

Anticipated acquisition by Yorkshire Purchasing Organisation of Findel Education Limited

Provisional findings report

Notified: 16 October 2020

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets.

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- B: Internal documents (Competitive Monitoring and Benchmarking)
- C: Market shares
- D: Customer evidence
- E: Competitor hearings summary

Glossary

Summary

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 (i.e., 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' (i.e. 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 – i.e. 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 (e.g. 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.

Provisional findings

1. The reference

- 1.1 On 30 June 2020, the Competition and Markets Authority (**CMA**) in exercise of its duty under s33(1) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition by Yorkshire Purchasing Organisation (**YPO**) of Findel Education Limited (**Findel**) (the **Merger**) for further investigation and report by a group of independent panel members on the following questions in accordance with section 36(1) of the Act.
- (a) whether arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the UK for goods or services.
- 1.2 Throughout this document, YPO and Findel are referred to collectively as ‘the **Parties**’ and YPO and Findel are referred to collectively post the Merger as ‘the **Merged Entity**’.
- 1.3 Our terms of reference, along with information on the conduct of the inquiry, are in Appendix A. We are required to publish a final report by 14 December 2020.
- 1.4 This document, together with its appendices, constitutes the CMA’s provisional findings. Further information relevant to this inquiry, including non-confidential versions of submissions including from the Parties, can be found on the CMA case page.¹

2. Industry Background

- 2.1 This chapter provides information on the supply of Educational Resources to Educational Institutions. This section is structured as follows:
- (a) Customers of Educational Resources;
 - (b) The supply chain;
 - (c) Suppliers of Educational Resources;

¹ [Yorkshire Purchasing Organisation/Findel Education merger inquiry case page](#).

(d) Procurement by public bodies; and

(e) Purchasing behaviour.

Customers of Educational Resources

- 2.2 Educational Resources assist the teaching of children. The term encompasses a wide variety of product categories. The British Educational Suppliers Association (**BESA**), the trade association for the UK educational supplies sector, categorises these in the following way: stationery; furniture; art and craft materials; sport, science and special educational needs equipment; and other curriculum products.
- 2.3 The main customers of Educational Resources are nurseries (sometimes referred to as 'early years'), primary schools, and secondary schools (**Educational Institutions**).
- 2.4 There are currently around 33,000 Educational Institutions in the UK, most of which are public sector mainstream schools (around 21,000 primary and 4,000 secondary).² This figure also includes around 4,000 public nurseries but the majority of early years establishments are private which are not included in published statistics.³
- 2.5 Educational Institutions can be categorised by the level of education that they offer and by their source of funding, as set out further below.⁴

Level of education

- 2.6 Set out in Table 2.1 below, is a breakdown of the number of Educational Institutions in the UK by level of education.

² [Education and training statistics for the UK: 2019](#), Department for Education.

³ The wider early years sector is fragmented and includes other, mostly privately funded, early years settings. All types of settings are estimated by some sources at 16,000 early years establishments in total.

⁴ The main levels of education are (1) nursery or early years, (2) primary, and (3) secondary.

Table 2.1: Number of Educational Institutions in the UK by type and region

	<i>England</i>	<i>Wales</i>	<i>Scotland</i>	<i>Northern Ireland</i>	<i>Total</i>
Nurseries or early years	391	9	2,544	770	3,714
Primary	16,769	1,238	1,953	813	20,773
Secondary	3,448	206	357	196	4,207
Independent*	2,319	75	59	14	2,467
Special	1,396	41	133	39	1,609
<i>Total</i>	<i>24,323</i>	<i>1,569</i>	<i>5,046</i>	<i>1,832</i>	<i>32,770</i>

Sources: [BESA website](#), [Key UK Education Statistics](#). [Scottish Government website: independent schools register](#).

Note: Some schools educate pupils at all levels. Independent schools are privately owned and self-financing. Special schools educate pupils with additional support needs.

* Independent primary and secondary schools are included together.

2.7 There were around 10 million full time and part time school pupils in 2018/19.⁵

Source of funding

2.8 Around 92% of Educational Institutions are government-funded. Independent schools charge fees to attend instead of being funded by the government.⁶

State-funded ('maintained') Educational Institutions

England

2.9 Educational Institutions in England, which are not independent, can either be funded by local authorities or the Department for Education. Schools which receive funding from the Department for Education can also join together under a Multi Academy Trust (**MAT**).⁷

2.10 There are currently around 1,170 MATs in England. The majority comprise five or fewer schools.⁸ The evidence we have seen indicates that Educational Resources are mostly procured by individual Educational Institutions rather than at the MAT level.

Devolved nations

2.11 Unless they are independent, Educational Institutions in Scotland and Wales receive their funding from local authorities. Educational Institutions in Northern

⁵ [BESA website](#), [Key UK Education Statistics](#).

⁶ [Gov.uk website](#), [Types of school](#), 28 September 2020.

⁷ MATs are legal entities comprising several academies, whose scope is mainly to increase efficiencies and economies of scale. The composition of MATs varies and may include more than 50 Educational Institutions at one or more levels of education. Each MAT has a board, an executive and a financial officer. See [DFE, Multi-academy trusts Good practice guidance and expectations for growth](#), December 2016. See also [Gov.uk website](#), [Ofsted: Let us inspect multi-academy trusts \(MATs\)](#), 15 July 2019.

⁸ [BESA website](#), [Key UK Education Statistics](#). Around 598 MATs include five or fewer schools.

Ireland receive their funding directly from the Department of Education and Skills.⁹

Supply chain

Historical context

2.12 Local authorities have historically had significant influence over the procurement options of the Educational Institutions located within their areas. Over time, some local authorities formed central purchasing bodies (**CPBs**), otherwise known as public sector buying organisations (**PSBOs**), with the aim of providing Educational Institutions with better value goods and services and realising efficiencies.¹⁰

Suppliers of Educational Resources

2.13 Currently, Educational Institutions can purchase Educational Resources from different types of suppliers, which can be grouped into three categories:

- (a) Generalist Suppliers;
- (b) Specialist Suppliers; and
- (c) General retailers.

Generalist Suppliers of Educational Resources

2.14 Some Suppliers (including the Parties) offer a broad range of Educational Resources on a UK-wide or regional basis (**Generalist Suppliers** or **Generalists** – see Chapter 9 below).

2.15 YPO, Findel and RM plc 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**).¹¹ Larger regional Generalist Suppliers include ESPO¹² and KCS.¹³ There are also a number of smaller regional, or local,

⁹ Department of Education in Northern Ireland, [Common Funding](#).

¹⁰ Office of Fair Trading: [School Suppliers provide assurances to OFT to ensure competition](#), (2011).

¹¹ Some Generalist Suppliers' origins can be linked to the following regions: YPO: Yorkshire and the Humber; Findel: London and the South East of England; ESPO: East Midlands; RM (due to its acquisition of Consortium): the South West of England; KCS: the South East of England (Kent).

¹² ESPO is managed by six member authority councils: Leicestershire County Council, Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council, and Peterborough City Council.

¹³ KCS is the PSBO of Kent County Council.

Generalist Suppliers which have historically focused on supplying Educational Institutions within their respective regions, such as East Riding,¹⁴ and Herts FullStop.¹⁵

- 2.16 All of the specific Generalist Suppliers referred to in paragraph 2.15 are PSBOs except for Findel and RM plc which are owned by publicly listed companies. 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.
- 2.17 There has been some consolidation of Generalist Suppliers within the past five years:
- (a) In 2017, RM plc¹⁶ acquired The Consortium from Connect Group;¹⁷ and
 - (b) In 2019, Herts FullStop and Nottinghamshire County Supplies joined together in a collaborative agreement.¹⁸

Amazon

- 2.18 Amazon, the online retailer, offers Educational Resources (amongst a much wider product offering) to Educational Institutions. It advertises specific electronic procurement tools to them, including restricted browse-only access for teachers and departments, allowing them to submit 'virtual' basket requests to budget holders, school business managers or headteachers for approval before a purchase is made.¹⁹ Amazon Business, its business-to-business 'online store', started to operate in this sector from around 2017.²⁰

Specialist Suppliers of Educational Resources

- 2.19 Other Suppliers specialise in particular categories of Educational Resources (**Specialist Suppliers** or **Specialists** – see Chapter 9 below).
- 2.20 Examples of Specialist Suppliers include the following:

¹⁴ East Riding is the PSBO of East Riding of Yorkshire Council.

¹⁵ Herts is the PSBO of Hertfordshire County Council. It also trades under County Supplies (for Nottinghamshire County Council).

¹⁶ RM supplies Educational Resources under its brands TTS and Consortium.

¹⁷ [RM Plc transaction circular](#), 7 February 2017, page 5. [§<].

¹⁸ [Nottinghamshire County Supplies and Herts FullStop privacy notice](#), 7 May 2019.

¹⁹ [Amazon website](#), Empower your school with a better buying solution.

²⁰ [Pymnts.com website](#), Amazon Business Makes Its UK Debut, 5 April 2017.

- (a) **Bishop Sports & Leisure**, which specialises in supplying play, physical education and sports equipment.²¹
- (b) **Community Playthings**, which designs and manufactures furniture and play equipment for primary schools and early years.²²
- (c) **Lyreco**, which makes sales in 42 countries and employs around 1,400 people in the UK.²³

2.21 Some Generalist Suppliers such as Findel operate brands which may individually be regarded as Specialist Suppliers.²⁴ Findel makes certain of its brands which fall into this category available for sale through standalone online shops and catalogues used exclusively for these brands, and also through its main brands, Hope and GLS, which sell a combination of own brands and third party brands and can be regarded as equivalent to other Generalist Suppliers.

General retailers

2.22 Educational Institutions also purchase from general retailers, such as supermarkets, which offer a broad range of product categories.²⁵

Supply chain

2.23 Generalist Suppliers either purchase and take possession of Educational Resources from manufacturers or upstream third party suppliers for onwards sale to their customers, or arrange for the Educational Resources to be delivered to their customers directly. Where the Generalist Suppliers do not purchase or take possession of the Educational Resources, they may receive a commission from the manufacturer or upstream third party supplier for arranging the sale. Intermediaries receive commission from the upstream third party suppliers.

2.24 Some Specialist Suppliers sell through Generalist Suppliers. For example, Bishop Sports has sold some of its products through YPO's catalogues.

²¹ [Bishop Sports website, About Us](#), 30 July 2020. Bishop Sports & Leisure is the trading name of Bishop Sports & Leisure Ltd.

²² [Community Playthings website, About Us](#), 30 July 2020. Community Playthings is the trading name of Community Products (UK) Limited.

²³ [Lyreco UK Limited financial statements for the year ended 31 December 2018](#).

²⁴ For example, Findel's brands, Davies Sport, Philip Harris and LDA, may individually be regarded as being Specialist Suppliers.

²⁵ For example, Sainsburys, Asda and Tesco.

- 2.25 Many suppliers of Educational Resources have invested in warehouses so they can hold large amounts of stock which is available for despatching quickly to customers.²⁶

Procurement by public bodies

- 2.26 State-funded Educational Institutions are public bodies and are required to comply with public procurement rules. As set out further below, procurement models differ between England, Scotland, Northern Ireland and Wales.
- 2.27 The European Commission sets thresholds²⁷ which apply to the award of contracts by certain public bodies, including state-funded Educational Institutions, above which certain advertising and tendering rules apply.²⁸ Contracts which fall within the scope of the rules must be advertised in an 'open and transparent manner' so as to ensure equal access to contract opportunities across the European Union. This requires certain contracts to be advertised in the Official Journal of the European Union (**OJEU**).

Public procurement in England

- 2.28 A small number of local authorities in England run competitive OJEU tenders amongst Suppliers to provide Educational Resources to state-funded Educational Institutions within that local authority's area. Elsewhere, the onus is on Educational Institutions to ensure that they comply with the public procurement rules.

Public procurement in Scotland

- 2.29 In Scotland, all state-funded Educational Institutions in Scotland largely (but not exclusively) use Framework Agreements which have been tendered and awarded by the Scottish procurement body Scotland Excel (**SXL**). The principal agreement for Educational Institutions is the 'Education Materials Framework Agreement'.
- 2.30 The Scottish Government's website states that one of the achievements of SXL is procuring contracts 'in a size which maximises competition whilst maintaining economies of scale and offers winners an opportunity for growth'.²⁹

²⁶ [🔗]

²⁷ Implemented into UK law by the following regulations: Public Contracts Regulations 2015 in England, Wales and Northern Ireland and Public Contracts Regulations (Scotland) Regulations 2015 in Scotland.

²⁸ [CMS Legal, Guide to the EU procurement rules in the UK](#), May 2015, page 6.

²⁹ [Scottish Government, Public Procurement Reform Programme](#), page 11.

Public procurement in Northern Ireland

2.31 In Northern Ireland, Educational Institutions are not permitted to procure outside of Framework Agreements put in place by the Construction and Procurement Delivery function of the Department of Finance and the Education Authority.

Public procurement in Wales

2.32 In Wales, Educational Resources are purchased primarily through agreements set up by individual local authorities, although the National Procurement Service also tenders and awards Framework Agreements.

Alternative routes to compliance with public procurement rules

2.33 As an alternative to advertising contracts on the OJEU, state-funded Educational Institutions can comply with the public procurement rules if they:

- (a) buy goods and services directly from a CPB; and/or
- (b) buy goods and services through contracts and Framework Agreements set up by a CPB.³⁰

2.34 As long as CPBs have followed the public procurement rules, state-funded Educational Institutions may use Framework Agreements the CPBs have set up to buy goods and services.³¹

2.35 YPO has entered into a Framework Agreement with Amazon Business to supply educational products from Amazon Business to its customers [✂]. Educational Institutions can comply with the public procurement rules by buying certain goods and services through this Framework Agreement set up by YPO (a CPB).

Purchasing behaviour

Role of school business managers

2.36 Historically, teachers and head teachers were responsible for procuring Educational Resources. In recent years, some schools have recruited school business managers who, amongst other matters, are responsible for

³⁰ Local Government Association website, [Central Purchasing Bodies](#).

³¹ The Public Contracts (Scotland) Regulations 2015, s38 and Public Contracts Regulations 2015, regulation 37.

preparing budgets for the governors' approval and then monitoring and controlling purchasing to achieve value for money.³² This includes comparing the prices offered by a range of Suppliers.

Pricing

2.37 Many Generalist Suppliers typically list their prices in catalogues which are published annually. Different types of discounts are then sometimes offered to attract and retain Educational Institutions.

Online sales channels

2.38 Historically, the main channel to market for schools has been via a printed catalogue, however Generalist Suppliers are now increasingly offering digital solutions. This includes catalogues available to view online³³ and searchable product databases.

2.39 In the last three years, there has been a significant increase in the extent to which customers use online channels to procure Educational Resources.³⁴ YPO provided transaction data which shows that it generated around [X]% of its sales of Educational Resources in 2019 from websites.³⁵ The Parties told us that digitalisation within the market 'has been further catalysed by the COVID-19 pandemic'.

Electronic procurement

2.40 Educational Resources can be procured through a broad range of electronic procurement channels, ranging from hand-typed emails at one end of the spectrum to highly integrated electronic procurement interfaces that can communicate with Educational Institutions' information management software.

³² [X].

³³ Findel website, Digital Catalogues, 3 August 2020.

³⁴ [X].

³⁵ [X].

3. The Parties

The acquirer: Yorkshire Purchasing Organisation

Nature of YPO's business

3.1 YPO supplies products and services to a wide range of customers including schools, local authorities, charities, emergency services, public sector and other businesses such as nurseries and care homes.³⁶

YPO's constitution

3.2 YPO is a joint committee constituted by 13 local authorities in England known as 'Founder Member Authorities' (**Founder Members**). YPO told us that its purpose '[redacted]'. It told us that '[redacted]'.

3.3 The Council of the City of Wakefield (**Wakefield**) in West Yorkshire acts as the lead authority (**Lead Authority**) of YPO and [redacted]. YPO's constitution states that 'all existing and future assets shall vest in the Lead Authority in trust for the [Founder Members] on terms to be agreed by the Management Committee'.³⁷

3.4 YPO has three types of member:

- (a) Founder Members;
- (b) Associate Members; and
- (c) Ordinary Members.

Founder Members

3.5 There are 13 Founder Members who participate in YPO under a joint committee arrangement (detailed further below). YPO told us that this committee '[redacted]'.³⁸

³⁶ [YPO website, About YPO.](#)

³⁷ [redacted]

³⁸ The following local authorities are Founder Members: (i) Barnsley Metropolitan Borough Council; (ii) The Borough Council of Bolton; (iii) City of Bradford Metropolitan District Council; (iv) Borough Council of Calderdale; (v) Doncaster Borough Council; (vi) The Council of The Borough Of Kirklees; (vii) Knowsley Metropolitan Borough Council; (viii) North Yorkshire County Council; (ix) Rotherham Borough Council; (x) St Helens Borough Council; (xi) Wakefield Metropolitan District Council; (xii) Wigan Borough Council; (xiii) Council of The City of York.

3.6 YPO has no legal personality separate to that of its members. It told us that [✂].

Associate Members

3.7 There are 65 '**Associate Members**' who have applied for and been granted Associate Membership status. YPO told us that Associate Membership 'is essentially a commercial arrangement which permits such members to receive a form of rebate ([✂]) based on their purchasing activity with YPO'.

3.8 YPO told us that Associate Members are invited to attend an annual meeting with the Executive Sub-Committee or participate in some other means of discussion, however, [✂].

Ordinary Members

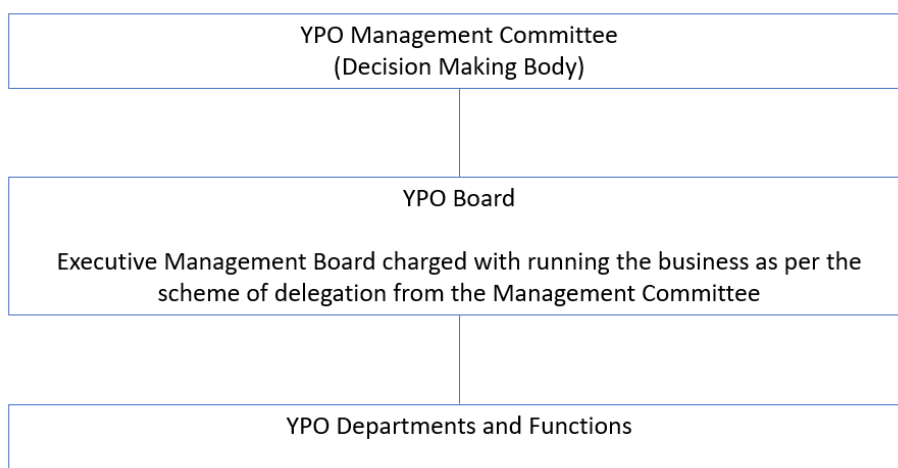
3.9 All individual customer account holders who are not Founder Members or Associate Members are given '**Ordinary Membership**' status. This entitles them to a rebate in the form of a credit voucher against further purchases.

YPO's organisational structure

3.10 YPO told us that it has a Management Committee which is its formal decision-making body with the role of [✂].

3.11 Founder Members each have one vote (of equal weight) which they can exercise at the Management Committee. YPO told us that the Founder Members exercise ultimate control of YPO through this arrangement, although [✂].

Figure 3.1: YPO's Management Structure



Source: YPO response to Phase 2 s.109, 30 June 2020, PowerPoint slides, page 2.

3.12 The Founder Members have agreed a Scheme of Delegation. This is a set of powers delegated to the senior managers of YPO. YPO told us that this [REDACTED].

YPO's distribution of profits

3.13 YPO told us that the Management Committee determines the amount (if any) which may be drawn from YPO's distributable surplus by way of a dividend for the Founder Members, Associate Members and Ordinary Members.

3.14 YPO told us that, [REDACTED].³⁹

YPO's related companies

YPO Procurement Holdings Limited

3.15 In 2014, the Founder Members formed YPO Procurement Holdings Limited (**YPO Procurement**), a separate limited company to 'allow YPO to access markets outside of the UK Public Sector (which is outside the remit of the joint committee)' in light of legal limitations on the ability of local authorities in England to take actions for a commercial purpose. YPO told us that each of the Founder Members own one share [REDACTED].

3.16 In 2018, YPO Procurement made no sales and made a net loss of £46,173. It had a net balance sheet liability as at 31 December 2018 of £79,100. [REDACTED].

YPO Supplies Limited

3.17 YPO Procurement owns all of the share capital in YPO Supplies Limited, another company limited by shares. In 2018, YPO Supplies Limited made sales of £1,848,587 and made a net profit of £54,908. It had net assets of £38,423. [REDACTED]. [REDACTED].

³⁹ [REDACTED].

Financial Metrics: YPO

Table 3.1: Key consolidated financial metrics of the Joint Committee known as YPO (all product categories)

	£ / million		
	Financial year ended 31 December in		
	2017	2018	2019
Revenue	111.0	112.8	[X]
Cost of sales	(80.3)	(81.2)	[X]
Operating profit/loss	5.0	5.6	[X]
Net assets	14.7	14.5	[X]

Source: YPO annual report for financial year ended 31 December 2018 and YPO management accounts for the financial year ended 31 December 2019.

The target: Findel Education Limited

Findel's constitution

3.18 Findel Education Limited (**Findel**) was incorporated as a private company limited by shares in 1973. Its registered office is in Lancashire.

Ultimate parent

3.19 Findel's ultimate parent is The Studio Retail Group Plc (**Studio**).⁴⁰ Studio's consolidated group turnover in 2019 was £507 million (2018: £480 million).

3.20 In addition to owning Findel Education Limited, Studio owns a UK retailer which sells clothing and footwear, home and leisure, gift products and payment options.

Nature of Findel's business

3.21 Findel's most recent annual report states that it is one of the largest independent suppliers of school and early years resources (excluding information technology and publishing) to primary, secondary and nursery educational establishments both in the UK and internationally to over 130 countries.

3.22 Findel operates under a number of brands including, amongst others (2019 revenue shown in brackets):

⁴⁰ Formerly known as Findel Plc prior to a Written Resolution, 25 July 2019.

- (a) GLS (around £[REDACTED]);
- (b) Hope for Educational Resources (around £[REDACTED]);⁴¹
- (c) AtoZ (around £[REDACTED]);
- (d) Davies Sports for sports equipment (around £[REDACTED]);
- (e) Philip Harris Scientific for science equipment (around £[REDACTED]); and
- (f) SPA (around £[REDACTED]).

Financial Metrics: Findel Education Limited

Table 3.2: Key consolidated financial metrics of Findel Education Limited

	<i>£ / million</i>		
	<i>52-week period ended</i>		
	<i>31 March 2017</i>	<i>28 March 2018</i>	<i>29 March 2019</i>
Revenue	91.3	85.9	82.1
Cost of sales	(58)	(55)	(53)
Operating profit/loss	(9.7)	1	4.1
Net assets	0.6	8.3	10

Source: Findel Education Limited annual report and financial statements for the 52-week periods ended 31 March 2017, 28 March 2018 and 29 March 2019.

4. The Merger

4.1 This chapter contains the following background information on the Merger:

- (a) The sales process;
- (b) Key commercial terms agreed by the Parties; and
- (c) Our assessment of the Parties' rationales for the Merger.

The sales process

4.2 YPO's Managing Director and Studio's Group CEO met in July 2019 to discuss the possibility of YPO acquiring Findel. An internal briefing note by YPO's Managing Director to YPO's legal, financial and strategic officers refers to it being [REDACTED]. [REDACTED].

⁴¹ The Parties told us that Findel's Hope and GLS brands are [REDACTED].

4.3 In December 2019, the deal was approved by [REDACTED]⁴² YPO's Management Committee. Wakefield, acting in its capacity as the Lead Authority of YPO, and Studio entered into a Share and Loan Purchase Agreement in December 2019. Studio's Ordinary shareholders approved the disposal of Findel at a general meeting in January 2020.⁴³

Key commercial terms agreed by the Parties

4.4 YPO has entered into a conditional agreement to acquire the entire issued share capital of Findel. The shares in Findel would be legally owned by Wakefield on behalf of the YPO Management Committee.⁴⁴

4.5 The consideration for the Merger is £[REDACTED].

Rationale for the Merger

Parties' submissions

4.6 The Parties told us that the rationale for the Merger is to realise efficiency gains by bringing two 'broadly complementary' businesses together, and about '[REDACTED]'.⁴⁵

4.7 In particular, the Parties told us that the acquisition would:

(a) be a pre-emptive move to 'better position' the Merged Entity to respond to changes in 'the traditional market dynamics'⁴⁵ and 'increasing customer sophistication';

(b) result in economies of scale; and

(c) unlock greater efficiencies and synergies.⁴⁶

4.8 YPO told us that YPO's core mission is to provide low pricing and, although the Founder Members 'wish to see a return on their investment, the primary purpose of YPO is to serve as a buying organisation to obtain lower prices for customers (which are predominantly publicly funded, including by YPO's [Founder Members]'.⁴⁶

⁴² [REDACTED]

⁴³ The Merger is conditional on obtaining merger control clearance from the CMA.

⁴⁴ [REDACTED]

⁴⁵ The Parties gave, as an example, the trend for customers to make purchases online.

⁴⁶ The Parties told us that YPO's customers would benefit from Findel's 'strong digital offering', 'superior product range in specialist categories', and 'improved operational practices'.

- 4.9 The Parties submitted that the Phase 1 Decision dated 13 July 2020 has misrepresented YPO's rationale by placing undue weight on statements in internal documents which state that the Merger is '[redacted]'. They stated that these are selective quotations which have been taken out of context and that the same documents are clear that competitive pricing is, and is intended to remain, 'core' to YPO's strategy and its objective to 'find a means to stay competitive in the face of commercial pressure'.
- 4.10 In their response to the Annotated Issues Statement, the Parties told us that 'an increase in YPO's market share allows YPO to "stand still" (i.e. to maintain its current position whereas the counterfactual would be that without the efficiencies of the transaction, it would lose customers)'. Furthermore, they told us that 'Given the large complementarity between the Parties (including their differently positioned brands, difference in service focus and their complementary historic geographic nexuses), the increase of market share simply represents consolidation of complementary sales and not a particular lessening of competition'.
- 4.11 We examine the internal documents referred to in the Phase 1 Decision, and other evidence, below.

Studio's rationale for disposing of Findel

- 4.12 A circular from Studio to its Ordinary shareholders in December 2019 (the **Circular**) gives three reasons for its disposal of Findel:
- (a) Findel is not 'core' to the wider Studio business, which is focused on being an online value retailer business;⁴⁷
 - (b) Findel's revenue has been [redacted], 'in part due to an increasingly competitive marketplace and tight public spending budgets for educational resources'; and
 - (c) [redacted].⁴⁸
- 4.13 Findel generates around [redacted]% of the revenue of Studio's wider business. Analyst reports from June 2019 present a positive view of Findel's recent financial performance:
- (a) [redacted] stated that Findel's results have 'continued to recover as the business has invested in price and has materially improved its digital offer

⁴⁷ Examples include clothing and footwear, home and leisure, gifts, and flexible payment options.

⁴⁸ [redacted]

to the convenience of its customers'. It forecasts revenue growth for Findel of [REDACTED]% in 2021 and 2022.

- (b) [REDACTED] stated that Findel's 'management's strategy to turn around the Education division is yielding positive results. [REDACTED].

Studio's valuation of Findel

4.14 Findel provided us with a [REDACTED].

YPO's rationale for acquiring Findel

4.15 In this section we assess:

- (a) YPO's business case for the Merger, and related documents; and
(b) YPO's valuation of Findel.

YPO's business case

4.16 YPO provided us with a business case for the Merger in a report by its Managing Director addressed to the Founder Members, 5 November 2019 (the **Business Case**). It identifies [REDACTED]:

- (a) [REDACTED]; and
(b) [REDACTED].

[REDACTED]

4.17 [REDACTED]

4.18 [REDACTED]

4.19 YPO's data shows that between its 2017 and 2019 financial years, its gross margin ratio by region was [REDACTED].

Table 4.1: YPO's gross margins from the supply of Educational Resources to Educational Institutions by region

Region	Gross margin total (£ million)			Gross margin (%)		
	2017	2018	2019	2017	2018	2019
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: [REDACTED].

4.20 YPO's data shows that, between its 2017 and 2019 financial years, its gross margin ratio by product category [REDACTED].

Table 4.2: YPO's gross margins from the supply of Educational Resources to Educational Institutions by product category

Product Category BESA	Gross margin total (£ million)			Gross margin percentage (%)		
	2017	2018	2019	2017	2018	2019
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: [REDACTED].

4.21 In summary, [REDACTED], YPO's data shows that its gross margins by region [REDACTED] between 2017 and 2019, and its gross margins by product category [REDACTED] over this period.

4.22 The Business Case states that [REDACTED]:

(a) [REDACTED]; and

(b) [REDACTED].

- 4.23 The Business Case states [REDACTED].
- 4.24 The Business Case states that [REDACTED]. YPO provided us with a report by its Managing Director to YPO's strategic officers which states that YPO [REDACTED].
- 4.25 YPO provided us with an internal briefing note which states that the Merger would:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED]; and
 - (d) [REDACTED].
- 4.26 The Business Case also sets out four reasons for acquiring Findel, in particular:
- (a) **Potential synergies and efficiencies** – the Business Case states that [REDACTED];
 - (b) [REDACTED];⁴⁹
 - (c) [REDACTED]; and
 - (d) [REDACTED]:
 - (i) [REDACTED]; and
 - (ii) [REDACTED].⁵⁰
- 4.27 The Parties' claimed efficiencies arising from the Merger are assessed in the Countervailing Factors chapter.

YPO's valuation of Findel

- 4.28 The consideration payable by YPO for the Merger is [REDACTED] prepared by PwC in September 2019 (**PwC's Valuation**). PwC valued Findel in the range [REDACTED]. This takes into account an estimated [REDACTED].⁵¹

⁴⁹ [REDACTED]
⁵⁰ [REDACTED]
⁵¹ [REDACTED]

- 4.29 The Business Case assumes that [REDACTED]. YPO told us that the [REDACTED] ‘reflects that the [REDACTED]. [REDACTED].
- 4.30 PwC’s valuation of Findel is [REDACTED].⁵² [REDACTED].
- 4.31 Findel had around £10 million of net assets as at 29 March 2019, including around £36 million owed to group undertakings.⁵³ [REDACTED].

Summary of YPO’s rationale

- 4.32 We consider that the evidence supports YPO’s position that [REDACTED]. [REDACTED].
- 4.33 YPO told us that [REDACTED]. [REDACTED].
- 4.34 We found that there are other commercial reasons for YPO to want to acquire Findel specifically:
- (a) The Merger will allow YPO to [REDACTED] more quickly than it expects to be able to do through organic growth;
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) YPO appears to consider Findel to be a good [REDACTED] fit for its business;
 - (e) [REDACTED];
 - (f) [REDACTED], although we have not identified any specific plans; and
 - (g) [REDACTED].

5. Relevant merger situation

- 5.1 In accordance with [section 36](#) of the Act and pursuant to our terms of reference (see Appendix A) we are required to investigate and report on two statutory questions: (i) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

⁵² [REDACTED]

⁵³ [REDACTED]

- 5.2 We address the first of the statutory questions in this chapter.
- 5.3 A relevant merger situation is created if:
- (a) two or more enterprises cease to be distinct; and
 - (b) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test) or ‘the share of supply test’ is satisfied.

Enterprises ceasing to be distinct

- 5.4 The Act defines an ‘enterprise’ as ‘the activities, or part of the activities, of a business’.⁵⁴ A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.⁵⁵ The CMA Jurisdictional Guidance⁵⁶ explains that the enterprise in question need not be a separate legal entity⁵⁷ and when making a judgment as to whether or not the activities of a business, or part of a business, constitute an enterprise under the Act, the CMA will have regard to the substance of the arrangement under consideration, rather than merely its legal form.
- 5.5 YPO is not a legal entity and does not have its own legal personality. It is a ‘joint committee’ operating under the Local Authority (Goods & Services) Act 1970. As set out above, YPO is governed and controlled by the 13 Founder Members,⁵⁸ with Wakefield acting as the Lead Authority of the YPO joint committee. YPO carried on activities for gain or reward generating £[£] in the UK in 2018. YPO produces its own accounts and has a recognisable public identity. Findel is currently controlled by Studio.
- 5.6 YPO and Findel are each active in the supply of Educational Resources to Educational Institutions and offer a broad range of educational resources on a

⁵⁴ The Act, section 129(1).

⁵⁵ The Act, section 129(1).

⁵⁶ CMA, Mergers: Guidance on the CMA’s jurisdiction and procedure, January 2014, [CMA2](#).

⁵⁷ CMA Jurisdictional Guidance, paragraphs 4.6. Nor is there a requirement that the transferred activities generate a profit or dividend for shareholders: indeed, the transferred activities may be loss-making or conducted on a not-for-profit basis.

⁵⁸ The Founder Members are the following: (i) Barnsley Metropolitan Borough Council; (ii) The Borough Council of Bolton; (iii) City of Bradford Metropolitan District Council; (iv) Borough Council of Calderdale; (v) Doncaster Borough Council; (vi) The Council of The Borough Of Kirklees; (vii) Knowsley Metropolitan Borough Council; (viii) North Yorkshire County Council; (ix) Rotherham Borough Council; (x) St Helens Borough Council; (xi) Wakefield; (xii) Wigan Borough Council; (xiii) Council of The City of York.

⁵⁸ Also referred to as Wakefield Metropolitan District Council.

UK-wide or regional basis in the UK. We are therefore satisfied that each of YPO and Findel are enterprises for the purposes of the Act.

5.7 The Act provides that two enterprises 'cease to be distinct' if they are brought under common ownership or common control.⁵⁹ As a result of the Merger, the enterprise presently carried on by YPO and the enterprise presently carried on by Findel would be brought under common ownership or common control because:

(a) Wakefield (acting in its capacity as Lead Authority of the joint committee known as YPO) will acquire on trust for the other Founder Members of YPO, the whole of the issued share capital of Findel.

(b) It is intended that the Founder Members will exercise control over Findel in the same way as over YPO's existing business.

5.8 Accordingly, we are satisfied that YPO and Findel would cease to be distinct enterprises for the purposes of the Act.

5.9 We are therefore satisfied that the first limb of the relevant merger situation test, that two or more enterprises would cease to be distinct enterprises as a result of the Merger, is met.

Jurisdiction test

5.10 The second element of the jurisdictional test seeks to establish sufficient connection with the UK on a turnover or share of supply basis.

Turnover test

5.11 The turnover test is satisfied if the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.⁶⁰

5.12 In the accounting year ending March 2019,⁶¹ the annual value of the UK turnover of the Findel business was approximately £74,713,000. We are therefore satisfied that the value of the annual UK turnover of Findel exceeds £70 million and that the turnover test is met.⁶²

⁵⁹ The Act, section 26.

⁶⁰ The Act, section 23(1)(b).

⁶¹ The most recent financial year for which published accounts are available. As noted in the CMA Jurisdictional Guidance, figures in the enterprise's latest published accounts will normally be sufficient to measure the turnover test (paragraph 4.51).

⁶² As the turnover test in section 23(1)(b) of the Act is satisfied in this case, it is not necessary to consider the application of the share of supply test in section 23(2)-(4) of the Act.

Share of supply test

- 5.13 As the turnover test is met, we are not required to consider whether the share of supply test is met. However, for completeness, we consider the share of supply test in section 23 of the Act would also be met.
- 5.14 The share of supply test is satisfied where, as a result of enterprises ceasing to be distinct, the following condition prevails or prevails to a greater extent: at least one quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.⁶³ The requirement that the condition prevails or prevails to a greater extent means that the merger must result in the creation of or an increase in a share of supply of goods or services of a particular description and the resulting share must be 25% or more.
- 5.15 The concept of goods or services of ‘any description’ is very broad. The description of goods or services identified for the purposes of the jurisdictional test does not have to correspond with the economic market definition/frame of reference adopted for the purposes of determining the SLC question. The CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.
- 5.16 We currently consider that the share of supply test would be met by reference to a reasonable description of a set of goods or services; whilst the frame of reference for the Share of Supply test need not correspond with the economic market definition, we note that the Parties’ market share of the Relevant Market (the supply of Educational Resources to Educational Institutions in the UK by Generalist Suppliers) is in excess of 25% and with an increment, as set out in Appendix C. We also note that the shares of supply of the Parties in a number of Regions are also in excess of 25% and with an increment.

Provisional conclusions on relevant merger situation

- 5.17 In the light of the above, we have provisionally found that the Proposed Merger, if carried into effect, will result in the creation of a relevant merger situation. As a result, we must consider whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

⁶³ Section 23(2), (3) and (4) of the Act.

6. Counterfactual

6.1 In this chapter, we:

- (a) Set out the framework for the assessment of the counterfactual in a merger inquiry.
- (b) Summarise the Parties' views on the counterfactual.
- (c) Set out our assessment of the appropriate counterfactual to be used in assessing the competitive effects of the anticipated acquisition by YPO of Findel.

Legal framework

- 6.2 The counterfactual is an analytical tool used to help answer the question of whether a merger has or may be expected to give rise to an SLC.⁶⁴ It does this by providing the basis for a comparison of the prospects for competition with the merger against the competitive situation without the merger.⁶⁵ The latter is called the counterfactual.⁶⁶
- 6.3 We may examine several possible situations to determine the appropriate counterfactual, one of which may be the continuation of the pre-merger situation. Ultimately only the most likely situation will be selected as the counterfactual.⁶⁷ Depending on the evidence, the choice of the counterfactual could be a situation either more or less competitive than the prevailing conditions of competition. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of an SLC finding.⁶⁸
- 6.4 We will typically incorporate into the counterfactual only those aspects of situations that appear likely based on the facts available to us and the extent of our ability to foresee future developments.⁶⁹ The foreseeable period can sometimes be relatively short.⁷⁰ However, even if an event or circumstance is not sufficiently certain to be included in the counterfactual, it may still be considered in the context of the competitive assessment of the merger.⁷¹

⁶⁴ [CMA Guidance](#), paragraph 4.3.1.

⁶⁵ [CMA Guidance](#), paragraph 4.3.1.

⁶⁶ [CMA Guidance](#), paragraph 4.3.1.

⁶⁷ [CMA Guidance](#), paragraph 4.3.6.

⁶⁸ [CMA Guidance](#), paragraph 4.3.4.

⁶⁹ [CMA Guidance](#), paragraph 4.3.6.

⁷⁰ [CMA Guidance](#), paragraph 4.3.2.

⁷¹ [CMA Guidance](#), paragraph 4.3.2.

Developments which have arisen or are likely to arise as a result of the merger will not form part of the counterfactual assessment.⁷²

- 6.5 We seek to avoid importing into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight.⁷³ Given that the counterfactual incorporates only those elements of situations that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not the counterfactual.⁷⁴
- 6.6 In reaching a view on the appropriate counterfactual, we must determine what future developments we foresee arising absent the merger based on the totality of facts available to us. Insofar as future events or circumstances are not certain or foreseeable enough to include in the counterfactual, the analysis of such events can take place in the assessment of competitive effects.

The Parties' views

- 6.7 In their Merger Notice, the Parties submitted that the 'status quo' is the relevant counterfactual. However, in their response to the Phase 2 Annotated Issues Statement, the Parties told us that they 'broadly agree' that the prevailing conditions of competition would be the counterfactual, provided that this includes 'digitalisation within the market leading to increasing pressure across all product categories' as 'further catalysed by the COVID-19 pandemic'.

Our assessment

- 6.8 In this section, we set out our assessment, based on the evidence available to us, of the appropriate counterfactual.

YPO absent the Merger

- 6.9 YPO told us that, absent the Merger, it would 'seek alternative acquisition targets to maximise economies of scale, enhance innovation and thereby remain competitive in the market'. However, we have seen no evidence of any alternative target that YPO was likely to have acquired.

⁷² CMA Guidance, paragraph 4.3.1.

⁷³ CMA Guidance, paragraph 4.3.6.

⁷⁴ CMA Guidance, paragraph 4.3.6.

6.10 Based on the evidence we have reviewed, our provisional view is that the most likely situation is that YPO would have continued to compete as it did prior to the merger.

Findel absent the merger

6.11 Findel told us that [REDACTED]:

(a) [REDACTED]; and

(b) [REDACTED].

6.12 Findel told us that, absent the Merger, Studio would [REDACTED].

6.13 [REDACTED]. [REDACTED] not certain or foreseeable enough to include in the counterfactual.

6.14 Based on the evidence we have reviewed, our provisional view is that the most likely situation is that Findel would have continued to compete in a similar way to the prevailing conditions of competition as it did prior to the merger.

Third party views

6.15 No third parties have proposed that we should use an alternative counterfactual to the existing competitive situation.

Our provisional conclusion on the counterfactual

6.16 Our provisional conclusion is that the most likely counterfactual is therefore that, in the absence of the Merger, the prevailing conditions of competition would continue. We consider that the prevailing conditions of competition include a degree of market development. We consider how the market may develop as part of our competitive assessment.

7. Our approach to competitive assessment

Introduction

7.1 In this chapter we set out our approach to assessing the Merger and the evidence we have gathered during our inquiry to date, to inform this assessment.

7.2 This chapter is structured as an overview of the following:

(a) Market definition.

- (b) Theories of harm.
- (c) Countervailing factors.
- (d) Evidence gathering and use of evidence.
- (e) Consideration of the relevance of the COVID-19 pandemic.

7.3 Further details on each is set out in subsequent chapters.

Market Definition

7.4 As set out in CMA Guidance,⁷⁵ we define the market within which the Merger may give rise to an SLC (the relevant market). As set out further in the Market Definition chapter below, while market definition is a useful analytical tool, it is not an end in itself, and identifying the relevant market involves an element of judgement.⁷⁶ We use the market definition as a framework for our analysis of the competitive effects of the Merger.

Theories of harm

7.5 We have investigated two theories of harm: (i) horizontal unilateral effects; and (ii) horizontal coordinated effects. Our framework for assessment for each of these is summarised below.

7.6 Both theories of harm concern the supply of Educational Resources to Educational Institutions. As such, there is a material degree of interaction in the evidence used and provisional conclusions drawn for both competitive assessments. Therefore, we set out in these Provisional Findings a chapter setting out our assessment of the Nature of Competition, which is of relevance to both competitive assessments.

Horizontal unilateral effects

7.7 We assessed whether there are any horizontal unilateral effects arising from the Merger. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity to worsen its offering profitably or not improve that offering as much as it would otherwise have done. Horizontal unilateral effects are more likely when the merging parties are close competitors.

⁷⁵ CMA Guidance, section 5.2.

⁷⁶ CMA Guidance, paragraph 5.2.2.

7.8 We set out our assessment of horizontal unilateral effects in Chapter 10.

Horizontal coordination effects

7.9 We assessed whether there are any horizontal coordinated effects arising from the Merger. 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. Such coordination may take different forms: explicit, achieved through communication and agreement between the parties involved; or tacit, which does not require any direct contact between firms and is not based on any formal arrangements or direct communications. Our focus has been on whether the merger would make it easier for coordination which limits rivalry to take place and therefore gives rise to an SLC.

7.10 We set out our assessment of horizontal coordinated effects in Chapter 11.

Countervailing factors

7.11 We considered whether there are any countervailing factors which are likely to prevent any SLC that we may have found. Specifically, we looked at whether entry by new Suppliers or expansion by Suppliers would be timely, likely and sufficient to offset any SLC.

7.12 We also considered whether any merger-specific efficiencies or buyer power would prevent any SLC.

7.13 We set out our assessment of countervailing factors in Chapter 12.

Evidence gathered

7.14 We gathered and have taken account of a large range of evidence in our assessment. We considered the views of the Parties and third parties, including customers, competitors and other third parties, assessed customer and transaction data from the Parties and customer level data from third parties, and reviewed an extensive number of internal documents from the Parties and third parties.

7.15 This evidence informs our assessment of the current competition in the market but also anticipated changes in the market over the foreseeable future. As part of our forward-looking assessment, we have considered the plans, strategies and forecasts of the Parties and third parties. We therefore considered both the static and dynamic aspects of the markets in our

assessment. In doing so, we have used and built on the evidence gathered by the CMA at phase 1.

- 7.16 We set out briefly below the different pieces of evidence we considered; our detailed assessment of the evidence is provided in the remaining chapters of our Provisional Findings.
- 7.17 In considering the weight to be placed on each piece of evidence, we have taken into account factors such as the robustness of the data/methodology adopted, the nature of the party providing the information or view, the age of the information or document, context, author and recipient of a document, and the purpose for which it was produced. We have not relied on any one piece of evidence to inform our decision; rather, we have assessed all of the evidence together and in the round, including giving due regard to the extent that our view on the interpretation of a piece of evidence is corroborated by other evidence available to us.

Evidence from customers

- 7.18 We have undertaken customer research with a limited number of customers. We designed the research to be qualitative, focusing on holding hearings where possible, supplemented by our email questions. Our customer research comprised of 65 written questionnaire responses and 11 calls or hearings with customers from across phase 1 and phase 2.⁷⁷
- 7.19 Given the size of our sample we are mindful that the responses are not statistically representative and that it is not appropriate to use these responses to draw firm quantitative (i.e. statistically robust) conclusions about the wider population of customers. Instead we have only used the results of this research to draw qualitative conclusions where appropriate, alongside other evidence.
- 7.20 See Appendix D, paragraphs 2 to 10 for a summary of our approach to customer research. We draw on these views where appropriate in these Provisional Findings.
- 7.21 We did not conduct a large-scale customer survey in this case due to the disruption caused by COVID-19 and the timing of the school summer holidays (which overlapped with the initial stages of the phase 2 inquiry). We are

⁷⁷ During phase 1 we received 30 written questionnaire responses and conducted 2 calls. During phase 2 we received 35 written questionnaire responses and conducted 9 calls. The phase 1 questionnaire contained 14 questions and the phase 2 questionnaire contained 7 questions.

confident, nonetheless, that the extensive data gathering we have undertaken provides an appropriate evidence base for this inquiry.

Evidence from the Parties

- 7.22 We considered evidence from the Parties submitted during the phase 1 inquiry, responses to our informal and formal requests for information and documents during phase 2, site visits, the Main Party Hearings and other phase 2 submissions. We recognise that the Parties have an interest in the outcome of our inquiry. Therefore, as in any inquiry, in using views of the Parties, we have given due regard to a range of factors including the extent to which the views were corroborated by other evidence available to us.
- 7.23 We gathered a large volume of internal documents and reviewed several thousand relevant internal documents. We gathered evidence relating to which Suppliers the Parties: (i) price benchmark against; and (ii) monitor; and (iii) appear to respond to. In doing so we assessed documents produced at the levels of senior leadership and sales manager:
- (a) Any regularly produced monitoring and benchmarking documents;
 - (b) Any other regularly reporting documents;
 - (c) Any one-off competitor and benchmarking documents; and
 - (d) Any one-off documents where competitors are discussed.
- 7.24 Internal documents provide a useful source of evidence as they reflect how the Parties assess the market in the ordinary course of business, and when making commercial and strategic decisions. They provide insights into such issues as the nature of competitor monitoring, the Parties' perceptions of other market players and their views of future developments.
- 7.25 See Appendix B, paragraph 4 for a summary of our approach to document review. We draw on this evidence where appropriate in these Provisional Findings.
- 7.26 We gathered customer and transaction data from the Parties covering all of their sales made since 2017. We have used this to better understand customer behaviour and the nature of competition (see Chapter 8), as well as to feed into our competitive assessment. We have also assessed an analysis of the Parties' customer and transaction data conducted by the Parties' advisers. We draw on and respond to this evidence where appropriate in these Provisional Findings.

Evidence from competitors

- 7.27 Our Guidance explains that we may take into account the views of competitors and informed third parties.⁷⁸ We recognise that some third parties have an interest in the outcome of our inquiry. Therefore, as in any inquiry, when using third party views as evidence, we have given due regard to a range of factors including: the incentives of the party giving that view; the extent to which the party had knowledge that was relevant to the subject areas being explored as part of our assessment and the extent to which the view was corroborated by other evidence available to us.
- 7.28 We gathered evidence and views on the nature of competition and the competitive conditions in the relevant markets from a range of Suppliers, including national and regional Generalist Suppliers and Specialists. Our evidence includes written submissions, hearings, and requests for information, data and documents including those issued under our formal powers.
- 7.29 See Appendix E for the information gathered during competitor hearings. We draw on competitor evidence where appropriate in these Provisional Findings.
- 7.30 We sent phase 2 questionnaires to more than 50 Suppliers and received responses from 17 Suppliers. We also requested internal documents using our formal powers from several Suppliers related to their business strategy and plans in the relevant markets.

Evidence from other third parties

- 7.31 We have collected, via questionnaires and hearings, the views of a range of other third parties, including:
- (a) BESA;
 - (b) Department for Education;
 - (c) National framework bodies; and
 - (d) YPO founder and associate members.
- 7.32 We draw on these views where appropriate in these Provisional Findings.

⁷⁸ [CMA Guidance](#), paragraph 5.2.15(a).

COVID-19

- 7.33 Our merger inquiry has taken place throughout 2020, a period during which COVID-19 has had a significant impact on the UK.⁷⁹ Our approach to evidence-gathering has taken into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will take into account the impact of the pandemic in our assessment of the competitive effects of the Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the Merger might have on the markets at issue.
- 7.34 The UK Government has implemented various restrictions on businesses and Educational Institutions throughout the course of 2020. For example, Suppliers and their staff, are subject to the government social distancing and self-isolation guidance and other aspects of their businesses are likely to be affected including Suppliers' operations (e.g. head offices, warehouses and distribution centres) and their supply chain. The restrictions have also affected Educational Institutions. On 20 March 2020, the UK government announced that, due to COVID-19, all UK schools and early years establishments should close (except for children of key workers and vulnerable children).⁸⁰ The staged re-opening of schools did not begin again until June 2020. We therefore recognise that all Suppliers are currently facing uncertain and difficult trading conditions.
- 7.35 There remains considerable uncertainty about the extent and duration of the impact of COVID-19.⁸¹ We note that all Suppliers in the relevant markets are subject to the same change in market conditions, although it is difficult to predict the effect on different Suppliers and how each will respond to the circumstances.
- 7.36 In this case, as far as possible, we have obtained evidence on and considered the impact of COVID-19 in our assessment on competition between the Parties and the constraints from other Suppliers, both now and in the foreseeable future (see paragraph 10.148129).⁸²

⁷⁹ The CMA has published a [statement](#) on its website on how it has adjusted its working arrangements in response and [guidance](#) on key aspects of its practice during the pandemic.

⁸⁰ [Scotland](#); [Wales](#); [Northern Ireland](#); and [England](#).

⁸¹ [CMA, Merger Assessments during the Coronavirus \(COVID-19\) pandemic, paragraph 22.](#)

⁸² The CMA needs to ensure that its decisions are based on evidence and not speculation and will carefully consider the available evidence in relation to the possible impacts of COVID-19 on competition in each case. See: [CMA, Merger Assessments during the Coronavirus \(COVID-19\) pandemic, paragraph 22.](#)

8. Nature of competition

- 8.1 This chapter considers the nature of competition with respect to the supply of Educational Resources to Educational Institutions and provides context for the discussion of market definition and the assessment of competitive effects.
- 8.2 This chapter is structured as follows:
- (a) First, we discuss customer behaviour, in particular: (i) spending patterns; (ii) one stop shopping; and (iii) loyalty and switching.
 - (b) Second, we discuss parameters of competition, including (i) price, quality, range, service, innovation and marketing; and (ii) ability to discriminate between customer groups.

Customer behaviour

- 8.3 Educational Institutions are diverse with a wide range of different characteristics (eg size, ownership) and requirements (eg types of resources needed) which means that there is a spectrum of different customer behaviours. Nevertheless, we highlight some of the typical features of their behaviours and illustrate where there are significant differences. We have generally drawn on evidence relating to the Parties' customers. We have also received some evidence from competitors about their customers' purchasing habits and have not seen evidence to suggest that these patterns are materially different from those of the Parties' customers.
- 8.4 We note that in some cases the existence of variation in customer behaviour may in practice have limited impact on our assessment given that Suppliers can typically identify and vary their offerings to specific customers. This implies the presence of some price sensitive customers may not constrain the prices offered to other customers. For example, customers purchasing in just one category may not constrain the prices of products in that category overall if Suppliers are able to identify and offer different prices or service to different types of customers (see, paragraphs 8.82 to 8.84). In any case, the majority of the Parties' revenues comes from customers who purchase across multiple categories (Figure 8.1 and Figure 8.2).

Spending patterns

- 8.5 In this section we assess the spending patterns of the Parties' customers in terms of: (i) order frequency; (ii) distribution of order values; (iii) customers' annual spend with the Parties; and (iv) order values for high spending customers.

Order frequency

8.6 The Parties' customers place orders throughout the year. However, the Parties' revenues and the average order value vary significantly throughout the year, with pronounced peaks during the summer (see Figure 8.1 and Figure 8.2). However, the Parties' revenues and the average order value vary significantly throughout the year, with pronounced peaks during the summer (see Figure 8.1 and Figure 8.2).

Figure 8.1: Parties revenues throughout the year

[REDACTED]

Source: CMA analysis of the Parties' transaction data.

Figure 8.2: Average transaction value throughout the year

[REDACTED]

Source: CMA analysis of the Parties' transaction data.

Note: [REDACTED].

Distribution of order values

8.7 Figure 8.3 and Figure 8.4 show the distribution of order values for Findel and YPO respectively. They show that the size and value of each order varies significantly, with a large number of [REDACTED] and a smaller number [REDACTED].

Figure 8.3: Distribution of order values – YPO

[REDACTED]

Source: CMA analysis of the YPO's transaction data.

Note: [REDACTED].

Figure 8.4: Distribution of order values – Findel

[REDACTED]

Source: CMA analysis of Findel's transaction data.

Note: [REDACTED].

Customers' annual spend with the Parties

8.8 During 2019, on average YPO's customers spent around £[REDACTED] and on average Findel's customers spent around £[REDACTED].⁸³ But underlying these averages there is significant variation in customer spend. For example, YPO's highest spending customer spent £[REDACTED] and Findel's spent £[REDACTED] in 2019.⁸⁴

⁸³ CMA analysis of the Parties' customer datasets.

⁸⁴ CMA analysis of Parties' data.

Further, customers within their core regions on average [X]. During 2019, on average YPO's customers in Yorkshire and the Humber, North East and North West spent around £[X] and on average Findel's customers in London spent around £[X].

8.9 The majority of the Parties' revenues come from a minority of their customers. Figure 8.5 shows that around [X]% of YPO's customers account for around [X]% of its revenues. Figure 8.6 shows that around [X]% of Findel's customers account for [X]% of its revenues. The rest of these customers could be described as a long-tail of customers, since there are a high proportion of these customers, who only contributed a limited amount to the Parties revenues.

Figure 8.5: Customer numbers vs annual customer spend (YPO)

[X]

Source: CMA analysis of YPO's customer data.

Figure 8.6: Customer numbers vs annual customer spend (Findel)

[X]

Source: CMA analysis of Findel's customer data.

Order values for high-spending customers

8.10 Recognising that high-spending customers (ie the top 20-30% of spenders) account for the majority of the Parties' revenues, we examined the distribution of order values for these customers. This helps to inform the extent to which these customers are prepared to make multiple orders (putting aside any other preferences leading them to purchase from the same Supplier).

8.11 Figure 8.7 and Figure 8.8 show [X]. High-spending customers also make many small orders but also have a greater tendency to make higher value orders.

Figure 8.7: [X]

[X]

Source: CMA analysis of the YPO's transaction data.

Note: [X].

Figure 8.8: [X]

[X]

Source: CMA analysis of Findel's transaction data.

Note: [X].

Provisional view on spending patterns

8.12 Based on our analysis of the Parties' customer and transaction data, we found:

- (a) Customers spend with the Parties throughout the year (Figure 8.1), with a peak during summer;
- (b) Most orders with the Parties are relatively [redacted] ([redacted]) (Figure 8.3 and Figure 8.4) but the average order value is around £[redacted] (Figure 8.2). Customers in YPO and Findel's core regions have a [redacted] average annual spend with [redacted] than customers outside their core regions;
- (c) The majority of the Parties' revenues come from the [redacted] of their customers (Figure 8.5 and Figure 8.6);
- (d) High-spending customers also make many low value orders but also have a greater tendency to make higher value orders (Figure 8.7 and Figure 8.8).

8.13 The above evidence shows that there are many low value orders. These orders are likely to contain few products and few product categories.⁸⁵ Potentially orders with few products or few product categories may be easier to switch to other Suppliers (including Specialists) than if individual orders were typically comprised of many items and/or many product categories. It implies that the efficiency gained by minimising or limiting the number of transactions is not a strong consideration for schools and not a determinant of any one-stop shop preferences.

One-stop shopping

8.14 One-stop shopping, as we use the term in this case, describes the practice of a customer buying a significant proportion of their Educational Resources requirements across multiple product categories from one Supplier. Suppliers themselves can be considered a one-stop shop, when they are able to fulfil a significant proportion of an Educational Institution's requirements.⁸⁶

8.15 The one-stop shop buying practice represents customers placing a value on convenience, scale and continuity in relationship, but we recognise that a one-stop shop may be used by customers in different ways. Some customers, who value limiting their number of transactions, may purchase across multiple

⁸⁵ The Parties submitted that "Over [redacted]% of YPO's transactions and above [redacted]% of Findel's transactions in 2019 involved two product categories at most."

⁸⁶ Note, this definition is slightly different to that of a Generalist, as used in Chapter 9.

product categories, in bulk, in a single order. Other customers who value limiting their search costs and prefer relying on known Suppliers, may make multiple purchases from the same Supplier, across multiple product categories over the course of a year. We discuss the implications of this variation below in paragraph 8.30.

- 8.16 We examine the strength of one-stop shop preferences as it is relevant to determining the types of Suppliers that may be suitable alternatives for the Parties' customers.

Parties' views

- 8.17 The Parties' submitted their view of the definition of one-stop shop as "one stop shopping, [...] is when customers value a single transaction for multiple product categories over multiple transactions."
- 8.18 They therefore disagree with the use of the term one-stop shop to describe the types of purchasing patterns set out above. They said "[...] to the extent that the term "one stop shop" has any meaning in the CMA's analysis, it means no more than that there is a degree of customer loyalty i.e. the practice of a customer buying a significant proportion of their Educational Resources from one Supplier. This is not measuring one stop shopping [...]."
- 8.19 Regarding the evidence for a one-stop shop (using their own definition), the Parties said "[...] there is no true requirement for a "one stop shop" in that customers do not have a need to purchase a bundle of a large number of different kinds of products on one occasion, for example to simplify ordering, secure consolidated delivery, or reduce search in making buying decisions at a given point in time." They said that the extent of top-up shopping, customers' use of multiple suppliers and the significance of specialists as an alternative for almost all purchases does not support strong preferences for one-stop shopping.
- 8.20 The Parties submitted that analysis of the Parties' data reinforces the limited importance of a one-stop shop. They identified that the large majority of the Parties' transactions (by volume) are transactions involving at most [✂] categories of products and that these transactions account for the majority of the Parties' revenues. The Parties also submitted that [✂].
- 8.21 The Parties also submitted that trends are towards more frequent and more fragmented buying by customers. They said there is a [✂].
- 8.22 Further, they submitted evidence on customers shopping around and said this would be incompatible with a one-stop shop model.

Our assessment

- 8.23 We have found that the term ‘one-stop shop’ is very commonly used within the industry but is often used by different market participants in different ways. It can be used to describe customer preferences for limiting their number of transactions, limiting the extent of their search or their reliance on a familiar Supplier. We consider that it broadly describes customers’ tendency to purchase significant proportions of their needs from one (or a very small number) main Generalist Supplier. We acknowledge that different uses of the term, or different facets of its definition, may be relevant for each issue under consideration. We therefore seek to be clear when referring to one-stop shop the precise concept we are referring to in a given context.
- 8.24 In this section, we consider: (i) customer and transaction data; (ii) Parties’ internal documents; (iii) competitors’ views; (iv) customers’ views; and (v) separate framework lots.

Customer and transaction data

- 8.25 We broadly agree with the Parties’ submission that evidence (see, paragraph 8.20) suggests customers are willing to make lots of separate transactions, including customers which use a main supplier. This is also implied by the large number of low-value transactions shown in (Figure 8.3 and Figure 8.4).
- 8.26 We therefore agree with the Parties’ submission that this gives customers *the ability* to purchase from a range of Suppliers. However, we consider it is also relevant to assess whether customers *actually do* purchase across a range of Suppliers.
- 8.27 In examining customer purchases, we found that customers’ spend is not highly fragmented across Generalists (ie it is not widely spread across many Generalists). For example, Figure 8.9 shows that customers who purchase with three or fewer Generalists account for less than half ([X]%) of the spend in the market. Further, Figure 8.10 shows that more than half ([X]%) of all spend with Generalists comes from customers that spend 70% or more with their main Supplier. We note that both Figure 8.9 and Figure 8.10 include spend from Amazon.⁸⁷

⁸⁷ We have included Amazon within Figure 8.9 and Figure 8.10. However, we note some concerns about the robustness of the matching of its customers to other Generalists. We found that upon cleaning Amazon’s data and matching its customers by customer name and postcode we could only match around [X] out of [X] of Amazon’s customers with other Suppliers’ customers. We consider that this level of matching raised concerns

Figure 8.9: Extent of multi homing among Generalist customers

[REDACTED]

Source: CMA analysis of 8 Generalist Suppliers' data for 2019. Suppliers included are [REDACTED].

Figure 8.10: Extent of market spend from customers with a main Supplier

[REDACTED]

Source: CMA analysis of 8 Generalist Suppliers' data for 2019. Suppliers included are [REDACTED].

- 8.28 In addition, customers' average annual spend with individual Generalists tends to be in the region of £[REDACTED] ([REDACTED]) which illustrates that customers typically spend a significant annual sum with Generalists equivalent to the value of multiple average-sized transactions (see paragraph 8.7).^{88,89}
- 8.29 This cross-market evidence of concentration in customers' spend is supported by evidence on the breadth of the Parties' customers' spending. In particular, our analysis shows that most of the Parties' revenues come from customers purchasing across multiple categories in a given year (Chapter 9, Figure 9.3). We note that the difference to the Parties' submission, which suggested that transactions and monthly spend comes from customers spending in just [REDACTED], is driven by our analysis considering (i) a longer time period, such as a year and (ii) the relative importance of spend rather than customer numbers.
- 8.30 We note that some benefits of using a single Supplier may accrue over several transactions and hence over a longer time period. For example, if one of the benefits is that reduced search costs apply whenever an order is made, perhaps stemming from a consolidated list of approved Suppliers, then interpreting the one-stop shop value over a longer time-period is appropriate. Looking at individual transactions data is only relevant if the benefits of one-stop shop are purely due to being able to minimise the number of transactions.
- 8.31 We consider that customer data shows a degree of concentration in spend/customers spending across multiple categories in a year. Customers tend to purchase most of their requirements from one supplier over time, suggesting preferences for a one-stop shop over time (albeit there is no evidence that this is driven by customers wanting to necessarily aggregate all

about its accuracy and an inaccurately low-level of matching could potentially bias upwards the number of customers purchasing from just one Generalist. We therefore tested excluding Amazon. When excluding Amazon, Figure 8.9 displays a broadly similar pattern, but a much greater proportion of customers and customer spend with a smaller number of Generalists. When excluding Amazon, Figure 8.10 displays a similar pattern, but with a greater proportion of customers having higher spend with their main Supplier.

⁸⁸ CMA analysis of Suppliers data. Suppliers included are [REDACTED].

⁸⁹ These averages are taken across all Generalists and therefore the estimates for the Parties in paragraph 8.8 fall within this range.

purchases in single transactions, but rather may be driven by search costs savings, the effect of rebates or other factors). We consider that the effect of customers relying on a single principal supplier for most of their requirements is more relevant than the reasons for this effect.

Parties' internal documents

- 8.32 The Parties' internal documents include [REDACTED]. These contain a mixture of references to [REDACTED]. For example, [REDACTED]⁹⁰ and [REDACTED].⁹¹ However, other [REDACTED].⁹²
- 8.33 As set out in paragraphs 10.91 to 10.93, the [REDACTED]. This is indicative of the Parties not being constrained by customers switching from Generalists to Specialists – i.e. customers do prefer a one-stop shop offering for a significant proportion of their spending needs.
- 8.34 We have not collected as many documents from competitors as from the Parties, however, [REDACTED].

Competitors' views

- 8.35 Competitors gave a clear indication that, in general, customers do value a one-stop shop offering. This came across both in their questionnaire responses, where 12 out of 16 competitors indicated customers' generally value a one-stop shop (which we defined in the question to them as 'being able to buy all or most of their Educational Resources from one Supplier') and in our hearings with competitors.
- 8.36 Seven competitors provided an estimate of the proportion of customers which have a preference for a one-stop shop approach to purchasing Educational Resources (all other competitors gave a nil return to this question). The average estimate was 67% of customers have a preference for a one-stop shop.

Customers' views

- 8.37 We asked customers in our written questionnaire about the important of a one-stop shop. The majority of customers (29 out of 31) stated that it was important to be able to order a range of products from a single Supplier (one-

⁹⁰ [REDACTED]
⁹¹ [REDACTED]
⁹² [REDACTED]

stop shop).⁹³ One customer mentioned that a one-stop shop was important, but that this was for aggregating smaller items (e.g. types of stationery), and it did purchase larger items from other Suppliers. Similarly, another customer mentioned that the school uses a range of different Suppliers (in its questionnaire it listed five Generalists, including Amazon, in addition to one Specialist and High-Street stores),⁹⁴ depending on the department it is purchasing for. However, for general areas like stationery and exercise books, it will tend to use just one or two Suppliers. Another customer said that bulk orders from the same Supplier lead to discounts, simplify the invoicing process and reduce the logistical challenges – while another told us that it is seeking to consolidate spend to a few Suppliers, as this improves oversight of spend, reduces the logistical challenges and may help facilitate discounts.

- 8.38 While responding customers generally told us a one-stop shop was important, we note that all respondents bought from a number of Suppliers, including the six customers who indicated in their written response that a one-stop shop was ‘Essential’ (five customers showed this and one was a nil return for this question). However, this should be caveated by the following points: (i) all customers indicated that they had a main Supplier or a small number of main Suppliers, (ii) in some cases products (or their volumes) bought from other Suppliers were different to products bought from their main Supplier (this was particularly the case for purchases from Amazon), and (iii) customers may have interpreted ‘one-stop shop’ in different ways in their responses to our written questionnaire.

Separate framework lots

- 8.39 The Scotland Excel Framework, has separate Lots for a ‘one-stop shop’ Lot as well as Specialist Lots. If the Specialist Lots were sufficient on their own, and there was no preference for a one-stop shop then that lot may not be expected to exist. However, the Northern Ireland Framework, which is structured differently, does not have a specific Generalist Lot or contract.

⁹³ Question: “Q4. How important is it for you to be able to order a range of different products across different categories (e.g. stationery, furniture, sports equipment) from a single Supplier (one-stop shop ordering)?” The possible responses were “Essential, Very Important, Fairly Important, Not Important, Don’t Know”. The asymmetric response scale has been chosen intentionally to allow for greater disaggregation of responses stating that this is important to some degree.

⁹⁴ The questionnaire gave prompted answers (8 named Generalists (including Amazon), 1 named Specialist, High-Street stores and Supermarkets) and an ‘other’ category. All the Suppliers listed by [§] had named prompts, except for ‘High-Street stores’ which was named as a broad category.

Provisional view on one-stop shopping

8.40 We have observed a range of customer preferences. Competitor and customer views and internal documentary evidence from Suppliers supports the view that customers value a one-stop shop offering. However, analysis of the Parties' data is more mixed. It shows that there are many low value transactions (indicating that preferences for a one-stop shop to fulfil a significant proportion of needs within individual transactions is weak) but it also shows that the majority of the Parties' revenues comes from customers purchasing multiple categories of products from the Parties (ie a significant proportion of customer needs are fulfilled by one-stop shops over time).

Loyalty and Switching

8.41 Customer loyalty arises when customers continue to purchase from the same Supplier due, at least in part, to their past relationship with that Supplier. Specifically, it implies a tendency to remain loyal to a Supplier even when an overall better offer is available from an alternative Supplier. This can include providing the main Supplier the opportunity to price match against a better offer, which may prevent customers from switching. Loyalty is not binary, rather the degree of loyalty may vary across customers.

8.42 We examine loyalty and switching to provide insight into the levels of rivalry in the market and the closeness of competition between the Parties and other Suppliers. Where customers engage in switching to other Suppliers, this indicates a degree of competitive constraint from those Suppliers. Where little actual switching occurs, but, for example, price reductions such as price matching takes place, we consider this to be an example of rivalry, and the competitors against which the price matching takes place to be relevant alternatives.

8.43 In this section, we set out: (i) the Parties' views; (ii) our assessment of the evidence; and (iii) our response to the Parties' representations.

Parties' views

8.44 The Parties submitted that customers frequently shop around and that loyalty to PSBOs is breaking down. The Parties submitted that this is evidenced by low average customer tenure ([REDACTED]),⁹⁵ and a large number of the Parties' customers ([REDACTED]) significantly changing their purchasing behaviour.⁹⁶

⁹⁵ The Parties submitted that [REDACTED].

⁹⁶ [REDACTED]

- 8.45 The Parties submitted an analysis of their customers' spending variation (ie the extent to which customers varied their spend with the Parties between 2018 and 2019). The Parties submitted that the sales data shows material variations in customer spending from one year to the next. For example they submitted that [X] % of YPO's and [X] % of Findel's customers in 2018 did not purchase any product from the respective Party in 2019. The Parties submitted that should customers be sticky, one would expect expenditure with the same supplier to be much more stable from one year to the next.
- 8.46 The Parties said that the evidence is not consistent with strong loyalty on the part of customers. They said:
- (a) The large majority of customers already buy from more than one supplier (based on the CMA's customer evidence and analysis of Suppliers' customer data);
 - (b) Customers indicate that they shop around and that the most important factor in their purchasing decisions is price and they benchmark on price (based on the CMA's customer evidence);
 - (c) The Parties' typical experience is of customers reporting to them that they are switching to an alternative supplier;
 - (d) Customers indicate that they have alternatives they would switch to in the face of a price increase and can name a variety of such alternatives (based on the CMA's customer evidence);
 - (e) Transaction data shows that customers are not loyal;
 - (f) The balance of evidence from internal documents is at most mixed on customer loyalty;
 - (g) Even among the highest-spending customers there is very substantial churn that is too large to be explained by year to year variations in spend; and
 - (h) The market trend is away from loyalty, not towards it.

Our assessment

- 8.47 In this section, we assess: (i) customer tenure and variation in spend; (ii) Parties' internal documents; (iii) customer evidence; (iv) third party views; (v) rebates; (vi) local authority influence; and (vii) incentives to switch.

Customer tenure and variation in spend

- 8.48 Measuring customer tenure in this market is less straightforward than in some other markets, since customers may vary their levels of spend, either in aggregate or across suppliers, instead of switching Supplier entirely.
- 8.49 Nevertheless, examining tenure on the basis of placing at least one order each year, we find that there is a strong element of customer loyalty among the Parties' highest value customers (i.e. those more likely to be using them as a one-stop shop):
- (a) [X]% of YPO's [X] of customers by value have been their customer for [X] years; and
 - (b) [X]% of Findel's [X] of customers by value have been their customer for [X].⁹⁷
- 8.50 We note the Parties' analysis of variation in customer spend (see, paragraph 8.45). We agree that substantial annual variation in customer spend could be indicative of customer switching and could be consistent with customers not being loyal (paragraphs 8.46(e) and 8.46(f)). However, it could also reflect variations in spend by product category across time, particularly for durable products (e.g. furniture). We also recognise there are other possible explanations for this finding (which are discussed further in Chapter 10);
- 8.51 We note that in the Parties' analysis, when the analysis is limited to the [X] of customers by spend value (which we estimate to account for approx [X], see Figure 8.5 and Figure 8.6), the proportion of customers ceasing purchasing (between 2018-2019)⁹⁸ with the Parties decreases to between [X]% (compared to [X]% of all YPO's and [X]% of all Findel's customers, see paragraph 8.45). However, we also note that [X]% of YPO's and [X]% of Findel's [X] of customers in 2018 decreased their spending with YPO and Findel respectively by between [X]% in 2019.
- 8.52 [X] told us that between 2018 and 2019 it had [X] amounting to around £[X] in revenue ([X]). It described this as [X]. [X].

⁹⁷ [X]

⁹⁸ We recognise that this comparison is based on examining the difference between only two years of data, however, we have found broadly similar impacts between 2017 and 2018.

Parties' internal documents

- 8.53 As part of our review of the Parties' internal documents we have looked for references to loyalty and switching. However, as a source of evidence, we expect to place less weight on them than other evidence (such as actual customer tenure and customer switching) since it is unclear how systematic they are. We are also mindful that there may be bias in the reporting of examples of references to loyalty and switching which means they could be unrepresentative. Specifically, if loyalty was strong there could be a tendency to report examples of switching (as unusual occurrences) and less likelihood of reporting loyalty specifically. Many of the documents we have reviewed are reports from sales or account managers. We would expect these individuals to be more likely to highlight a switch than continuation of the status quo, especially for higher value customers.
- 8.54 Our review of the Parties' internal documents found mixed evidence on customer loyalty (and hence we agree with the Parties' submission in paragraph 8.46(f)). We have found evidence of weak loyalty, but we consider that these examples could be driven by a tendency to focus on reporting switches, making the number of examples observed in these documents unrepresentative of broader customer behaviour. We therefore do not agree with the Parties' submission.
- 8.55 We also note that as discussed in paragraph 4.23, YPO's Business Case states that [REDACTED]. We consider this is further evidence of customer loyalty.

Customer evidence

- 8.56 We do not consider it appropriate for the Parties to use our customer evidence in support of their view on wider behaviour of customers (this applies to paragraphs 8.46(a), 8.46(b) and 8.46(d)), given the limitations of this evidence.
- 8.57 Among the respondents to our customer research we found mixed evidence in relation to the extent of customer switching. In general customers told us that they do shop around and few customers indicated that historical purchasing behaviour was a significant factor in their current purchases. However, customers also indicated that they generally had lengthy tenure (ie four years or longer) with Suppliers and the rigour of any shopping around varied between customers.
- 8.58 Many customers purchase across more than one Supplier over the course of a year (Figure 8.9), but most customers have a main Supplier (Figure 8.10)

such that it is not appropriate to consider use of multiple suppliers in itself as evidence of weak loyalty.

Third party views

- 8.59 Suppliers gave mixed views about the extent of loyalty and the speed with which it is changing. However, most acknowledged that historically the industry has been characterised by customer loyalty. They generally gave some evidence of a trend away from loyalty, in-line with the Parties' submission (paragraph 8.46(h)). However, we also note some off-setting trends (eg a tendency for MATs to consolidate suppliers and have preferred suppliers).
- 8.60 16 competitors provided views in relation to customer switching and customer loyalty. These responses include some from competitors we consider to be Specialists. Of these:
- (a) Five competitors ([REDACTED]) gave responses broadly indicating that customer loyalty is and remains strong. For example, one competitor said "We find customer loyalty is high due to our long-established track record of providing good value for money and high levels of customer service."
 - (b) Seven competitors ([REDACTED]) gave responses indicating a mixed picture, eg that some customers were loyal and others shopped around. For example, one competitor said "The industry can be quite fickle and sometimes will switch for a very small saving especially on the '[REDACTED]' products we supply. However, there are also very loyal customers especially heads of depts and curricular products". Another Supplier said [REDACTED] and that it had found it '[REDACTED]' to acquire market share from [REDACTED] due to 'strong regional and national penetration and the reluctance of customers within the sector to change supplier partners'.⁹⁹
 - (c) Four Suppliers gave responses indicating that there was little customer loyalty. For example, one competitor said "Customer loyalty is limited, particularly on key lines, the internet has given the power to the consumer to find the best deals and price is critical."
 - (d) BESA (the trade body for some Generalist Suppliers) told us that "Individual suppliers tend to have high [Net Promoter Scores] NPS scores for loyalty".¹⁰⁰

⁹⁹ [REDACTED]

¹⁰⁰ NPS stands for Net Promoter Score and is an index that measures the willingness of customers to recommend a company, a product, or a service to others.

Rebates

- 8.61 We examined whether there is evidence that rebates may induce customer loyalty.
- 8.62 YPO issues rebates to its Associate (mainly Councils) and Ordinary Members (all customers).¹⁰¹ [REDACTED].
- *Founder Members' loyalty rebates*
- 8.63 In 2019, YPO's Management Committee determined [REDACTED]. [REDACTED].¹⁰² [REDACTED].
- *Associate Members' loyalty rebates*
- 8.64 In 2019, YPO's Management Committee determined that [REDACTED].¹⁰³ [REDACTED].
- *Ordinary Members' loyalty rebates*
- 8.65 All YPO's customers who are not Founder or Associate Members are considered to be its Ordinary Members. They may receive loyalty rebates in the form of credit vouchers which they can redeem against their future purchases. [REDACTED].¹⁰⁴
- 8.66 One customer out of our eleven customer interviews told us that these types of rebate are a factor in their choice of Supplier.
- 8.67 We therefore consider that rebates may tend to increase loyalty, but only among customers of some Suppliers and only among some of these customers.

Local Authority influence

- 8.68 We found some references in the Parties' internal documents to councils influencing/directing decisions about which Suppliers locally maintained/funded schools should use. For example, [REDACTED].¹⁰⁵
- 8.69 We contacted some of YPO's Founder and Associate Members. Among those we contacted, we received 10 responses from Councils.

¹⁰¹ These are effectively the same as loyalty rebates.

¹⁰² [REDACTED]

¹⁰³ [REDACTED]

¹⁰⁴ [REDACTED]

¹⁰⁵ [REDACTED]

- 8.70 Amongst the Founder Members, two Councils said they did not provide advice to schools on what to buy or whom to buy from,¹⁰⁶ one said it gave some procurement advice on a chargeable basis and two described advice in certain circumstances.¹⁰⁷ One Founder Member said “[It] advises schools on ways of achieving value for money. This may include highlighting to them Local Authority contracts, DfE frameworks, public sector buying organisations such as YPO or the Crown Commercial Service”.
- 8.71 Amongst the Associate Members, [redacted]. Three Councils said they do not give advice to schools. One said “The LA does not advise, influence or control maintained schools choice of educational resources. Schools make their own arrangements and enter into their own contractual arrangements following contract procedure rules to test value for money.
- 8.72 Overall, we do not consider that local authority influence is a material factor in sustaining customer loyalty.

Incentives to switch

- 8.73 A further factor that could potentially increase loyalty is the overall incentive for customers to switch, as determined by the potential savings from doing so. Discretionary spend, and spend on Educational Resources, is a very small portion (3%) of Educational Institutions’ budgets and as such any savings are a relatively small part of an Educational Institution’s budget. This may limit their incentive to switch Supplier, particularly when set against the risk of switching to a previously unused Supplier and the time cost involved in search. For some customers this effect could be more limited where decision makers have specific budgets (eg budget for a secondary school Department) for which they are responsible and hence the marginal gains from switching may appear a greater proportion of the budget for which they are responsible. Overall, the limited scope for savings as a proportion of an overall customers’ budget could be a further factor supporting customer loyalty.

¹⁰⁶ [redacted]. [redacted] said that it does not control purchasing decisions made by schools within its area. Head teachers and school bursars make local spending decisions and report to their governing body on performance and financial management. These are independent entities and free from council influence in this regard. It is however an expectation that schools comply with procurement law when making purchasing decisions and guidance is provided to schools to that effect. It advises on compliance, not “what to buy or whom to buy from.”

¹⁰⁷ [redacted]. [redacted] said its maintained schools are free to procure educational resources from any supplier available to them and only in certain circumstances provided support to a school for finding resources for specific educational reasons/outcomes.

Provisional view on loyalty

8.74 We have found that customer loyalty has historically been an important factor in the market and continues to be present to at least some extent. However, levels of loyalty differ substantially between different Educational Institutions.

Parameters of competition

8.75 Competition can help to drive good outcomes for customers through exerting competitive pressure across all aspects of Suppliers' offerings. In this section we consider: (i) the Parties' views; (ii) how competition in this market occurs across each of PQRS, innovation and marketing; and (iii) the ability to discriminate between customers.

Parties' views

8.76 The Parties submitted that "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."

8.77 The Parties submitted that "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)".

Our assessment

Price

List prices

8.78 Suppliers told us that that they typically set list prices on an [REDACTED] basis and that these are consistent across their sales channels such as print catalogues and online.¹⁰⁸ When setting prices the Suppliers take account of competitor pricing and typically engage in price benchmarking for a proportion of their products. For example, Findel said [REDACTED]. In its annual report, [REDACTED]

¹⁰⁸ [REDACTED]

8.79 For most Suppliers, the setting of list prices involves some form of benchmarking.¹⁰⁹ [REDACTED]. Findel said:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

Discounting

8.80 The extent of discounting conducted by Suppliers in the market varies considerably. Some Suppliers undertake substantial discounts relative to list price, for example, [REDACTED] and there are frequent mentions of competitors' discounting in the Parties' internal documents.¹¹⁰ Others do not conduct any significant discounting, for example, [REDACTED]. Limited discounting seems to be more common amongst PSBOs. For example, one competitor told us "As a not-for-profit organisation, we aim to keep our prices as competitive as possible, adding an on-cost that only covers our operating model. Our transparent pricing is, therefore, without scope for additional variations or discounts for individual customers."

Frameworks

8.81 Suppliers also compete on price when tendering for framework agreements, either with National Bodies or with individual education establishments or MATs.¹¹¹ For example, the previous iteration of the Scotland Excel Framework was [REDACTED].

Ability to discriminate between customers

8.82 The ability and extent of discrimination between customers is important to our competitive assessment. In markets where there is little ability to identify different customers by their likelihood of switching and a uniform offering to customers, then suppliers take into account all customers when setting their overall offering and the behaviour of a relatively small number of customers may help to keep an overall offering competitive. On the other hand, in markets where it is possible to identify different customer types and to tailor

¹⁰⁹ See for example, for the Parties, paragraphs 10.51 to 10.94, and [REDACTED].

¹¹⁰ [REDACTED]

¹¹¹ Such frameworks are referred to in some of the Parties' internal documents, mostly for MATs. [REDACTED].

offerings to them, then there is a greater likelihood of individual customers being affected.

8.83 This is relevant to this case in that Suppliers' ability to identify and discriminate (whether on price or service) between customers could influence both the potential for a merger effect for different groups of customers, and also the types of Supplier that may act as a constraint on the Parties.

8.84 Where customers (i) engage in top-up, marginal or specialist spend, or (ii) are relatively price sensitive, it is feasible that Generalist Suppliers face greater competitive constraints for these customers, including from out of market Suppliers. Where customers use a Generalist Supplier as a primary supplier for a large range of products, the pool of alternative Suppliers may be more limited, and consequently the risk of a merger effect may be greater.

- *Parties' views*

8.85 The Parties submitted that the Merged Entity would not risk a strategy that involves keeping prices high for customers who predominately buy from them and discount to attract others who make occasional purchases. They submitted that it would not be possible to treat loyal peak multi-category customers worse than currently, since such conduct would prompt more shopping around. They said that even loyal customers multi-source and benchmark and therefore that price discrimination against so called 'loyal' customers would quickly be discovered and acted upon.

- *Ability to identify customers*

8.86 Suppliers are able to monitor the spend patterns of their customers relatively easily. For example, [REDACTED]. Another Generalist said "We know what every current, former or potential customer is spending. We know internally, so once they hit a certain period of time without spending, it kind of triggers a warning, if you like, for the account managers or sales staff to get in touch with them."

- *Ability to prevent offers being available to all customers*

8.87 Despite having uniform price lists and product range, Suppliers are able to offer bespoke terms to individual customers through discounts or variations in service terms. While awareness of discounts and offers from Suppliers may lead some customers to seek out equivalent terms from a Supplier, not all customers may be aware or choose to do so. Therefore, we consider that Suppliers are able to target terms of service/discounts to specific customers.

- *Extent of current price discrimination*

8.88 We have reviewed the extent to which there is currently price discrimination in the market (we also recognise that discrimination could arise in the form of variation in the level of service provided, but have not reviewed the extent of such existing variation).

8.89 [REDACTED]:

(a) [REDACTED].¹¹²

(b) [REDACTED].¹¹³

8.90 [REDACTED]

8.91 One competitor we spoke to during the inquiry described pricing practices that flexed according to the customer. This included descriptions of ‘tactical’ pricing or discounts, and price matching such as for new, important or high value customers. Another described differences in the range of discount that would typically be offered.

- *Provisional view on ability to discriminate between customers*

8.92 We have provisionally found that price discrimination does occur in the market currently. We also consider that given the ability to monitor, identify and offer different terms to different customers there is scope for continued and/or further price or service discrimination in future. We recognise that there are public price lists and many different customers, but consider the ability to offer customers targeted off-price list discounts gives scope for future discrimination between customers.

8.93 We acknowledge the Parties’ submission (see paragraph 8.85) that they would not risk such a strategy, but consider that they have the ability to enact it should they find it profitable to do so. We disagree that loyal customers would necessarily shop around in response to price discrimination against them, since by definition, we have identified that these customers are loyal and less likely to switch or compare. We also disagree that offering discriminatory discounts to occasional purchasers would necessarily become apparent to multi-category customers, since this would not need to be reflected in publicly-available list prices. Further, we do not consider that such

¹¹² CMA analysis of Findel transaction data.

¹¹³ CMA analysis of Findel transaction data.

discrimination is necessary under the horizontal unilateral effects theory of harm, rather than that it may enhance the prospect for concerns to arise.

Quality

- 8.94 We consider that quality encompasses both the quality of the products that Suppliers source and sell (and in some cases this includes their own products), as well as the quality of their Supply functions, such as the quality of their catalogues.
- 8.95 Evidence from customers suggests that quality is an important factor in their purchasing decisions. For example, [redacted] customers told us that quality was one of the top 3 most important factors in their purchasing decisions.¹¹⁴ Suppliers supported this view of the importance of quality ([redacted] reported it as in the top 5 factors influencing customer decisions). For example, one competitor said “Most education establishments require products that are well made, durable and of good quality in order to obtain true best value for money.”

Range

- 8.96 We consider range in this case to encompass all aspects of the range of products available from a given Supplier, including the number of product categories, the number of individual products themselves and the types of quantities products available (e.g. bulk bundles of whiteboard erasers, single whiteboard erasers). Supplier’s ranges can differ considerably, notable between Generalists (who offer a wide range of product categories) and Specialists (who offer only one or two product categories).
- 8.97 Suppliers supported this view of the importance of range ([redacted] reported it as in the top 5 factors influencing customer decisions). For example, one Supplier said “Customers like to have choice and [redacted] will all offer competing products in relation to any particular subject or segment. Some will have a wider range of products, others will be more focused.”

Service

- 8.98 We consider that service encompasses all aspects of customer service, such as advice, customer contact, delivery options and ease of ordering. As noted above (see paragraph 8.83) Suppliers’ ability to identify and potentially discriminate on service terms between customers could influence both the

¹¹⁴ See Appendix D, paragraph 18.

potential for a merger effect for different groups of customers, and also the types of Supplier that may act as a constraint on the Parties. Evidence from the competitors we spoke to during this inquiry supports the view that discrimination could take place in relation to non-price factors. One competitor described itself as moulding according to the customer profile. One competitor described [REDACTED] and another described [REDACTED] as a feature of their approach, which could be flexed according to the customer profile, including by reference to existing or new customers.

- 8.99 Evidence from customers, suggests that service is an important factor in their purchasing decisions. For example, [REDACTED] customers told us that service was one of their top 3 most important factors in their purchasing decisions. Suppliers supported this view of the importance of service ([REDACTED] reported it as in the top 5 factors influencing customer decisions). For example, one Supplier listed ‘Service and Aftercare’ as the single most important factor in customer purchasing decisions. It explained “Customers expect a hassle free experience, ideally making lives easier in regards to ordering supplies”. [REDACTED].

Innovation

- 8.100 In addition to the competition which occurs on these existing PQRS aspects of Suppliers’ offerings, innovation also plays a role in this market in terms of changes and improvements to Suppliers’ services and offerings. While such innovation is, by its nature, hard to predict, we have seen Suppliers making improvements across these areas – including their customer interface, billing systems, communications, bespoke or ‘value add’ services and delivery terms.¹¹⁵

Marketing

- 8.101 Suppliers make sales through a number of channels, including their website. They are therefore always available to passively receive orders. In addition, they undertake various initiatives to try and proactively win, or retain, customers.
- 8.102 Suppliers undertake marketing in a variety of forms including:
- (a) Catalogue and leaflet distribution – All Generalists other than Amazon have a physical catalogue that they distribute to some of their customers. 16 out of 16 third party Suppliers with paper catalogues told us that their paper catalogues remained important for their sales to Educational

¹¹⁵ [REDACTED]

Institutions. In some cases Suppliers distribute leaflets/pamphlets instead of a full catalogue for reasons of cost savings.

- (b) Digital adverts and social media – Some Suppliers run digital or social media campaigns. [REDACTED].
- (c) Promoted links on search engines – For example, search engine marketing can include promoted links which take a user to a specific campaign page with messaging tailored to their local geography and their local area sales manager’s details.
- (d) Direct mail and email campaigns – Some Suppliers conducted target mail or email campaigns. [REDACTED].

8.103 The Parties have submitted that there is a move away from catalogues and traditional forms of marketing and more towards digital and online marketing.

8.104 The Parties’ marketing budgets are approximately £[REDACTED] and £[REDACTED].

8.105 Marketing can be national, regional or targeted at specific customer types. [REDACTED].¹¹⁶

8.106 Suppliers engage in specific campaigns targeted at winning business in specific contexts eg from specific regions. For example, [REDACTED].

Provisional view on parameters of competition

8.107 On the basis of the evidence set out above, our provisional view is that Suppliers compete with each other across all aspects of PQRS as well as competing to innovate and improve their offering. Suppliers can identify different customers and have the ability and potential to discriminate service terms between them.

9. Market Definition

Introduction

9.1 In this chapter, we define the relevant market which will frame the analysis of the competitive effects of the Merger and which contains the most significant competitive alternatives.

9.2 This chapter is structured as follows:

¹¹⁶ [REDACTED]

- (a) General approach to market definition;
- (b) Introduction to the sector;
- (c) Product market;
- (d) Segmentation by customer type;
- (e) Geographic market; and
- (f) Provisional view on market definition.

General approach to market definition

- 9.3 The purpose of market definition is to provide a framework for our analysis of the competitive effects of the Merger. The relevant market(s) contain the most significant alternatives available to the customers of the Parties and includes the most relevant constraints on the behaviour of the Parties.¹¹⁷
- 9.4 Market definition is a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In this case, we will take into account all relevant competitive constraints in our competitive assessment.
- 9.5 In practice, the analysis underpinning the market definition and the assessment of competitive effects overlap, with many of the factors being relevant to both. In our assessment of whether the Merger may give rise to an SLC, we will take into account constraints outside the relevant market, and to the extent necessary, segmentation within the relevant market, or other ways in which some constraints are more important than others.
- 9.6 For example, Suppliers are differentiated. Differentiation means that a spectrum of offerings exists. Delineating a relevant market on such a spectrum can be difficult and somewhat artificial. Recognising that product differentiation can limit the usefulness of market definition, we will ensure that our competitive effects analysis takes account of all relevant constraints and of the ways in which some constraints may be more important than others.
- 9.7 Below we assess both the relevant product and geographic market and whether markets should be segmented.

¹¹⁷ [CMA Guidance](#), paragraph 5.2.1.

Introduction to the sector

- 9.8 The Parties are Suppliers of Educational Resources to Educational Institutions in the UK. They offer a wide range of different Educational Resources across a number of product categories, covering stationery, science equipment, play equipment etc.¹¹⁸ Some of these products are homogenous products (eg A4 paper) whereas others are differentiated products (eg certain Arts and Crafts materials, sports equipment).
- 9.9 Suppliers' overall offerings are also differentiated by the product ranges they offer (eg between Generalist and Specialist Suppliers), as well as by other factors such as their customer service, delivery policies and branding.
- 9.10 There is a wide range of different Suppliers of Educational Resources, covering Generalists, Specialists and high-street retailers. Some of these only supply Educational Resources to Educational Institutions, while others supply other types of customers as well. Some operate across the UK and others are focused on parts of the UK. The substitutability of these Suppliers from a customer perspective will depend on factors like their product range and brand proposition. Suppliers have different product ranges, with some focused on a narrow product category and others covering multiple product categories.
- 9.11 While we recognise this spectrum of Suppliers exists, we consider it appropriate to begin the assessment of the relevant market by focusing on the products and geographic areas where the Parties overlap.
- 9.12 In terms of the product market, both Parties supply across multiple product categories with sufficient depth that they could be the main provider for the majority of an Educational Institution's requirements, which makes them Generalists, although Findel also has a well-developed specialist offer.¹¹⁹ Geographically, both Parties supply across the UK and therefore have a degree of overlap in all nations and Regions of the UK.¹²⁰

¹¹⁸ The exact set of products offered (eg curriculum products) changes over time. Nevertheless, market definition is not a static concept, and this does not preclude a market definition to be made over a broad category of products.

¹¹⁹ We discuss in Appendix C why we have treated all of Findel's brands together in our assessment and included them all within Findel's market share.

¹²⁰ Both Parties also have international sales ([§<]). However, we do not consider this to be a material overlap and not relevant to our assessment.

Product market definition

Parties' views

- 9.13 The Parties submitted that the relevant product frame of reference is the supply of educational resources to all types of educational establishment in the UK, and that this should not be segmented by product type, by customer type or by the type of distributor.
- 9.14 The Parties submitted that many of the core products purchased by customers are sold by most suppliers and that there is a lot of substitutability on the supply side, since suppliers can add additional products or categories to their portfolio.
- 9.15 The Parties submitted that the Phase 1 Decision adopts an implausibly narrow frame of reference and fails to give weight to substantial constraints from inside and outside the market.¹²¹
- 9.16 The Parties submitted that Amazon should be included within the frame of reference. They submitted that this was because online ordering was becoming increasingly common, that Amazon has put strategies in place to grow in this market and the Parties' have lost customers to Amazon. The Parties also submitted that both customers and competitors readily identify Amazon as an alternative to the Parties either as a potential supplier, or as a main competitor. The Parties further submitted that these views are consistent with the Parties' regular monitoring and benchmarking of Amazon.
- 9.17 Regarding Specialist Suppliers, the Parties submitted that the Phase 1 Decision dismisses Specialist Suppliers as a constraint, amongst other reasons because customers rely on Generalists as a "one stop shop" and that Specialist Suppliers sell product categories that sit outside of what most Generalists would supply. However, for every product category sold by the Parties, there are numerous Specialist Suppliers which also supply the same type and range of products in that category. In order to constrain the Parties, it is not necessary for such Specialists to operate in every single category, only that educational establishments consider these Specialists as an alternative to some of their requirements. The Parties believe this is absolutely the case and requires further examination in phase 2.
- 9.18 The Parties submitted that it was a flawed approach to consider that Specialists would only form part of the market if a sufficient number of

¹²¹ [REDACTED]

customers would consider switching from being supplied by a Generalist to being supplied by Specialists for all of their needs. They submitted that this approach:

- (a) Fails to give weight to the fungibility of products and that customers require a particular product and do not focus on the nature and range of the Supplier; and
- (b) Centres on the idea that customers rely on Generalists for a one-stop shop and this is not supported by the evidence showing most of the Parties' transactions are single-category transactions.

9.19 In contrast, the Parties submitted that:

- (a) Customers and competitors view Specialists as clear competitors;
- (b) The Parties consistently benchmark against Specialists, indicating that they are a constraint; and
- (c) The constraint from Specialists may be seen in the Parties' comparisons made for buying and range development rather than the benchmarking of price.

Our assessment

9.20 This section is structured as follows:

- (a) Assessment of what type of supplier is within the narrow candidate market for Generalist Suppliers.
- (b) Consideration of whether the market should be expanded to include Specialist Suppliers.
- (c) Assessment of whether the market should be segmented by reference to distribution channels.

Generalist Suppliers

9.21 When assessing the relevant market, we start by selecting a candidate market as a starting point and then assessing whether the relevant market should be widened from this basis. When selecting a candidate market, we include at least the substitute products of the merging firms.¹²²

¹²² [CMA Guidance](#), paragraph 5.2.11.

- 9.22 As set out above, the Parties sell a broad range of Educational Resources. We consider Educational Resources are resources used by Educational Institutions to assist the teaching of children or to facilitate a safe learning environment. 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. The Parties overlap in their supply of Educational Resources across multiple product categories.¹²³ We consider these types of Suppliers to be Generalist Suppliers and we take this as a candidate market for product market definition.
- 9.23 We consider that Generalist Suppliers are those that offer Educational Resources products across multiple Educational Resources categories (e.g. arts & crafts, curriculum, stationery, sport etc) and offer sufficient depth within these categories that they could be used as the main provider for the majority of an Educational Institution's requirements, although the precise products that Generalists offer may differ between them. Typically, they also have a customer service proposition designed specifically to suit Educational Institution's needs.
- 9.24 Generalist Suppliers have a similar product and service offering which means that typically they see other Generalists as their closest competitors and customers from whom we collected evidence saw them as alternatives to each other (see Appendix D). This supports the definition of a market at least encompassing these Generalist Suppliers. However, Generalists are not homogenous and differences in their product ranges and service offers still lead to differentiation between them and some being closer or more distant competitors to each other.

PSBOs

- 9.25 We consider PSBOs to be Generalists and they [X]. We include within this category, East Riding, ESPO, Hampshire County Supplies, Herts FullStop, KCS and YPO.¹²⁴

¹²³ The Parties do not appear to offer 'bundles' ie a pre-defined bundle of goods sold at a price that may differ from the sum of its composite components. In some cases, where Suppliers do offer such packages it can be appropriate to define a bundles market, but in this case we do not consider it appropriate to do so.

¹²⁴ Even though Findel and RM are now private companies, they both include within their Group's former PSBOs (for Findel, GLS used to be Greater London Supplies and for RM, Consortium used a local authority supplies organisation for customers in the South West and Wales).

Former PSBOs and privately owned Generalist Suppliers

- 9.26 We note that some former PSBOs (Consortium and GLS) are now private companies (Findel, RM). There are also some other private companies (e.g. HBS Half Moon Group) that have a similar offer and self-identify as Generalists but do not have a PSBO background.

Amazon

- 9.27 We considered whether it is appropriate to place online-only retailers, such as Amazon, within the relevant market, regardless of its different route to customers and its shorter history.
- 9.28 Amazon provides Educational Resources to Educational Institutions in the UK through Amazon Business, its business-to-business online store, which it started to operate in this sector in 2017 (although it is likely that some Educational Institutions procured Educational Resources from Amazon's consumer-facing service, rather than Amazon Business specifically, before this date). It has since become a prominent Supplier that offers products across a broad range of categories to Educational Institutions.

- *Amazon's offering*

- 9.29 Our customer research covered a limited number of customers but, of these, the majority ([REDACTED] YPO customers and [REDACTED] Findel customers) made at least some purchases with Amazon during the 2019-20 school year.¹²⁵ Of these, a very small number of YPO customers ([REDACTED]) and Findel customers ([REDACTED]) told us that Amazon was in fact their main Supplier. We also spoke to 9 of these customers that purchased from Amazon and 6 of these described that they typically use Amazon to purchase specific products that were not necessarily available from other Generalists or in some cases for making emergency purchases due to rapid delivery.
- 9.30 A piece of existing third party customer research from Autumn 2019 with 981 respondents shows that between 22-32% of schools make quite regular (or all the time) use of Amazon. This research said: "A quarter of schools in the maintained sector record using Amazon quite regularly, with a very small percentage suggesting very regular use. In the last year there has been some extension in use, but it is limited. Use of Amazon across the independent sector is a little more common. Even so, the majority of schools make no or very rare use of Amazon."

¹²⁵ See Appendix D, paragraph 53.

- 9.31 Recognising that a proportion of customers make regular purchases from Amazon, we have considered whether the level of spend and type of those purchases is similar to those made from a Generalist Supplier.
- 9.32 Regarding the level of spend, we found that the average annual Educational Institution customer spend with Amazon Business in 2019 in the UK was around £[REDACTED],¹²⁶ [REDACTED] (see, paragraph 8.28). [REDACTED].
- 9.33 Regarding the type of spend, Amazon's Educational Resources revenues have been growing in recent years, [REDACTED]. This hypothesis is supported by an examination of Amazon's top 20 vendors and sellers (according to our analysis, accounting for [REDACTED]% of its revenues). Our analysis found that these vendors and sellers are primarily [REDACTED]. [REDACTED].
- 9.34 [REDACTED]. Amazon told us that overall it sees itself as a retailer. It does not specifically target educational customers, or educational categories per se, but those products are part of its general offering. Amazon told us that there are various different trade shows that it will engage with across all different types of industries (whether public or private sector [REDACTED]. [REDACTED]. Some changes that it has made, which benefit Educational Institutions, such as revisions to invoicing processes were rolled out in a wider context.
- *Amazon as an alternative to other Generalists*
- 9.35 We have considered whether Amazon is an alternative to other Generalists for customers.
- 9.36 Our customer research found that [REDACTED] YPO customers and [REDACTED] Findel customers named Amazon as a potential alternative, for at least part of their spend, if the relevant Party stopped supplying.¹²⁷ However, for only one of these customers was Amazon the sole alternative listed. It is therefore unclear whether Amazon, on its own, represents a viable alternative to the Parties for these customers, or whether it is only an alternative for part of those customers' spend.
- 9.37 We have also considered evidence from the Parties' internal documents as to whether Amazon appears to be a close substitute. As set out further in Chapter 10, YPO monitors Amazon [REDACTED] (see paragraph 10.66) and Findel perceives Amazon as imposing some constraint, and as having the potential to impose a greater constraint in the future (see paragraphs 10.82 and 10.83). Although we found [REDACTED], the evidence indicates that Amazon is currently

¹²⁶ [REDACTED]

¹²⁷ See Appendix D, paragraph 62.

perceived to be a less important or immediate competitor than the other larger Generalist Suppliers (the other Merging Party, RM, ESPO and KCS). We also note that YPO has an agreement with Amazon to allow it to sell through Amazon. It is not clear-cut how to interpret this arrangement, but it could imply that Amazon and YPO are, at least in some ways, complementary rather than substitutable.¹²⁸

9.38 Other Generalist Suppliers that we contacted as part of our inquiry rarely mentioned Amazon as a main competitor to themselves or to either of the Parties.

(a) One of [REDACTED] competitors listed Amazon within their top three competitors.

(b) A further two of [REDACTED] competitors listed Amazon within the top five competitors of the Parties.

(c) One competitor said “We have seen a growth in sales with retailers such as Amazon and supermarkets, however based on our analysis of the products bought by [REDACTED] schools they are rarely products which we supply or have in place via our direct supply arrangements (framework agreements). We believe that these retailers are mainly complementary.”

(d) One competitor said “[Amazon, supermarkets and stationery Suppliers] usually offer some commodities type offering but usually in much smaller pack sizes that the Educational Suppliers that consider school convenience and class sizes. The ability to transact with schools and make it easy to shop is a barrier for these companies.”

(e) [REDACTED]

(f) One competitor said “Although companies like Amazon are not our main competitor they still create more competition in the market”.

9.39 Overall, we consider that Amazon fulfils the characteristics of a Generalist, albeit its service offering is less focused on Educational Institutions, it is purely an online Supplier (eg has no catalogue) and there is a different focus in the types of products it sells. On the basis of this, we consider Amazon to be a Generalist Supplier, active in the same product market as the Parties and other, more traditional, Generalists described above. We assess the strength of its constraint further in our assessment of horizontal unilateral effects in Chapter 10. We also assess the potential for Amazon to expand in the future and be a countervailing factor to any merger effect in Chapter 12.

¹²⁸ YPO has told the CMA that the agreement relates to products that are not stocked by YPO. [REDACTED].

Supermarkets

- 9.40 Supermarkets (which typically have both physical stores and an online offer) offer a range of Educational Resources, primarily stationery and consumables, but also some other categories including arts & crafts and furniture.
- 9.41 Our customer research provides an indication that some customers ([REDACTED] YPO customers and [REDACTED] Findel customers) made at least some purchases with supermarkets. However, when we spoke to customers it seemed that they typically used supermarkets for specific product categories, often consumables and food.
- 9.42 YPO [REDACTED] (see paragraph 10.72). [REDACTED], Findel [REDACTED] (see paragraph 10.89). This indicates that supermarkets only impose a very limited, or no, constraint on the Parties.
- 9.43 [REDACTED] mentioned supermarkets as a main competitor to themselves or to either of the Parties. Two Generalists mentioned that supermarkets' offering is different to their own offering (see, paragraph 9.38(c) and 9.38(d)).
- 9.44 Overall, we do not consider that supermarkets form part of the relevant market but, to the extent relevant, we will assess them as an out-of-market constraint.

Provisional view on Generalist Suppliers

- 9.45 Our provisional view is that all PSBOs are Generalist Suppliers and belong within the relevant market. Some other private sector companies that provide a Generalist offer, including former PSBOs also belong within the Generalist market. While in some ways Amazon is differentiated from other Generalists, it does exhibit many of the same characteristics as Generalist Suppliers, and we therefore include Amazon within the same relevant market as Generalist Suppliers. In contrast, supermarkets and other retailers are insufficiently substitutable to be part of the relevant market.
- 9.46 Next, we consider whether the relevant product market should be widened beyond Generalist Suppliers.

Specialist Suppliers

- 9.47 Specialist Suppliers are focused on products in just one or a few product categories (eg stationery specialists, sport equipment specialists, science equipment specialists).

- 9.48 Most customers require products across a range of product categories on an ongoing basis. Typically, they can either purchase across these categories from a Generalist Supplier, or purchase from multiple individual Suppliers, such as Specialists, or a combination of both. The more willing customers are to spread their purchases across different providers, or to shop around within individual product categories, the stronger the constraint from Specialist Suppliers on Generalist Suppliers and the more likely that they belong within the same relevant market.
- 9.49 We consider examples of Specialist Suppliers to be, among others, Breckland Scientific, Oxford University Press, Specialist Crafts, Sports Directory and WFE.¹²⁹ [X]. We also include within Specialists, office/stationery Suppliers such as Banner, Lyreco, Rymans and Office Depot.
- 9.50 We therefore consider whether it is appropriate to include Specialist Suppliers as part of the relevant market.
- 9.51 The Parties submitted that “[to be a constraint] it is not necessary for such Specialists to operate in every single category, only that education establishments consider these Specialists as an alternative to some of their requirements.” We agree that if a sufficient number of customers consider Specialists as an alternative in this way then they may form a constraint that could be included within the relevant market. Specifically, using the framework of the hypothetical monopolist test, the relevant question is whether a sufficient number of Generalist Supplier customers would switch to purchasing from Specialist Suppliers in response to a small, permanent deterioration in the offering of all Generalist Suppliers.

Current purchasing behaviour

- 9.52 Customers may make different kinds of purchases including regular ongoing purchases, termly bulk purchases, emergency top-up purchases and one-off set-up purchases.¹³⁰ All of these types of purchases can be made from a range of Suppliers. In most cases, customers could purchase all their needs from just a single Supplier (a Generalist) or across multiple Suppliers (Generalists and/or Specialists). However, observing that customers may purchase from multiple Suppliers does not necessarily indicate that purchases from Specialists are substitutes for purchases from Generalists.

¹²⁹ We note that the Parties discussed WFE under the heading ‘national generalist distributors’. As explained in paragraph 10.40 we do not consider that WFE is a Generalist. We consider that while its four brands cover several product categories as a whole they do not constitute a Generalist offer.

¹³⁰ See, Appendix D, paragraph 14.

- 9.53 How customers of Generalists view splitting their purchases is more relevant. If customers of Generalists are willing to split their purchases and purchase from Specialists instead, then this could indicate it is appropriate to include Specialists in the relevant product market.
- 9.54 If customers have strong preferences for purchasing across multiple product categories from a single Supplier, either in a single transaction or over a period of time (eg academic year), this would indicate that Specialist Suppliers are not a strong constraint on Generalist Suppliers and that it is not appropriate to include them within the defined relevant market. Such preferences could stem from customers valuing the convenience and efficiencies associated with purchasing from a single Supplier (eg time savings from shorter search times, convenience of fewer deliveries, a single point of contact for customer service, among others) or valuing combinations of specific products together (eg matching furniture or matching sports equipment).
- 9.55 We have examined customers' current purchasing behaviour, covering how they purchase across different product categories. This helps to inform the extent to which customers value a one-stop shop.¹³¹
- 9.56 Figure 9.1 below was submitted by the Parties and shows the proportion of customers who purchased across multiple product categories during the same month. So, for example, around [30-40%] of Findel customers only purchased from one category (eg [X]) and around [10-20%] of YPO customers bought from four categories (eg [X]) in the same month. These purchases could have been made either as part of the same transaction or as several transactions over the course of a month. The Parties also examined the number of transactions that included only 1 or 2 product categories, which showed the majority of transactions only cover 1 or 2 product categories.

Figure 9.1: Proportion of customers who purchased across multiple categories during the same month

[X]

Source: [X].

- 9.57 Figure 9.2 below is equivalent to Figure 9.1, except it shows purchases made over the course of an entire year. The proportion of customers purchasing across multiple categories is higher than when analysed on a monthly basis,

¹³¹ A one-stop shop refers to the ability to purchase from multiple product categories with the same Supplier. This could be preferred for a number of reasons including reduced search costs, ease of ordering or reputation.

although between around [X]% (YPO) to [X]% (Findel) of customers still only purchase from one category.

Figure 9.2: Proportion of customers who purchased across multiple categories during same year

[X]

Source: CMA analysis

- 9.58 Figure 9.1 and Figure 9.2 show that most customers of the Parties (which we use as a proxy for Generalists) purchase across three or more categories. This could be consistent with several explanations. Taken in isolation, this could indicate that customers have requirements in each category and happen to purchase these separate categories from Generalists or alternatively that they often have a preference for purchasing from Generalists (for example because they know this creates time savings, or because they trust the Supplier).
- 9.59 We note the proportion purchasing from just one category is a significant minority. Those customers are more likely to be able to easily switch all of their purchases to a Specialist. This may act as a form of constraint on a Generalist, especially if these customers are spread across a range of categories (if they are focused in one category then the constraint will be stronger but limited to just that category).
- 9.60 In order to understand the level of constraint that these customers impose, we have analysed how the Parties' revenues break down across these different types of customers.

Figure 9.3: Proportion of revenue from customers purchasing across multiple categories during same year

[X]

Source: CMA analysis

- 9.61 As Figure 9.3 above shows, customers who purchase from one or two product categories account for a very small proportion of both Parties' revenue - around [X]% of YPO's and [X]% of Findel sales come from customers who purchase from one or two product categories. This shows that the relative importance of these customers to the Parties, and hence the constraint that they may exercise is unlikely to be strong.
- 9.62 We also note that Generalists typically have good information about their customers and their purchasing patterns, and are able to target terms of service including discounts (either product, category or customer specific) at individual customers, if they were concerned about losing specific customers

to Specialists. The potential for such price discrimination could limit the constraint from single category customers.

- 9.63 Our customer research indicates that among the limited number of customers which responded, a one-stop shop offering is important (see Appendix D, paragraph 26).¹³² However, a small number of customers ([REDACTED] YPO and [REDACTED] Findel customers) indicated that they would divert to a named Specialist for at least part of their spend if the respective Party was unavailable.¹³³
- 9.64 A number of Generalists estimated that between [REDACTED] customers have a preference for a one-stop shop. One competitor said that “Schools don't really like splitting orders between companies unless there is a significant reason to do so, ie cost saving.”
- 9.65 However, not all competitors saw a one-stop shop service as being consistently important. One competitor said “We believe that the ease of ordering, even from multiple Suppliers, is more important than a one-stop shop’ approach as staff are often time-poor and the ordering of supplies is often one small part of a far bigger role. A ‘one-stop shop’ approach may be more important for high volume, frequently ordered products. However, there are some product categories that they will shop around for to ensure the best possible price and service.”
- 9.66 Overall, we consider that there is some evidence that customers use Generalists for purchases across multiple categories such that Specialists are not a sufficient constraint to consider as being within the market.

Parties’ monitoring and benchmarking of Specialists

- 9.67 As described in our review of the Parties’ internal documents (see paragraphs 10.51 to 10.94), the Parties undertake some monitoring of [REDACTED]. [REDACTED]. For Findel, the internal document evidence reviewed suggests that [REDACTED]. This implies the Parties do not view Specialists as a strong constraint and therefore they are potentially outside the relevant market.

Third party views

- 9.68 [REDACTED] of the [REDACTED] competitor Generalists that responded to our phase 2 questionnaire reported a Specialist Supplier as one of their own top three

¹³² Evidence from our customer research indicated that when asked directly, most customers considered being able to purchase multiple categories from the same supplier to be important. See, Appendix D, paragraph 26. However, we place limited weight on that customer research given the limited number of responses and consider the evidence reported here on observed behaviour to be more informative.

¹³³ See, Appendix D, paragraph 42.

competitors. Further [X] of these [X] competitors listed a Specialist Supplier within their view of the top five competitors of each of the Parties.

9.69 The views of these competitors – in not identifying Specialists as main competitors to Generalists – are supportive of Specialist Suppliers being a weak constraint on the Parties and being outside of the market.¹³⁴ Qualitative comments offered by competitors tend to support this. For example:

(a) One competitor said that “Specialist Suppliers and Generalist Suppliers of Educational Resources do compete to a degree but their offers are generally complementary”.

(b) One competitor said that “In the majority the ranges are complementary to one another, however they are becoming more substitutable than in the past.”

Other evidence

9.70 We note that Scotland Excel’s procurement for the Supply and Delivery of Educational Materials is divided into nine lots, one of which is ‘General Educational Materials’. This lot appears to be designed to cover Generalist/one-stop-shop Suppliers. For example, the winning bidders were Findel, RM (TTS and Consortium separately) and YPO, all of which are Generalists. The existence of this lot separate to other lots¹³⁵ is supportive of Generalist Suppliers fulfilling a different need to Specialist Suppliers. The majority [70-80%] of spend through the framework was with Generalist Suppliers (see paragraph 9.122(a)). On the other hand, frameworks in Northern Ireland are organised differently and no Generalist/one-stop-shop framework exists. Instead there are separate catalogue-discount contracts and item-by-item contracts. Appointed Suppliers are a mixture of Generalists and Specialists. We received a nil return from our inquiries into the nature of the framework in Wales, but our understanding is that it is closer to the English system in that a majority of the sales in Wales take place outside of the framework.

¹³⁴ We note that when identifying competitors to the Parties and to themselves, third party competitors were only able to list up to five competitors. If individual Specialists fell outside this top five none of them would have been reported, even if their aggregate constraint was stronger than their individual constraint.

¹³⁵ The eight other lots are: Arts & Crafts; Board, Card & Paper, Exercise Books, Early Learning Materials, Bespoke Homework Diaries, Musical Instruments, Scientific Equipment and Sports Equipment. Office and Education furniture is captured under a different category with its own bespoke lots.

Response to the Parties' views

9.71 We note the Parties' views that Specialists belong in the market, as described in paragraph 9.18. We provisionally do not agree with their view for the following reasons:

- (a) We accept that the products bought are fungible, but consider this only supports customers' ability to substitute between Generalists and Specialists and not whether they have a preference to purchase from one type of Supplier.
- (b) We do not consider the Parties' evidence on single-category transactions demonstrates that sufficient customers would be willing to substitute from Generalists to Specialists to consider them part of the same market. While customers do make many single-category individual purchases Figure 9.3 shows that most spend with Generalists comes from customers purchasing across multiple categories.
- (c) We do not consider there is strong evidence (see, paragraphs 10.99 and 10.100) that customers view Specialists as alternatives, although we are mindful of the limitations of our customer research. We consider the evidence (as described in paragraph 9.64) from competitors is consistent with the view that they do not see Specialists as close competitors.
- (d) We found that, while there is some monitoring and benchmarking by the Parties of Specialists, it was materially below the level applied to other Generalists, both individually and collectively (see paragraphs 10.71 and 10.88), indicating that Specialists are not a close substitute to the Parties (or other Generalists) (see, paragraph 9.67).

Supply-side substitution

9.72 We do not consider that supply-side substitution between Specialists and Generalists is likely. [✂]. However, there were mixed views on the extent of barriers to expanding a Suppliers' product categories. One Supplier said "Depends on how specialist the categories are. Expertise is required, so either people or businesses will need to be acquired". Two Suppliers mentioned warehousing constraints, one of which said "Limited warehouse capacity dictates the number of items we can stock". One other Supplier described barriers to expanding product categories as "Very low in our market".

Provisional view on Specialist Suppliers

- 9.73 Our provisional view is that Specialist Suppliers are used by customers and can be an alternative in some categories for some customers. However, they appear to fulfil a different purpose than Generalists and we consider them to be outside of the relevant market. We take them into account as out-of-market constraints in our competitive assessment.

Distribution channels

- 9.74 We considered whether the market should include supplies made through all distribution channels (such as delivery or in-store) and all sales channels (such as telephone ordering or online orders) or should be segmented.

Delivery of items vs physical stores

- 9.75 Customers order Educational Resources for use at their Educational Institution sites and not for use elsewhere.
- 9.76 We consider that the number and size of orders with Generalists are such that collection of these products rather than delivery is unlikely to be an alternative. For example, one competitor referred to customers receiving pallets of products. Further, staff of Educational Institutions may not have the time or means to collect items from a physical store. The position might vary for smaller and more ad-hoc top-up purchases of supplies.¹³⁶
- 9.77 On this basis, we consider it appropriate to exclude non-delivered sales made at the physical stores of supermarkets, stationers and other retailers. Where these types of Supplier fit the product description and also offer services online, they are captured under our discussion of Generalists and Specialists above.

Ordering channels

- 9.78 We recognise that orders are increasingly being placed online, as opposed to via telephone, or other means. However, we consider that all such ordering channels should be considered within the same market on the basis that customers and Suppliers are able to easily substitute between them.

¹³⁶ We have seen some evidence of consumables being purchased in supermarkets' physical stores, but consider this a different type of purchase. See Appendix D, paragraph 31.

Provisional view on product market definition

- 9.79 Based on the evidence set out above, our provisional view is that it is appropriate to define the relevant product market as the supply of Educational Resources to Educational Institutions by Generalist Suppliers (including Amazon).
- 9.80 We provisionally find that Specialist Suppliers are outside of the relevant market. However, we recognise there are many Specialist Suppliers and we consider their aggregate constraint as part of competitive effects.
- 9.81 We provisionally find that other Suppliers (including supermarkets and high-street stores) are outside of the relevant market, on the basis that the type of products bought and nature of product orders differ from those bought from Generalists, and Generalists do not see these Suppliers as a main competitor.
- 9.82 Our provisional view is to include all delivered services within the relevant market (i.e. exclude any sales that are not delivered), but to include all channels through which sales are made (eg online sellers only) within the relevant market.

Segmentation by customer type

- 9.83 We may sometimes define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis.¹³⁷
- 9.84 In this case, we considered whether it may be appropriate to segment by different customer groups, including by level of education or funding model.

Parties' views

- 9.85 The Parties submitted that, in line with the CMA's findings in *RM/Hedgelane*, it would not be meaningful to sub-divide the market by Educational Institutions because Generalist Suppliers are active across all types of Educational Institution. The Parties further submitted that for the same reason, it would not be meaningful to segment the market by the funding type of the institution (private, public).

¹³⁷ [CMA Guidance](#), paragraph 5.2.11.

Our assessment

Level of education

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

Table 9.1: Selected Generalist Suppliers split of sales across educational tiers

	YPO	Findel	RM (TTS)	RM (Consortium)	ESPO	KCS	Total
Early Years	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[0-5]%	[0-5]%	[5-10]%
Primary education	[60-70]%	[60-70]%	[60-70]%	[40-50]%	[60-70]%	[60-70]%	[60-70]%
Secondary education	[20-30]%	[10-20]%	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%
Total	100%	100%	100%	100%	100%	100%	100%

Source: Parties' and third party data supplied to BESA.

9.87 Generalist Suppliers typically supply to all three Educational Institution sectors which implies that a single market definition capturing all types of customer would be appropriate.

9.88 Our provisional view is that the competitive constraints do not vary sufficiently in the primary and secondary sectors to justify segmentation by these customer types. For the nurseries/early years sector, however we note there are differences in approaches to procurement due to customer loyalty generally being weaker due to the lack of historical ties to local authorities.¹³⁸ On balance, we consider it appropriate to assess all sectors as part of a single product market. However, we will examine any relevant differences in constraints in our competitive assessment.

Financial model of Educational institutions

9.89 Private Educational Institutions are not subject to the same procurement rules as state-funded institutions. In addition, some of the smaller PSBOs are not able to supply institutions outside the public sector,¹³⁹ because they do not have a private procurement arm.¹⁴⁰ However, we have not found any

¹³⁸ This view is supported by our customer research, see Appendix D, paragraph 31(c).

¹³⁹ [REDACTED]

¹⁴⁰ For example, larger PSBOs such as YPO and ESPO have established private procurement arms which enables them to sell to all types of customers.

evidence in the Parties' internal documents or in the evidence submitted by third parties that indicates that parameters of competition or competitor sets are sufficiently different to warrant segmenting the frame of reference for state-funded and private Educational Institutions.¹⁴¹ As discussed above, we note that private ownership is much more common in the early years segment.

9.90 One customer group mentioned frequently in the Parties' internal documents is MATs, which appear to have the ability to place large bulk orders and receive larger discounts. MATs can get involved in the purchasing decisions made by their academies, which can be subject to MATs' overarching rules and/or final approval. Some third parties indicated that the increased academisation of schools in England may bring about changes in the market and there appears to be some support for this in the Parties' internal documents. However, the Parties' internal documents and customer evidence indicate that there does not appear to be a consistent approach to procurement across all MATs and parameters of competition to supply these customers do not currently seem to differ substantially between MATs and other types of Educational Institutions. Therefore, we have not considered MATs as a separate customer group for the purposes of the relevant product frame of reference. However, we will examine any relevant differences in constraints in our competitive assessment.

Provisional view on customer segmentation

9.91 Our provisional view is that it is not appropriate to segment by customer type. However, we will examine any relevant differences in constraints for different customers in our competitive assessment.

Geographic market definition

9.92 We next consider the relevant geographic market definition, which sets out the area within which we will assess the Merger. A relevant geographic market definition could be, for example, local, regional, national or international.¹⁴² The scope of the geographic market influences the customers and competitors (both physical and online) that we will consider in our competitive assessment.

¹⁴¹ For example, there does not appear to have been any demand for separate research into the purchasing behaviour of private Educational Institutions recently.

¹⁴² [CMA Guidance](#), paragraph 5.2.5b.

Parties' views

9.93 The Parties submitted that the relevant geographic frame of reference for the assessment of this Merger should be at least UK-wide citing the following reasons:

- (a) Generalist Suppliers offer a UK-wide supply of educational resources, outside their core regions with transport logistics in place and have UK-wide catalogues price lists and marketing.
- (b) Customers source UK-wide and ask UK Suppliers to quote or tender, irrespective of the location of the Supplier or of its region of origin.
- (c) Suppliers and retailers have an online presence.

Our assessment

9.94 In markets like this one, where products are delivered to customers (rather than customers travelling to Supplier premises) and there is scope for negotiation on price (or at least price discrimination), we may define geographic markets on the basis of customer location rather than Supplier location.¹⁴³

9.95 We review the current conditions of competition across the UK and then in turn the demand-side and supply-side factors related to the geographic market definition.

Conditions of competition

9.96 Where the same companies compete to supply customers and the conditions of competition between those companies are the same it can be appropriate to aggregate areas and consider them all as one market.¹⁴⁴

9.97 In this case, we consider whether the same Suppliers compete across different geographic areas and whether the conditions of competition between them are the same in each area. Where they are the same, there is a case for analysing them as one single/national market (potentially through aggregating any local/regional supply).

¹⁴³ [CMA Guidance](#), paragraph 5.2.27.

¹⁴⁴ The assessment of conditions of competition is described in the [CMA Guidance](#) paragraph 5.2.17 for the purposes of product market definition, but as explained at paragraph 5.2.21 a similar approach can be adopted for geographic market definition.

9.98 Tables 2(a) to 2(c) in Appendix C show estimates of the Regional shares of supply of Generalists (we discuss our view of the relevance of shares of supply to this case in paragraph 10.42). There is a substantial degree of variation in the extent to which each Generalist Supplier is present in certain Regions¹⁴⁵ of the UK. Almost all Generalist Suppliers (notably excluding Amazon which has followed a different route to market) have core regions in which they have large shares, and Regions in which they have little or no share:

- (a) Apart from the Parties, the only Generalist Suppliers which appear to have substantial presence across most Regions of the UK are RM and Amazon.¹⁴⁶
- (b) The next group of Generalist Suppliers includes smaller, more regional firms: ESPO and KCS. Both have significant presence within their core regions (the East Midlands for ESPO and the South East for KCS) but more limited presence outside of these Regions.
- (c) The third group of Generalist Suppliers are those with a narrower, more local presence such as East Riding, HBS Half Moon Group, Herts FullStop and Hampshire County Supplies. [REDACTED].^{147,148}

Provisional view on conditions of competition

9.99 We recognise that there is some evidence of differences in Regional shares of supply implying that conditions of competition vary across Regions. The strength of the main Generalist Suppliers differs and the presence of regional or local Generalists also affects the competitive conditions across Regions.

9.100 We next consider demand-side and supply-side factors to test whether or not these apparent differences in the conditions of competition support defining sub-national markets.

Demand-side factors

9.101 In some markets, even where products are delivered, customers may have strong preferences for Suppliers located in their vicinity (locality or region). Such preferences may stem from historical ties or familiarity with those

¹⁴⁵ The Generalist Suppliers' historic origins can be linked to the following English regions: YPO – Yorkshire and the Humber, Findel – London and South East; ESPO – East Midlands; RM (due to its acquisition of Consortium) – South West, KCS – South East (Kent), although some have expanded beyond these regions.

¹⁴⁶ While RM sells nationally, its presence is stronger in the South West of England (where it has its origins), West Midlands, Wales, London and the South East. It has a [REDACTED] presence in the East and North of England.

¹⁴⁷ [REDACTED]

¹⁴⁸ [REDACTED]

Suppliers, rather than from the Supplier's location per se. If such preferences exist, this could influence the ability of Suppliers to substitute into new regions.

- 9.102 Given the historical relationships between Educational Institutions and local authorities, PSBOs or former PSBOs (see paragraph 2.12) and some customers' long tenure (see paragraph 8.49), some customers may retain a preference for purchasing from their historical Supplier.
- 9.103 We note that the evidence that shares of supply vary considerably between Regions (see Appendix C, Tables 2(a) to 2(c)) indicates that some customers may prefer to order from their closest Suppliers.
- 9.104 We investigated whether customers have preferences for locally based Suppliers (aside from any historical relationship). The customers we spoke to in our inquiry chose their main Generalist Supplier based on the options they perceive to be available to them in their region or local area. This appears to be driven by familiarity and purchasing habits, and by catalogue distribution coverage which is quite limited for the smaller Generalists.¹⁴⁹ However, our customer research found that a Supplier's location is not commonly explicitly cited as an important factor in customers' choice of Supplier (see Appendix D, paragraph 23).

Supply-side factors

- 9.105 We review the extent of geographic flexing by Suppliers of the parameters of competition to assess the conditions of competition between areas – which we return to in our competitive assessment.

Geographic flexing of parameters of competition

- 9.106 We first consider whether Generalist Suppliers compete nationally or on a regional basis.

- *Price and discounts*

- 9.107 Generalist Suppliers typically offer national list prices that are the same across their catalogues and websites. For example, both Parties have stated that their list prices and website prices are the same throughout the UK. However, list prices are not always reflective of actual prices paid, since discounts may be offered.

¹⁴⁹ [REDACTED]

9.108 The extent of discounting conducted by Suppliers in the market varies considerably. Some Suppliers undertake substantial discounts relative to list price, for example, [REDACTED].¹⁵⁰ Others do not conduct any significant discounting, for example, [REDACTED]. Limited discounting seems to be more common amongst PSBOs. For example, one competitor told us “[REDACTED], we aim to keep our prices as competitive as possible, adding an on-cost that only covers our operating model. Our transparent pricing is, therefore, without scope for additional variations or discounts for individual customers.” Discounts can also be offered through Framework Agreements in some parts of the UK (most notably Scotland,¹⁵¹ Northern Ireland and, to a lesser extent, Wales).

9.109 Bespoke discounts can be applied to individual customers which would allow the Suppliers to price discriminate between customers in different regions. For example, [REDACTED]. [REDACTED].¹⁵²

9.110 Overall, while there is some regional variation in discounts, we consider that discounts do not appear to be Region specific (and instead appear to be customer or product specific). This therefore does not suggest any form of local or regional market.

Figure 9.4: Findel’s average header discounts by Region (2019)

[REDACTED]

Source: CMA analysis

- *Quality and range*

9.111 The Parties have national catalogues (a single catalogue distributed across the UK) and set their catalogue prices, as well as some other key elements of their competitive offer (such as product quality, range and own-label offering) nationally. Most Generalists’ online offers, including those of the Parties, are available nationally.¹⁵³

9.112 The Parties’ broad advertising and marketing strategies are set nationally.¹⁵⁴

- *Service*

9.113 The Parties have centralised warehousing and delivery operations. There are some differences in the delivery service offered for some regions, but these

¹⁵⁰ [REDACTED]

¹⁵¹ [REDACTED]

¹⁵² CMA analysis of Findel’s transaction data.

¹⁵³ There are some exceptions to this. [REDACTED].

¹⁵⁴ [REDACTED]

appear to be primarily related to geographic/logistical factors and not due to differences in competitive constraints.

9.114 We note that local/regional sales events and trade shows do take place, but we have seen no evidence that these are determined or affected by differences in competitive conditions.

Transport/Logistical costs

9.115 In line with the CMA Guidance, in assessing the scope for aggregation of narrow markets we may give particular regard to transport costs.¹⁵⁵

9.116 As noted above Amazon, Findel, RM and YPO all already have some presence in each UK Region. They also each offer delivery services for the same price to all parts of the UK mainland.^{156,157} As such, we consider that these Suppliers are either already present within different Regions, or are able to rapidly substitute into these areas, given they already have arrangements for national distribution.

9.117 Some other Generalists such as ESPO¹⁵⁸ and KCS¹⁵⁹ also offer national delivery. Other Generalists have shown a weaker tendency to offer services outside of their core regions. One Generalist has taken a conscious decision not to serve outside of its deliverable radius.

9.118 There is limited evidence of expansion [REDACTED]¹⁶⁰ by [REDACTED]. One Generalist Supplier told us that there are high costs to expanding with little chance of success due to low customer switching. Some Generalist Suppliers perceive there to be logistical barriers to expanding into new regions and have told us that they are constrained by [REDACTED]. On the other hand, evidence submitted by the Parties and another Generalist Supplier indicates that [REDACTED]. For example, approximately [REDACTED] and [REDACTED] deliveries are made by third party logistics networks. Further, one Generalist commented that they were seeing new suppliers who had not previously been very prominent in their core region becoming prominent in their core region.

9.119 On the basis of the above, we consider there to be logistical constraints to regional expansion, although these constraints can to some extent be

¹⁵⁵ CMA Guidance, paragraph 5.2.24.

¹⁵⁶ See <https://www.findel-education.co.uk/help-and-advice/your-order/delivery/>; <https://www.consortiumeducation.com/help/faq/delivery-returns-faq>; <https://www.tts-group.co.uk/shipping.html>; <https://www.ypo.co.uk/contact/help-centre/faqs-b2c#Delivery>.

¹⁵⁷ For some Suppliers, some parts of the UK such as Anglesey, Isle of Wight, the Scottish Islands and Northern Ireland are either subject to additional delivery charges or delivery is not offered.

¹⁵⁸ See <https://www.espo.org/About-us/FAQs/Catalogue>.

¹⁵⁹ See <https://www.kcs.co.uk/delivery>.

¹⁶⁰ [REDACTED]

overcome by using outsourced fulfilment and logistics providers and are therefore not, on their own, a key reason for regional disparities in shares of supply. On the other hand, some Suppliers have a view that a combination of logistical constraints and low customer switching make it unattractive to seek to compete for customers outside of historic core regions.

National Framework Agreements

- 9.120 There are some significant differences in how procurement of Educational Resources takes place across the four UK nations.
- 9.121 In England, most Educational Institutions make procurement decisions independently and no national Framework Agreement¹⁶¹ exists.
- 9.122 In contrast, Framework Agreements are of significance in Scotland, Northern Ireland and, to some extent, Wales, where there is a greater centralisation of the procurement process:
- (a) In Scotland, the principal agreement is the Scotland Excel Educational Materials Framework Agreement which is tendered and awarded by the Scottish procurement body Scotland Excel (**SXL**) for four years. This Framework Agreement is not exclusive and customers may make purchases outside of it. However, SXL supplied the CMA with a detailed dataset of spend with each Supplier through the Framework Agreement in 2019, which showed that the majority of spend [70-80%] was with Generalist Suppliers – YPO, Findel and [redacted].¹⁶²
 - (b) The Education Materials Framework is divided into 9 different lots. One of them is for a one stop shop, which is an amalgamation of the other 8 lots. The three Suppliers on the ‘one stop shop’ lot are YPO, Findel and [redacted]. Across all the lots there are 29 Suppliers on the Education Materials Framework, this includes [redacted] on Lot 5 – Early Learning Materials, and a number of smaller and specialist Suppliers (such as [redacted] on Lot 8 – Scientific Equipment) and [redacted] on Lot 9 – Sports equipment). The presence of these other Suppliers suggests that Generalists and Specialists not based in Scotland are able to bid for and provide services via this Framework.

¹⁶¹ A Framework Agreement is an overarching agreement put in place by procurement body or LA that is then used by a contracting authority, such as a school, to create a contract with the most suitable supplier for their needs (**Framework Agreement**). There is a tender process for a Framework Agreement, in which suppliers of educational resources submit prices at which they will offer educational resources. If the distributor’s bid is successful, it will be awarded the Framework Agreement and is able to supply to certain state-funded Educational Institutions determined within the Framework Agreement.

¹⁶² [redacted]

- (c) In Northern Ireland, Framework Agreements are exclusive, i.e. Educational Institutions are not permitted to purchase outside of Framework Agreements.
- (d) In Wales, educational resources are purchased primarily through agreements set up by individual LAs, although the National Procurement Service also tenders and awards Framework Agreements.

9.123 The presence of National Framework Agreements has consequences for the ability of Suppliers to offer services in three of the UK nations. The exclusivity of the Framework Agreement in Northern Ireland would limit the ability of other Suppliers to substitute into the area once the Framework was awarded, although it would not limit Suppliers from bidding for the Framework itself. In Scotland and Wales, the lack of exclusivity does not prohibit this, but in Scotland it reduces customers' familiarity with off-framework Suppliers during the period for which the tenders are awarded. Further, one competitor told us that one of the requirements of the Scotland Excel framework was for a Supplier to have an office in Scotland.¹⁶³ This could present a barrier to some Suppliers offering services, although Findel told us "[redacted]. That is not particularly hard to put in place [...] a lot of the suppliers for the Scotland framework are English based."

9.124 While the Framework Agreements may present short-term barriers to entry, they are open to all Suppliers. We have found that, while they do act to limit supply-side substitution into the nations during the period when the tenders have been awarded, they do not do so in a way that would materially change the conditions of competition.

International Supply

9.125 We have seen no evidence that customers would switch to international Suppliers nor of international Suppliers supplying, customers, and therefore focus on the UK.

Provisional view on geographic market definition

9.126 The evidence on the geographic market is mixed but, on balance, our provisional view is that the geographic scope of the market should be the UK (and therefore all Generalists, including local/regional ones are within the relevant market). We consider differences in competitive constraints within

¹⁶³ [redacted]

this market (for example across nations and regions) to the extent necessary within our competitive assessment.

Provisional view on market definition

9.127 Our provisional view is that it is appropriate to define the market as the supply of Educational Resources to Educational Institutions in the UK by Generalist Suppliers.

10. Our competitive assessment of horizontal unilateral effects

10.1 In this chapter, we set out our assessment of whether there are any horizontal unilateral effects arising from the Merger. A merger will give rise to an SLC where it has a significant effect on rivalry over time, and therefore on the competitive pressure on firms to improve their offer to customers or become more efficient or innovative. Our Guidelines provide that “A merger that gives rise to an SLC will be expected to lead to an adverse effect for customers.”¹⁶⁴

10.2 We assessed evidence in a number of areas to help us understand the strength of the Parties’ competitive constraint on each other and the aggregate competitive constraint on the Merged Entity. The structure of this chapter is set out below:

- (a) YPO as a publicly owned entity;
- (b) Competition between the Parties and with competitors;
 - (i) Overview of Suppliers and their offerings;
 - (ii) Market shares;
 - (iii) Parties’ internal documents;
 - (iv) Customer evidence;
 - (v) Competitors’ views;
 - (vi) Transaction data;
 - (vii) Market developments; and

¹⁶⁴ [CMA Guidance](#), paragraph 4.1.3.

(c) Provisional view.

YPO as a publicly owned entity

10.3 YPO is a joint committee of local authorities. This section explains how it operates as a Supplier in the Relevant Market, with a specific focus on its incentives and how these affect the way in which it competes. It considers whether YPO's public ownership influences the way it sets its prices and other elements of its offer, and how it responds to competitive pressures. We review this to assess if YPO's ownership or incentives would impact our analysis of whether the merger gives rise to an SLC.

Parties' views

10.4 YPO submitted that it operates as a commercial entity, providing commercial services directly to customers in the public sector and to the private sector through its trading company, YPO Supplies Limited.

10.5 YPO submitted that its public sector ethos and regulation is relevant to our assessment of the Merger. It said it has an incentive to keep prices low as a result of its public sector ethos, formal obligations under legislation and the interests of local authority members who need YPO to be low cost and efficient for their budgets.

10.6 YPO also submitted that "while Member Authorities wish to see a return on their investment, the primary purpose of YPO is to serve as a buying organisation to obtain lower prices for customers. [...] As a result, YPO's mandate and mission is focused on that core aim (rather than short term returns to its owners – although clearly returns are a factor)." According to YPO, that ethos then carries into its pricing and operations which include a commitment to consistent low pricing for all customers, regardless of differences in cost to serve or customer constitutional arrangements.

Our assessment

YPO's structure and members

10.7 As described in paragraph 3.4, YPO has three types of members; Founder Members, Associate Members and Ordinary Members.

10.8 The Founder Members have an interest in the financial performance of YPO through a dividend that is distributed to them. YPO's Management Committee

is responsible for determining the amount (if any) of this dividend which is drawn from YPO's distributable surplus.¹⁶⁵

- 10.9 Following YPO's 2019 financial year, [REDACTED].¹⁶⁶ [REDACTED]. YPO told us that this was intended to reflect the Founder Members' risk of ownership and to provide a return on their investment, 'similar to a company repaying both debt and then equity dividends'. [REDACTED].
- 10.10 YPO's 'Associate Members' (mainly Local Authorities) and 'Ordinary Members' (see, paragraphs 3.7 to 3.9) are typically customers (but not necessarily of Educational Resources). Whilst YPO refers to 'dividends' being paid to these two types of Members, the payments are in substance rebates on the purchases they have made as YPO's customers in the previous financial year. Based on the evidence we have seen, Associate Members and Ordinary Members have no mechanisms to influence YPO's price setting or any other elements of YPO's competitive offer.¹⁶⁷

YPO as a commercial entity

- 10.11 PSBOs, including YPO, were originally formed by one or more Local Authorities to drive efficiencies and exercise buyer power when purchasing from Educational Resources manufacturers with the core aim of passing those savings on to customers.
- 10.12 Subsequent changes in legislation led to changes in how PSBOs operate and commercialisation of their aims, with private companies entering and some of the former PSBOs (eg GLS, Consortium, West Mercia Supplies) being sold to private owners.
- 10.13 In order to understand whether YPO's PSBO nature influences how we should view the Merger, we have looked at the evidence in relation to:
- (a) Whether the Public Services (Social Value) Act 2012 (the **2012 Act**) governs YPO's day-to-day activities in relation to its supply of Educational Resources;
 - (b) The extent to which the fact that YPO's Founder Members have funding responsibility for Local Authority maintained schools in their area could affect YPO's incentives; and

¹⁶⁵ YPO's distributable surplus is its trading surplus after deduction of other operating expenditure and financing and investment income and expenditure.

¹⁶⁶ [REDACTED]

¹⁶⁷ YPO told us that, whilst Associate Members are invited to attend an annual meeting with the Executive Sub-Committee [REDACTED].

- (c) Whether there are any factors that YPO takes into account when setting its price (and other elements of its competitive offer) or responding to competition that a privately-owned commercial entity would not be expected to do.

The Public Services (Social Value) Act 2012

- 10.14 Due to the nature of its ownership, YPO is subject to the 2012 Act. The Parties submitted that ‘YPO is obligated under [the 2012] Act to factor in economic, social and environmental well-being in connection with its operating activities.’
- 10.15 YPO told us that its business model and operations strive to save the public sector money, that YPO's profits are reinvested into the public purse by way of dividends and loyalty vouchers and that this ethos naturally aligns with the purpose of the 2012 Act. YPO also stated that its purpose is to ensure value for money that will enable public bodies to fulfil their social missions and that it deals with social value ‘holistically’.
- 10.16 However, the extent to which the 2012 Act affects YPO’s day-to-day commercial operating activities in relation to its supply of Educational Resources appears to be largely limited to the procurement stage, i.e. when YPO is purchasing products for resale rather than downstream activity, including price-setting. YPO stated that the 2012 Act requires consideration to be given to, eg economic, social and environmental factors at the pre-procurement stage.¹⁶⁸

YPO’s customer base

- 10.17 YPO has a wide customer base. In 2019, YPO had [X] (of an estimated 44,000 Educational Institutions in the UK as a whole).
- 10.18 Some of its customers are local authority-funded schools within its Founder Member areas. Spend by local authority-funded schools directly affects the budgets of YPO’s governing local authorities. This could imply that YPO may not have incentives (or may have reduced incentives) to raise prices when selling to Educational Institutions directly funded by its Founder Members.

¹⁶⁸ YPO stated that the Act requires that consideration is given at the pre-procurement stage to: a) how what is proposed to be procured may improve the economic, social and environmental well-being of the relevant area; b) how in conducting a procurement process may YPO act with a view to securing that improvement; c) whether consultation is appropriate or required.

10.19 However, YPO's sales extend beyond Educational Institutions funded by its Founder Members. The following customers' spending does not directly affect the Founder Member budgets:

- (a) Spending by certain types of customer within the Founder Member local authorities:
 - (i) Academies, as well as other types of schools funded directly by the Department for Education – (these account for 35% of primary schools and 77% of secondary schools in England¹⁶⁹); and
 - (ii) Privately-funded Educational Institutions, most commonly found in the Early Years sector.
- (b) Spending by all Educational Institutions that are outside of the Founder Member local authority areas
 - (i) The Yorkshire and the Humber and the North East and North West region include 50 local authorities, so even in YPO's core region its customer base is wider than the 13 Founder Members' areas. According to YPO, around [X] % of its sales are attributed to non-Founder Member areas.
 - (ii) The acquisition of Findel would give YPO access to Findel's customer base which is largely around the London and South East regions and in Scotland, thus reducing further the proportion of customers and sales that YPO makes to Educational Institutions directly funded by its Founder Members. While noting that the two businesses may (at least initially) be run as separate brands or entities, the acquisition of those customers would therefore further weaken any incentives that YPO may have to factor in the direct impacts on its Founder Member budgets of any price increases or deteriorations in their offer.

10.20 YPO's relationship with local authority funded schools within its Founder Member areas could potentially affect its commercial incentives. However, we have not found evidence of an incentive to keep prices low for those customers that would translate to lower prices to all YPO customers:

- (a) [X]

¹⁶⁹ DfE statistics, <https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics>.

(b) [REDACTED]^{170,171}

YPO's approach to pricing and other elements of its competitive offer

- 10.21 Whilst YPO submitted that it was incentivised to keep prices low (see paragraph 10.5), it also submitted that it is subject to normal market and commercial considerations when setting its pricing and that there are no legislative reasons that would impact on YPO's ability to make pricing decisions as a commercial entity.
- 10.22 We have found little evidence supporting the proposition that there are factors that differentiate YPO in how it sets its product prices from a privately-owned organisation.¹⁷² Generally, evidence from YPO and competitors indicates it behaves in a commercial way in respect of its price, quality range and service offer, including responding to competitive pressure.
- 10.23 We have also considered whether reputational factors, due to YPO being publicly owned, could have an implication for how it sets elements of its offer. We have not found any evidence of these considerations feeding into any of the decision-making process around price-setting on a practical level or being discussed at a more strategic level.

Provisional view

- 10.24 We have found that the evidence in YPO's submissions, its internal documents and third-party evidence do not indicate that YPO's incentives differ from those of a commercial entity in any fundamental way, or that they would do so post-merger. We have found no evidence to suggest that the 2012 Act (or any other factor related to YPO's public ownership) is a material consideration when YPO sets the parameters of its competitive offer or that it would preclude an SLC from arising.

Competition between the Parties and with competitors

- 10.25 In this section, we assess the strength of the Parties' competitive constraint on each other, the constraint they each face from other Suppliers in the Relevant Market and the constraint from out-of-market constraints.

¹⁷⁰ [REDACTED]

¹⁷¹ [REDACTED]

¹⁷² We note it is possible that YPO's public ownership may allow it to take a longer term view of certain investment opportunities, [REDACTED]. [REDACTED].

10.26 Our assessment is forward-looking in nature. We have therefore also considered whether there are any changes underway or likely to happen in the foreseeable future (ie broadly within the next two years),¹⁷³ that might materially change the nature of the existing competitive constraints on the Parties.

10.27 This section is structured as follows: (i) Overview of Suppliers and their offerings; (ii) market shares; (iii) Parties' internal documents; (iv) customer evidence; (v) competitors' views; (vi) transaction data; and (vii) market developments.

Overview of Suppliers and their offerings

10.28 One way to identify relevant potential competitors is to assess the similarities and differences between retailers' offerings. This provides an initial indication of their likely competitive strength and closeness. In this section we briefly described Generalists and their offerings, before turning to out-of-market constraints in paragraphs 10.40 and 10.41.

10.29 We consider that the Parties are both large, national Generalist Suppliers. They each serve a large number of customers ([REDACTED]), have national reach across all Regions (both have nationally operating online delivery services), they each employ several hundred employees ([REDACTED]) and each have turnover in the tens of millions of pounds (see, Appendix C, Table 1). Many of their characteristics have been described in Chapter 2 and Chapter 4, however, we highlight some of their features below.

10.30 YPO is a large PSBO. It has a single brand under which it offers all its services. It has a Generalist offer, given it has a wide range and depth of products. It also notes on its website that it can provide 'everything you could possibly need to successfully run your organisation'.¹⁷⁴ YPO has a particularly strong presence in the North East, North West and Yorkshire and the Humber; a sizeable presence in Scotland and some presence in all other Regions.

10.31 Findel is a large, privately-owned Supplier. It has several brands including brands covering a wide product range, such as Hope Education, GLS, AtoZ,

¹⁷³ We consider that in this case and given the nature of this market, the relevant period over which we can reasonably assess future market developments is broadly the next two years. We note that a period of two years is also consistent with the period over which we would typically assess the prospect of entry or expansion (see Chapter 11). Where we have specific evidence on future developments covering a different time period, we have taken that into account in our assessment.

¹⁷⁴ See <https://www.ypo.co.uk/about>.

Spa4Schools and Findel Education and three more specialised brands, Davies Sports, LDA Learning, Philip Harris. Each of these brands has a different focus, however, in practice the majority of Findel's offer is available through its generalised brands. Findel told us "[redacted]". On its website, Findel further notes that it provides 'all of the products schools and nurseries need'.¹⁷⁵ Findel's GLS brand is a former PSBO (Greater London Supplies) and hence Findel has a particularly strong presence in London and the South East. It also has a markedly strong presence in Northern Ireland; a sizeable presence in Scotland and some presence in all other Regions.

10.32 RM is a large, privately-owned Supplier. It has two brands - Consortium and TTS. The Consortium brand (which includes the former West Mercia Supplies business) has a Generalist offer. TTS also provides a Generalist offer, but is more focused around classroom-based teaching and learning resources. The Consortium brand is a former PSBO focused on the South West. TTS has a broader national presence than Consortium. RM has a strong presence in the South West, Wales and the West Midlands, a sizeable presence in Scotland and some presence in all other Regions.

10.33 ESPO is a moderately-large PSBO.¹⁷⁶ It has a single brand under which it offers all its services. It has a wide range and depth of products meaning it has a Generalist offer. ESPO has a particularly strong presence in the East Midlands and the East of England. It is not present in all Regions.

10.34 KCS is a moderately-sized PSBO.¹⁷⁷ It offers most of its services in the Relevant Market under a single brand (KCS). It has a wide range and depth of products meaning its offer is a Generalist offer. KCS has a particularly strong presence in the South East. It is not present in all Regions.

10.35 Herts FullStop is a moderately-sized PSBO.¹⁷⁸ It has a wide range and depth of products meaning its offer is a Generalist offer. Herts FullStop has a particularly strong presence in the East of England. It is not present in all Regions.

10.36 HBS Half Moon Group is a small-medium privately owned Supplier. It offers most of its services in the Relevant Market under a single-brand. It has a wide

¹⁷⁵ See <https://www.findel-education.co.uk/help-and-advice/about/about-findel-education/>.

¹⁷⁶ It is managed by Leicestershire County Council, Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council, and Peterborough City Council.

¹⁷⁷ It is owned by Kent County Council.

¹⁷⁸ Herts FullStop is a trading name of Hertfordshire County Council. Hertfordshire County Council also has a second trading name of County Supplies which is [redacted]. For the purposes of our assessment we use the name Herts FullStop to refer to these consolidated businesses.

range and depth of products meaning its offer is a Generalist offer. It has a particularly strong presence in London. It is not present in all Regions.

- 10.37 Hampshire County Supplies is a small PSBO which is part of Hampshire County Council. It offers most of its services in the Relevant Market under a single-brand. It has a wide range and depth of products meaning its offer is a Generalist offer. It has a particularly strong presence in the South East, but is only present in this Region.
- 10.38 East Riding is a small PSBO which is part of the East Riding of Yorkshire Council. It offers most of its services in the Relevant Market under a single-brand. It has a wide range and depth of products meaning its offer is a Generalist offer. It has a particularly strong presence in Yorkshire and the Humber, but is only present in this Region.
- 10.39 Amazon is a large, private-sector, online retailer of a wide range of products to consumers and professional customers including the public sector. Educational Institutions can make purchases in the Amazon stores, including through Amazon Business, its business-to-business 'online store'. It launched Amazon Business in this sector in the UK in 2017. It has a wide range and depth of products meaning its offer is a Generalist offer, albeit it does not consider itself to be a generalist or specialist educational resources supplier and there is a different focus in the types of products it sells compared to other Generalists. According to our analysis, Amazon makes sales in all Regions.
- 10.40 Wall Family Enterprise (WFE) is a medium-small, privately-owned Supplier that has four main brands. Its main brands are Maudesport (a sports equipment brand), Timstar (a science brand), TSL (a design and technology brand) and Demco (a library supplies brand). We consider that while these four brands, together, cover several product categories, as a whole they do not constitute a Generalist offer. [REDACTED]. [REDACTED].¹⁷⁹ We therefore consider WFE to be a Specialist Supplier.
- 10.41 There are many other Suppliers of Educational Resources, for example, Banner, Office Depot, Oxford University Press, Rymans, Bishop Sport etc. These are a mix of large, medium and small organisations, mostly focused on particular product categories and therefore we consider them to be Specialists.

¹⁷⁹ [REDACTED]

Market shares

10.42 As part of a merger assessment, the CMA may calculate market shares and measures of concentration.¹⁸⁰ We looked at market shares as an indicator of the presence and constraints that different suppliers have in the market and how the Merger may change the market structure, including the potential post-Merger degree of concentration nationally and in particular Regions. However, market delineation in this type of differentiated sector can be somewhat artificial which can make calculating relevant or appropriate market shares difficult. This particularly applies to Suppliers who may offer a substantially different set of products. We also note that market shares do not capture the role of out-of-market constraints, but these are included in our wider competitive assessment.

10.43 In line with the CMA Guidance,¹⁸¹ we have also considered closeness of competition, including the extent to which market shares are proportionate to the constraint exercised by a particular supplier.

Parties' views

10.44 The Parties submitted their own analysis of the market size, based on estimates of spend per pupil, and said that on this basis our market share estimates discussed below were over estimated. Their views are described in more detail in Appendix C from paragraph 18, together with our assessment of their representations and description of our methodology. In summary, we consider our approach to calculating market shares, which is based on actual sales data from Generalist Suppliers, to be much more accurate and consistent with our market definition, and consider approaches based on estimating the market size from per pupil spend to be, at best, a sense check only.

Our assessment

10.45 Our estimates of market shares for 2019 are shown in Table 10.1. Appendix C sets out these estimates and their calculation in more detail, including highlighting that using alternative data sources does not have a material impact on these shares (see Appendix C, paragraph 7).

¹⁸⁰ [CMA Guidance](#), paragraphs 5.3.1 to 5.3.6.

¹⁸¹ [CMA Guidance](#), paragraph 5.3.2, footnote 63, and paragraph 5.4.9.

Table 10.1: National market shares (2019)

	2019
YPO	[20-30%]
Findel	[10-20%]
YPO & Findel	[30-50%]
Amazon	[10-20%]
East Riding	[0-5%]
ESPO	[10-20%]
Hampshire County Supplies	[0-5%]
HBS Half Moon Group	[0-5%]
Herts Full Stop	[0-5%]
KCS	[5-10%]
RM (TTS & Consortium)	[20-30%]
Total	100%

Source: CMA analysis.

10.46 We consider that the Parties both have a considerable presence within the Relevant Market, we estimated that YPO is the [redacted] Supplier with a share of [20-30%]. Findel is smaller, with a share of [10-20%]. There are also a number of other Suppliers which have a material presence in this market. RM has a share of [20-30%] and ESPO has a share of [10-20%]. Amazon has a share of [10-20%] but for the reasons given in paragraph 9.39 and paragraph 10.39 we do not think the shares of Amazon provide a good indication of its role in the Relevant Market nor closeness of competition to the Parties. No other retailer has a share above 10%.

10.47 We consider that the national share increment [10-20%] is material. Post-Merger, the Merged Entity would be the largest Supplier in the market, with [30-50%], and by some distance [10-20%], larger than the next largest Supplier.

10.48 As set out in Appendix C, we have also examined shares and share increments within Regions of this national market (Appendix C, Tables 2a-c and paragraphs 17 and 18). We found that in some regions the share increment is larger than the national increment e.g. Scotland has an increment of [30-50%] and the post-Merger market share would be [70-90%]. In other Regions, while the increment is small, the Merged Entity would have a considerable market share e.g. Yorkshire and the Humber an increment of [0-10%] but combined share of [60-80%], North West increment of [0-10%] but combined share of [60-80%], North East increment of [0-10%] but combined share of [60-80%] and Northern Ireland an increment of [0-10%] but a combined share of [80-100%].

10.49 Given the high level of the post-Merger combined shares in Regions highlighted in paragraph 10.48 we consider that this is indicative that the Merger raises prima facie concerns. In particular, we consider that the large combined share indicates that the Parties are important constraints on each

other in these Regions. We also note that there are few other strong competitors: RM and Amazon are the only competitors with a market share above 10% in some of these Regions, but their market share is always below 20%. In Scotland, the Parties sell primarily through the Generalist Lot of the Scotland Excel Framework, on which there is currently only one other Supplier (RM) and [X]. In Northern Ireland, there are no competitors with a market share above 10%.

10.50 We note that even if there is a small share increment, competition can still be substantially lessened by a merger. For example, in a market that is already highly concentrated pre-merger (which could be consistent with limited competition pre-merger), a further increase in concentration could still constitute a substantial lessening of competition. A merger with a small share increment could also lead to a substantial lessening of competition if the merging parties are close competitors.

Parties' internal documents

10.51 This section summarises evidence from the Parties' internal documents regarding which Suppliers they typically monitor and benchmark. Such evidence can provide a good indicator of which Suppliers the Parties consider to be their strongest competitive constraints. We have considered evidence relating to which Suppliers the Parties (i) price **benchmark** against; (ii) **monitor** (eg when reporting developments in the market); and (iii) appear to **respond** to – both when setting their strategy generally, and when noticing particular developments in the market (eg the entry of a Supplier into a new region). In general, we have seen more evidence of the Parties benchmarking/monitoring other Suppliers, than responding directly to them. Whilst evidence of a competitive response can be particularly informative, evidence of benchmarking/monitoring alone also provides valuable evidence of competitive constraints.

10.52 Details of our findings from our review of internal documents are set out in Appendix B.

Parties' views

10.53 The Parties said that, whilst the Parties are each described by the CMA as amongst a group of each other's closest competitors, based on an assessment of internal documents, they are generally not each other's closest competitor.

- 10.54 The Parties said that there are very many specialist suppliers and to search for evidence of a constraint from them by looking for evidence of references to suppliers in internal documents misses the point.
- 10.55 The Parties said that there was a wealth of evidence of schools using specialists for their core needs. They highlighted several references to Specialists in their documents (as discussed in Appendix B, paragraphs 23, 48(a), and 59(e)).
- 10.56 The Parties said that the view that Specialist suppliers are a relatively weak constraint is inconsistent with the CMA's recognition that Findel 'consistently benchmarks' against a series of Specialist suppliers, including [REDACTED] and that a number of Specialist suppliers are benchmarked against by YPO in [REDACTED]% of the categories described by the CMA [...] as well as being mentioned as a competitive force in a number of area sales manager reports of YPO.
- 10.57 The Parties said that the CMA's view that the internal evidence is consistent with some constraint, but a weaker constraint, even in aggregate, on Generalist Suppliers underweights the importance of these suppliers.

Our assessment – YPO

Closeness of competition between the Parties

- 10.58 [REDACTED]
- 10.59 [REDACTED]
- 10.60 [REDACTED]
- 10.61 Overall, the internal document evidence reviewed shows that YPO treats Findel as one of its closest competitors.

Constraint from other Generalist Suppliers

- *ESPO and RM*

- 10.62 [REDACTED]
- 10.63 The internal document evidence reviewed shows that YPO treats ESPO and RM as amongst its closest competitors (together with Findel).

- *Herts FullStop and KCS*

- 10.64 [REDACTED]

10.65 The internal document evidence reviewed indicates that YPO considers Herts FullStop and KCS are less close competitors than Findel, ESPO and RM.

- *Amazon*

10.66 [REDACTED]

10.67 Overall, the internal document evidence indicates that Amazon poses some constraint on YPO, more so in some categories than others, but shows a consistent picture that it acts as a lesser constraint than Findel, ESPO and RM. [REDACTED].

- *Other regional/local Generalists*

10.68 [REDACTED]. The internal document evidence reviewed does not suggest that YPO considers Hampshire County Supplies and East Riding as close competitors.

Constraint from Specialist Suppliers

10.69 [REDACTED]¹⁸²

10.70 [REDACTED]. As such, we have not found evidence from internal documents to suggest that Specialist Suppliers, even collectively, exert an equivalent degree of competitive constraint as a Generalist Supplier. [REDACTED].

10.71 Overall, the internal document evidence reviewed is consistent with Specialist Suppliers potentially exerting some competitive constraint collectively, although the documents show a consistent picture that this constraint is a weaker constraint than that exerted by Generalist Suppliers. Individually, Specialist Suppliers do not appear to be close competitors to YPO.

Other retailers

10.72 [REDACTED]

10.73 The internal document evidence reviewed therefore does not suggest that YPO considers other retailers as close competitors.

¹⁸² [REDACTED]

Our assessment – Findel

Closeness between the Parties

10.74 [✂]

10.75 [✂]

10.76 The internal documents evidence reviewed therefore shows that Findel treats YPO as one of its closest competitors.

Constraint from other Generalist Suppliers

10.77 [✂]

- *RM and KCS*

10.78 [✂]

10.79 The internal document evidence reviewed therefore shows that Findel treats RM (Consortium and TTS) and KCS as amongst its closest competitors (together with YPO).

- *ESPO*

10.80 [✂]

10.81 The internal document evidence reviewed therefore indicates that Findel treats ESPO as a less important competitor than KCS, RM and YPO.

- *Amazon*

10.82 [✂]

10.83 Overall the internal documents demonstrate that Findel perceives Amazon as imposing some constraint, and as having the potential to impose a greater constraint in the future – particularly following the launch of the Amazon-YPO framework. However, the internal documents also demonstrate Findel's perception that, given its different customer offering, Amazon poses a lesser constraint than ESPO, KCS, RM, and YPO, particularly at present.

- *Herts FullStop, Hampshire County Supplies and East Riding*

10.84 [✂]

10.85 The internal document evidence reviewed therefore indicates that Herts FullStop is a recognised competitor to Findel (albeit not a particularly close one), and Hampshire County Supplies and East Riding are not close competitors, [REDACTED].

Constraint from Specialist Suppliers

10.86 [REDACTED]

10.87 [REDACTED]

10.88 Overall, the internal document evidence reviewed therefore is consistent with Specialist Suppliers potentially exerting some competitive constraint on Findel [REDACTED]. However, when taking into account all of Findel's brands, internal documents show a consistent picture that this constraint is weaker constraint than that exerted by Generalist Suppliers. Individually, Specialist Suppliers do not appear to be close competitors to Findel.

Other retailers

10.89 [REDACTED]

10.90 The internal document evidence reviewed therefore does not suggest that Findel considers other retailers as close competitors.

Provisional view

10.91 Overall, we provisionally find that the internal documents present a consistent picture in respect of YPO and Findel, as set out below.

10.92 YPO's closest competitors are Findel, ESPO and RM (Consortium and TTS). Herts FullStop and KCS are the next closest competitors, although these are less important competitors than Findel, ESPO or RM. Hampshire County Supplies and East Riding are not close competitors. Specialist Suppliers potentially exert some competitive constraint collectively, although this constraint appears a weaker constraint than that exerted by Generalist Suppliers. Individually, Specialist Suppliers do not appear to be close competitors to YPO. Amazon appears to impose some constraint on YPO, more so in some categories than others, but acts as a lesser constraint than Findel, ESPO and RM. Other retailers (e.g. high-street, supermarkets) impose only a very limited constraint.

10.93 Findel's closest competitors are YPO, RM (Consortium and TTS) and KCS. ESPO is a relatively close competitor to Findel, although it is a less important competitor than YPO, RM or KCS. Herts FullStop is a recognised competitor

to Findel (albeit not a particularly close one), and Hampshire County Supplies and East Riding are not close competitors and appear less close than Herts FullStop. Specialist Suppliers appear to exert some constraint on Findel's [X], when taking into account all of Findel's brands, Specialist Suppliers appear to be a relatively weak constraint to Findel's overall offering. Whilst Amazon is identified as having the potential to act as an important competitor in the future, it currently appears a less important competitor than ESPO, KCS, RM and YPO. Other retailers (e.g. high-street, supermarkets) impose only a very limited constraint.

10.94 In relation to the Parties' submission (see, paragraph 10.53) that they are not each other's closest competitor, we consider that the evidence shows that each is among a group of the other's closest competitors and to make a distinction between the Suppliers in this group would be somewhat artificial. At the same time, we do not consider that determining whether the Parties are in fact each other's closest competitor is necessary, since our assessment must rather determine whether the Merger gives rise to an SLC and, in order to do so, it is not necessary to find they are one another's closest competitors.

Customer evidence

10.95 As described in paragraph 7.18 and Appendix D, we have collected customer evidence from a sample of the Parties' customers. Part of our research covered customers' views on the next closest alternative to the Parties. We asked who they would place their orders with instead if YPO/Findel were no longer active in this industry.

Parties' views

10.96 The Parties submitted that the CMA's customer evidence demonstrates that Amazon is a significant competitor to the Parties with over a third of customers saying that they would switch to Amazon if the Parties exited the market. The Parties said this is unsurprising given that 75% of respondents said that they had at least moderate (or main) spend with Amazon. They said this is in line with the Parties' practical experience, where dissatisfied customers have indicated that they are switching to Amazon for their needs.

10.97 The Parties submitted that customers view Specialists as clear competitors to the Parties. They said that around a quarter of customers told the CMA that they would switch to a Specialist supplier if the Parties exited the market. They said this was entirely unprompted by potential answers and is despite the fact that the CMA's questions did not include any potential specialists.

Our assessment

10.98 Given the small size of the sample we stress that it is not appropriate to draw quantitative inferences about the wider population of customers from this research. We therefore caution against the Parties' quantitative highlighting of proportions/percentages of customers that would switch to Amazon or Specialists. While these values are correct for the respondents to our questionnaire, they cannot be reliably assumed to apply to the wider population of customers.

10.99 We asked customers who they would place their orders with if YPO/ Findel were no longer active in this industry.¹⁸³ We received a range of different types of response to this question reflecting both customers' ability to engage with it and also different views on alternatives to the Parties.¹⁸⁴ The responses can broadly be categorised as follows.

- (a) Multiple Suppliers – Most (29 out of 42) customers who provided a response to the relevant questions in our written phase 1 or 2 questionnaires listed multiple alternatives rather than a single Supplier, or told us they would go with various Suppliers. It is not clear in all the responses whether they would split their spend between these Suppliers or are listing them as a range of options for single-alternative Supplier.
- (b) Single Suppliers – Several customers (9 out of 42) who provided a response to the relevant questions in our written phase 1 or 2 questionnaires named a single alternative Supplier. Those listed include Banner, ESPO, Findel (by a YPO customer), Hampshire County Supplies KCS and RM.
- (c) Categories of Suppliers - One customer responding to our written phase 2 questionnaire did not name an alternative Supplier but specified that they would place their orders with another PSBO and online.
- (d) Don't know – Several customers told us, either in response to the written questionnaires or during calls, that it was unknown at this time who they would switch to. For example, one customer told us that they would speak to other headteachers for recommendations.

¹⁸³ In phase 1 we asked, "Q11 if [YPO/Findel] were no longer active, please tell us what kind of Supplier you would be more likely to purchase from instead." In phase 2 we asked, "Q5. If [YPO/ Findel] were no longer active in this industry, who would you place your orders with instead?" We have used the categories Specialist and local Generalist to consolidate responses of named competitors that fall into these categories, as determined by us.

¹⁸⁴ We note that respondents were able to list one or more alternative Suppliers in their response to our open-ended question about what a customer would do if the Party it had bought from was unavailable.

10.100 The number of mentions of different Suppliers by customers that named at least one Supplier in response to our written phase 1 and phase 2 questionnaires was as follows:

(a) For YPO customers:

- (i) 9 out of 20 mentioned Findel;
- (ii) 7 out of 20 mentioned RM;
- (iii) 6 out of 20 mentioned Amazon;
- (iv) 6 out of 20 mentioned ESPO;
- (v) 4 out of 20 mentioned a local Generalist;
- (vi) 4 out of 20 mentioned a Specialist; and
- (vii) 1 out of 20 mentioned KCS.

(b) For Findel customers:

- (i) 10 out of 15 mentioned RM;
- (ii) 6 out of 15 mentioned Amazon;
- (iii) 5 out of 15 mentioned YPO;
- (iv) 4 out of 15 mentioned KCS;
- (v) 4 out of 15 mentioned a Specialist;
- (vi) 2 out of 15 mentioned a Local Generalist; and
- (vii) 1 out of 15 mentioned ESPO.

Provisional view

10.101 Given the limitations of our customer evidence we consider that we can only place limited weight on its results, except that it illustrates for respondents to our questionnaires, the Suppliers identified as alternatives to the Parties are broadly consistent with those identified as alternatives in other sources of evidence, albeit Amazon is slightly more prominent and for Findel's customers, ESPO is slightly less prominent.

Competitors' views

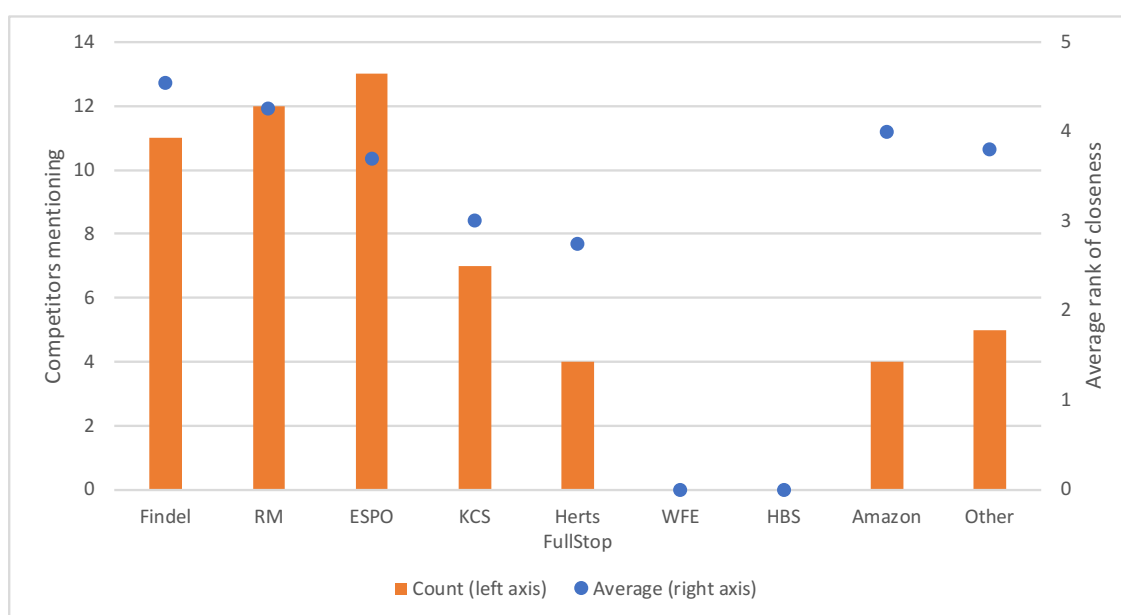
10.102 As described in paragraph 7.27 we have collected evidence and views from third party competitors. Our questionnaire asked competitors to identify who they considered to be the closest competitors to each of YPO and Findel. In doing so we asked them to give an indication of the strength of competition between each of these competitors and each of YPO and Findel. We summarise this below. In Appendix E, we set out a summary of the hearings conducted with competitors as part of this inquiry.

Our assessment

Views on YPO's competitors

10.103 Figure 10.1 shows who competitors reported as the closest competitors to YPO. 13 out of 15 competitors mentioned ESPO, 12 out of 15 mentioned RM and 11 out of 15 mentioned Findel. However, the average ranking of closeness was highest for Findel.

Figure 10.1: Competitors' views on YPO's closest competitors (all competitors)



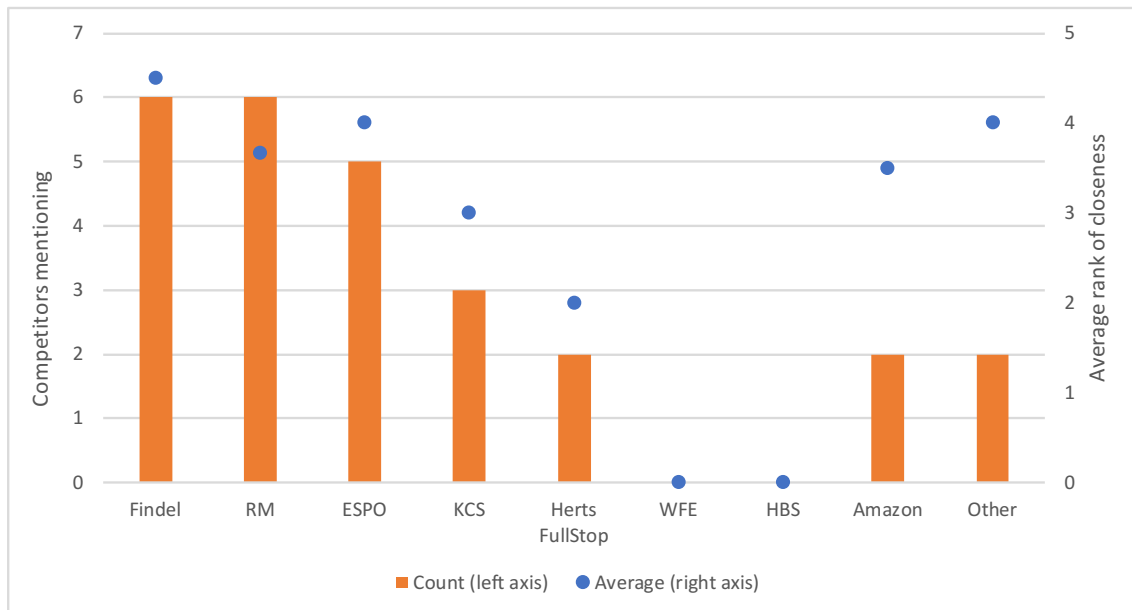
Source: CMA analysis of phase 2 questionnaire responses.

Base: 15 competitors.

Question: Q10: Who are, in your opinion, YPO's main competitors? For each of them, please assign a score from 1 to 5, where 1 = very weak competitor and 5 = very strong competitor. Please explain your answers and, if relevant, also comment on whether there are any specific factors with regards to product category, type of Educational Institution or UK region that affect your answer.

10.104 Recognising that Generalist Suppliers may have greater knowledge of the competitive pressures faced by YPO, we have also examined the Generalist sub-set of the responses in Figure 10.2. Broadly the findings are similar with Findel, RM and ESPO being the three most mentioned competitors and the competitors and Findel having the highest average ranking.

Figure 10.2: Competitors' views on YPO's closest competitors (Generalists only)



Source: CMA analysis of phase 2 questionnaire responses.

Base: 7 Generalist competitors.

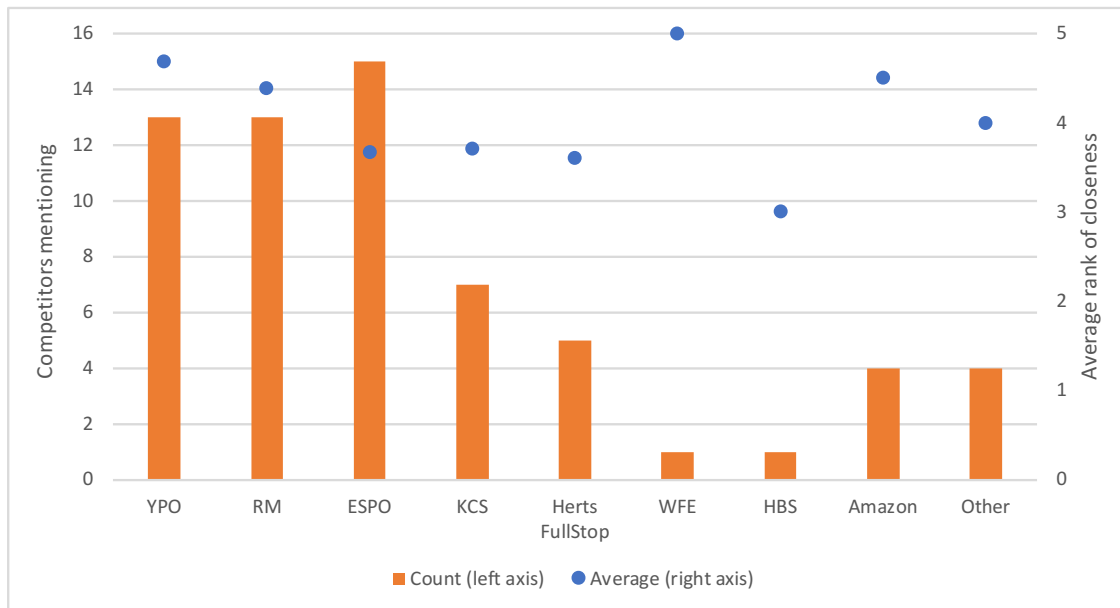
Question: Q10: Who are, in your opinion, YPO's main competitors? For each of them, please assign a score from 1 to 5, where 1 = very weak competitor and 5 = very strong competitor. Please explain your answers and, if relevant, also comment on whether there are any specific factors with regards to product category, type of Educational Institution or UK region that affect your answer.

Views on Findel's competitors

10.105 Figure 10.3 shows who competitors reported as the closest competitors to Findel. 15 out of 15 competitors mentioned ESPO, 13 out of 15 mentioned RM and 13 out of 15 mentioned YPO. However, the average ranking of closeness for these three suppliers was highest for YPO.¹⁸⁵

¹⁸⁵ WFE actually had the highest rank of closeness to Findel, but this was based on only one mention.

Figure 10.3: Competitors' views on Findel's closest competitors (all competitors)



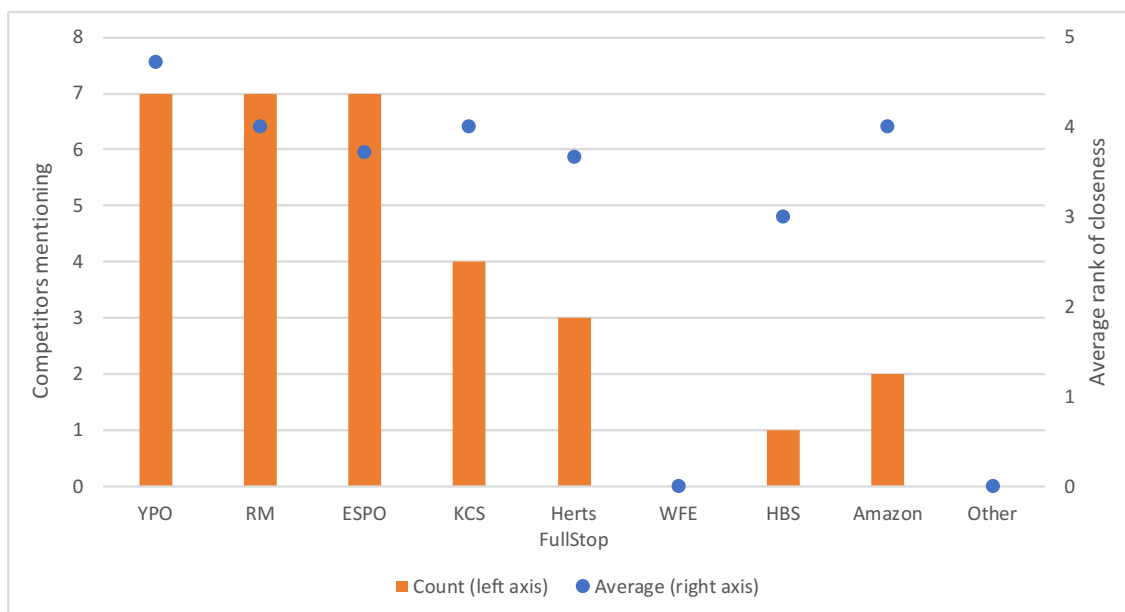
Source: CMA analysis of phase 2 questionnaire responses.

Base: 15 competitors.

Question: Q9: Who are, in your opinion, Findel's main competitors? For each of them, please assign a score from 1 to 5, where 1 = very weak competitor and 5 = very strong competitor. Please explain your answers and, if relevant, also comment on whether there are any specific factors with regards to product category, type of Educational Institution or UK region that affect your answer.

10.106 Recognising that Generalist Suppliers may have greater knowledge of the competitive pressures faced by Findel, we have also examined the Generalist sub-set of the responses in Figure 10.4. Broadly the findings are similar with YPO, RM and ESPO being the three most mentioned and Findel has the highest ranking.

Figure 10.4: Competitors' views on Findel's closest competitors (Generalists only)



Source: CMA analysis of phase 2 questionnaire responses.

Base: 7 Generalist competitors.

Question: Q9: Who are, in your opinion, Findel's main competitors? For each of them, please assign a score from 1 to 5, where 1 = very weak competitor and 5 = very strong competitor. Please explain your answers and, if relevant, also comment on whether there are any specific factors with regards to product category, type of Educational Institution or UK region that affect your answer.

Views on Amazon's position in the market

10.107 In our hearings, we asked Suppliers about their view of Amazon, its role in the Relevant Market and its closeness to the Parties.

- *Amazon's own views*

10.108 Amazon told us that 'generally speaking, we talk to our customers around what is frequently termed "tail spend"', which it described as 'a huge number of very variable products which are bought from a very large number of suppliers and usually do not have that form of pattern to them or repeat purchase to them'. It clarified that such 'tail spend' can include 'top ups', something 'random' (such as a replacement for a broken chair), and 'everything in between; there can be all sorts of stuff in there'.¹⁸⁶ Furthermore, Amazon told us [✂].

10.109 Amazon's description of its 'tail spend' activity was corroborated by one Generalist Supplier who told us that Amazon is seen as a 'top-up supplier'. Another told us that they do not compete with Amazon because 'whilst it is a

¹⁸⁶ By way of an example of a 'top up', Amazon told us that a customer might urgently require whiteboard markers.

Generalist Supplier, it is not yet a competitor in the educational resources market’.

10.110 Amazon said that “We do not go specifically looking to see who the educational suppliers are to educational customers. We look at tail spend¹⁸⁷ overall and we look at who provides the ability to service those needs. [...] [redacted]. So, yes, we very much view it as part of the overall network, tapestry, however you want to put it, of competition that exists in this area.”

10.111 Amazon also told us that [redacted].

10.112 Amazon said [redacted].

- *Views of other competitors*

10.113 We asked competitors that we held hearings with about the role of Amazon in the Relevant Market.

10.114 [redacted] said that Amazon “is very much seen as a top-up supplier that the teacher or school business manager may often make a purchase from either via a personal/business card, rather than them being seen as a replacement supplier.”

10.115 [redacted] said that “It is difficult to know exactly but, again, we think Amazon gets used to shop around and at least do some price comparison. It does not necessarily mean that customers order from them. I think again often it is about next-day delivery and urgency of delivery. Certainly, we have seen that Amazon have become much more familiar with our customers over the last few years. That is assumed to be influenced by personal behaviour as well as organisational behaviour. Generally, we do not think they are necessarily directly competing with ourselves and with our competitors on a lot of the core product ranges. We do not really see any evidence that we can see anyway around them competing on pens, paper and things like that and exercise books. It tends to be things which perhaps we do not supply or where there is perhaps more choice in some of those things. Certainly, we know that things like books and those sorts of things are quite popular purchases through Amazon for our customers [redacted].”

10.116 [redacted] said “We see Amazon as a threat, I think everyone sees them as a threat on some level. [...] Amazon are clearly a threat in the sense that they are one of those [...] suppliers who could at any point pick off certain parts of spend,

¹⁸⁷ Amazon described ‘tail spend’ as “a huge number of very variable products which are bought from a very large number of suppliers and usually do not have that form of pattern to them or repeat purchase to them. They can for example be top-ups”.

which is not good for any of us. But they are not yet the kind of one stop shop. They are not seen in that way, so I am sure nearly every school probably buys something from Amazon but what they are buying is on a Tuesday some Goldfish food as opposed to buying [X], which are the main stay of the spend. So, currently they are more of a kind of very low-level participant as opposed to seen as a main competitor. But because of the sheer scale of them being Amazon, of course we take that seriously that that could change”.

10.117 [X] said “We do not compete with them. We do know some schools are buying from Amazon but we believe it is very small and more consumable-based resources. We do not hear of anything; we know that Amazon have some agreement with YPO- but we do not really hear any noise from it, to be honest. So, we do not compete at all. If you look at whatever Amazon have got from a YPO offering, it does seem very small. So, in my opinion, I think Amazon are also, equally, struggling to get into the education market because they have tried to partner with YPO and, as I say, we do not hear any noise from it whatsoever.”

10.118 [X] said “There is a lot of talk about it. It depends what you classify as the educational market. If you are a one-stop supplier to a school [...] I could see somebody like Amazon coming into that market.”

Provisional view

10.119 We consider that competitors were very consistent in the way they described the market and the closest competitors to the Parties. They described the Parties as close competitors with few other close constraints. Competitors, in general, described Amazon’s role in the market as being somewhat different to other Generalists and it was not commonly mentioned as a close competitor, although there was some acknowledgement that its role may change in future.

Transaction data

10.120 We collected a dataset of all of the Parties’ transactions since 2017, covering their value, contents, customer etc. This data informs us of actual market outcomes and therefore potentially provides an important insight into customer behaviour. For example, it demonstrated that there are a significant group of customers who value the Generalist service for their main spend across multiple product categories (see, Figure 8.10]). However, it has limitations as a source of evidence of the closest alternatives for customers and hence the constraints on the Parties, since we cannot tell what happens when a customer appears to reduce sales from YPO or Findel – we don’t know whether that customer has maintained its previous level of spend and

switched to an alternative supplier, or simply reduced the level of spend in that year (and reduced its spend with one or other of the Parties accordingly).

Parties' views

Spend variation

- 10.121 The Parties submitted that “there is very substantial variation in spend by customers each year, much of which can only be accounted for by switching to competitors. [X]% of YPO’s and [X]% of Findel’s top 30% of customers in 2018 decreased their spending with YPO and Findel respectively by at least 30% or stopped purchasing from the respective Party in 2019. These variations in spend are as visible in categories which can be expected to have relatively regular spend, such as stationery, or arts and crafts and are not limited to categories where a school’s spend might be occasional, suggesting that variations are the result of switching and not simply different purchasing requirements in each year”.
- 10.122 The Parties examined changes in customer spend under two different approaches – changes at the category-level and changes at the customer-level.
- (a) The category-level refers to changes in spend on individual product categories of Educational Resources with one Party by individual customers. For example, if a customer reduced its spend on stationery between 2018 and 2019, that reduction contributes to the estimate of ‘lost revenues’ regardless of that customer’s spending in other categories.
- (b) The customer-level refers to changes in total spend on Educational Resources with one Party by individual customers. For example, if a customer reduced its total spend with one Party between 2018 and 2019, that net reduction contributes to the estimate of ‘lost revenues’.
- 10.123 At the category-level, the Parties said “Both Parties lost a material proportion of their sales between 2018 and 2019, at product category level.¹⁸⁸ YPO lost [X]% of its 2018 revenues, at product category level, while Findel lost [X]%”.

¹⁸⁸ The reference to product category level, refers to individual categories of Educational Resources. The Parties’ analysed each customers spend in each separate product category. For example, if a customer reduced its spend on stationery between 2018 and 2019, that reduction contributes to the ‘lost revenues’ regardless of that customers spending in other categories.

10.124 At the customer-level the Parties submitted that they lost a material proportion of their sales between 2018 and 2019. YPO lost [X]% of its 2018 revenues, while Findel lost [X]%.

Recoupment analysis

10.125 The Parties said that they do not compete closely. The Parties lost around [X]% of revenues between 2018-2019 and only a minority was recouped by the other party (approx [X]%).

10.126 When accounting for cross-category substitution by assessing spend variation across all categories (i.e. at the customer level), the Parties found that “the proportion of lost revenues which the other merging Party recouped are still small. Findel recouped [X]% of YPO’s lost sales, while YPO recouped [X]% of Findel’s lost sales.”

Multi-homing

10.127 The Parties submitted that “analysis shows that there is a [X] proportion of the Parties’ customers that split their spending with the Parties fairly evenly. In [X]% of the analysed instances, customers allocated at most 60% of their spending (with the Parties) to either YPO or Findel; in [X]% of the cases customers allocated at most 70% of their spending (with the Parties) to either YPO or Findel.

10.128 The Parties submitted that this evidence is not compatible with a conclusion that customers choose a main Supplier and consider other suppliers only for “top ups”.

Our assessment

Spend variation

10.129 We have analysed the Parties’ customer and transaction data and found that between 2018 and 2019 the Parties lost the following gross revenues:¹⁸⁹

(a) At the category-level and customer-level;¹⁹⁰

¹⁸⁹ The definition of lost revenue refers to spend observed in 2018 that decreases partially or wholly in 2019. For example, a customer that spent with the given Party £1,000 in 2018 but £0 in 2019, would contribute £1,000 to the ‘lost’ revenues, a customer that spent £1,000 in 2018 and £700 in 2019 would contribute £300 to the ‘lost’ revenues and a customer that spend £1,000 in 2018 and £1,200 in 2019 would contribute £0 to the ‘lost’ revenues.

¹⁹⁰ This involves assessing each customers’ spend within each product category with a given Party.

(i) [REDACTED] for Findel; and

(ii) [REDACTED] for YPO.

(b) At the customer-level;¹⁹¹

(i) [REDACTED] for Findel; and

(ii) [REDACTED] for YPO.

10.130 These results are of the same order of magnitude as the Parties' results in paragraphs 10.122 and 10.123.

10.131 We therefore broadly agree with the Parties' estimate of the variation in individual customers' spend between years, although we note that the Parties' overall revenues are broadly stable, varying by only [REDACTED]% for YPO and [REDACTED]% for Findel (see Appendix C, Table 1). Given the level of variation in individual customer spend, one would not necessarily expect the level of variation in total customer spend to be so limited and overall revenues to be so stable (and as also borne out by market shares).

10.132 The difference between the variation in category-level spend and customer-level spend, suggests that cross-category switching (i.e. a customer's requirements change from year to year) is likely responsible for a proportion of the difference. However, it does not explain the variation in customer-level spend with each Party.

10.133 Variation in customer-level spend could represent one, or a combination of, the following:

(a) Switching to other Generalists;

(b) Switching to Specialists and/or other Suppliers; and

(c) Variation in Educational Resources spend by customers across years.

10.134 We discuss these possible explanations individually below and then consider how they may fit together.

- *Switching to other Generalists*

10.135 Variation in customer spend might theoretically be explained, at least in part, by switching from the Parties to other Generalists. If this were the case, it might imply that the constraint from other Generalists was relatively strong.

¹⁹¹ This involves assessing each customers' total spend with a given Party.

However, it is not clear that this explanation is supported by the evidence in this case.

- (a) Overall revenues are stable - Given the level of variation in individual customer spend, one would not necessarily expect the level of variation in total customer spend to be so limited and overall revenues to be so stable (and as also borne out by market shares). Indeed, we do not see any individual Generalists making material gains (or losses) in market share, as one would expect if there was switching towards (or away from) well-positioned offers in 2019.
- (b) Material switching is not consistent with other evidence – While we have seen evidence indicating Generalists are the closest constraints to the Parties, we have not seen other evidence suggesting material switching to Generalists (for example, internal documents (see paragraphs 10.58 to 10.68 and paragraphs 10.74 to 10.86), competitor views (see paragraphs 10.103 to 10.106)).

10.136 However, to the extent that there is switching, the prospect of it being switching to other Generalists, seems likely, given the other evidence we have reviewed (for example, the Parties own internal documents and the internal documents and views of competitors). Indeed, in support of switching being mostly between a sub-set of Generalists, one Supplier said: [REDACTED].”

- *Switching to Specialists and/or other Suppliers*

10.137 Variation in customer spend might also theoretically be explained by switching from the Parties to Specialists or other Suppliers outside of the market. If this were the case, it might imply that the constraint from Specialists was relatively strong. However, it is not clear that this explanation is supported by the evidence in this case.

- (a) Overall revenues are stable – Given the level of variation in individual customer spend, one would not necessarily expect the level of variation in total customer spend to be so limited and overall revenues to be so stable (and as also borne out by market shares).
- (b) Further, if the spend variation represented switching to Specialists and other Suppliers, one might expect there would have to be equivalent switching back to the Generalists in order for Generalists’ revenues to remain broadly stable. However, we have not seen evidence of material switching from Specialists to Generalists, and this would be inconsistent with the Parties’ view that there is a trend towards greater fragmentation and purchases with Specialists.

(c) Material switching to Specialists and other Suppliers is not consistent with other evidence - We have not seen evidence suggesting material switching to Specialists and other Suppliers within other evidence (for example, internal documents (see paragraphs 10.69 to 10.70 and paragraph 10.87), competitor views (see paragraphs 10.103 to 10.106).

- *Variation in spend by customers across years*

10.138 It cannot be inferred with sufficient certainty for it to be given determinative weight in our analysis that reductions in spend represent customer switching. Since any decrease in spend is captured as a loss, any purchases that occur less frequently than annually will appear to be variation in spend (for example one-off furniture purchases, biennial (or longer) purchases of curriculum products, reductions in quantities of products purchased etc).

10.139 In order to assess the possibility of this longer-term pattern in the variation, we have examined the variation in the total spend of customers across Generalist Suppliers between 2018 and 2019. We have matched the customer datasets of eight Generalist Suppliers and calculated each customer's total spend in 2018 and 2019. Figure 10.5 shows the variation in this total spend between the two years. The horizontal axis shows the total change in a customer's budget, ranging from 100% (ie no spend in 2019) to more than 100% (ie more than doubling their spend). The vertical axis shows the proportion of all customers that fit into each category.

Figure 10.5: Variation in customers' spend with Generalists

Source: CMA analysis of Generalists' data. Generalists included are [X]. [X].

10.140 Figure 10.5 shows that the total reduction in spend is equivalent to about 25% of Generalist revenues (as is the total increase in spend). This could suggest that variation in customer total expenditure accounts for a large proportion of the total variation in the Parties' revenues. Although this calculation does not account for any switching to Specialists or out-of-the market Suppliers, the above explanation in paragraph 10.137(c) suggests that such switching may not be large.

10.141 Overall, we consider that all of the possible explanations in paragraph 10.133 may contribute to some extent to the variation in spend, but that the third explanation (Variation in Educational Resources spend across years) seems likely to account for a large proportion of this, given the first two explanations are inconsistent with other evidence.

Recoupment analysis

10.142 We have considered the Parties' analysis of recoupment (in paragraphs 10.125 and 10.126 above). We consider the analysis at the customer-level to be more relevant than the category-level analysis, since at the category-level there is scope for cross-category substitution which may materially affect the recoupment estimates and would likely bias them downwards. However, even at the customer-level we consider that it may be inappropriate to interpret variation in spend as switching and therefore equally inappropriate for the recoupment estimates to be considered genuine recoupment. Further, there is some uncertainty around the levels of the recoupment estimates, for the following reasons:

- (a) If customers vary their total spend on Educational Resources (not necessarily total budgets across all expenditure) across years, ie reduced their total spend on Education Resources across all Suppliers, then the level of recoupment is likely to be underestimated (eg the denominator may be too large). Based on our assessment in paragraph 10.140, this is likely to be a significant factor; and
- (b) If some customers switch spend to the other Merging Party from a different Supplier,¹⁹² then the level of recoupment may be overestimated (eg the numerator may be too large).

10.143 In any event, such evidence needs to be considered alongside the other evidence we have found, including each Party's benchmarking of the other, internal sales reports and third party evidence which point to a higher level of competitive interaction.

10.144 For the above reasons, we have fundamental concerns about the recoupment analysis, that it does not necessarily measure switching, and so place limited weight on it.

Multi-homing

10.145 We have considered the Parties' analysis of customers that spend with each of the Parties (see, paragraph 10.127 above). However, we consider that a more complete, and therefore reliable, picture of customers' preferences to concentrate spend on one, or a small number of main Suppliers, is illustrated by our analysis of multi-homing (see, Figure 8.10 and paragraph 8.27) which

¹⁹² For example, if a YPO customer has spend with multiple Suppliers (YPO, ESPO and Findel) and simultaneously reduces its spend with YPO and ESPO and increases it with Findel, it is not possible to accurately attribute the increase in spend with Findel as recoupment from YPO or ESPO.

covers a wider pool of Suppliers and hence the proportions of spending with the Parties will more accurately represent preferences for multi- or single-homing. This analysis demonstrated that most customers do have a main Supplier and these account for the majority of spend in the market.

Provisional view

- 10.146 While we have assessed the transaction data in discrete terms above, we also assess this evidence in conjunction with the evidence obtained overall. We have taken into account factors such as the robustness of the data/methodology adopted and the degree of confidence in the interpretation that can be (or alternative interpretations that may be) drawn.
- 10.147 Overall, we consider that there is variation in customer spend across time. However, we consider that this could be explained, in part, by a number of different factors. While it might theoretically be consistent with Generalists and Specialists being close competitors with the Parties, this hypothesis is not supported by the other evidence we have observed and we consider that variation in spend between years (through a combination of one-off purchases and longer than annual spending cycles) are a more plausible explanation. Further, we have fundamental concerns about the recoupment analysis, that it does not necessarily measure switching, and so place limited weight on it. In any event, such evidence needs to be considered alongside the other evidence we have found, including each Party's benchmarking of the other, internal sales reports and third party evidence which point to a higher level of competitive interaction.

Market developments

COVID-19

- 10.148 On 20 March 2020, the UK government announced that, due to COVID-19, all UK schools and early years establishments should close (except for children of key workers and vulnerable children).¹⁹³ The staged re-opening of schools did not begin again until June 2020.
- 10.149 During the short term (broadly until July 2020) most Suppliers experienced a substantial reduction in monthly revenues relative to the previous year. Some Suppliers described this a reduction in revenues of the order of [X] %.

¹⁹³ See <https://www.gov.uk/government/news/schools-colleges-and-early-years-settings-to-close>.

- 10.150 Since then, Suppliers have generally described an improvement in trading and significant recovery during June and July, but they still expect uncertainty and impact to continue for some time.
- 10.151 The medium-long-term effect of COVID-19 remains highly uncertain, as does its impact on the sector. For example, it is unclear whether the product mix required by Educational Institutions will change (and, in turn, whether this will lead to significant changes in customers' choice of Generalist Supplier). Several Suppliers indicated that they had seen and anticipated some change in the product mix, but they did not say they expected this to be substantial.
- 10.152 While all Suppliers are facing challenging trading conditions, we have not seen clear evidence to suggest that different Suppliers are being affected in different ways (including the growth of online, which we examine next). As such, we do not consider we can conclude with sufficient certainty that there would be material changes in the strength of the competitive constraint posed by different Suppliers over the foreseeable future.

Digitisation and growth of online

Parties' views

- 10.153 The Parties submitted that the market is increasingly moving online. The Parties said that customers "do not need to engage in the complexities of search through a variety of catalogues – they now order online and easily and quickly comparable information is readily available." They submitted that "online transactions predominate, with over [X] % of Findel transactions now being made online (with a peak of [X] % during the COVID-19 pandemic) and [X] % of YPO transactions made online."
- 10.154 The Parties submitted that the movement online is a trend that will continue "[COVID-19] accelerated the shift that is already underway towards effective online providers. As schools have been forced to operate remotely, many who may not have ventured online have certainly now done so."

Our assessment

- 10.155 We recognise that online sales are, or are becoming, the predominant channel by which customers make orders in the Relevant Market. However, we do not consider that this trend, in and of itself, necessarily reflects a change in the strength of different competitive constraints. All market participants have websites through which customers can and do place orders.

10.156 In addition, there remains a significant proportion of customers that do not make their purchases online. For YPO, only [redacted]% of its transactions were made online which means that [redacted]% were made through other methods. This means that a significant proportion of customers rely on methods such as paper orders, telephone or fax.

10.157 This was supported by Suppliers' views of the market. When asked how customers shop with Suppliers, one Supplier told us "There are two main ways, one is a traditional raising a paper order, [redacted] faxes are still used in the education sector, [redacted]".

10.158 When asked about its expectation for the use of catalogues in the next few years one Supplier said that customers continue to value paper catalogues and that this was expected to continue in the foreseeable future:

"only in the last few weeks have we run another customer survey. We had a very strong response, [...] a large number of responses, and it was about 80 per cent towards, "We still want a catalogue; we would not be happy if you withdrew it".

I do think it is habitual; I do think it is also -- sometimes websites, you kind of need to know what you are looking for. You do not go on a website really to browse; you go on a website to shop. So, if I am a teacher and I do not really know what I want, then sitting down and whizzing through the [redacted] catalogue, like everyone used to with the Argos catalogue at Christmas, kind of gives you the inspiration that you are looking for.

Websites do not really work like that. You know, there are so many different products on them that it is just a sea of -- you just get lost in the volume. So, from a purchasing perspective, [redacted] have about [redacted] per cent of our sales online. So, getting towards kind of [redacted] of the business now is digital, but you will be amazed around the physical purchasing process of those customers, because many of them order online, but they type in the product code from a catalogue that is on their lap. So, yes, it is a digital online sale, but [...] the website is just a mechanism to place the order; they are still finding the product in the catalogue.

So, we will be continuing with them for the foreseeable future."

10.159 Therefore, while we acknowledge online sales are important, and may become more so, we do not expect this trend to materially change the competitive constraints faced by most Generalists Suppliers and the Parties over the foreseeable future. Indeed, aspects of most Generalists wider service

and market e.g their catalogue may continue to differentiate them from other Suppliers, including from online-only Generalist Suppliers like Amazon.

Educational Budgets

- 10.160 Educational Institutions are currently facing financial pressures¹⁹⁴ but this has been the case for some time. Given the increases in public sector net borrowing in 2020 compared to 2019,¹⁹⁵ these pressures may continue.
- 10.161 Customer purchasing behaviour could be influenced by the level of their budgets, including the extent to which they focus on value for money. However, any tightening of budgets, which is not currently clear, would not - of itself - change the nature of the Suppliers in the market or the strength of their competitive constraint on each other. Further, any increased focused on value for money does not necessarily mean a preparedness to seek products from a wider pool of Suppliers, since customers value other aspects of Suppliers' offerings. Lastly, financial pressure is not unrelated to the pressure on time, the need to streamline procurement processes and search costs.

Provisional view

- 10.162 We set out our provisional view below.

Closeness of competition between the Parties

- 10.163 Taking the evidence in the round we provisionally find that the Parties are close competitors. They are each 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 is slightly different, with Findel operating Specialist as well as Generalist brands. While historically the Parties have been stronger in different regions, internal documentary evidence indicates that they compete directly, both in respect of each other's core regions and in terms of targeting each other's customers.
- 10.164 We consider that, post-Merger, the national market share of the Parties would be large, at [30-50%] (which underestimates the position of the Parties, given the limited closeness of Amazon as a competitor to the Parties), and materially more than the next largest Supplier. However, we have also examined shares and share increments within Regions of this national market. We found that in some regions the share increment is even larger and

¹⁹⁴ At least two Suppliers told us this.

¹⁹⁵ Office for Budget Responsibility, [Commentary on the Public Sector Finances](#). September 2020, page 3.

in other regions, while the increment is small, the Merged Entity would have a considerable share of supply and there would be a limited number of rivals.

- 10.165 The Parties' internal documents show that each Party is one of the other's most closely benchmarked and monitored competitors (alongside a small number of others). Our review of the Parties' internal documents showed a consistent picture that YPO considers its closest competitors to be Findel, ESPO and RM and that Findel considers its closest competitors to be YPO, RM and KCS (and to a lesser extent ESPO).
- 10.166 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.
- 10.167 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 indicates that the Parties are close substitutes for some but not all customers.
- 10.168 We do not consider the Parties' analysis of variation in spend and recoupment necessarily measure switching, and so place limited weight on it, as a measure of closeness between the Parties.

Constraint from other Suppliers

- 10.169 We found that, post-Merger, the primary competitive constraints on the Parties would come from only one national Generalist (RM) and, to a lesser extent, constraints from two regional Generalists (ESPO and KCS).
- 10.170 We found local Generalists (East Riding, Herts FullStop, Hampshire, HBS Half Moon Group) 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. Local Generalists exert a significantly weaker competitive constraint on the Parties than RM, ESPO and KCS.
- 10.171 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 (eg RM and ESPO). We found that the level and distribution of different customers' annual spend with Amazon is [REDACTED]. However, we found some evidence that these sales related to (i) a different type of spend, such as urgent orders, and (ii) a different product type of sales than those typically supplied by other Generalist Suppliers. Amazon's growth in sales from Educational Institutions [REDACTED]. Evidence from Generalist and Specialist

Suppliers indicates that Amazon exerts a significantly weaker competitive constraint on the Parties than other Generalist Suppliers and we found some evidence that some customers use Amazon for a different purpose to other Generalists. [✂].

- 10.172 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. Specialists do not match the offering of Generalists individually and we found that a significant number of customers buy a range of products from the same supplier over time – ie beyond the specialist-only offering. 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. Evidence from Generalist and Specialist Suppliers indicates that Specialist Suppliers exert a significantly weaker competitive constraint on the Parties than the larger Generalist Suppliers.
- 10.173 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 from the reasons for purchasing from Generalist Suppliers.
- 10.174 We considered the aggregate constraint on the Parties generally, recognising that it is appropriate to consider the effect of all suppliers together as a combined constraint. While there may be a greater degree of constraint on the Parties for a smaller subset of customers or their top-up, specific or silo purchases, we found that this is not the case for the majority of customers who typically have a main Supplier. 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, for example, customer service focused on Educational Institutions - 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 Specialists would not represent an alternative option that would effectively constrain the Merged Entity. Overall, we provisionally find 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.

Summary of provisional conclusion

10.175 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.

11. Our competitive assessment of horizontal coordinated effects

Introduction

11.1 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.¹⁹⁶ Concerns regarding coordinated effects arise when a merger makes coordination more likely to emerge or makes pre-existing coordination more stable or effective.¹⁹⁷ Coordination can be explicit or tacit. Explicit coordination is achieved through communication and agreement between the parties involved. Tacit coordination is achieved through implicit understanding between the parties, but without any formal arrangements.¹⁹⁸ In particular, in concentrated markets where firms recognise their interdependence, repeated interaction between firms can lead them to refrain from competitive behaviours without the need for any active collusion between them.

11.2 Our focus is on whether the Merger would make it more likely for Generalist Suppliers to coordinate or align their behaviour in a way which limits the rivalry between them without necessarily entering into any express agreement or direct communication, or whether the Merger would make such coordination more stable or effective.

11.3 In assessing whether a merger gives rise to coordinated effects, the CMA will analyse whether the characteristics of the market are conducive to coordination, whether there is evidence of pre-existing coordination and

¹⁹⁶ [CMA Guidance](#), paragraph 5.5.1.

¹⁹⁷ More stable or sustainable coordination would be more likely to continue whereas more effective coordination would result in an outcome closer to that a monopolist would achieve.

¹⁹⁸ [CMA Guidance](#), paragraph 5.5.3.

whether the effect of the merger is to make any pre-existing coordination more stable or to make coordination more likely to emerge.¹⁹⁹

11.4 The Guidelines set out that all three of the following conditions must be satisfied for coordination to be possible:²⁰⁰

- (a) Firms need to be able to reach and monitor the terms of coordination;
- (b) Coordination needs to be internally sustainable among the coordinating group, ie firms find it in their individual interests to adhere to the coordinated outcome; and
- (c) Coordination needs to be externally sustainable, in that the coordination is not undermined by competition from outside the coordinating group.

11.5 We assessed whether the Merger might be expected to give rise to an SLC in the Relevant Market through coordinated effects, using the above framework. As part of our assessment, we examined the extent to which the conditions are met currently, and the extent to which they would be met following the Merger.

Possible forms of coordination

11.6 Based on our assessment of the characteristics of the market and the evidence received, we consider that tacit coordination, both if it were to occur pre-Merger or to emerge post-Merger, would most likely have the following characteristics:

- (a) Coordination in relation to the supply of Educational Resources would most likely take place between YPO, Findel, ESPO, KCS and RM (referred to as the '**hypothetical coordinating group**'). Each of these is a national or larger regional supplier and has one or more core regions (see, paragraph 9.98). As such, these Suppliers are sufficiently similar to recognise their mutual interdependence and are likely to have a shared incentive to protect their core regions.^{201,202}

¹⁹⁹ CMA Guidance, paragraph 5.5.4.

²⁰⁰ CMA Guidance, paragraph 5.5.9.

²⁰¹ While it is possible that (i) only a subset of these Suppliers could be part of the coordination or (ii) other Generalists Suppliers could also be part of the coordination, we consider the hypothetical coordinating group consisting of YPO, Findel, ESPO, KCS and RM to be the most likely to fulfil the conditions for coordination. In light of our provisional finding in relation to the most likely mechanism through which we consider coordination could occur, it was not necessary to consider other hypothetical forms of coordination.

²⁰² While Amazon is also a national supplier, we do not consider that Amazon was likely to be part of any coordination. In particular, we found some evidence that customer purchases from Amazon relate to a different

(b) In light of the existence of core regions for the members of the hypothetical coordinating group, we considered that, if coordination was to take place, it would most likely be via a form of market allocation, based on an understanding as to the identity of the leading supplier in those (or certain of those) regions.²⁰³ This could take the form of an understanding not to actively compete for rivals' customers, primarily by not entering/expanding into rivals' core regions (including through catalogue distribution, marketing and promotional activity, such as targeted discounts), and have the effect of maintaining prevailing regional and national market shares. We considered that general price coordination is less likely to occur, given the number of products and customers and use of non-list price discounting.

Pre-existing coordination

11.7 Pre-existing coordination is not required for a merger to lead to an SLC as a result of coordinated effects. However, in general, a merger in a market already showing coordinated outcomes would be likely to make coordination more sustainable or more effective, unless the structure and scale of the merged firm is so different from those of its predecessors that the incentive to coordinate has been removed.²⁰⁴

Parties' views

11.8 The Parties submitted that there is no evidence of pre-existing coordination in the market as it stands today. The Parties submitted that whilst market shares were reasonably stable for the UK generally between 2016 and 2019, this masks strong regional competition between the Generalist Suppliers. The Parties also submitted that Generalist Suppliers attempt to gain market share from each other in different regions year on year, and succeed in doing so. The Parties further submitted that the multiple regional expansion strategies of other Generalist Suppliers confirm the competitive pressures that all Generalist Suppliers are under and the volatility of their presence and focus throughout the UK regions. The Parties also submitted that the lack of variation in regional margins is evidence that the Parties do not view their market shares as 'stable', nor do they treat customers in their 'heartland' core regions as captive.

type of spend (such as urgent orders) and a different product type than those typically supplied by other Generalist Suppliers (see, Chapter 10, paragraph 10.175. [§X]) (see, Appendix C, Tables 2a to 2c).

²⁰³ This could lead to coordinated effects/stability arising at the regional level but also the national level.

²⁰⁴ [CMA Guidance](#), paragraph 5.5.8.

11.9 In addition, the Parties submitted that a past investigation by the Office of Fair Trading (**OFT**) in 2011 in the sector did not make any findings of infringement, that the market has changed since this investigation was conducted, and that the evidence on communications between Generalists Suppliers does not provide a sound basis to identify pre-existing coordination. The Parties also submitted that national-level market data disseminated by BESA on a monthly basis does not provide the transparency needed to monitor regional market developments.

Our assessment

11.10 To assess whether there is evidence of pre-existing coordination,²⁰⁵ we considered: (i) past investigations in the sector; (ii) observed market outcomes; (iii) the level and nature of communications between Generalists; (iv) sales data monitoring by the Generalists; and (v) evidence of competition between Generalists. In our assessment, we have placed particular focus on the members of the hypothetical coordinating group.

Past investigations in the sector

11.11 Past proven or suspected cartel actions in the same relevant product market may indicate that the conditions for coordination were met in that market, although this inference cannot automatically be drawn.²⁰⁶

11.12 In 2011, the OFT investigated several PSBOs in relation to how they marketed goods and services to schools. This resulted in some PSBOs giving voluntary assurances to address the OFT's concerns²⁰⁷ and, as such, the OFT did not make a formal finding on the matter.²⁰⁸ We have placed limited weight on this previous investigation in this case, noting that it did not result in a formal finding and, in particular, the amount of time that has passed since the investigation.

Observed market outcomes

11.13 We analysed whether current market outcomes are consistent with coordination or competition.

²⁰⁵ [CMA Guidance](#), paragraph 5.5.3.

²⁰⁶ [CMA Guidance](#), paragraph 5.5.7.

²⁰⁷ The Pro5 group of suppliers, namely: YPO; Central Buying Consortium (CBC); ESPO; the North East Procurement Organisation (NEPO); West Mercia Supplies (WMS) (now part of RM).

²⁰⁸ OFT, '[School suppliers provide assurances to OFT to ensure competition](#),' 6 December 2011. For the CBC, assurances were received from Hampshire County Supplies, Hertfordshire Business Services, and Kent County Supplies.

- 11.14 We found that each of the members of the hypothetical coordinating group have longstanding core regions of market strength. Although their annual national market shares appear to have fallen slightly while that of Amazon appears to have grown in recent years (see Table 1 in Appendix C),²⁰⁹ we do not believe that Amazon's market shares are a good representation of its closeness of competition to the other Generalist Suppliers (see, paragraph 10.46). Generalist Suppliers' market shares both at the national and regional levels have been broadly stable when excluding Amazon. We note that this is despite financial pressures on Educational Institutions' budgets (which have been present in the market for some time) and growing digitisation.²¹⁰
- 11.15 While we also found that the monthly national market shares of the members of the hypothetical coordinating group vary over time, it is unclear to what extent this is driven by competition rather than by other factors, such as differences in the spending patterns of customers. We also found that when seen cumulatively over a calendar year, these market shares are relatively stable (see Figure 1 and Figure 2 in Appendix C).
- 11.16 Overall, we therefore consider that market shares have been quite stable and that core regions continue to exist. We note that this would be consistent with coordination.
- 11.17 We also considered whether observed margins (including both the margin level and the relative margins across regions) could be consistent with pre-existing coordination. We requested data on gross margins by Region from the Parties²¹¹ and [redacted] of their competitors, ([redacted])^{212,213}. However, we note that the received margin data does not consistently include an allocation of warehouse and transport costs. We therefore have concerns that the data provided is not reflective of true margins and we have therefore placed little weight on this evidence.

Level and nature of communications between Generalist Suppliers

- 11.18 We have reviewed evidence from the Parties' internal documents and third parties to assess whether there are channels of communication in the market that could facilitate coordination, as well as whether there is any evidence of explicit coordination.

²⁰⁹ [redacted]

²¹⁰ See, Chapter 10, paragraphs 10.142 to 10.154.

²¹¹ The Parties have calculated regional gross margins as turnover minus the cost of goods sold, rebates (cash and vouchers) and discounts.

²¹² [redacted]

²¹³ [redacted]

- 11.19 The Parties' internal documents indicate that it is not uncommon for communications to take place at a senior level between competing Generalist Suppliers. [X].
- 11.20 The Parties' internal documents also show examples of *ad hoc* exchanges at a less senior level between rival sales teams. [X].
- 11.21 In terms of evidence from third parties, one Generalist Supplier [X] told us that they occasionally have informal courtesy meetings or discussions with [X] to discuss market dynamics and progress. Another Generalist Supplier ([X]) explained that senior management of entities active in the market for the supply of educational resources meet from time to time in person to discuss latest market trends and other market and business specific issues.²¹⁴
- 11.22 Overall, evidence from the Parties' internal documents and from third parties shows a degree of transparency resulting from communications between rival suppliers that could potentially facilitate and/or be consistent with pre-existing coordination.

Sales data monitoring

- 11.23 The Parties, ESPO, KCS, RM and WFE submit sales revenue data to a research company commissioned by BESA to undertake a monthly sales monitoring report for the educational resource suppliers' sector. The revenues are broken down by product category and institution type and are combined to report total revenues. This data can be used by each distributor to infer its own market shares (by product category and Educational Institution sector) at national (not regional) level on a monthly basis. Overall, while we found that there are references to BESA data in some of the Parties' internal documents which discuss performance and that the sharing of market data would increase transparency for the suppliers of the market as a whole, we found that the data sharing exercise was unlikely to facilitate coordination in this case, given that the data was shared on a national rather than regional basis.
- 11.24 In addition to the BESA sales data, the Parties' [X] sales teams collect market intelligence on competitor and customer behaviour. As discussed in paragraphs 11.34 to 11.39 below, we consider that such information provides some transparency on competitor actions, albeit this is subject to limitations.

²¹⁴ [X] is not part of the hypothetical coordinating group but is used as an example of the contact within this market.

Evidence of competition between Generalist Suppliers

11.25 We have also assessed whether there is evidence of competition between Generalist Suppliers in the Parties' internal documents and evidence from third parties.

11.26 As set out in Chapter 10 (from paragraph 10.25), the Parties' internal documents and evidence from third parties show that there is competition between the Parties, as well as between Generalists more generally. This includes evidence of competitors entering or seeking to enter each other's areas ([REDACTED]^{215,216,217,218}), although it also shows that some Generalist Suppliers ([REDACTED]) have more limited plans or largely focus on their own regions. [REDACTED].²¹⁹

11.27 [REDACTED]^{220,221}

Provisional conclusion on pre-existing coordination

11.28 Overall, we consider the evidence on pre-existing coordination to be mixed. While there is evidence of competition between Generalist Suppliers, there is also some evidence that competition in the market is less strong than would be expected. This includes [REDACTED], quite stable market shares and the continued existence of core regions, as well as evidence of communications between suppliers. However, on balance, we did not find sufficient evidence to support a conclusion of pre-existing coordination.

Conduciveness to coordination: Ability to reach and monitor the terms of coordination

11.29 For coordination to be possible, the coordinating suppliers need to be able to reach a common understanding on their objectives (eg customers to whom they will not sell). This need not involve a precise outcome but needs to be sufficiently clear to enable their behaviour to be aligned.²²² To sustain coordination, they will also need to be able to observe each other's behaviour

²¹⁵ [REDACTED].

²¹⁶ [REDACTED].

²¹⁷ [REDACTED].

²¹⁸ [REDACTED].

²¹⁹ This includes: [REDACTED].

²²⁰ [REDACTED].

²²¹ [REDACTED].

²²² [CMA Guidance](#), paragraph 5.5.10.

sufficiently to ensure that deviation from the coordinated outcome can be detected.²²³

Parties' views

11.30 The Parties submitted that it would not be possible to reach and monitor the terms of coordination. The Parties submitted that there are significant regional overlaps between YPO, Findel, RM, KCS and ESPO, and that an understanding (tacit or explicit) not to enter each other's core regions is not practicable. They also submitted that any form of market allocation would be complex and unachievable.

11.31 The Parties further submitted that Suppliers have no means to monitor regional market shares and that their monitoring of each other's campaigns and them trying to understand market shares over time does not mean that they are able to monitor market shares in real time to determine if variability in customer demand is due to deviation from any understanding. They also submitted that market participants sell well outside of their core regions and that ad hoc information gives little indication of the scale and success of such activity.

Our assessment

11.32 We consider that it may be relatively simple for the hypothetical coordinating group to reach an understanding as to the hypothetical mechanism for coordination, namely refraining from actively competing for rivals' customers, including by refraining from entering / expanding into rivals' core regions. In particular, we note that the terms of such coordination could be relatively straightforward, given the continued existence of core regions and given that coordination would involve a limited number of suppliers (with a hypothetical coordinating group of four post-Merger). While we acknowledge that there may not be a common understanding as to the identity of the core supplier for all customers and regions in the UK, we note that the hypothetical coordination would not need to involve every region in the UK to be effective.

11.33 While 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, and the Merger would increase asymmetry between the members of the hypothetical coordinating group by creating a single larger player. These asymmetries are likely to make it more difficult to reach terms of coordination. However, given that the Merger would retain some alignment of

²²³ [CMA Guidance](#), paragraph 5.5.12.

incentives between the hypothetical coordinating group as a result of each having one or more core regions of strength, it is unclear whether, in the case at hand, the asymmetries in size would prevent coordination.

- 11.34 We consider that the terms of coordination could be monitored via market intelligence and an analysis of a supplier's own customer database. In terms of the ability to monitor, [REDACTED]. For example, [REDACTED].²²⁴ Findel produces 'trading reports' which monitor customer numbers [REDACTED] and which are provided to the Findel Board.²²⁵ [REDACTED]^{226,227,228}
- 11.35 The [REDACTED] outlined above allows opportunities for deviation to be detected in a timely fashion. However, there are a very large number of customers in the market, with the Parties having around [REDACTED] customers in total.²²⁹ These customers have a wide range of different characteristics (eg size, ownership) and requirements (eg types of resources needed). This is likely to complicate the ability to monitor customer behaviour, particularly given the significant variation in annual customer spend²³⁰ and variations in order size.²³¹ While we note that around [REDACTED]% of YPO's customers and around [REDACTED]% of Findel's customers account for [REDACTED]% of their respective revenues (see paragraph 8.9) and that monitoring may therefore not need to include all customers in order to be effective, even monitoring only [REDACTED]% of customers amounts to a relatively large number of customers.
- 11.36 The existence of multi-sourcing in the market²³² is also likely to make monitoring more difficult: the members of the hypothetical coordinating group are active beyond their core regions and, as explained above, we do not consider that coordination would require rivals to withdraw from others' core regions. Multi-sourcing therefore would not necessarily evidence deviation. Nevertheless, we note that business analytical tools could reduce the impact of the complexities to monitoring caused by the large number of customers, variations and multi-sourcing.²³³
- 11.37 While market intelligence observed by sales teams is regularly reported and may deliver some additional timely information, market intelligence is ad hoc and can be limited to a small number of customers. Also, Findel told the CMA

²²⁴ For example, [REDACTED].

²²⁵ See for example [REDACTED].

²²⁶ [REDACTED]

²²⁷ [REDACTED]

²²⁸ In relation to monitoring customers, [REDACTED].

²²⁹ Appendix C, paragraph 2.

²³⁰ Chapter 8, paragraph 8.7.

²³¹ Chapter 8, paragraph 8.6.

²³² Chapter 9 Figure 9.1 See also: [REDACTED].

²³³ YPO has partnered with EDCO to better monitor customer behaviour. 'For 2020 we have invested in [REDACTED].'

that they expected to gather [REDACTED] market intelligence from its sales team moving forward [REDACTED].²³⁴

- 11.38 Overall, this means that transparency over rivals' customer bases, acquisition attempts and successes would only be partial – which could undermine the ability to detect deviation in a timely manner. However, where deviation could be detected by observing a rival pursuing customers in a particular region, full transparency is not required. We therefore consider that insights gathered by sales representatives or monitoring of key customers would allow large scale deviation to be detected.
- 11.39 Considering the evidence on monitoring in the round, we provisionally find that there is a degree of relevant market transparency that could support monitoring of the hypothetical form of coordination considered in this case. Nevertheless, we recognise that there are limitations to the extent of transparency.
- 11.40 Despite the asymmetries between the hypothetical coordinating group and limitations to the extent of transparency, we considered that the hypothetical coordinating group may be able to reach and monitor the terms of coordination. Since all three conditions for coordination must be met, in light of our conclusions below on internal sustainability, we do not reach a provisional conclusion on whether the hypothetical coordinating group would have the ability to reach and monitor terms of coordination either pre or post-Merger. However, factors relevant to our assessment of the ability to monitor adherence to coordination are also relevant to our assessment of internal sustainability. We have therefore taken these into account for the assessment of the second condition.

Conduciveness to coordination: Internal sustainability

- 11.41 Coordination will be sustainable only where the additional profit from coordination is sufficiently high, and there is an effective mechanism to respond to deviation (making the profit from deviation sufficiently low to make it unattractive). If coordination is not sufficiently profitable, or the response of others to deviation is not sufficiently swift and costly to the firm deviating, a firm may prefer to deviate. It might do so if the short-term gain that the firm makes from having a more competitive offering than the coordinating firms outweighs the costs to it of a breakdown of coordination. A response to

²³⁴ When asked if it would “become apparent fairly soon if someone was coming into the area, targeting your customers simply through feedback from customers or indeed, from noting that activity in the region”, Findel told the CMA, ‘Traditionally yes, [REDACTED]’.

deviation may take the form of a reversion to more intense competition by the other firms rather than a deliberate punitive strategy on their part.²³⁵

Parties' views

- 11.42 The Parties submitted that, assuming that the hypothetical coordinating group could reach terms of coordination (which the Parties submitted it could not), such coordination could not be sustained post-Merger. They submitted this is because suppliers within the hypothetical coordinating group would have incentives to deviate, as regional market allocation could disadvantage suppliers as a result of not expanding into other areas, and peak seasons of demand throughout the year would create incentives to deviate. The Parties submitted that deviation could be achieved relatively quickly given that customers multi-source throughout the year (with multiple individual transactions) and are willing to switch.
- 11.43 The Parties further submitted that any analysis of the effect of the Merger based on the premise that Findel would, pre-Merger, have been willing to deviate and that other members of the hypothetical coordinating group would not, is flawed. In particular, they submitted that ESPO, RM and KCS all share the same commercial strategies and incentives as Findel.
- 11.44 The Parties also submitted that insufficient transparency meant that detecting and punishing deviation would not be feasible. The Parties submitted that any understanding would not be lasting in the face of continuous uncertainty as to whether the variability in customer spend is explained by deviation or demand downturn.

Our assessment

- 11.45 As part of our assessment of internal sustainability of coordination, we considered (i) the incentives to coordinate and to deviate from such coordination and (ii) the ability and incentives to punish deviation.

Incentives to coordinate and to deviate

- 11.46 We considered how a number of market characteristics impact the incentives of the hypothetical coordinating group to coordinate and to deviate.
- 11.47 As discussed in paragraph 8.75, we found that customers consider a range of PQRS factors when purchasing from Generalist Suppliers and that loyalty forms a feature of this market. However, we found mixed evidence on the

²³⁵ [CMA Guidance](#), paragraph 5.5.15.

extent of customer loyalty, and found that its significance can vary by region, customer type and type of spend. The risk of customer switching could therefore create an incentive to coordinate, particularly where each member of the hypothetical coordinating group has (and would have post-Merger) core regions where their customer base is especially strong. In addition, where loyalty is a feature of the market, this could undermine the ability and incentive of the hypothetical coordinating group to deviate, which could increase the sustainability of coordination.

11.48 However, the potential for switching may also incentivise deviation by creating opportunities to win rival customers. Incentives to deviate are likely to be particularly high in times of high demand. In this respect, we note that there are pronounced peaks in the value of customer orders during summer (see Figure 8.1 and Figure 8.2). The existence of high-value orders during summer is also supported by the Parties' internal documents and comments from third parties.²³⁶

11.49 As set out in paragraph 11.26 above, we found evidence indicating that, pre-Merger, members of the hypothetical coordinating group have incentives to acquire new customers and to enter new regions, with [REDACTED]. [REDACTED].

11.50 The Merger would retain some alignment of incentives between the hypothetical coordinating group as a result of each having one or more core regions of strength. However, the Merger would also increase asymmetries in the relative size of the members of the hypothetical coordinating group: instead of YPO and [REDACTED], the Merger would create a clear market leader, with the combined YPO/Findel holding a [30-50%] share. The market shares of the other members of the hypothetical coordinating group would be significantly smaller, with RM at [20-30%], ESPO at [10-20%] and KCS at [0-10%]. This increase in asymmetry in size may undermine incentives to coordinate and increase incentives to deviate to some extent.

11.51 We have also considered whether, given the evidence of the way that Findel has behaved to date in the market, the Merger removes a destabilising force. Findel's internal documents suggest that it has considered itself to be a [REDACTED].²³⁷ [REDACTED].²³⁸ [REDACTED]. We also note that Findel signalled possible changes to its [REDACTED].

²³⁶ For example, [REDACTED].

²³⁷ [REDACTED]

²³⁸ [REDACTED]

11.52 Overall, we consider that, while the removal of Findel as an independent competitor could increase internal sustainability by removing a potential destabilising force, this does not eliminate incentives to deviate.

Punishing deviation

11.53 In assessing whether coordination would be internally sustainable, we also considered the extent to which the hypothetical coordinating group would have the ability and incentive to punish deviation.

11.54 Where deviation is detected, punishment may take the form of actively targeting rivals' customers. Since price discrimination is possible, such punishment could be delivered through the use of targeted discounts towards the deviating firm's customers and/or in the deviating firm's core region.

11.55 As explained above, we consider that customer loyalty continues to be present in the market to at least some extent, however it varies by customer and spend type and potentially by region. In addition to the effect of customer loyalty on the incentives to coordinate and to deviate discussed above, customer loyalty could also have the effect of undermining the ability and incentives of rivals to punish deviation, as successful deviation would not necessarily be met with equally successful retaliation.

11.56 Additionally, the ability and incentive to punish deviation is likely to be impacted by the combination of limitations to the extent of transparency and the cyclical nature of demand. In particular:

- (a) As explained in paragraph 11.34 above, we consider that there is a level of transparency in the market that may on balance allow the terms of coordination to be agreed and monitored.
- (b) The existence of peaks in the value of customer orders during summer, as discussed in paragraph 11.48, provides some indication that timely detection of deviation is particularly important: a failure to detect deviation (which is most likely to occur during the peak season) in a timely manner would imply that detection had occurred too late (i.e. only after the peak season) to punish the deviating firm through competing for high-value peak season orders within the same peak season.
- (c) While, as noted above, [redacted], there are limitations to the ability to monitor, and transparency over rivals' [redacted] would only be partial – which could in turn hinder the ability to detect, and therefore respond, to deviation quickly.

(d) Nevertheless, we acknowledge that there are at least some opportunities to compete for rivals' customers (and hence punish) outside of the peak season: while order values are highest during summer, customer spend occurs throughout the year and high-value order peaks occur cyclical every year.²³⁹ However, the lower order value or a delay until the next peak season are likely to make punishing less effective.

11.57 In terms of the effect of the Merger, the increase in asymmetry in size discussed in paragraph 11.50 above may limit the ability and incentive to punish deviation, although we also note that the Merged Entity may be better able to sustain short-term losses in a specific area, which would give it a greater ability (and incentive) to punish through greater discounting. Additionally, we note that the Merger may allow deviation to be detected more quickly as a result of the reduction in the number of market participants, which may strengthen the ability to respond.

Provisional conclusion on internal sustainability

11.58 Assessing the evidence in the round, while there are features of the Relevant Market that could support the internal sustainability of the hypothetical form of coordination we have considered, we do not consider that coordination would be internally sustainable post-Merger. On balance, we believe that the incentive for Suppliers to deviate by expanding to new customers and regions, while imperfect, is likely to be greater than the potential losses through retaliation, in particular due to the limitations in the ability and incentive to punish deviation, owing to the potential impact of customer loyalty and limitations on transparency over deviation.

11.59 Overall, our provisional conclusion is that the conditions of the Relevant Market, including the likely effect of the Merger, make it unlikely that coordination would be internally sustainable.

Conduciveness to coordination: External sustainability

11.60 Given our provisional finding that the second condition, internal sustainability, would not be satisfied post-Merger, we do not need to conclude on the external sustainability of coordination in the Relevant Market.²⁴⁰

²³⁹ Findel, for example, planned to begin testing regional attack plans in October and November 2018 and to launch the attacks in January [REDACTED], whilst YPO identified an autumn sales push in [REDACTED] (which the CMA understands covered [REDACTED]) to be 'critical to maintaining and growing sales in the region' in October 2018 in an area where YPO faced 'intense and sustained pressure from, [REDACTED] and others' and [REDACTED] 'stepping up their efforts'.

²⁴⁰ [CMA Guidance](#), paragraph 5.5.9.

Provisional conclusion on coordinated effects

11.61 As set out above, we found that the conditions of the Relevant Market, taking into account the likely effect of the Merger, do not support internal sustainability of the hypothetical coordination considered in this case. We therefore did not need to conclude on the other conditions for coordination. As a result, we provisionally conclude that the Merger is not likely to result in an SLC on the basis of coordinated effects in the Relevant Market.

12. Countervailing factors

12.1 When considering whether a merger may be expected to result in an SLC, we consider factors that may mitigate the initial effect of a merger on competition (often known as countervailing factors) which in some cases may prevent any SLC which we have provisionally found from arising. These factors include:

- (a) The responses of others in the market (rivals or potential new entrants) to the merger, for instance the entry into the Relevant Market of new providers or expansion by existing providers;
- (b) The ability of customers to exercise buyer power; and
- (c) The effect of any rivalry-enhancing efficiencies arising as a result of the merger.

Entry and expansion

12.2 Any analysis of a possible SLC includes consideration of the responses of others, including rivals. The CMA considers whether the entry of new firms, or the expansion of operations by existing firms, would offset the initial effect of a merger on competition to such an extent that no SLC would arise.²⁴¹

12.3 This section is structured as follows:

- (a) CMA framework for assessing entry and expansion;
- (b) Barriers to entry or expansion and other market conditions, alongside other factors that may influence the extent and likelihood of entry following the Merger;²⁴²

²⁴¹ [CMA Guidance](#), paragraph 5.8.1.

²⁴² Barriers to entry and expansion are specific features of a market that give incumbent firms advantages over potential competitors. Where such barriers are low, the merged firm is more likely to be constrained by entry; conversely, this is less likely where barriers are high.

- (c) Views of the Parties and third parties about entry conditions in the Relevant Market and potential sources of entry and expansion in the Relevant Market, looking both at examples of recent entry and at any evidence of specific entry plans; and
- (d) Our provisional finding on whether, in light of the available evidence, entry and/or expansion would be timely, likely and sufficient to prevent an SLC from arising.

CMA framework for assessing entry and expansion

12.4 In assessing whether entry or expansion might prevent an SLC, we will consider whether such entry or expansion would be: (i) timely;²⁴³ (ii) likely;²⁴⁴ and (iii) sufficient.²⁴⁵ We will also consider whether potential (or actual) competitors may encounter barriers individually or in aggregate which adversely affect the timeliness, likelihood and sufficiency of their ability to enter (or expand in) the market, and their incentive (or intent) to do so. We will consider whether there are specific features of the market that give incumbent firms advantages over potential or growing competitors (barriers to entry and expansion).²⁴⁶

Barriers to entry and expansion

12.5 In line with our market definition and competitive assessment above, we consider entry into the Relevant Market of new Generalist Suppliers or expansion in the Relevant Market by existing Generalist Suppliers.

12.6 Parties told us that in their view barriers to entry, and particularly to expansion, are low because there are a 'large number of Suppliers of varying sizes which supply tens of thousands of educational institutions'. The Parties also provided submissions on potential barriers to entry or expansion and on the likelihood of new entry and expansion which we consider further below.

²⁴³ As regards timeliness: entry and/or expansion must be sufficiently timely and sustained to constrain the merged entity. The timeliness of entry or expansion is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, but the CMA would normally consider entry or expansion that has a significant impact on competition within two years to be timely. [CMA Guidance](#), paragraph 5.8.11.

²⁴⁴ As regards the likelihood of entry or expansion: we consider both the scale of any barriers to entry and/or expansion that may impact on the likelihood of entry or expansion and also whether firms have the ability and incentive to enter the market. For example, in a market characterised by relatively low absolute barriers to entry and/or expansion, entrants may nevertheless be discouraged from entry by the small size of the market, or the credible threat of retaliation by incumbents. [CMA Guidance](#), paragraph 5.8.8.

²⁴⁵ As regards sufficiency: entry or expansion should be sufficient to deter or defeat any attempt by the merged entity to exploit any lessening of competition resulting from the Merger. [CMA Guidance](#), paragraphs 5.8.3 and 5.8.10.

²⁴⁶ [CMA Guidance](#), paragraph 5.8.4.

12.7 In this section we consider the following potential barriers to entry and/or expansion.

- (a) The requirement of Educational Institutions to comply with public procurement rules;
- (b) The investment required to put in place warehousing, logistics and distribution infrastructure, systems and processes;
- (c) Economies of scale in upstream purchasing;
- (d) Generalist Suppliers' existing relationships with Educational Institutions; and
- (e) The tendering process for Framework Agreements.

The requirement of Educational Institutions to comply with public procurement rules

12.8 As noted in the Industry Background chapter, state funded Educational Institutions are required to comply with public procurement rules. One route to compliance with the rules is to procure goods and services directly from a CPB, such as YPO, or through contracts and Framework Agreements set up by a CPB. As an example, YPO has entered into a Framework Agreement with Amazon so that YPO's public sector customers can make purchases from Amazon through the framework in compliance with the public procurement rules.²⁴⁷ Under this arrangement, purchases that are covered by the terms of the Framework Agreement would comply with the procurement rules. YPO told us that the Framework Agreement is 'principally geared towards purchases of non-education products which YPO does not sell but which Amazon does'.

12.9 The Parties told us that public procurement rules play a 'limited role' in competition in the market for the supply of Educational Resources.

12.10 [REDACTED] told us that public sector bodies are very 'conscious' of public procurement regulations and it has received feedback that compliance with public procurement regulations was a 'blocker' for some of its potential customers being comfortable using its services. [REDACTED] told us this customer concern relating to public procurement was a barrier to increasing spend. Therefore, we consider this to be a barrier to expansion for [REDACTED] in the Relevant Market as a Generalist Supplier. However, we note that [REDACTED] has the ability to overcome this barrier [REDACTED].

²⁴⁷ [REDACTED]

- 12.11 The evidence we obtained from competitors overall was divided on the effect of the public procurement rules on an Educational Institution's choice of Generalist Supplier, as set out further in Appendix E. Some competitors told us that Educational Institutions were cognisant of the public procurement rules and that they were a factor in their purchasing decisions. A small number of competitors told us that public procurement rules have a limited impact on purchasing decisions. We further note the presence of Generalist Suppliers (which are not CPBs) in the private sector in the Relevant Market, such as Findel and RM.
- 12.12 One customer told us that OJEU compliance was a 'relevant factor' in its decision to purchase from YPO and ESPO (both CPBs), in addition to the fact that they are both publicly owned. It told us that it would be 'hard to purchase [from Findel (not a CPB)] in a compliant way as it would take time to do an OJEU compliant tender'. The majority of customers we contacted did not suggest that it was important for a Generalist Supplier to be able to assure compliance with the public procurement rules.

Our assessment

- 12.13 Based on the evidence we have seen from competitors and customers, we consider that the obligation on state funded Educational Institutions to comply with public procurement rules does not appear to constitute a significant barrier to entry for potential entrants or to expansion for competitors which might otherwise expand. In particular:
- (a) Independent Educational Institutions are not bound by the rules;
 - (b) The rules are based on the value of purchases exceeding a threshold, such that they may not apply for certain purchases;
 - (c) Publicly owned Educational Institutions can advertise large contracts in the OJEU; and
 - (d) Non-CPBs can partner with CPBs to offer compliant purchasing routes.
- 12.14 Although these options have limitations and are, to some extent, outside of the control of the supplier, we note the success of private sector firms such as Findel and RM.

The investment required to put in place warehousing, logistics and distribution infrastructure, systems and processes

- 12.15 Generalist Suppliers require a wide product range across multiple Educational Resources categories in order to have an offering with sufficient depth to be

used as the main provider for the majority of an Educational Institution's requirements. The requirement to be able to offer this critical mass of products, and the warehousing, logistics and distribution to be able to supply them, may be a barrier to small scale entry acting as an effective competitive constraint. We consider further below the related costs or barriers that flow from the requirement to build up a wide range of products.

- 12.16 For a Specialist Supplier, entry into the Relevant Market would require a fundamental shift in either the number of product categories of Educational Resources they offer, or in the types of Educational Institution they supply to in the UK. The requirement to procure and hold this level of stock and put in place warehousing, logistics and distribution capabilities adds complexity, risk and cost to operations and could thus be a barrier to becoming a credible Generalist Supplier. In addition, Generalist Suppliers which have invested in these capabilities may benefit from economies of scale which prevent entry or expansion on a smaller scale acting as an effective competitive constraint.
- 12.17 The Parties told us that YPO has arrangements in place with manufacturers to dispatch products directly to customers for around [REDACTED]% of its range. They told us that, because 'a large number of manufacturers supply customers directly (either as part of their business in other sectors or to Educational Institutions both directly and via Amazon market place), it is not difficult for new entrants or other distributors to set up similar arrangements', so these arrangements with manufacturers are not a barrier to entry or expansion.
- 12.18 The Parties told us that they and their competitors are 'less and less reliant' on a localised sales or distribution infrastructure. They told us that smaller competitors are able to use logistics partners 'in the same way' as them in order to offer fast national delivery. Findel told us that the spread in the geographic reach of some of its competitors was a characteristic of the market.
- 12.19 A Generalist Supplier ([REDACTED]) told us that it expects the rate of return on investment in the infrastructure required to expand (and the risk that such expansion would not generate the necessary uplift in custom) to be insufficient to justify that investment.²⁴⁸ While we found that [REDACTED] warehousing capability [REDACTED], thereby accommodating some room for expansion, the ability to significantly expand by outsourcing warehousing, logistics and distribution capabilities (individually or in aggregate) appears limited.

²⁴⁸ [REDACTED] told us that it uses national logistics providers for around [REDACTED]% of its deliveries [REDACTED], that this logistics option 'is scalable and it [REDACTED] is not limited'.

- 12.20 [X] told us that, amongst other barriers to entry and expansion in the Relevant Market, some of the reasons that it has ‘not seen any new entrants successfully establish themselves’ include:
- (a) ‘Brand loyalty and high marketing costs to penetrate and convert customers’;
 - (b) ‘Large volumes need to be purchased from suppliers to obtain attractive cost prices’; and
 - (c) The ‘huge investment needed to establish a product range’.²⁴⁹
- 12.21 [X] noted that [X] would need to have ‘the distribution warehouse space to be able to stock a wide range of products and SKUs and a supplier network and a supplier base to support that’. It told us that it primarily outsources its distribution and uses national logistics providers to deliver its stock to its customers. [X] told us that it was important to have a ‘wide and deep product range’ in order to be able to compete.
- 12.22 [X] told us that one barrier to the incentive (or intent) of potential competitors from entering was the low margins (driven by PSBOs) making the market unattractive to companies outside of education.
- 12.23 [X] told us that it [X]. [X] told us that Educational Institutions will switch to different Suppliers if they do not have sufficient availability of a product and larger Suppliers are more likely to be able to secure stock lines.
- 12.24 [X] told us that the main limitation to being able to offer a one-stop shop solution is having insufficient warehousing space. [X] told us that it serves its customers in the [X] from its own delivery fleet and, ‘where we can reach schools ourselves, then clearly the service is [X], there is free next-day delivery available, and we can pretty much provide a bespoke personalised service’. It told us that this was a way of differentiating its offering and, whilst it worked with logistics providers in further away areas, ‘the reality is the service [from logistics providers] is not as personal And, if it is no longer a [X] walking through your door, it is kind of irrelevant who your supplier is’.
- 12.25 [X] told us that Educational Institutions have ‘traditionally preferred a more personal service’ [X]. [X].
- 12.26 [X] told us that it would not consider bidding for contracts in Scotland and Northern Ireland due to ‘logistical issues’ with supplying these regions.

²⁴⁹ [X]

- 12.27 One Specialist Supplier, told us that there was ‘potentially’ only one barrier to entry or expansion as a Generalist Supplier, and that this was ‘scale, having particular logistics’. It told us that it only makes commercial sense to enter/expand if you are seeking to offer customers a one-stop shop with a very broad product range and operate as a logistics operation. It said that the business model of a Generalist Supplier is likely to be different to that of a Specialist Supplier, such that transitioning from Specialist to Generalist would require a conscious change in direction.
- 12.28 Another Specialist Supplier told us that ‘it is very difficult for new entrants to displace the main supplier due to their breadth of offering’.

Our assessment

- 12.29 We found a consistent view from competitors that warehousing, logistics and distribution capabilities (and the more personal and efficient level of customer service which they can help to facilitate) are a significant consideration and, taken together, are a barrier to entry and expansion.
- 12.30 We have found that some warehousing, logistics and distribution capabilities can be outsourced to one or more logistics providers, and scaled in terms of size and geography to fit the needs of the business.²⁵⁰ However, we found that these capabilities cannot be wholly outsourced whilst maintaining the service, ease of ordering and delivery speed demanded by Educational Institutions, that many competitors do not perceive this model to be attractive, and that the risks and costs associated with these capabilities would act as a barrier.
- 12.31 We therefore consider that a new entrant would need to establish effective warehousing, logistics and distribution capabilities in order to enter the Relevant Market, and that an existing regional or local Generalist Supplier would need to make further investment in order to expand in the Relevant Market, and this would act as a barrier.

Economies of scale in upstream purchasing

- 12.32 Large Generalist Suppliers may be able to use their size as a negotiating strength with upstream suppliers or manufacturers of Educational Resources. For example, they may do this by offering to place significant orders in return for more competitive pricing, or by negotiating favourable payment terms after demonstrating their credit worthiness. This may prevent potential competitors

²⁵⁰ The Parties and [REDACTED] told us that they outsource some or all of their distribution to logistics providers.

which are small in scale (and therefore unable to use their scale as a negotiating strength) from acting as an effective competitive constraint.

12.33 YPO told us that its rationale for the Merger is to [REDACTED], and that [REDACTED]. [REDACTED].

12.34 [REDACTED] told us that price is a barrier to entry and since 'PSBOs are offering low prices', except for niche players, new entrants are not able to make profits in the short term. It told us that the combined strength and size of the Merged Entity should give it 'cost advantages' in the medium and long term, 'based on increased purchasing power with suppliers as volumes for the combined entity which be significantly greater'.

12.35 [REDACTED]

12.36 [REDACTED] told us that it is 'difficult to compete with the larger companies as they have such buying power'. We note that this buying power could also come through entry from an adjacent market: [REDACTED] told us [REDACTED] additional buying power through its ability to export to [REDACTED] countries.

Our assessment

12.37 The evidence we have seen indicates that greater size gives the existing large Generalist Suppliers some negotiating strength and the ability to negotiate upstream purchasing efficiencies.

12.38 Some of this buying power could be replicated by a new entrant with strength in an adjacent market (for example a Specialist Supplier), or by an existing Generalist Supplier with sufficient scale in the Relevant Market. However, the importance of having negotiating strength in the Relevant Market may prevent small scale entry, or expansion by a small Generalist Supplier, from acting as an effective competitive constraint.

Generalist Suppliers' existing relationships with Educational Institutions

12.39 Incumbent Generalist Suppliers may have built up relationships with Educational Institutions over time which act as barriers to switching and give incumbent Generalist Suppliers advantages over potential competitors wishing to enter or over existing Generalist Suppliers wishing to expand.

12.40 The Parties told us that 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'. The Parties also told us that 'one stop shopping and strong customer loyalty are no longer important features of this market'.

- 12.41 YPO provided its Business Case for the Merger which refers to [REDACTED].
- 12.42 Furthermore, YPO provided an internal document addressed to its directors which set out that [REDACTED].
- 12.43 [REDACTED] told us that it has found it '[REDACTED]' to acquire market share from [REDACTED] due to their 'strong regional and national penetration and the reluctance of customers within the sector to change supplier partners'.²⁵¹ It also told us that 'Amazon is likely to be not that easy for an Educational Institution to transact with. [REDACTED] still receives a large amount of payments by cheque and many schools cannot pay by card'.
- 12.44 A Generalist Supplier ([REDACTED]) told us that it is a 'relationship driven sales environment', schools are time poor and they are unlikely to shop around for low cost items. [REDACTED] told us that staff in schools are not procurement specialists and do not have the time or desire to spend time placing an order and then finding out why it went wrong. [REDACTED] told us that it [REDACTED] on the ease of ordering and level of customer service if something goes wrong.
- 12.45 [REDACTED] told us that the main barrier to entry is that it is embedded in the culture of many schools that they need to have a strong reason to switch from a supplier 'with whom they have established a relationship of trust'.
- 12.46 All but one of the Educational Institutions we spoke to told us that they had a 'main' or 'preferred' Generalist Supplier. One told us that it spent around £[REDACTED] with YPO when setting up the school and 'has tended to continue to purchase from YPO', however, it will buy from ESPO where it offers a more competitive price. Another told us that they had a list of approved Suppliers and emphasised that the reputation of a Supplier is important because this gives it 'security' that the Supplier can meet their expectations; for example, in terms of the timescale for orders to be fulfilled.
- 12.47 One Educational Institution told us that it would not place a large order for Educational Resources with Amazon because it didn't 'see them as a school specialist' and mainly used Amazon to compare prices.

Our assessment

- 12.48 As we describe in paragraph 8.73, we have found that customer loyalty has historically been an important factor in the market and continues to be present to at least some extent.

²⁵¹ [REDACTED]

- 12.49 The evidence we have seen on the effect of customer relationships on entry or expansion indicates that incumbent Generalist Suppliers have built up relationships with Educational Institutions over time and that competitors see these relationships as making it difficult for them to win market share. In addition, customers emphasised the importance of a supplier's reputation.
- 12.50 We therefore consider that these relationships give incumbent Generalist Suppliers some advantage over potential competitors entering the market and over existing suppliers wishing to expand.

The tendering process for Framework Agreements

- 12.51 Central purchasing bodies in Scotland, Northern Ireland and, to a lesser extent, Wales, provide state funded Educational Institutions in those areas with access to Framework Agreements which have already been entered into with Generalist Suppliers. Framework Agreements typically last for an initial period of around two to four years.
- 12.52 We considered whether potential competitors may be deterred or prevented from entering some nations within the Relevant Market, during the period for which the Framework applies, or have difficulty meeting the eligibility requirements set by the central purchasing bodies.²⁵²
- 12.53 The Parties told us that, in the devolved nations (and, in particular, Scotland and Northern Ireland) the model of central purchasing through Framework Agreements creates a 'strong competitive process of competition' resulting in significant value for Educational Institutions across price, service and quality.²⁵³ The Parties told us that this '[redacted]'.
- 12.54 The Parties told us that centralised procurement is run on a category by category basis meaning that the end result is that each category Framework Agreement has competitive bids from both Generalist Suppliers, Specialist manufacturers and others, and that this allows 'smaller operators a solid revenue stream from which to build and grow'. However, as set out in our Nature of Competition chapter, we note that Scotland Excel has a 'one-stop shop' lot within its 'Education Materials' Framework Agreement, 'making it easier for customers to get the bulk of their needs from a single source'. Scotland Excel provided data showing that the Parties supplied around [redacted]% of purchases by value, [redacted], under this Framework Agreement in [redacted], [redacted].

²⁵² Whereas Educational Institutions in Northern Ireland are not permitted to make purchases outside of Framework Agreements, this restriction does not apply to other Educational Institutions in the UK.

²⁵³ The Parties told us that, in Scotland, 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.

- 12.55 [X] told us that the practice in the devolved nations of using public procurement bodies tends to favour either large corporations or local companies. It told us that, in order to sell into some of the devolved nations, it relies on selling through [X] as it has been awarded some of the Framework Agreements.
- 12.56 [X] told us that the previous Framework Agreement by Scotland Excel did not fit its business model [X]. It also told us that a prerequisite was having an office in Scotland, [X]. [X].
- 12.57 [X] told us that the ‘frameworks typically last for 4 years and it is hard for suppliers to penetrate these agreements’. [X].

Our assessment

- 12.58 Framework Agreements are intended to enable public sector organisations to benefit from the buying power of CPBs and achieve compliance with public procurement rules.²⁵⁴
- 12.59 As we note earlier in paragraph 8.80, suppliers compete on price when tendering for framework agreements. However, once these frameworks are in place, competitors have told us that they can make entry or expansion more difficult.
- 12.60 We consider that the Framework Agreements in Scotland, Northern Ireland and Wales could act as a barrier to entry in two circumstances:
- (a) Whereas incumbent Generalist Suppliers will have already met the requirements set by the relevant central purchasing bodies, potential competitors wishing to enter or expand may need to significantly amend their operating models or make investments in order to meet the terms of the Framework Agreement (for example, investing in putting in place warehousing, logistics and distribution infrastructure, systems and processes, as noted in paragraph 12.31);
 - (b) The Framework Agreements restrict when the Relevant Market is open to competition by commonly having durations of two to four years. This means that a new entrant could face a delay before it is able to access the Framework Agreements and make sales to Educational Institutions, so entry or expansion may not be timely.

²⁵⁴ Scottish Government, [Public Procurement Reform Programme](#), page 11.

12.61 As the Framework Agreements typically come up for re-tendering every two to four years, we consider that any barrier between bidding opportunities would, on average, be relatively short-lived. We discussed earlier the investment needed in warehousing, logistics and distribution infrastructure and consider that there is unlikely to be significant additional investment needed to meet the terms of the Framework Agreements. We therefore do not consider these to be a significant barrier to entry or expansion.

Summary of barriers to entry or expansion

12.62 We have found a number of barriers to entry and/or expansion and in particular we have identified the following significant barriers:

- (a) The investment required to put in place warehousing, logistics and distribution infrastructure, systems and processes;
- (b) Advantages from economies of scale in upstream purchasing; and
- (c) The advantage from having formed existing relationships with Educational Institutions.

12.63 The extent to which they are likely to affect a particular entrant or existing competitor will depend on the nature of that entity's operations, including whether it is a PSBO, whether it has scale in a related market and whether it has existing relationships with customers. For example, a new entrant which has not already invested in effective warehousing, logistics and distribution capabilities, or formed relationships with customers, would face higher barriers than an existing Generalist Supplier attempting to expand. Similarly, a large entrant from an adjacent market may already benefit from economies of scale in upstream purchasing but still face barriers in terms of forming relationships with Educational Institutions.

12.64 Nevertheless, our provisional conclusion is that these barriers in aggregate are likely to materially influence the extent and likelihood of entry following the Merger: all potential entrants or existing suppliers attempting to expand would face at least some of these barriers and potentially several of them.

12.65 We have found that the tendering process for Framework Agreements could impose a cost on Suppliers in terms of making changes to their operating models or other investments and could also delay when a Supplier is able to enter and/or expand. However, we do not consider the existence of Framework Agreements to be a significant barrier to entry or expansion.

Potential sources of entry and expansion

12.66 We consider potential sources of entry into, and/or expansion in, the Relevant Market by looking first at the recent history of entry and expansion, then at the specific evidence of planned entry or expansion by third parties, and the scope for entry from adjacent or related markets.

History of entry and expansion

12.67 In this section we first set out the Parties' views on recent entry and expansion and then consider the evidence we received from competitors. We recognise there are exceptional circumstances arising in 2020 due to the COVID-19 pandemic and this may have affected the Parties and their competitors' views and financial accounts, although (see, paragraph 10.152 above) we have not seen clear evidence that different Suppliers are being affected in different ways by COVID-19).

12.68 YPO told us that there has been 'significant expansion' by 'regional' Generalist Suppliers such as [X] and [X] which 'provide a clear competitive constraint on the Parties nationally'.

12.69 Another Generalist Supplier provided an internal document which states '[X] high investment and large expansion model has not been as successful as envisaged and the sales do not appear to have been realised as quickly as planned'.

12.70 The Parties also told us that [X] is 'expanding widely, selling internationally, attending national and local events and actively targeting schools (and particularly multi-academy trusts) across the UK with aggressive pricing'. [X].²⁵⁵

12.71 YPO provided a list of [X] other Suppliers (in addition to [X]) which, in its opinion, have entered or expanded since 1 January 2017, or are known future entrants. Based on our assessment of the Relevant Market, the list of [X] other Suppliers includes [X]. [X]. We do not consider this [X] to be an example of a competitor overcoming a barrier to expansion in the Relevant Market and have not found evidence that [X] has subsequently expanded to a significant extent.

12.72 A Specialist Supplier told us that RM (through its brands, TTS and Consortium), YPO, Findel and ESPO 'pretty much own the market [of supplying Educational Institutions with products across multiple Educational

²⁵⁵ [X]

Resources categories]’. It referred to these participants as the gatekeepers; ‘fail to supply one of these and the market is pretty much closed’.

12.73 The Parties told us that ‘Amazon is a major force, with ambition and scale, that is growing very rapidly’ and that ‘Educational supplies are a key priority for Amazon Business as can be clearly seen from the Amazon Business website and from the promotional film set in Hackney New School who say they shop with Amazon because they can buy ‘everything under one roof’.

12.74 Amazon Business launched in the UK in 2017.²⁵⁶ As we describe from paragraph 10.107 and paragraph 10.161 above, although Amazon offers a wide range of products, we consider it currently to be a weak constraint on the Parties: competitors describe Amazon as playing a different role in the market to other Generalists, its sales are more focused on urgent orders, and on particular product groups (such as [REDACTED]) compared to other Generalists.

12.75 Figure 12.1 below shows the sales revenue generated by Amazon Business in the 2018 and 2019 calendar years, and also the first 203 days in 2020.

12.76 We have been able to place only limited weight on this data in our assessment of Amazon, in particular, because the composition of the Educational Resources category may vary over time and between Generalist Suppliers, and more importantly the data only shows the sales revenue from Amazon Business. It is likely that some Educational Institutions procured Educational Resources from Amazon’s consumer-facing service (rather than Amazon Business specifically) before its launch of Amazon Business in 2017, and some will have continued to do so.

Figure 12.1: Amazon Business sales revenue

[REDACTED]

Source: CMA analysis [REDACTED].

12.77 Amazon Business’ revenue [REDACTED], in USD, by [REDACTED]% between 2018 and 2019. We are not able to compare 2019 and the data we have for 2020, principally because there may be seasonal variations in the value and frequency of Educational Institutions’ procurement of Educational Resources (with pronounced peaks in the Parties’ revenues and average order value during the Summer, as described in paragraph 8.6 above) and we do not have clear evidence on the effect of the COVID-19 pandemic in 2020.

²⁵⁶ [Pymnts.com website, Amazon Business Makes Its UK Debut, 5 April 2017.](#)

12.78 BESA told us that, with the exception of Amazon, it was not aware of any Generalist Suppliers entering into the ‘education resources market.’

Evidence of specific entry or expansion plans

12.79 We considered whether any third parties have plans to enter the Relevant Market or to significantly expand their operations in the near future. As part of this assessment, we considered where third party entry or expansion might come from, including entry from suppliers outside of the Relevant Market, but which are included in our analysis as possible out of market constraints (for example, Specialist Suppliers).

Plans to enter the market

12.80 We did not identify any third parties with specific plans to enter the Relevant Market.

12.81 The Parties did not identify any non-UK Generalist Suppliers that had plans to enter the UK, nor did they identify any Specialist Suppliers that had plans to expand their offering across multiple Educational Resources categories with sufficient depth that they could be used as the main provider for the majority of an Educational Institution’s requirements (to effectively become Generalist Suppliers).

12.82 Our engagement with third parties (including some Specialist Suppliers, Amazon and some retailers) also did not identify any such entry plans.

12.83 We have not seen evidence of Specialist Suppliers seeking to enter the Relevant Market. On the contrary, one Specialist Supplier told us [REDACTED]. [REDACTED].

Plans to expand in the market

Amazon

12.84 During the course of the inquiry we requested information and documents from Amazon on its plans to expand in this market, including requiring information and specified documents using our formal powers under s109 of the Act. We also held a hearing with Amazon to explore these responses further.

12.85 Amazon Business’s sales of Educational Resources have grown [REDACTED] since it launched in 2017, as described above and set out in Appendix C, Market Shares.

- 12.86 Amazon told us that last year [REDACTED] and told us that the team has [REDACTED] in the last year, in line with the growth of the rest of its business. [REDACTED].
- 12.87 We asked Amazon how it saw future trends in the educational resources segment. Amazon [REDACTED].
- 12.88 In terms of its own specific growth projections or expansion plans, Amazon told us that it was [REDACTED]. Amazon said that it is looking at what they can do to [REDACTED]. However, it said that it was not able to comment more specifically than that.
- 12.89 Amazon told us that [REDACTED].
- 12.90 Amazon also told us that it was [REDACTED]. [REDACTED].
- 12.91 We asked Amazon to provide all of its internal documents produced since January 2019 that contain references to plans to expand or grow its business in relation to sales of Educational Resources to Educational Institutions in the UK. In response, Amazon told us that '[REDACTED]'.
- 12.92 We also asked Amazon whether it had any plans to introduce or trial additional features within Amazon Business that were aimed specifically at Educational Institutions or public sector customers more generally. [REDACTED].
- 12.93 Amazon told us that, overall, it sees itself as a retailer. It does not specifically target educational customers or educational categories per se, but those products are part of its general offering. Amazon told us that there are various different trade shows that it will engage with across different types of industries (whether in the public or private sectors), and also [REDACTED]. [REDACTED]. See our assessment of Amazon in the paragraph 10.161.
- 12.94 In summary, Amazon Business has grown its sales of Educational Resources over the last three years. [REDACTED].
- 12.95 As we note above, we consider that Amazon plays a different role in the market to other Generalist Suppliers, and [REDACTED].
- 12.96 In addition as noted in paragraph 10.110, Amazon told us that it talks to customers about 'tail spend' and does not 'go specifically looking to see who the educational suppliers are to educational customers'. In our view, Amazon did not indicate that [REDACTED].
- 12.97 As we describe above in paragraph 10.161, we found that Amazon is currently not a strong constraint on the Parties. However, we recognise that Amazon has the potential to be an important Generalist Supplier in the future [REDACTED]. [REDACTED].

12.98 We therefore provisionally conclude that Amazon would not be likely to expand on a timely basis or sufficiently on its own to mitigate the SLC in the foreseeable future.

Other Generalist Suppliers

12.99 Other Generalist Suppliers told us that there is uncertainty over their forecasts due to the COVID-19 pandemic and this may affect the likelihood of their plans coming to fruition.

12.100 [X] told us that it expects to grow around [X]% in the UK over the next few years by increasing its market share in [X] whilst taking into account the COVID-19 pandemic in this forecast. However we note that the majority of this growth is [X], and in any case [X] revenue in [X] was approximately £[X] and so the effect of any incremental growth would be small compared to the Merged Entity.

12.101 [X] told us that there has not been any notable entry and, 'large stationery companies, such as Lyreco, Viking and Office Depot, have tried to enter the market by setting up dedicated divisions for the supply of educational resources without significant progress, because customers usually have a preferred supplier and prefer dealing with dedicated educational resource suppliers'. It told us that the market is 'tight' and 'though large corporations with vast resources [for example large stationery companies] are attempting to enter the market for the supply of educational resources, they are failing'.

12.102 RM told us that '[X] would be more to try to gain market share [X]'. During the course of the inquiry, we requested information and documents from RM on its plans to expand in this market, including requiring information and specified documents using our formal powers under s109 of the Act. RM provided an internal document with the title, [X]. Another internal document refers to [X]. [X].

12.103 As we note in Chapter 10, we found that RM is currently a constraint on both of the Parties, is currently one of their 'closest competitors, and would remain a constraint on the Parties post-Merger. Although we note that RM has ambitions to [X], we do not consider that this would be sufficient to materially increase the constraint it already imposes on the Parties. Provisional findings on entry and expansion.

12.104 We provisionally found that there are barriers to entry and expansion, which in aggregate are likely to materially influence the extent, timeliness and likelihood of entry or expansion following the Merger. In particular we have

identified the following significant barriers, noting that some will affect some firms more than others:

- (a) The investment required to put in place warehousing, logistics and distribution infrastructure, systems and processes (and the more personal and efficient level of customer service which they can help to facilitate);
- (b) Advantages from economies of scale in upstream purchasing; and
- (c) The advantage from having formed existing relationships with Educational Institutions in a market where customer loyalty and ability to offer a personal and efficient level of customer service have historically been important factors.

12.105 With the exception of Amazon, which has expanded since around 2017, we have not seen evidence of recent entry and/or expansion by third parties. We have found Amazon's growth has [REDACTED] – such that its entry and expansion has not lead it to become a strong constraint on the Parties. [REDACTED].

12.106 We have also assessed potential sources of entry and expansion in the Relevant Market. We have not seen evidence of any firms with specific plans to enter and/or expand to such a degree and in such a manner that they would sufficiently constrain the Merged Entity.

12.107 We note that RM [REDACTED]. However, it is currently among the Parties' closest competitors and we do not consider that expansion by RM would materially change the constraint it currently imposes on the Parties.

12.108 We also considered the combined effect of the entry and expansion plans of new or existing firms in the market and provisionally concluded that even in combination these plans were not sufficiently developed to be likely, timely and sufficient in scope to constrain the Merged Entity such as to prevent any SLC from arising. In particular, we have seen no evidence that:

- (a) Amazon would be likely to expand in the Relevant Market in a manner or to such a degree in the foreseeable future such that it would sufficiently constrain the Parties post-Merger;
- (b) any further growth by RM would sufficiently increase the constraint it already imposes on the Parties; or that
- (c) any other firm had specific plans to enter or expand to such a degree and in such a manner that they would sufficiently constrain the Merged Entity.

12.109 Our provisional finding is therefore that entry or expansion would not be timely, likely and sufficient in scope to constrain the Merged Entity such as to prevent an SLC from arising.

Countervailing buyer power

Introduction

12.110 In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. We refer to this as countervailing buyer power. The existence of countervailing buyer power may make an SLC finding less likely. If all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some – not all – customers of the merged firm possess countervailing buyer power. In such cases, we assess the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.²⁵⁷

12.111 The extent to which customers have buyer power is dependent on a number of different factors. An individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, or where it can otherwise constrain the behaviour of the supplier. Typically, a customer's ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch, or the customer has the ability to sponsor new entry or enter the supplier's market itself by vertical integration. Where customers have no choice but to take a supplier's products, they may nonetheless be able to constrain prices by imposing costs on the supplier, for example by refusing to buy other products produced by the supplier.²⁵⁸

Parties' views

12.112 The Parties told us that, in the devolved nations (and in particular Scotland and Northern Ireland), Framework Agreements set up by central purchasing bodies create a strong competitive process of competition resulting in significant value for Educational Institutions across price, service and quality.

12.113 The Parties told us that the tenders for Framework Agreements are the principal route to market in Scotland for all Generalist Suppliers and this means that, 'central government has significant buyer power which allows it to

²⁵⁷ [CMA Guidance](#), paragraph 5.9.1.

²⁵⁸ [CMA Guidance](#), paragraphs 5.9.2 and 5.9.3.

play off multiple Suppliers exercising a constraint on all market operators (such that no SLC could possibly arise)'.

12.114 The Parties did not make specific representations that customers in England would possess countervailing buyer power, however, they told us that YPO's stated mission for the Merger is to 'keep pricing low for customers' and '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'.

Our assessment of countervailing buyer power

12.115 Whilst central purchasing bodies in Scotland, Northern Ireland and Wales, and possibly some larger MATs, may have sufficient scale to possess some countervailing buyer power, this only applies to certain customers in the Relevant Market. In addition, the Merger will reduce the number of close competitors available to these customers, which, other things being equal, will reduce their buyer power.

12.116 Because Framework Agreements typically have durations of between two and four years, any opportunities which they create for potential entrants and competitors would be infrequent.

Provisional finding on countervailing buyer power

12.117 Our provisional finding is that the nature of competition in this market and the limited coverage of Framework Agreements means that only some customers of the Merged Entity would possess countervailing buyer power and it could not be relied upon to protect all customers to prevent an SLC from arising. In addition, the reduction in the number of close competitors available to these customers post-Merger will reduce their buyer power.

Rivalry-enhancing efficiencies

Introduction

12.118 The CMA Guidance states that whilst mergers can harm competition, they can also give rise to efficiencies: 'Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC.'²⁵⁹ For example, a merger of two of the smaller firms in a market

²⁵⁹ See section 30(1) of the Act, and the [CMA Guidance](#), paragraphs 3.14 to 3.24.

resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms'.²⁶⁰

12.119 The CMA Guidance also notes that efficiencies may be taken into account in the form of relevant customer benefits,²⁶¹ however, this would take place in the context of remedies for any SLC identified.²⁶²

12.120 To form a view that any claimed efficiencies will enhance rivalry, such that a merger does not result in an SLC, CMA Guidance states that the CMA must expect that the following criteria will be met:

(a) The efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and

(b) The efficiencies must be merger-specific, i.e. a direct consequence of the merger, judged relative to what would happen without it.

12.121 Efficiency claims can be difficult to verify because most of the information concerning efficiencies is held by the merging firms.²⁶³ The CMA therefore encourages the merging firms to provide evidence to support any efficiency claims whether as part of the SLC analysis or the consideration of relevant customer benefits. The CMA is 'more likely to take cost savings into account where efficiencies reduce marginal (or short-run variable) costs as these tend to stimulate competition and are more likely to be passed on to customers in the form of lower prices'.²⁶⁴

12.122 The CMA Guidance distinguishes between supply-side efficiencies and demand-side efficiencies.²⁶⁵ Supply-side efficiencies arise if the merged entity can supply its products at lower cost as a result of the merger. Such efficiencies include the removal of 'double marginalisation' and cost reductions due to economies of scale and scope. Demand-side efficiencies arise if the attractiveness to customers of the Merged Entity's products increases as a result of the merger. Such efficiencies may arise due to network effects, pricing effects and 'one-stop shopping'.

12.123 In assessing whether the Parties' claimed efficiencies are rivalry enhancing, we follow the criteria set out above. That is, the claimed efficiencies must be

²⁶⁰ See section 30(1) of the Act, and the [CMA Guidance](#), paragraphs 3.14 to 3.24.

²⁶¹ See section 30(1) of the Act, and the [CMA Guidance](#), paragraphs 3.14 to 3.24.

²⁶² See section 30(1) of the Act, and the [CMA Guidance](#), paragraphs 3.14 to 3.24.

²⁶³ [CMA Guidance](#), paragraph 5.7.5.

²⁶⁴ [CMA Guidance](#), paragraph 5.7.8.

²⁶⁵ [CMA Guidance](#), paragraph 5.7.6.

timely, likely and sufficient to prevent an SLC from arising, and must be merger-specific.

Parties' views

12.124 Table 12.1 shows the cost 'savings' which the Parties have told us that they, in particular, estimate will arise from the Merger and 'which will provide significant benefits for customers'.

Table 12.1: Cost efficiencies by the Parties to arise from the Merger

[✂]

Source: The Parties

12.125 The Parties submitted that 'the synergies envisaged by YPO are based on conservative estimates of obvious savings that can be achieved by combining the two businesses, in particular continuing upstream purchasing efficiencies which allow YPO to continue its core mission of consistent low pricing to customers across the country'.

Our assessment of efficiencies

12.126 In this section, we assess the evidence presented by the Parties.

[✂]

12.127 This supply-side efficiency is calculated based on [✂].

12.128 [✂]

12.129 [✂], YPO has not provided sufficient evidence to establish [✂].

[✂]

12.130 This supply-side efficiency is based on [✂].

12.131 YPO did not provide evidence in support of this efficiency. Accordingly, we have neither been able to assess whether this efficiency would arise from the Merger or if it would enhance rivalry.

Other claimed efficiencies

12.132 YPO did not provide evidence or tell us that its other claimed efficiencies would reduce marginal costs or were Merger-specific.²⁶⁶ Our provisional finding is that these efficiencies would not be timely, likely and sufficient to prevent an SLC from arising.

Provisional finding on efficiencies

12.133 Our provisional finding is that the evidence does not support the view that merger-specific efficiencies would be timely, likely and sufficient to prevent an SLC from arising.

Provisional findings on countervailing factors

12.134 We have considered:

- (a) The timeliness, likeliness and sufficiency of entry into the Relevant Market by new Generalist Suppliers, or expansion by existing Generalist Suppliers;
- (b) The ability of Educational Institutions to exercise sufficient buyer power; and
- (c) The timeliness, likeliness and sufficiency of the effect of any rivalry-enhancing efficiencies arising as a result of the Merger.

12.135 Our provisional finding is that there are no countervailing factors which would mitigate the initial effect of the Merger on competition to such an extent that they would prevent the SLC identified from arising.

13. Provisional Findings

13.1 As a result of our assessment, we provisionally conclude that the anticipated acquisition by Yorkshire Purchasing Organisation of the whole share capital of Findel Education Limited would result in the creation of a relevant merger situation.

13.2 We also provisionally conclude that the creation of that relevant merger situation:

²⁶⁶ YPO's other claimed efficiencies include [REDACTED].

- (a) May be expected to result in a substantial lessening of competition as a result of horizontal unilateral effects in the market for the supply of Educational Resources to Educational Institutions in the UK by Generalist Suppliers.
- (b) May not be expected to result in a substantial lessening of competition as a result of horizontal coordinated effects in the market for the supply of Educational Resources to Educational Institutions in the UK by Generalist Suppliers.