

# YORKSHIRE PURCHASING ORGANISATION/FINDEL EDUCATION LIMITED

## Summary of provisional findings

**Notified: 16 October 2020**

### Overview

1. The Competition and Markets Authority (**CMA**) has provisionally found that the anticipated acquisition (the **Merger**) by Yorkshire Purchasing Organisation (**YPO**) of Findel Education Limited (**Findel**) (together, the **Parties**), may be expected to result in a substantial lessening of competition (**SLC**) in the supply of educational resources to schools and nurseries by suppliers which offer a broad range of educational resources on a UK-wide or regional basis (**Generalist Suppliers**) in the UK (the **Relevant Market**).
2. This is not our final decision and we invite any interested parties to make submissions on these provisional findings by **17:00 on 6 November 2020**. Parties should refer to the notice of provisional findings for details of how to do this.
3. Alongside these provisional findings, we have published a notice of possible remedies which sets out our initial views on the measures that might be required to remedy the SLC we have provisionally found. We also invite submissions on these initial views by **17:00 on 30 October 2020**. Parties should refer to the notice of possible remedies for details of how to do this.
4. We will take all submissions received by these dates into account in reaching our final decision, which will be issued by 14 December 2020.

### Background

#### *Our inquiry*

5. On 30 June 2020, following a phase 1 investigation, the CMA referred the Merger for an in-depth phase 2 inquiry.

6. The CMA is required by its terms of reference to decide whether:
  - (a) Arrangements are in progress or contemplation which, if carried into effect, will result in a relevant merger situation being created;
  - (b) This has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services; and
  - (c) Action should be taken for the purposes of remedying, mitigating or preventing any SLC or resulting adverse effect we have identified.
7. In addressing the questions above, we have considered a large range of different evidence and views we received from the Parties, their customers, suppliers and other third parties through submissions, responses to information requests, including using our formal information gathering powers, calls and hearings. In doing so we assessed customer and transaction data from the Parties and customer level data from third parties, and a large number of internal documents from the Parties and third parties.

### ***The Parties***

8. YPO is the largest formally constituted local authority purchasing consortium in the UK (also called a public sector buying organisation or **PSBO**). YPO operates under the Local Authority (Goods & Services) Act 1970 and is governed by 13 'Founder Member' Local Authorities. YPO is a Joint Committee and does not have a legal personality separate from its Founder Members. The Council of the City of Wakefield (**Wakefield**) acts as the 'Lead Authority' of YPO. In 2014, the founder members formed YPO Procurement Holdings Limited, a separate limited company to enable customers outside the public sector to buy goods and services from YPO.
9. Findel is currently controlled by The Studio Retail Group Plc. It supplies educational and related resources to educational and other institutions both in the UK and internationally (in over 130 countries). Findel operates under brand names including, Hope Education, GLS, Philip Harries, Davies Sports and LDA. Findel had global revenues of £82,081,000 and UK revenues of £74,713,000 in the financial year ending 30 March 2019.

### ***The Merger***

10. On 15 December 2019, Wakefield, acting in its capacity as the Lead Authority, entered into a share and loan purchase agreement with The Studio Retail Group Plc under which it agreed to acquire, on trust for the other Founder Members of YPO, the entire share capital of Findel.

11. The Merger is not yet complete and is conditional on clearance by the CMA. The Merger is not being reviewed by any other competition authorities.

### ***The industry***

12. The Parties overlap in the supply of '**Educational Resources**' to '**Educational Institutions**' in the UK. Educational Resources encompass a variety of product categories including stationery, furniture, art and craft materials, sports equipment, science and special educational needs and other curriculum products, as well as office-related and cleaning products. Educational Institutions are nurseries, primary schools, and secondary schools. They can be privately-funded or state-funded (by the Department for Education, the devolved nation or the relevant local authority). There are currently around 33,000 schools in the UK, most of which are public sector mainstream schools (around 21,000 primary and 4,000 secondary). This figure includes around 4,000 public nurseries.
13. Depending on their requirements at the point of purchase, Educational Institutions can buy Educational Resources from a supplier that offers a general range of Educational Resource products (**Generalist Suppliers**), from a supplier that specialises in a category of Educational Resources (**Specialist Suppliers**) or from retailers that do not focus on Educational Institutions in particular, such as supermarkets.
14. As discussed below, the market is characterised by national conditions of supply and demand. However, there is considerable variation in the extent to which suppliers are present in different regions within the UK. YPO, Findel and RM are Generalist Suppliers which supply a large number of regions across the UK (we term these **national Generalist Suppliers**). Other Generalist Suppliers are more regionally focused (**regional Generalist Suppliers**). Larger regional Generalist Suppliers include ESPO and KCS. There are also a number of smaller regional, or local, Generalist Suppliers. These national and regional Generalist Suppliers tend to have core geographic areas of strength (**core regions**), where local shares of supply are higher. This arises partly because Generalist Suppliers were often established to serve a particular group of local authorities. Amazon, the online retailer, is an online-only Generalist Supplier without a history of serving a particular geographic area. Amazon Business started to operate in this sector from around 2017.
15. There are a number of features of and market developments in this sector which we have taken into account in our inquiry. These include: (i) differences in the size, structure and funding for Educational Institutions, including the emergence of academies and the multi-academy trust (**MAT**) model; (ii)

customer requirements and patterns in customer spend; (iii) growth of online sales and e-procurement; and (iii) developments in the ways that schools organise their purchasing, including through school business managers. As far as possible, we have obtained evidence on and considered the impact of the Coronavirus (**COVID-19**) pandemic in our assessment of competition between the Parties and the constraints from other suppliers, both now and in the foreseeable future.

## **Our provisional findings**

16. We assessed the Merger against a counterfactual of the pre-Merger conditions of competition.

### ***Market definition***

#### *Product market*

17. We consider that the relevant product market is the supply of Educational Resources to Educational Institutions by Generalist Suppliers. We consider Generalist Suppliers to be suppliers that offer a delivered service, that is focused on the supply to Educational Institutions of a range of commonly used products across multiple product categories, and that offer sufficient depth within these categories that they could be used as the main supplier for the majority of an Educational Institution's requirements. We found that many customers value being able to use one or two Generalist Suppliers for the majority of their needs (ie, as a '**main supplier**') and that many competitors identified the ability to act as a main supplier to be an important aspect of their offer.
18. We consider that the term Generalist Suppliers includes national, regional and local firms, as set out in paragraph 14 above. We also consider Amazon to be a Generalist Supplier.
19. Specialist Suppliers and retailers, such as supermarkets, also supply some Educational Resources to Educational Institutions. However, we consider both of these types of supplier to be outside of the Relevant Market. We consider that the market should not be widened to include Specialist Suppliers, supermarkets and other retailers because we do not consider that a sufficiently large number of customers would switch away to prevent a price rise (or other deterioration in offer) by a Generalist Supplier with market power from being profitable. Nevertheless, we took into account the constraint from Specialist Suppliers, supermarkets and other retailers as part of our competitive assessment.

### *Geographic market*

20. We have defined the relevant market as the UK, primarily on the basis of the presence of four national Generalist Suppliers and the national offerings of them and the other Generalist Suppliers. However, we recognise there may be some differences in the conditions of competition between the UK nations and regions within England, and some barriers to local Generalist Suppliers expanding outside of their core regions. We have taken into account regional variations where appropriate in our competitive assessment.
21. **Therefore, we define the Relevant Market as the supply of Educational Resources to Educational Institutions in the UK by Generalist Suppliers.**

### *Competitive effects*

22. We assessed whether the Merger may be expected to result in an SLC in the Relevant Market as a result of horizontal (i) unilateral effects; and (ii) coordinated effects.

### *Nature of competition in the Relevant Market*

23. We found that suppliers compete across each aspect of price, quality, range and service (**PQRS**) and that they compete on developing and improving their offering. The extent of this competition varies between customers. Suppliers have the ability to monitor customers and to discriminate (in terms of the prices, discounts or other terms offered) between customers.
24. Although we found some variability in individual customers' purchasing between years, we found that most customer spend with the Parties is from customers purchasing across multiple categories. These customers tend to make a mix of 'bulk' (ie a single large purchase) and individually small purchases. The evidence indicates that a significant number of customers value the convenience of purchasing most of their needs from one supplier or a small number of suppliers, although there is a long tail of customers making small or single-category purchases from the Parties. There is evidence of customer loyalty. Customers' average spend with Generalist Suppliers tends to be higher within that Generalist Supplier's core region; although this does not generally apply to Amazon. We recognise, however, that levels of loyalty differ substantially between different Educational Institutions (for example, according to their budget, size, and spend).
25. Customers spend with Generalist Suppliers throughout the year, and typically there are predictable cyclical peaks in spend, relating to the academic year.

### *Unilateral effects*

26. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, eliminating that constraint and thereby allowing the merged entity to worsen its offering profitably or not improve that offering as much as it would otherwise have done - resulting in higher prices and/or reduced quality, range and service. In considering this theory of harm, we assessed the closeness of competition between the Parties, which would be lost post-Merger, and any remaining constraints on the Merged Entity from other suppliers.

### *Closeness of competition between the Parties*

27. Taking the evidence in the round, we provisionally find that the Parties are close competitors. They are each often used as a main/Generalist Supplier by customers, with a high degree of overlap in the products they supply, although the way that they market themselves are slightly different, with Findel operating Specialist as well as Generalist brands. While historically the Parties have been stronger in different regions, documentary evidence from the Parties indicates that they compete directly, both in respect of each other's core regions and in terms of targeting each other's customers.
28. The Parties' internal documents show a consistent picture that each Party is one of the other's closest competitors.
29. Competing suppliers (Generalist and Specialist) consider the Parties to be close competitors, alongside RM and ESPO. On average, competitors ranked Findel as YPO's closest competitor and YPO as Findel's closest competitor.
30. Customer evidence also suggests that the Parties are among each other's closest competitors (although we note some limitations to the evidence). Overall, the customer evidence is consistent with the Parties being close substitutes for some but not all customers.

### *Constraints on the Merged Entity*

31. On the basis of the Parties' internal documents, competitor evidence, transaction data and customer evidence, we found that, post-Merger, the primary competitive constraints on the Parties would come from only one national Generalist Supplier (RM) and, to a lesser extent, two regional Generalist Suppliers (ESPO and KCS).
32. We found local Generalist Suppliers (East Riding, Herts FullStop, Hampshire, HBS HalfMoon) not to be close competitors to the Parties overall. While they

may be important for some customers in certain areas, they place a limited constraint on the Parties and do so at a local level only. Evidence from the Parties' internal documents, Generalist Suppliers, Specialist Suppliers and customers indicates that local Generalists exert a significantly weaker competitive constraint on the Parties than RM, ESPO and KCS.

33. We found Amazon to be a weak constraint on the Parties. The Parties' internal documents indicate that Amazon is currently perceived to be a less important or immediate competitor than the other larger Generalist Suppliers. We found some evidence that Amazon's sales related to (i) a different type of spend, such as urgent orders, and (ii) different product types than those typically supplied by other Generalist Suppliers. Evidence from Generalist Suppliers and Specialist Suppliers indicates that Amazon exerts a significantly weaker competitive constraint on the Parties than other Generalist Suppliers. Some customers told us they use Amazon for a different purpose to other Generalists.
34. We found the constraint from Specialist Suppliers to be weak individually, and in aggregate not equivalent to the constraint posed by a Generalist Supplier. For both YPO and Findel, the Parties' internal documents indicate that the constraint from Specialist Suppliers is weaker than that exerted by Generalist Suppliers. We found that for a significant number of customers, it is important to be able to buy a range of products from the same supplier over time – ie beyond the specialist-only offering. Evidence from Generalist Suppliers and Specialist Suppliers indicates that Specialist Suppliers exert a significantly weaker competitive constraint on the Parties than the larger Generalist Suppliers. Customer evidence indicates that the offers of Generalist Suppliers and Specialist Suppliers are to some extent complementary. While there are some purchases for which a Specialist offering may be viewed by a customer as a good alternative to a Generalist offering (for example, where the customer wishes to make a one-off or specific purchase such as furniture or audio-visual equipment) this is not the case for purchases where a bundle of supplies are required (for example, in preparation for the start of the school year) or where customers wish to consolidate the number of Suppliers from whom they purchase.
35. On the basis of the Parties' internal documents, evidence from Generalist Suppliers, Specialist Suppliers and customers, we found that other retailers (eg high-street, supermarkets) impose a very limited constraint. We found that some customers do purchase from high-street retailers and supermarkets, but the reasons for doing so are typically very different to the reasons for purchasing from Generalist Suppliers.

36. We considered the aggregate constraint generally, recognising that it is appropriate to consider the effect of all suppliers together as a combined constraint on the Parties. While there may be a greater degree of constraint on the Parties for a smaller subset of customers or for customer's top-up, specific or silo purchases, we found that this is not the case for the majority of customers for their main general spend. For a significant group of customers – who value the Generalist service for their main spend across multiple product categories, and for whom there is not a material presence of local Generalists that provide an equivalent offer - the loss of competition between the Parties would be substantial. There would be a limited constraint from Generalist Suppliers in respect of those customers and Specialist Suppliers would not represent an alternative option that would effectively constrain the Merged Entity. Overall, we have found that these constraints taken in aggregate would be insufficient to constrain the Merged Entity from raising prices, reducing discounts that it may otherwise offer, or otherwise deteriorating its offer, including in terms of service, quality or range.

*Shares of supply and market concentration*

37. Market shares of the Merged Entity can provide an indication of the change in market power resulting from a merger. However, they do not necessarily reflect the strength of competition between competitors in differentiated markets such as this. Both Parties are sizeable firms, with a high combined market share and a significant increment. Their combined share varies substantially between regions. Their combined share is particularly high with a material increment and/or a limited number of rivals in Scotland, Northern Ireland and, within England, in London, the North East, North West, and Yorkshire and the Humber. We found that Amazon's market share is not a reliable indicator of its constraint on the Parties, having found that it is not a close competitor to the Parties as set out above.
38. **For the reasons set out above, we have provisionally found that the loss of competition between the Parties in the Relevant Market as a result of the Merger may be expected to result in an SLC as a result of horizontal unilateral effects.**

*Our assessment of coordinated effects*

39. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate, or align their behaviour, to limit their rivalry. We assessed whether there is evidence that coordination already exists, whether the characteristics of the Relevant Market are conducive to



such behaviour, having regard to the following cumulative factors, and whether the Merger may make coordination more likely:

- (a) The ability of firms to reach a common understanding of the objectives of coordination, and to monitor the outcome of such coordination (**reaching and monitoring terms**);
  - (b) The incentives of firms to reach and maintain a coordinated outcome, including the costs and benefits of deviation (**internal sustainability**); and
  - (c) Whether firms from outside any coordinating group would have the ability and incentive to undermine coordination (**external sustainability**).
40. We focused our assessment on the form of coordination most likely to take place. We consider this to be between a subset of the larger Generalist Suppliers: YPO, Findel, RM, KCS and ESPO (the '**hypothetical coordinating group**'). This would most likely be via a form of market allocation, whereby suppliers within the coordinating group would not actively compete in the other's established core regions. This could involve an understanding (tacit or explicit) not to enter or expand into rivals' core regions, thereby softening competition between them.

#### *Pre-existing coordination*

41. We found broadly stable market shares and the existence of Generalist Suppliers with longstanding core regions of market strength. We found evidence of contacts between Generalist Suppliers, and that the hypothetical coordinating group can monitor their own national shares using data collected on a monthly basis. However, we also found evidence that is consistent with competition, including evidence in the Parties' internal documents on monitoring, benchmarking and marketing plans that suggests competition between Generalist Suppliers and from third parties, including entry into each other's core regions. On balance, we did not find sufficient evidence to support a conclusion of pre-existing coordination.

#### *Reaching and monitoring terms*

42. We considered the number of firms involved in the hypothetical coordinating group, the symmetry between them, the complexity of the arrangement and transparency provided by monitoring channels.
43. There are currently symmetries in terms of size and national presence between YPO, Findel and RM. ESPO and especially KCS are smaller and not present in all regions but they are large suppliers in some regions as are

YPO, Findel and RM. Whilst the Merger would increase asymmetry in size, it would retain some alignment in incentives as a result of each having one or more core region of strength.

44. We found a number of complexities present in the market overall. These include the number of products and customers, product and product range differentiation, heterogeneity and multi-sourcing within the customer base (that includes bulk purchase and top-up customers). However, the level of complexity identified would not preclude this limb from being met in respect of an understanding not to enter or expand into rivals' core regions. We also found a degree of relevant market transparency and opportunity for transparency, with some evidence of this being timely. On balance, while the coordinating group may be able to reach and monitor terms, in light of our conclusion on internal sustainability, it was not necessary for us to reach a provisional conclusion in this regard.

#### *Internal sustainability*

45. We assessed current and post-Merger: (i) incentives to coordinate and to deviate from such coordination; and (ii) the ability and incentives to punish deviation.
46. We found that, while the risks of customer switching could incentivise coordination to protect core regions, several of the hypothetical coordinating group members have an incentive to attract new customers by expanding beyond their core region. Such expansion could be achieved by concerted marketing efforts and promotional activity. It may be achieved in particular at key peaks in the sales cycle for Educational Institutions (related to school terms). We found that, while the removal of Findel, including as a potentially more competitive supplier, could increase internal sustainability, this was not determinative in isolation. We found some post-Merger alignment of incentives between the hypothetical coordinating group as a result of each having a core region of strength. We found that the Merger increases the asymmetry of size between the suppliers, with the Merged Entity becoming much larger than the next largest firm, RM. This may undermine incentives to coordinate and increase incentives to deviate to some extent.
47. We found limitations in the extent to which, and speed with which, deviation could be detected and punished post-Merger. In particular, it may not be detected or punished in a timely way. We have not found evidence that the potential losses through deviation would be sufficient to outweigh the likely incentive to deviate. Overall, we provisionally found the current conditions of the Relevant Market and the likely merger effect on those conditions not to

support internal sustainability. Since this limb was provisionally found not to be satisfied, it was not necessary to consider external sustainability.

- 48. For the above reasons, we have not seen sufficient evidence to support an SLC finding on as a result of horizontal coordinated effects.**

### ***Countervailing factors***

49. We have considered whether there are any factors which may prevent the SLC we have provisionally found.

### *Entry or expansion*

50. We identified certain barriers to entry or expansion. These include, in particular, the need to offer a wide product range, and the existence of longer-term customer relationships which generate loyalty.
51. The CMA has collected evidence from third parties (using its statutory investigation powers, as appropriate) to assess potential entry and expansion by specific suppliers. We normally consider entry or expansion that has a significant impact on competition within two years to be timely. The Parties have submitted that online ordering is becoming increasingly common and that Amazon has put strategies in place to grow in this market. Based on the evidence we have seen, and noting that Amazon is currently differentiated from YPO and Findel, we consider Amazon is unlikely to expand in a manner, or to such a degree in the foreseeable future that it, together with other constraints, will sufficiently constrain the Merged Entity. Other than Amazon, we have not identified recent evidence of new entry or significant expansion by Generalist Suppliers in the relevant market.
52. We provisionally consider that entry or expansion would not be timely, likely and sufficient to prevent the SLC from arising.

### *Countervailing buyer power*

53. We consider the nature of competition in this market and the size of customers is such that countervailing buyer power is not likely to constrain any SLC. Customers in Scotland may have some degree of buyer power by procuring Educational Resources through Framework Agreements tendered by central procurement bodies. However, the lessening in choice of suppliers arising from any SLC would still affect these customers.

## *Efficiencies*

54. The Parties submitted limited evidence regarding a number of efficiencies they considered would result from the Merger. We have not found that this evidence supports a finding of efficiencies which are timely, likely to arise, specific to the merger and rivalry enhancing. We have not seen persuasive evidence to support some of the efficiency claims made by the Parties sufficient to prevent the SLC we have provisionally found.

## **Provisional findings**

55. For the reasons set out above, we have provisionally found that the Merger:
- (a) If carried into effect, would lead to the creation of a relevant merger situation;
  - (b) **May be** expected to result in an SLC in relation to the supply of Educational Resources to Educational Institutions in the UK by Generalist Suppliers as a result of horizontal unilateral effects;
  - (c) May **not** be expected to result in an SLC in relation to the supply of Educational Resources to Educational Institutions in the UK by Generalist Suppliers as a result of horizontal coordinated effects.