers of educational resources. Each are considered in turn below.

Customer resources are and will be stretched

4.2. Customer financial resources are stretched (in both public sector schools and private Educational Institutions such as MATs and private nurseries). Educational Institutions are

²² See for example Findel site visit slides, slide 40.

under increasing pressure to deliver more for those resources and are looking at ways to achieve that. This is a trend that is only likely to continue as public finances are stretched.

- 4.3. As discussed above, Educational Institutions are under increasing pressure to deliver 'more for less', buying educational resources from budgets that have been cut significantly in recent years. The percentage of school budgets allocated to educational resources represents a relatively high proportion of the very small controllable part of the budget dedicated to all non-fixed costs (i.e. excluding fixed costs such as staff, premises, utilities etc). As noted above at paragraph 3.5, Educational Institutions are professionalising their procurement activity including through bringing in professional procurement officers / school business managers, to better manage those budgets, shop around to instigate and secure value for their schools. Where schools have invested in professional procurement officers, this has been in the expectation that they will drive a reduction in expenditure which exceeds the cost of employing them.

Customer expectations of service are rising

- 4.4. Customer expectations of service are rising. The shift described in section 3 above, means that Educational Institutions expect to be able to order online from quality websites that reflect their needs and they want the responsiveness of service in terms of delivery speed and value that they are used to from their own experiences as consumers, shopping from Amazon and elsewhere.
- 4.5. The Parties' see those changes in their own data as noted in paragraphs 3.17-3.34.7 above. Those changing shopping patterns in themselves erode the benefits of a one stop shop model, as online comparisons are easy to make and smaller purchases of a few lines are easy to compare and to switch to the best offer at a particular moment in time.

Suppliers are responding to these changes

- 4.6. All of these trends increase pressure on suppliers (of all kinds) to be more competitive and to improve the overall offering to compete with players such as Amazon, as described above. At the same time, suppliers, including the Parties, face rising costs in seeking to meet these greater customer expectations. What is required of a supplier to be successful in this environment is materially different to what it has been in the past – it is much more important to have an excellent online presence, a more bespoke, tailored offer specific to the customer's needs and highly responsive and flexible service. The Parties and their competitors have invested and adapted their offers to this changing environment:
 - 4.6.1. Both Findel and YPO have made substantial investments in developing their websites. Between 2017 (when Findel launched its own online platform) and 2019, Findel invested approx. [REDACTED] to bring new features to the market, such as online chats, workflow-style approvals, ability to upload excel workbooks, 1-click ordering etc. as explained at the site visit, with its annual spend on web maintenance increasing from £[REDACTED] in 2017 to £[REDACTED] in 2019. YPO is investing £[REDACTED] in this financial year to make its website more tailored and relevant, as explained at the site visit. As discussed below, others, such as KCS appear to have made similar efforts.
 - 4.6.2. Both have improved their delivery terms to come closer to the expectations set by Amazon. YPO now offers free standard delivery (3-4 days) with next day delivery (also free of charge) available on deliveries of all sizes for public sector customers (and for private sector customers above a £40 minimum order threshold).
 - 4.6.3. Both have invested in marketing strategies that are more focussed on social media and online activities. Others have done the same.

5. Rationale for the Merger

- 5.1. It is against this backdrop that the Merger and particularly the rationale for it, must be assessed by the Inquiry Group in Phase 2. As described in the Response to the Phase 1 Decision,²³ far from being driven by a motive of reducing competition, the Merger is driven by a need to achieve efficiencies in order to maintain current competitive pricing and position in the market. As described below at paragraphs 6.10 and 7.5-7.22, absent the Merger, YPO [REDACTED] in light of the competitive pressure that it faces from distributors across the spectrum as well as manufacturers and pure online operators.
- 5.2. Indeed, as described in the Response to the Phase 1 Decision,²⁴ the original business case put together by YPO in respect of this transaction shows YPO's expectations of (a) no price increases and (b) cost savings. Findel's projected EBITDA was [REDACTED] by March 2021 but this projection took into account anticipated (non-merger specific) price increases by Findel. YPO reduced the Findel EBITDA in its modelling (provided to its Founder Members when seeking approval for the Merger) to [REDACTED], removing the price increase.²⁵ This evidence is incompatible with any theory of harm which considers price increases as a risk post-merger.
- 5.3. In reality, the merger will instead lead to material efficiencies resulting from substantial reduction of the costs which the Parties will face post-merger. In particular, YPO's modelling of the synergies arising from the transaction (prepared in September – October 2019) shows that the following savings are anticipated as a result of the Merger which will provide significant benefits for customers:

Saving type	Estimated saving (%)
Savings on sourcing due to greater buying power - stock items only	[REDACTED]
Savings on audit and L&P expenses	[REDACTED]
Savings on IT Licence costs	[REDACTED]
Savings on other establishment costs - Security / Equipment etc.	[REDACTED]
Marketing Efficiencies - Combined campaigns / catalogues	[REDACTED]
Transport Efficiencies - brought on to YPO contract	[REDACTED]

6. Market definition

- 6.1. The Parties welcome the Inquiry Group's intention to consider new evidence pertaining to market definition and, importantly, to consider in any event the competitive constraints on the Parties from within and without any defined market or frame of reference. However, the Parties would encourage the Inquiry Group to critically analyse both the wealth of evidence presented to the CMA in Phase 1 and thus far in Phase 2 which clearly has an impact on the understanding of the market dynamics in this case.
- 6.2. As described in the Merger Notice²⁶ and above in section 3, the Parties' view is that Educational Institutions purchase supplies of various categories from a range of suppliers including both generalist and specialist distributors to Educational Institutions but also from a wider array of distributors in each category as well as retailers and manufacturers. It is important that these factors are properly included in considering the relevant product frame

²³ Response to the Phase I decision, paragraph 1.10

²⁴ Paragraph 1.9.

²⁵ Annex 30 to the Merger Notice.

²⁶ Paragraphs 12.1-12.13.

of reference given the nature of the products concerned and the customer behaviours outlined above.

YPO Approach to the market

- 6.3. As is evident from the categories into which YPO divides its product offering, it is effectively selling (in large part) commoditised goods which are widely available. It is simply marketing those products specifically to Educational Institutions. Clearly, as a 'generalist' distributor, YPO's business model is based around seeking to encourage as much spend as possible with YPO but that is simply a reflection of YPO's large product base and its chosen strategy. In reality, in terms of marketing to customers, YPO has always had to tailor its offering and approach for different categories:
- 6.3.1. **Product Selection** – has always involved YPO selecting particular products within a specific category based around customer needs and feedback. In reality, what an Educational Institution purchases is influenced by a number of factors including economic and political factors, curriculum requirements and funding / budget availability. In addition to ordinary budgets, Educational Institutions may be able to access funding for particular needs such as 'pupil premium' funding for economic disadvantage or for particular curriculum subjects. As a result, whilst Educational Institutions will always regularly need core commodity products such as stationery as well as larger items such as furniture from time to time, what Educational Institutions are able to spend in a particular category will vary over time and between Educational Institutions depending on a variety of factors as described. As a result, whilst YPO's model means that it stocks tens of thousands of items across the various categories of product which it sells, it takes a more targeted approach to its marketing priorities and strategy based on those factors.
- 6.3.2. **Engagement and Presentation** – as the CMA is aware from the YPO site visit, YPO has published separate catalogues for a number of categories (including sport, science, early years, furniture) to target the decision makers in each category within an Educational Institution. The shift to digital purchasing by customers has led to decreased relevance for these additional catalogues²⁷ but has nonetheless continued this focus by customers on being able to quickly identify specific products and categories. As described by YPO on its site visit, customer complaints and feedback in this area has led to significant investment and development by YPO in the online space generally and its website descriptions and entries specifically.²⁸ Its plans for the website are specifically to allow for a more bespoke, tailored experience for customers on the site, which bring it closer to competing directly with the offers of specialist providers.
- 6.4. This reflects the modern reality described in paragraphs 5.2-5.3 above, that whilst a generalist model allows YPO and its competitors to compete for additional spend from Educational Institutions, customers are focused on the particular product segments and competition for those particular products at the point of purchase; the evidence presented to the CMA to date clearly indicates that the Parties are competing not only with other distributors (including both 'generalist' distributors and specialist distributors and brands) but also with manufacturers directly. Indeed, the Parties have provided evidence to the CMA which shows that there are at least 98 manufacturers which provide a direct e-commerce offering to Educational Institutions in various segments and at least 30 of those have attended educational shows to market directly to customers (with a number also producing catalogues and investing in field sales teams).²⁹

²⁷ As described in the visual aids used by YPO on its site visit, YPO research shows that only [REDACTED]

²⁸ Documents 19-57 of the Phase II S.109(2) Notice dated 13 July 2020

²⁹ See also the competitor list provided by YPO on 3 August 2020 in response to the CMA's clarification questions.

Findel Approach to the Market and the rise of the specialist

- 6.5. By contrast, the Findel model is a collection of different brands with different focuses. This is not only true of Findel's three specialist brands (Philip Harris; Davies Sports; LDA), but also applies to its more generalist brands, each having a different focus (notwithstanding that each offers the full range of educational resources products). Hope Education is focussed on curricular educational resources and has a national focus, whereas GLS focuses primarily on commodity educational resources and has a more regional focus (albeit is still marketed nationally to some extent). Seen from that perspective, a "generalist" could either have a "YPO-model", or a "Findel-model". RM has adopted a similar model to Findel with TTS having a focus similar to GLS and Consortium having a focus similar to Hope Education. To that extent, both Findel and RM can be seen as not dissimilar to WFE, which also brings together several educational resources brands with specialist focuses. What is true of all the generalists, both true generalists (like YPO) and generalists with multiple brands with differing specialist focuses (Findel; RM; WFE), is that they aim to sell multiple educational resources and look to thereby achieve volume synergies in order to be more competitive.
- 6.6. Specialist distributors do not compete for different categories of customer, or respond to different customer demand compared to generalist distributors. Nor are specialist distributors selected for different purchasing occasions to generalist distributors. For a variety of reasons, often related to synergies with other parts of their business or history, specialist distributors differentiate themselves by focussing on a single/narrower range of product categories. By doing so, specialist distributors can and do compete for customer demand in respect of their particular product categories, including major core product categories such as stationery (Banner; Lyreco; Office Depot) and more specialist but nonetheless fundamentally important categories for a school, such as sport (Bishop), SEN (Sensory Education) and science (SLS).
- 6.7. Large specialist distributors of stationery, with increasingly strong online presence, achieve efficiencies in purchasing volumes of products in this category and as stock is not substantially different from general office supplies are actively and directly targeting school spend. For example, Ryman has a Back To School portal online and similarly Viking Direct has a School's Shop portal online, which is designed to act as a central location for customer to source educational resources.
- 6.8. Additionally, products in the curriculum category are increasingly being sourced directly by schools from publishers, so generalist suppliers compete with direct sales channels from curriculum specialists. As noted above, there is strong specialist presence in the categories for curriculum, SEN, early years, sports and science. Moreover, computing products are not a stock item, which facilitates direct sales from specialist competitors. Furniture is also a bespoke specialist offering, as explained above, with web-only suppliers (such as E-quip4education) competing for the same customers as the parties.
- 6.9. It follows that specialist distributors are competing against the part of a customer's spend which might otherwise be spent with a generalist distributor and as such specialist distributors ought to be included in the frame of reference given that evidence (including the competitive threats described by on the ground sales managers of YPO) shows that they exert material competitive constraints on both parties.³⁰
- 6.10. Finally, as described in the Response to the Phase 1 Decision³¹ the Parties face significant competitive pressure from Amazon and online offerings of other competitors (including

³⁰ Please see Annex 5 'FEL CMA presentation slide deck July 2020'. See also by way of example from YPO, paragraph 7.18, below. See also Document 27 of the Response to the Phase II S.109(3) Notice dated 16 July 2020

³¹ Response to the Phase I Decision, paragraphs 2.1-2.3 and 2.8(d)

expansion by previously regionally focussed suppliers) which has led to the Parties revising and improving their service standards significantly, as described above.

- 6.11. The Parties are therefore encouraged that the Inquiry Group will re-consider the CMA's position at phase 1 which simply ignores (against the weight of evidence) these market operators both individually and collectively and in relation to both the product frame of reference and the competitive analysis. The Parties submit that the evidence in favour of widening the frame of reference to include a wider range of suppliers is clear (and in particular the Parties encourage the CMA to consider the competitive constraints exercised by specialists including manufacturers and retailers supplying Educational Institutions directly). The CMA has considerable powers available to it to consider these points with both customers and distributors as well as manufacturers which supply Educational Institutions and the Parties encourage the CMA to use those to further explore this with those third parties.
- 6.12. The Parties note that the Inquiry Group is also considering whether to narrow the product frame of reference by product category. Again, the Parties welcome further investigation in this area. In reality, if the product frame of reference is narrowed to consider particular categories, the position adopted by the CMA at phase 1 which ignores specialist distributors in each category which focus purely on supplying Educational Institutions as well as online operators and other specialist distributors and retailers (as well as manufacturers) would be untenable. A product frame of reference delineated by category of product would necessarily need to include – in both the product frame of reference and the competitive analysis – supply of relevant products by other suppliers who supply Educational Institutions. There is no evidential basis for excluding manufacturers, Amazon and specialist distributors in such circumstances – the opposite is true. The Parties encourage the CMA to further explore this with customers and the large range of competitors for whom contact details have been supplied. As the Parties have discussed with the CMA, the views of Educational Institutions are critical in this regard and the Parties re-iterate their concern that a customer survey is not being undertaken by the CMA in this case and that sufficient time must be made available by the CMA for Educational Institutions to engage with the CMA's investigation after the school summer holiday period (during which customers are unavailable).

Geographic frame of reference

- 6.13. The Parties' view is that there is a UK-wide geographic market in which they operate. As described in the Merger Notice,³² the Parties supply nationwide without differentiating their pricing (save where they are discounting to win new business) and have national marketing campaigns. In particular, the Parties offer UK-wide delivery; indeed, YPO offers delivery at the same cost (free in many cases) to customers across the country, despite cost differences (both in its own fleet operations and when utilising logistics partners). Similarly, both generalist and specialist suppliers across the country offer nationwide delivery using logistics partners, as do manufacturers, general distributors in each category and, notably, Amazon and online competitors. Even very small competitors are able to offer such services, as described in the Response to the Phase 1 Decision.³³
- 6.14. Whilst the Parties do have historical 'heartlands' these are, effectively, historical bases. The evidence clearly demonstrates that both PSBOs and other distributors have expanded beyond these heartlands. Importantly, specialist distributors and specialist retailers / manufacturers have never had such heartlands (still less operators such as Amazon) and have always competed nationally.³⁴

³² Paragraphs 12.36-12.48.

³³ Response to the Phase I Decision, paragraph 2.8(d)

³⁴ Note, in particular that this is also the case in Scotland notwithstanding the fact that there is a centrally tendered framework for the supply of educational resources. As set out in paragraph 12.47 of the Merger Notice, the same competitors are active in

- 6.15. As discussed above, there are some differences in the dynamics of competition in Scotland and Northern Ireland in particular, where a very substantial proportion of expenditure educational resources is formally procured and then directed by a procuring body which runs a formal tender process. This results in different pricing and in something more akin to "competition for the market" in each product category.

7. Horizontal unilateral effects

- 7.1. The Parties welcome the Inquiry Group's commitment to assess the horizontal unilateral effects theory of harm adopted by the CMA at Phase 1. Whilst the CMA's decision at Phase 1 does not actually set out how a realistic prospect of an SLC could arise through horizontal unilateral effects (i.e. whether the CMA expects price rises or a lessening of service quality), the Parties' view is that they could not arise on any basis, as described more fully below.

Market Structure and Share of Supply

- 7.2. The Phase 1 Decision rejected the Parties' submission that the educational resources market is widely recognised to be worth £1.2bn in 2019. It based its market size estimates on value of sales data submitted by a small number of distributors to BESA, taking the view that market size is "*significantly smaller*" than the £1.2bn provided by the parties.³⁵ The group providing data to BESA is demonstrably a small subset of those active in the market and the shares of supply relied upon in Phase 1 therefore significantly overstate the positions of the Parties. More specifically, analysis included Findel's collection of specialist brands (as well as RM's different brands) on the basis that they were one stop shop generalist Suppliers but excluded WFE as it operates through a number of specialist brands and catalogues. Given that this is exactly how the Parties operate, it is difficult to understand the logic for this; it is not particularly meaningful and fails to properly characterise the market in a manner that allows the competitive dynamics to be fully examined.
- 7.3. The Parties are keen to assist the CMA in considering this issue at Phase 2. In order to assist the CMA further and to critically assess the disparity between the Parties' understanding of the market and the CMA's limited assessment of it, the Parties commissioned the Education Company (EDCO) a dedicated education data management and marketing agency, with which both Parties work, in order to accurately estimate likely market size. EDCO has 25 years' experience in this field and has, quite independently of the merger investigation, discussed the possibility of creating better quality market data to measure the educational resources market. EDCO's full methodology and conclusions will follow on 11 August 2020 as Annex 1.
- 7.4. Given the factors identified in sections 4, 6 and 7 in this Response, the Parties look forward to further engaging with the CMA in respect of the Parties' and competitors' shares of supply.

Factors that customers take into account

- 7.5. The CMA's decision at Phase 1 is predicated on the basis that Educational Institutions value one stop shopping above all else and largely do not take into account other factors. As noted in paragraphs 3.17-3.34.7 above, this does not reflect the reality encountered by the Parties and their competitors, in particular following the shift to online shopping by Educational Institutions. It also fails to recognise that budget holders at Educational Institutions are tasked with utilising their limited budgets in the best way possible. Whilst the Parties recognise that teachers may have limited time, this does not mean (as the CMA

competing for the market in Scotland which is clearly evidenced by the roster of competitors who were successful in the latest tender which includes a range of companies from across the country including Wall Family Europe (WFE), TTS, ESPO, Consortium (RM), Timstar and Bishop Sports and Leisure.

³⁵ Phase 1 Decision, paragraphs 123-126.

suggests in the Phase 1 Decision³⁶) that they do not shop around – on the contrary, it means that they hold the Parties to account pushing for better prices and service. Whilst the CMA recognised at Phase 1 that the Parties tracked a number of competitors and benchmarked prices against them in their internal documents,³⁷ it is also important to recognise that the Parties' internal documents also clearly show the Parties reacting to competitive offerings by competitors as well as losing to them. YPO's field sales reports³⁸ show YPO monitoring and reacting to competitor activity on a monthly basis. Even this small sample of formal reporting which has been provided to the CMA includes [REDACTED].³⁹ [REDACTED] As explained to the CMA during the Parties' site visits, such competitive pressure has been the driver for the Parties' continued focus on increasing quality and service levels (and in particular driving down delivery times whilst keeping prices low), as explained in paragraph 3.16 above. The Parties are keen to support the CMA in understanding the importance that these factors play for Educational Institutions.⁴⁰

Customer behaviour

- 7.6. These factors are clearly evident in customer behaviour and the Parties are keen to assist the CMA to understand this more fully during Phase 2. The CMA's decision at Phase 1 characterises customers as favouring one-stop shopping whilst sticking with the same supplier, largely on the basis that the Parties' customers maintain longer term relationships with them (and particularly so for the larger customers) maintaining spend with the Parties.
- 7.7. This is inconsistent with the evidence and in particular the Parties' transaction data. This data substantiates the Parties' submission at Phase 1 that there is evidence that customers purchase from multiple suppliers within categories and across time. As described in paragraphs 3.17-3.34.7 above, customers buy from a range of sources, switch spend frequently and divert to a range of specialist and generalist suppliers. [REDACTED]% (for YPO) and [REDACTED]% (for Findel) of the Parties' customers in 2019 purchased from a maximum of two categories and [REDACTED]% (for YPO) and [REDACTED]% (for Findel) of customers decreased their spending by 30% or stopped purchasing altogether.⁴¹ Further analysis shows that only [REDACTED]% of the Parties' customers in 2019 purchased from all ten BESA categories with the Parties⁴² meaning that [REDACTED]% of customers either did not purchase other categories of product at all or they purchased them from other Suppliers. Given that the data set out in paragraph 3.34.5.1 above also shows that [REDACTED]% (for YPO) and [REDACTED]% (for Findel) of customers decreased their spend with the Parties in consecutive years, it is far more likely, on the balance of probabilities, that customers spend with multiple suppliers across the range of different categories, switching to achieve a better deal where necessary.⁴³
- 7.8. Similarly, further analysis of the Parties' transaction data shows that where the Parties' customers reduced their spending in a category, only [REDACTED]% of this spend was recouped by the other Party, which clearly indicates that other third party suppliers recouped the remaining share of lost revenues.

³⁶ Response to Phase I Decision, paragraph 103(e)

³⁷ Phase 1 Decision, paragraph 145.

³⁸ Provided as Annexes 1-38 in YPO's response to Phase 2 s.109(3).

³⁹ See for example [REDACTED]

⁴⁰ These reports largely focus on competition outside of Scotland in light of the tendered framework for the supply of educational resources in Scotland. However, it is important to note that the existence of that central tender drives competition along the same lines in Scotland as the devolved administration utilises its significant power to extract value for Educational Institutions, via the procurement process.

⁴¹ See the analysis included in the Response to the Issues Statement at paragraphs 2.12-2.26 and the further detail included in Compass Lexecon's analysis paper in Annexes 2-4 to this Response.

⁴² See Annexes 2-4.

⁴³ In any event, it is worth noting that the sales reports referenced in paragraph 7.9, above, clearly show that YPO is reacting to competitive pressure from [REDACTED]. As a result, even those customers that do not switch spend away from the Parties benefit from strong competitive tension.

Figure 2: [REDACTED]

7.9. This is consistent with the further evidence from staff on the ground submitted and described in paragraph 7.8 above. A simple search on Google for the type of products which the Parties sell reveals the plethora of competitors in this space:

Product	Top 5 Suppliers (including ads) ⁴⁴	Other Suppliers on first page ⁴⁵	YPO Search ranking ⁴⁶
A4 exercise books with handwriting lines	TTS Group Viking Direct UK Hope Education Eurooffice Rhino Stationary	Ryman eBay Amazon The Exercise Book Company Primary Teaching Services YPO The Dyslexia Shop	[REDACTED]
A4 paper cheapest price	Viking Direct Caboodle Eurooffice Staples Monkey Office	Octopus Office Ryman eBay UK Office Direct	[REDACTED]
A4 zip wallet	Baker Ross Amazon TTS Group Zoro Tools Viking Direct UK	Daklapack YPO GLS Educational WHSmith Hope Education eBay BM Stores Wilko Paperplus UK	[REDACTED]
Berol black fineliners	Eurooffice TTS Group Viking Direct UK Arteza Hobbycraft	Amazon Rhino Stationary Hunt Office WHSmith YPO UK Office Direct	[REDACTED]
Kids ready mix paint	Viking Direct TTS Group Baker Ross Hobbycraft The Works	Early Years Resources Amazon eBay The Range Gompels YPO	[REDACTED]
Ready mix paint	Viking Direct TTS Group Baker Ross Hobbycraft The Works	YPO The Range Amazon Early Years Resources	[REDACTED]

⁴⁴ As displayed on Google on 07/08/2020 in the UK.

⁴⁵ As displayed on Google on 07/08/2020 in the UK.

⁴⁶ Based on YPO Google Analytics reporting for the same product.

Product	Top 5 Suppliers (including ads) ⁴⁴	Other Suppliers on first page ⁴⁵	YPO Search ranking ⁴⁶
Play sand	Wickes Hope Education Argos Gravelmaster Springbridge	Smyths Toys Tesco Amazon Homebase	[REDACTED]
Pritt Stick 43g bulk	Hope Education TTS Group Baker Ross AOS Online Viking Direct	YPO Amazon KCS Wholesale Office Supplies	[REDACTED]
Whiteboard eraser	TTS Group Viz-Pro Jansen Display UK Viking Direct UK Markers Online	WHSmith Amazon eBay Staples Ryman Magiboards YPO	[REDACTED]
Zip wallets	Baker Ross Amazon TTS Group Zoro Tools Viking Direct UK	YPO WHSmith Amazon GLS Educational Hope Education Consortium Education BM Stores eBay Paperchase	[REDACTED]

7.10. In reality, all of these data reflect the change in market dynamics and customer expectations which drive a more sophisticated customer base and significant competition. This customer behaviour is an important consideration in any assessment of the possibility (or lack thereof) of horizontal unilateral effects arising.

Closeness of competition between YPO and Findel

Switching

7.11. The data shown in Figure 2 also demonstrate that the Parties recouped a limited share of each other's lost revenues within product categories. This reflects the Parties' submissions that they are not particularly close competitors (and that the market is fragmented with multiple successful and strong Suppliers).

7.12. The CMA did not have the benefit of this evidence at Phase 1 and with the benefit of engaging with Educational Institutions directly and the Parties' transaction data, the CMA is able to further explore the lack of closeness of competition between the Parties during Phase 2.⁴⁷

Benchmarking

⁴⁷ As discussed with the CMA, the Parties are of the view that a customer survey would also be insightful in this regard and note that although very limited in number, the initial responses to the Parties' pilot surveys also substantiate the Parties' submissions in this regard.

- 7.13. The CMA's conclusion on closeness of competition at Phase 1 is based largely on the Parties' service proposition being similar in nature. This does not reflect the reality of the different propositions that each of the Parties has. As described in paragraph 7.2, above, Findel's collection of specialist brands are positioned separately with their own product focus and marketing.⁴⁸ It is therefore much closer to WFE's proposition than it is to YPO's proposition which has, historically, been about being able to service multiple needs for customers across the public sector.⁴⁹ In addition, the CMA's decision at Phase 1 focused on the Parties' internal documents which benchmark against the other.⁵⁰ In respect of YPO, the CMA focused particularly on commercial reporting which benchmarked against Findel 'alongside some of the other Generalist Distributors'.
- 7.14. In Phase 2, the CMA has subsequently been provided with the detail of YPO's benchmarking process. As described to the CMA,⁵¹ YPO benchmarks extensively across each of its product categories on an annual basis against a minimum of [REDACTED] competitors including generalist distributors [REDACTED] In reality, whilst Findel is clearly a competitor to YPO, ESPO (also a PSBO) is a closer competitor to YPO.
- 7.15. Similarly, in the Phase 1 Decision the CMA found that Findel conducts most of its benchmarking against the other large generalist distributors and benchmarks less frequently against other suppliers and retailers, including specialist distributors.⁵² While Findel conducts regular benchmarking against other large generalist distributors, the Phase 1 Decision understated the level of monitoring that Findel undertakes against other suppliers and retailers. Findel conducts regular benchmarking against [REDACTED] This is evidence that Findel regularly and increasingly benchmarks against specialist suppliers and retailers including online, contrary to the CMA's conclusion at Phase 1.
- 7.16. It is also the case that individual customers often and increasingly send the Parties "quotations" requests, which require the Parties to quote their best price for a selection of educational resources products, to enable the customer to benchmark prices against competing suppliers, both generalist and specialist. For Findel, the number of such quotations is up 36% on last year. Such quotations will often identify rival suppliers' prices (looking for Findel to beat those prices), often featuring a range of specialist suppliers as well as other generalists (examples of these were included in slides 42 – 45 of the Studio/Findel Site Visit slide deck). As such, Findel cannot avoid benchmarking its pricing against specialists as well as generalists. For YPO, two recent examples which are readily available to YPO (from June 2019) show it being asked to provide pricing against 17 competing suppliers and 5 competing suppliers, respectively. These include a range of generalists such as Consortium / TTS (RM), KCS, Hampshire County Supplies and Amazon as well as a number of specialists.⁵³

Bidding Data

- 7.17. Whilst the Parties tendering activity is limited (and the data is incomplete), the data shows over 50 competitors across the datasets and also that the Parties have not lost to each other.⁵⁴ Whilst the CMA placed very limited weight on this evidence at Phase 1, it is consistent with the other evidence noted above and therefore should be given weight when taking the full range of evidence in the round.

Future closeness of competition

⁴⁸ Indeed, the YPO benchmarking processes in different categories referred to below [REDACTED]

⁴⁹ As described in the Response to the Phase 1 Decision, YPO's own internal documents note that [REDACTED]

⁵⁰ Phase 1 Decision, paragraph 137.

⁵¹ See YPO's response to Q8 of Phase 2 s.109(2).

⁵² Phase 1 Decision, paragraph 55.

⁵³ See Annexes 6 and 7 to this response.

⁵⁴ Response to the Issues Letter, paragraph 4.28.

- 7.18. In light of the rationale for the Merger described above and the competitive constraints faced by the Parties, absent the Merger, YPO would [REDACTED]. Whilst YPO has made significant in-roads into the online shift from customers, its strategic challenge of being able to offer competitive pricing whilst maintaining dividends to the public sector is unworkable given the competitive pressure it faces going forward.

Current and future competitive constraints

- 7.19. The breadth of the market and its highly competitive pressures are much wider and greater than the CMA concluded at Phase 1, as the evidence set out in this Response consistently notes. Generalist Suppliers, Specialist Suppliers, manufacturers, online providers (including Amazon) and other retailers, including Argos, Tesco and Ryman. Customers hold specialists in high regard given their depth in particular categories and ability to competitively price and deliver – in particular where leveraging from other sectors.

- 7.20. Without repeating the various strands of evidence referred to above, it is important to note that the Parties disagree with the CMA's characterisation of ESPO, KCS, Herts, Amazon and WFE in the Phase 1 Decision. In addition to examining the constraints exercised by the large number of competitors, it is important that the CMA considers the proper characterisation of the competitive constrained exercised by these important competitors:

7.20.1. **Amazon** is a key competitor to the Parties driving significant change in the economy as a whole, customer expectations and the Parties' offerings.

7.20.2. **ESPO** are expanding widely, selling internationally, attending national and local events and actively targeting schools (and particularly multi-academy trusts) across the UK with aggressive pricing.

7.20.3. **KCS** describe themselves as the 'UK's leading provider of education and office supplies'. They offer a free next day delivery service across mainland UK either through their own fleet or through third party logistics provider TNT.

7.20.4. Herts describes itself as 'the 'one stop shop' for all of your purchasing needs. With everything from Stationery and Furniture, to Arts & Crafts and Classroom resources.' Because they offer more than 18,500 products for delivery across the UK, Herts Fullstop cannot reasonably be considered a regional player which exercises only limited constraint. Herts Fullstop's formal collaboration with Nottinghamshire County Supplies has brought scale and expertise and the Parties have supplied evidence that they are have increased their activity and presence in a number of geographic areas outside their traditional regions (including Derbyshire, East Midlands, London).

7.20.5. **WFE** is considered by YPO to be a serious competitor in secondary schools across the UK. Through its group of specialist brands TSL Projects, Demco Interiors, Timstar, Gresswell, TSL and Maudesport WFE presents itself as a 'single comprehensive source for our customers, covering science, sport, design and technology, as well as libraries'.

Geographic considerations

- 7.21. Finally, the CMA considered at Phase 1 that geographical overlap between the Parties, in particular in targeting expansion in each other's historic heartlands resulted in the Parties being close competitors.⁵⁵ The Parties welcome the CMA considering this issue further, in particular in light of the inconsistency with the CMA's conclusions in relation to coordinated effects (which the Parties reject). It is true that the Parties compete across the country along

⁵⁵ Phase 1 Decision, paragraph 138.

with many other competitors and that does involve competing in Findel's historic heartland of London. As described to the CMA during the YPO site visit the concentration of Educational Institutions in London makes it an attractive target for all competitors. It is clear from YPO's field sales reports noted above (and its SLT and board papers)⁵⁶ that a number of competitors are active in that geography, including KCS which is a closer competitor to Findel given its focus in that area historically. In reality, analysis of the Parties' transaction data shows that the overlap (both in terms of revenue and customers) between the Parties is limited.⁵⁷ Importantly, in the context of the market described above, these considerations are increasingly irrelevant:

7.21.1. **No localised sales or distribution infrastructure:** the Parties and their competitors are less and less reliant on a localised sales or distribution infrastructure. Whilst the Parties and competitors do employ sales managers, these are effectively client relationship managers focussed on large customers with sales and promotions conducted via online means with additional printed material sent by post. Findel does not maintain its own distribution fleet and that of YPO's now represents only [REDACTED] of its consignments delivered. This is also the case for competitors (including, for example, Herts, KCS, RM and WFE), all of whom have consistently expanded beyond their traditional areas in recent years.⁵⁸ This is also true for smaller competitors who are able to use logistics partners in the same way as the Parties in order to offer fast national delivery, in particular for commodity items. With the shift to online ordering both in this sector and others, this trend is likely to continue. In short, Educational Institutions will continue to demand access to the best value, wherever this comes from.⁵⁹

7.21.2. **Others compete nationally in any event:** specialist distributors, general distributors in a particular category and other retailers and manufacturers all supply customers nationally. As is evident from the websites of those parties described in the competitor contact details provided to the CMA by YPO, hundreds of suppliers offer direct transactional websites with national and international delivery. Many of these operators are present in a number of sectors (including manufacturers who sell directly to customers) and, as such, their online and delivery model is also affected by the more general shift to online ordering (and the required national delivery via logistics partner).⁶⁰

7.22. In that context (and taking account of the evidence set out above relating to the large number of competitive constraints present at various levels in this market), it is clear that the Parties will continue to face increased competition across the country from a range of competitors further eroding any historic reputations.

8. Coordinated effects

8.1. The Parties consider that the coordinated effects theory of harm cannot credibly be made out, in that:

8.1.1. the evidence of the market as it is now clearly demonstrates that it is not conducive to any form of coordination;

⁵⁶ See Documents 48-90 of the response to the Phase II S.109(3) Notice.

⁵⁷ See Annexes 2 and 3. Each of the Parties generates less than [REDACTED]% of revenue in the areas where the other generates over [REDACTED]%.

⁵⁸ See for example the field sales reports of YPO described in footnote 38, above which describe expansion by KCS and Herts, in particular as well as the strength of ESPO and RM across different regions.

⁵⁹ It is worth noting in respect of Scotland that all of the companies which have been successful in the framework tendering exercise are based in England and able to supply Educational Institutions across Scotland from English bases in the same way.

⁶⁰ Please see paragraph 7.25.1 above.

- 8.1.2. the Merger would not increase the likelihood or effectiveness of coordination and indeed may reduce the incentives to coordinate and the sustainability of any coordination as the incentives within any suggested coordinated group will not be aligned or stable. By merging with Findel, YPO becomes less rather than more aligned with other PSBOs who were regarded as candidates for coordination in the Phase 1 Decision.

The current market context is not conducive to coordination

- 8.2. The evidence of conditions of competition in the relevant market(s) consistently shows that there is no basis on which coordination is or could plausibly be sustained either currently or in the future. This is clear from:
- 8.2.1. the volatility of customer purchasing, apparent from analysis of the Parties' transaction data, discussed at paragraph 7.7 above, which is not capable of being tracked to competitors;
- 8.2.2. the variation in the Parties' own chosen means to categorise and benchmark their activities, which inhibits transparency;
- 8.2.3. the direct evidence of expansion strategies by existing market participants, notably PSBOs which are already well advanced and contrary to the suggestion of coordination; and
- 8.2.4. the disruption inherent in these markets from changing customer purchasing behaviour and the activity of different kinds of sellers such as Amazon, and a variety of different forms of specialist suppliers.
- 8.3. The Issues Statement sets out five aspects on which the CMA wishes to consider evidence in order to assess the pre-Merger situation and whether the characteristics of the market already display coordination or are conducive to coordination.⁶¹ Each of these is considered further below.

The market concerned is not transparent

- 8.4. The Phase 1 Decision states that there are currently around 32,100 schools in the UK and a further number, potentially up to 15,600 of various private nurseries or other early years settings not included in published statistics.⁶² Consequently there are likely to be in the region of 50,000 Educational Institutions purchasing educational resources from suppliers such as the Parties. Those customers purchase a very wide range of products as educational resources, with each of the Parties having over 30,000 products in their range. As set out at paragraph 3.5, those Educational Institutions purchase their requirements from a number of different suppliers, with any single institution likely to buy from multiple suppliers. Indeed, paragraph 182 of the Phase 1 Decision states that "*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*".
- 8.5. On its face, this is not therefore a market where transparency could easily be achieved. In fact, there is little information available to market participants that could enable coordination:
- 8.5.1. **Price information is not transparent:** The Phase 1 recognises this in relation to information on pricing is not transparent and could not readily form the basis of coordination.⁶³ Whilst prices are listed in catalogues (and on websites) these are

⁶¹ Issues Statement, paragraph 30

⁶² Phase 1 Decision, paragraph 43 and footnote 29.

⁶³ Phase 1 Decision, paragraph 269

essentially list prices and do not reflect promotional activity in relation to particular products, discounts agreed with particular customers, prices committed to in customer frameworks, rebates applied to customer accounts, promotional campaigns or ad hoc discretionary discounts applied by sales teams. All of these mechanisms are commonplace in the sector, but used differently by different market participants (who may prefer one mechanism to delivering value to customers over another) and are visible only to a limited extent. Price benchmarking is used widely, but only to ensure that headline prices are competitive.

- 8.5.2. **Information on who customers buy from is not transparent:** As the CMA itself has recognised, each Educational Institution will make purchases from multiple suppliers, including generalists and specialists. Who each customer chooses to buy from is not externally visible and cannot readily be inferred from periodic fluctuations in spend. Any such information held by the Parties and recorded in internal documents very ad hoc and piece meal. Notably, YPO has no systematic tracking of customer wins or losses.
- 8.5.3. **Information on who competitors are targeting or selling to is not transparent:** even smaller, historically regionally focussed suppliers such as KCS or Herts Fullstop increasingly assert that they operate nationally and will continue to seek to do so. Specialist suppliers, online operators (Amazon) or large stationary suppliers (Ryman, Lyreco, Viking), who have never had a geographic centre of gravity tend to operate nationally in any event. As more and more sales happen online and as more marketing activity is via social media campaigns or online advertising, it is increasingly difficult to identify and point to specific localised campaigns and sales efforts in a particular locality as the reason for sales in a particular region.
- 8.5.4. **Market data is very high level and does not provide insight that would permit coordination:** the Phase 1 Decision alleged that BESA data allows fluctuations in market share as between generalist suppliers to be detected and so to identify and act on circumstances where, for example, one PSBO chooses to expand into and compete in the territory that might be regarded as the "heartland" of another. The statistics collected by BESA are in the following template, provided for each month,⁶⁴ and category of educational establishment (early years, primary schools, secondary schools) and then for all establishments in aggregate, by state and independent sector:

	£ '000 (by month)
Core Curriculum (inc. SEN)	
Foundation Curriculum	
Sport	
Art & craft	
Furniture	
ICT & A/V	
EY/EYFS/Outdoor	

⁶⁴ Annexes 8 and 9 which are the July BESA data by way of example.

Stationery	
Consumables	
Other/unclassified	
Total	
State Schools	
Independent sector	

Critically, this data collection:

- 8.5.5. **does not include many key suppliers** which the Parties monitor and benchmark against. Indeed BESA has recently sought to expand its group and include others. Consequently, activity by those outside the alleged "coordinating group" would not be detectable from this data and fluctuations could not, with confidence, be attributed to the activity of others contributing data to BESA;
- 8.5.6. does not break down data **by geography**. Where the key allegation made in the Phase 1 Decision is that coordination may be achieved on the basis of regional market sharing, a data set that does not reveal regional market shares cannot readily support that form of coordination
- 8.5.7. does not collect data by **product category** in a form that corresponds to the Parties' own internal structures and reporting. In particular, the product categories employed internally by YPO to organise its buying function do not map to the BESA categories. A separate data mapping exercise is needed monthly in order to generate data for BESA reporting. This suggests that this data set is a poor tool for buyers to identify changes within their own spheres of knowledge and responsibility.

Monitoring of competitor activity is piecemeal and ad hoc

- 8.6. The extent to which monitoring takes place reflects the relative lack of transparency of information available.
- 8.7. In YPO, the main regular and systematic monitoring of competitor activity is price benchmarking of headline catalogue, as part of the annual price setting process, used strategically to ensure that YPO's own pricing is and remains competitive. [REDACTED]
- 8.8. As discussed above, BESA data is an incomplete representation of the market as a whole and is therefore only a weak indicator of market share. It is therefore used as a general indicator of trends in segment and market size, but is not otherwise significantly relied upon in strategic decision making as it provides an incomplete picture of the market. The limitations in the data currently available in this sector has led BESA to invite further participants to its dataset (please see the response to question 27 of the Phase II S.109(2) Notice) and has [REDACTED]. The Parties' currently rely on a wide range of information

to inform commercial strategy including analysis of government statistics on spend⁶⁵ especially commissioned reports (such as those on Amazon)⁶⁶ and informal and ad hoc feedback from the local and regional sales teams who feed back their observations on competitor activity from what they see in the field and from customer interactions. Summaries of this are reported up to Board level⁶⁷ precisely because better data is unavailable.

- 8.9. Other than in relation to the limited number of contracts that are formally tendered, for example in a customer framework, it is generally not transparent when a customer is "won" or "lost". There is therefore no regular monitoring of such customer wins/losses. Similarly, whilst sales trends in each region are monitored and tracked, there is no reporting of market shares in each region or an attempt to assess competitors' relative positions in anything more than a high level, qualitative way, precisely because such data is not transparent and not available.
- 8.10. There is therefore clearly very limited competitor monitoring and certainly none that would support monitoring of a strategy of coordination, for example on the basis of regional market shares.

The market is neither stable nor concentrated

- 8.11. Whilst headline market size and sales data for generalist suppliers might be misunderstood as indicating a relatively stable market against which deviations from coordination might be detected, there is no such stability when the data is examined in more detail. For example:
- 8.11.1. over time, each of the Parties' sales in individual regions have fluctuated. By way of example, YPO revenues grew by [REDACTED]% in the East England and by [REDACTED]% in London from 2017 to 2019 but fell by about [REDACTED]% in Wales and [REDACTED]% in Scotland in the same period.
- 8.11.2. During the same period, Findel's revenue grew by around [REDACTED]% in the South West but fell by around [REDACTED]% in Northern Ireland and [REDACTED]% in Wales.
- 8.11.3. as indicated at paragraph 3.34 above for an individual school, the level of sales with each of the Parties is not consistent and fluctuates significantly from one year to the next.
- 8.11.4. changes in customer buying behaviour, for example to increase frequency of purchase, reduce drop size and purchase more online, as well as adaptations to those changes by suppliers mean that purchasing data reflects these changes and seeking to analyse that information and infer competitive activity cannot reasonably be done in these conditions.
- 8.12. For the reasons explained at paragraph 8.11 above, the market is far from concentrated, with many suppliers, of different types, active and competing in the market in heterogeneous ways.

The interactions between competitors and between PSBOs in particular are normal and benign

- 8.13. The concerns expressed in the Phase 1 Decision as to the nature and frequency of interaction between PSBOs arise from a misunderstanding of the two sides of their businesses. As buying organisations selling educational resources, they buy stock to resell

⁶⁵ Please refer to our response to question 3 of the Site Visit Questions received from Benjamin Bray at 9.05 on 3 August 2020.

⁶⁶ Please see studies carried out by C3 Education submitted as Annexes 032-035 to the Merger Notice.

⁶⁷ Please see the monthly board meeting packs at Documents 48-90 of the response to the S.109(3) Notice dated 16 July 2020.

to schools and compete aggressively in their markets. The nature of that competition is evident from how YPO observes and responds to activity by other PSBOs.⁶⁸

- 8.14. However, YPO and other PSBOS have a quite different side to their businesses, working together to aggregate demand of their local authority members to negotiate buying frameworks for core services that are required by each and are made available to others. These activities are at most tangential to the market for educational resources. PSBOs collaborate to create Framework Agreements for products and services that local authority services might need and which schools might also benefit from – for example, energy, fleet, catering.⁶⁹ These are not matters that require or involve contact in relation to educational resources.

Nothing about the merger would increase the likelihood of coordination

- 8.15. The asymmetry in size of market participants would have a significant negative effect on their incentives to coordinate. The different size of educational suppliers makes it difficult to align their incentives. Since the merger increases this asymmetry, in particular, as between PSBOs who appear to be the CMA's candidate group for coordination, the likelihood of sustainable co-ordination is lowered further. The merger would expand YPO's national footprint and consolidate it as a national player with strong incentives to build on that platform. It will have reduced incentives to coordinate as a result. Conversely, smaller PSBOs such as KCS or Herts already have geographic expansion strategies underway⁷⁰ and would have much to gain by deviating from a coordination strategy.

9. Countervailing factors

- 9.1. In the devolved nations (and in particular Scotland and Northern Ireland) central procurement onto a framework by central government creates a strong competitive process of competition resulting in significant value for Educational Institution across price, service and quality. Given that the framework tender is the principal route to market in Scotland for all Suppliers, central government has significant buyer power which allows it to play off multiple Suppliers exercising a constraint on all market operators (such that no SLC could possibly arise).
- 9.2. It is also important to recall that YPO's stated mission, also evidenced in its business case for the Merger is to keep pricing low for customers. Simply put, YPO would not credibly be able to raise prices for its customers without ignoring its core mission which it publicly expounds with both its members and customers and adversely impacting the interests of both groups. In any event, in England, as described above, customer behaviour and traditional routes to market in this sector have changed significantly in recent years prompting investment, growth and expansion by traditional market players and other competitors in neighbouring markets. The shift to online ordering and increased expectations of customers in relation to offering, delivery and service from all market players has created a dynamic and fragmented marketplace where customers have easy access to multiple options across all categories. Educational Institutions can and do shop around resulting in significant ability to hold the Parties and their competitors to account and to obtain the best possible value.
- 9.3. In addition, it is important to recognise that the whole rationale for the Merger is to realise synergies and to bring benefits to customers of both Parties (as described in paragraphs 1.5 and 1.6 of the Response to the Phase 1 Decision) and set out in more detail in

⁶⁸ As described in the documents referenced in paragraph 7.9 and, indeed, the board reporting provided to the CMA during Phase 1.

⁶⁹ See <https://www.ypo.co.uk/frameworks-home> for the frameworks YPO currently offers.

⁷⁰ See for example the field sales reports of YPO described in footnote 38, above which describe expansion by KCS and Herts, in particular as well as the strength of ESPO and RM across different regions.



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paragraphs 5.2-5.3, above. This is YPO's core mission as an organisation and its customers and Founder Members will hold it to account.