

# Completed acquisition by Elis UK Limited of Central Laundry Limited

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

**ME/6892-20**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 23 October 2020. Full text of the decision published on 19 November 2020.

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

### SUMMARY

1. On 11 May 2020, Elis UK Limited (**Elis UK**) acquired Central Laundry Limited (**CLL**) (the **Merger**). Elis UK and CLL are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Elis UK and CLL is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply, rental, laundering and maintenance of general linen (ie bedsheets, towels, pillowcases, scrub uniforms and gowns worn by patients) (**general linen and laundry services**) to healthcare customers (ie NHS hospitals, private hospitals, private or public care homes and other healthcare facilities operated by NHS Trusts and/or private operators).
4. The CMA found that there is limited substitutability between general linen and surgical gowns and textiles (ie surgical gowns worn by theatre staff performing surgeries and other surgical textiles used when surgery is being performed) and therefore considered the impact of the Merger on the supply of general linen separately. The CMA did not consider it appropriate to segment the

product frame of reference by type of service (ie whether the general linen is supplier-owned or customer-owned).

5. The CMA did not consider it appropriate to widen the product frame of reference to include the supply of general linen and laundry services to hospitality and industrial and commercial services (**ICS**) customers alongside healthcare customers on the basis of limited supply-side substitutability. The CMA considered whether further segmentations within healthcare customers were appropriate on the basis of (i) the type of a healthcare customer (NHS hospital, private hospital, care home); and (ii) the volume requirements of a healthcare customer. The CMA did not consider it appropriate to segment the product frame of reference on either of these bases, however it has taken account of the fact that general linen and laundry services suppliers may be stronger or weaker in serving different healthcare customers and has taken account of these differences in the competitive assessment.
6. Finally, the CMA did not consider it appropriate to widen the product frame of reference to include facilities managers (**FMs**) and in-house supply.
7. The CMA has therefore assessed the impact of the Merger in the supply of general linen and laundry services to healthcare customers.
8. With regard to the geographic frame of reference, the CMA assessed the impact of the Merger in the area up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.
9. The CMA found that the Merger will account for a high combined share of supply of general linen and laundry services up to 100 miles driving distance from CLL's plant in Burton-upon-Trent. The CMA found that the Parties compete closely, most significantly for the supply of general linen and laundry services to smaller NHS hospitals (with volume requirements below [X] pieces per week) and that CLL is only a sporadic competitor for larger NHS hospitals. While the Parties are likely to compete for smaller private hospitals, the extent of head-to-head competition appears to be limited in practice, as many of Elis UK's private hospital customers [X] for which CLL does not tend to compete. The CMA also found that, while the Parties compete for the supply of general linen and laundry services to care homes, the majority of care homes have the ability to self-supply.
10. The CMA believes that there will not remain sufficient competitors post-Merger to constrain the Merged Entity and that entry and expansion would not be timely, likely and sufficient to prevent a realistic prospect of a substantial lessening of competition (**SLC**) as a result of the Merger. Finally, the CMA considers that in-house supply will exert a very limited constraint on the

Merged Entity, with the exception of care homes, where it is relatively easy for small care homes to self-supply.

11. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.
12. However, as the CMA believes that the market concerned is not of sufficient importance to justify the making of a reference, and there are no clear-cut undertakings in lieu (**UILs**) in principle available, the CMA has decided to exercise its discretion to apply the *de minimis* exception to the duty to refer (under section 22(2)(a) of the Enterprise Act 2002 (the **Act**)).
13. The Merger will therefore **not be referred** under section 22(1) of the Act.

## ASSESSMENT

### Parties

14. Elis UK is a private limited company that provides commercial laundry and facilities management services to hospitality, healthcare and ICS customers.<sup>1</sup> Elis UK operates in England, Scotland and Wales and offers its services through a network of 30 sites across the UK from which textiles are processed and distributed.<sup>2</sup> [REDACTED] of Elis UK's sites supply healthcare textile solutions or are multi-service processing sites (ie where both healthcare and hospitality linen can be laundered).<sup>3</sup> The turnover of Elis UK in the financial year ending 31 December 2019 was approximately [REDACTED] in the UK.<sup>4</sup>
15. CLL is a UK based private limited company that provides commercial laundry services to larger corporate customers, primarily in the healthcare sector such as NHS Trusts, private hospitals and care homes.<sup>5</sup> CLL operates its business from a single site in Burton-upon-Trent. The turnover of CLL in the financial year ending 31 December 2019 was approximately [REDACTED] in the UK.<sup>6</sup>

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<sup>1</sup> Elis UK's response dated 27 May 2020 (**Initial Response**); Paragraph 10.1 and footnote 2 of Elis UK's response dated 19 June 2020 to the enquiry letter (**Elis Response**).

<sup>2</sup> Paragraph 10.1, Elis Response.

<sup>3</sup> Paragraph 10.2, Elis Response.

<sup>4</sup> Elis UK's email dated 7 September 2020.

<sup>5</sup> Paragraph 10.3, Elis Response.

<sup>6</sup> Table 28.1 and Annex 15.01, Elis Response.

## Transaction

16. On 11 May 2020, Elis UK acquired the entire issued share capital of CLL pursuant to a share purchase agreement.

## Procedure

17. The CMA's mergers intelligence function identified this transaction as warranting an investigation.<sup>7</sup>
18. The Merger was considered at a Case Review Meeting.<sup>8</sup>

## Jurisdiction

19. Each of Elis UK and CLL is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
20. The Parties overlap in the supply of general linen and laundry services to healthcare customers in England, specifically in the Midlands region, with a combined share of supply of [80-90]% by value and an increment of [10-20]% brought about by the Merger.<sup>9</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.
21. The Merger completed and was first made public on 11 May 2020. The four-month deadline for a decision under section 24 of the Act is 30 October 2020, following extensions under section 25(2) of the Act.
22. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
23. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 28 August 2020 and the statutory 40 working day deadline for a decision is therefore 23 October 2020.

## Counterfactual

24. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However,

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<sup>7</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>8</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

<sup>9</sup> CMA's estimates based on the Parties' and third-party responses (see Table 2 below).

the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>10</sup>

25. The description of the counterfactual is affected by the extent to which events or circumstances and their consequences are foreseeable, enabling the CMA to predict with some confidence.<sup>11</sup> However, the CMA may still consider the effects of the merger in the context of an event or circumstance occurring even if that event or circumstance is not sufficiently certain to include in the counterfactual.<sup>12</sup>
26. Elis UK did not make specific submissions in relation to what it considers the relevant counterfactual to be.
27. The CMA considered whether there would have been a change to CLL's position in the absence of the Merger. The CMA also considered whether there is a realistic prospect that absent the Merger, CLL would have been acquired by an alternative purchaser, and whether there is a realistic prospect that any such acquisition would have created a more competitive situation than the pre-Merger conditions of competition. Finally, the CMA considered the Parties' submissions on the impact of the ongoing Coronavirus (COVID-19) pandemic on the relevant counterfactual.

### ***CLL's position absent the Merger***

28. The CMA considered whether, in the absence of the Merger, there would have been a material change in CLL's position as a result of changes in CLL's customer base and/or expansion plans of the CLL business.

### ***CLL's customer base***

29. Elis UK submitted that, absent the Merger, there would not have been any material short-term change to CLL's position as there were no material contracts set to expire.<sup>13</sup>

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<sup>10</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>11</sup> [Merger Assessment Guidelines](#), paragraph 4.3.2.

<sup>12</sup> [Merger Assessment Guidelines](#), paragraph 4.3.2.

<sup>13</sup> Paragraph 17.1, Elis Response.

30. Evidence from Elis UK's internal documents indicates that [REDACTED] is CLL's biggest and [REDACTED] and that the agreement with that hospital was set to expire in [REDACTED] 'with a potential prolongation +2 years'.<sup>14</sup> The tender data submitted by Elis UK indicates that [REDACTED] retendered the contract in [REDACTED] and that CLL has retained it.<sup>15</sup>
31. The CMA has not seen evidence to indicate that any other CLL's contracts were set to expire prior to the Merger.
32. In light of the above, the CMA believes that, in the absence of the Merger, there would not have been a material change to CLL's position as a result of changes in CLL's customer base.

#### *Expansion plans of the CLL business*

33. One of CLL's internal documents indicates that [REDACTED], the owners of CLL [REDACTED] assessed the following options for the business [REDACTED].<sup>16</sup>
34. [REDACTED] submitted to the CMA that [REDACTED].<sup>17</sup>
35. One of Elis UK's internal documents states [REDACTED].<sup>18</sup>
36. In light of the above, the CMA believes that, in the absence of the Merger, there would not have been a material change to CLL's position as a result of expansion plans of the CLL business.

#### *Decision to sell the CLL business*

37. As set out in paragraph 33 above, the sale of the CLL business was [REDACTED].
38. Elis UK's internal document dated February 2020 notes that [REDACTED], the previous owner of CLL, was [REDACTED]. The document explains that [REDACTED] 'indicated that he wanted to sell' CLL since [REDACTED].<sup>19</sup>
39. [REDACTED].<sup>20</sup>

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<sup>14</sup> Annex 20.01 (slide 17), Elis Response.

<sup>15</sup> Annex 21.01, Second S109 Response.

<sup>16</sup> Exhibit 05.05, Second S109 Response.

<sup>17</sup> [REDACTED].

<sup>18</sup> Annex 20.01 (slides 11 and 23), Elis Response.

<sup>19</sup> Annex 20.01 (slides 5 and 15), Elis Response.

<sup>20</sup> [REDACTED].

40. On this basis, the CMA believes that there is a realistic prospect that, in the absence of the Merger, CLL would have been acquired by an alternative purchaser.

#### *Alternative purchaser*

41. The CMA requested the previous owner of CLL to provide information regarding potential alternative purchasers of the CLL business.
42. [REDACTED].<sup>21</sup>
43. The available evidence therefore does not establish that it is realistic that there would have been an alternative purchaser of the CLL business that would have created a more competitive situation than the pre-Merger conditions of competition.

#### ***Impact of the Coronavirus (COVID-19) pandemic***

44. Elis UK submitted that the ongoing Coronavirus (COVID-19) pandemic has caused a significant reduction in demand for hospitality services, and, consequently, in demand for linen and laundry services from hospitality customers. On this basis, Elis UK submitted that it is likely that (i) suppliers of linen and laundry services who service both healthcare and hospitality customers will increasingly allocate capacity towards healthcare customers; and (ii) specialist suppliers of linen and laundry services to hospitality customers with excess capacity will increasingly seek to market their services to customers in other segment areas, such as healthcare.<sup>22</sup>
45. Elis UK further submitted that a number of laundries were re-purposing to provide services to healthcare customers, and that the Textile Services Association (the **TSA**) has recently launched a scheme allowing laundries to obtain interim certification for BS EN 14065, for which more than 30 hospitality laundries have applied. While it would usually take six months to obtain BS EN 14065 certification, the interim certification can be obtained in one month, subject to commitment to work towards full accreditation.<sup>23</sup>
46. While the CMA has seen some evidence to indicate that certain linen and laundry services suppliers are planning to shift their capacity from servicing hospitality customers to servicing healthcare customers, the majority of third parties who told the CMA that they intend to service healthcare customers in

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<sup>21</sup> [REDACTED].

<sup>22</sup> Paragraph 17.2, Elis Response.

<sup>23</sup> Paragraph 5.8 of Elis UK's response dated 25 August 2020 to the second request for information (**RFI2 Response**). See also [Interim Healthcare Laundry Certification \(Covid-19 Response\)](#), TSA.

the future confirmed that they do not intend to service healthcare customers within the CMA's relevant geographic frame of reference (defined in paragraph 97 below). The CMA has taken account of linen and laundry services suppliers who have expressed their intention to service healthcare customers within the CMA's relevant geographic frame of reference in its competitive assessment.

### ***Conclusion on counterfactual***

47. Based on the evidence presented above, the CMA believes that, in the absence of the Merger, there would not have been a material change to CLL's position as a result of changes in CLL's customer base and/or expansion plans of the CLL business. The CMA believes that while there is a realistic prospect that, in the absence of the Merger, CLL would have been acquired by an alternative purchaser, there is no basis to conclude that this would have been more competitive than the pre-Merger conditions of competition.
48. In light of the above, the CMA considers pre-Merger conditions of competition to be the relevant counterfactual. The CMA has taken account of any impact of the Coronavirus (COVID-19) pandemic where appropriate in its competitive assessment below.

### **Background**

49. The Parties are active in the supply of general linen and laundry services<sup>24</sup> in the UK and primarily overlap in the supply of these services to healthcare customers, such as NHS hospitals, private hospitals, private or public care homes and other healthcare facilities operated by NHS Trusts and/or private operators.<sup>25</sup> Within hospitals (ie private or NHS), there is a range of healthcare facilities, such as acute hospitals,<sup>26</sup> smaller community hospitals, hospices, and mental health facilities.<sup>27</sup> While the general requirements for textiles (ie rental services, regular supply) are similar, the volume and cleanliness specifications required (see paragraphs 56(a) and 56(b) below) vary between different types of healthcare customers.

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<sup>24</sup> Paragraph 9.1, Elis Response.

<sup>25</sup> The Parties also overlap in the supply of general linen and laundry services to hospitality and ICS customers. However, as explained in footnote 40, the CMA has not assessed this overlap further in this decision.

<sup>26</sup> An acute care hospital is a hospital that provides in-patient medical care and other related services for surgery, acute medical conditions or injuries (usually for a short-term illness or condition). Response to question 4, Initial Response.

<sup>27</sup> Paragraph 28.3, Elis Response.



50. Elis UK submitted that the linen supplied and laundered for healthcare customers includes: (i) general linen; and (ii) surgical gowns and textiles.<sup>28</sup>
51. Elis UK submitted that CLL is not engaged in the supply of surgical gowns and textiles, [✂].<sup>29</sup> On this basis, the Parties only overlap in the supply of general linen and laundry services.
52. In terms of general linen, linen and laundry service providers may offer a rental service whereby the laundry service provider owns the linen, launders it and rents it to the customer. Alternatively, the customer may own the linen and laundry service providers, such as the Parties, launder it. In both cases, the linen and laundry service provider will use its own fleet of vehicles to pick up and drop off the linen.

### ***Provision of linen and laundry services to healthcare customers***

53. The CMA sets out below the ways in which healthcare customers typically engage suppliers for their linen and laundry services needs.<sup>30</sup>

#### ***NHS Trusts and public healthcare customers***

54. NHS Trusts and public healthcare customers (eg public care homes) typically engage suppliers for their linen and laundry services needs in one of the following ways:
  - (a) **Public procurement frameworks/tenders:** Typically, NHS Trusts use frameworks and tenders to procure linen and laundry services.<sup>31</sup> Some frameworks permit NHS Trusts to make direct contract awards based on the pricing agreed under the framework for certain contract requirements but NHS Trusts will usually conduct a further round of bidding competition involving suppliers listed on the framework.<sup>32</sup> NHS Trusts are not restricted to using a single framework.
  - (b) **Appointment of a FM:** In some cases, NHS Trusts appoint a FM to provide services to the Trust which may include contracting with laundry suppliers on behalf of their customers. FMs typically have overarching

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<sup>28</sup> Paragraph 10.8.2, Elis Response.

<sup>29</sup> Paragraphs 10.9 and 28.25, Elis Response.

<sup>30</sup> Paragraph 28.4, Elis Response.

<sup>31</sup> There are six such public procurement frameworks that relate to linen and laundry services to healthcare customers, namely NHS London Procurement Partnership, Crown Commercial Service (**CCS**), North of England Commercial Procurement Collaborative (**NOECPC**), Health Trust Europe, NHS Shared Business Services and Commercial Procurement Services Cheshire. Paragraph 26.1, Second S109 Response.

<sup>32</sup> One third party explained that, although the 'direct award' of contracts is possible through some frameworks, typically a further competition is held between laundry providers on the framework who submit bids to compete for the contract based on the customer's specific requirements.

frameworks in place with suppliers that they can draw on when they bid to supply facilities management services for an NHS Trust. When FMs submit a bid for a facilities management contract, they decide which supplier of linen and laundry services to include in their bid, although sometimes a customer may have a preference for a particular supplier.

- (c) **In-house supply:** Some NHS hospitals manage their linen and laundry services in-house. There are also some NHS Trusts which offer their linen and laundry services to other NHS Trusts on a commercial basis. Elis UK submitted that, of the 227 NHS Trusts in England, 38 have their own on-site laundry.<sup>33</sup>

### *Private healthcare customers*

- 55. Private healthcare customers (eg private hospitals or private care homes) typically engage suppliers for their linen and laundry services needs in one of the following ways:

- (a) **Invitation to bid:** Private healthcare customers may establish their own tender process in which participants are invited to submit bids. Usually, larger private hospitals run their own tender processes. These tenders can be run on a national or local basis, depending on the private healthcare customer's need/preference.<sup>34</sup>
- (b) **Bilateral negotiations:** Private healthcare customers may engage in direct bilateral contract negotiations with linen and laundry suppliers.
- (c) **Purchase orders:** The supplier and customer may operate on the basis of a direct purchase order arrangement (ie with no overarching supply contract in place). Elis UK explained that this may be because a previous contract has lapsed or that a formal arrangement was not put in place.<sup>35</sup>

### *Competitive parameters*

- 56. Elis UK submitted that the main competitive parameters for the supply of linen and laundry services to healthcare customers are as follows:<sup>36</sup>

- (a) **Capacity:** Healthcare customers are likely to require a sizeable laundry capacity, given the large volume of pieces to be processed. In the case of a general acute hospital, the capacity requirements will be substantially

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<sup>33</sup> Based on ERIC data referred to at paragraph 28.17.5, Elis Response.

<sup>34</sup> [REDACTED].

<sup>35</sup> Paragraph 28.4.4, Elis Response.

<sup>36</sup> Paragraph 28.6, Elis Response.

greater than that for smaller facilities. In addition, the availability of a network of processing sites offers back-up capacity in the event of equipment failure or site shut down.

- (b) **Cleanliness specifications:** Suppliers to healthcare customers will put in place controls to address microbiological contamination. For example, they will implement a 'barrier system' within the laundry centre, which ensures dirty laundry cannot come into contact with clean items, and cover their drains. To service healthcare customers, all laundries must be compliant with the HTM 01-04<sup>37</sup> industry standard. The relevant European laundry standard for microbiological contamination control is BS EN 14065,<sup>38</sup> which is required in order to get listed on public procurement frameworks through which the majority of the NHS hospitals' contracts are awarded. In the case of care homes, Care Quality Commission standards require a level of thermal or chemical disinfection during the laundry process.
- (c) **Price:** Linen and laundry services suppliers compete on pricing as part of their tender submissions. Framework prices serve as the maximum price that the suppliers can charge for direct awards. Public bodies using a framework may conduct further negotiation via 'mini competition' in order to secure prices below the maximum price.
- (d) **Distribution capabilities:** Given the need to maintain strict hygiene standards for staff, residents or patients in health and social care settings, value is placed on the security of supply. The ability to offer a multi-drop service across a larger geographic region may appeal to customers operating a number of widely spread facilities.

57. Third parties that responded to the CMA's merger investigation generally supported Elis UK's submissions and indicated that price and capacity are the most important competitive parameters in the supply of linen and laundry services, followed by reliability of supply.

## Frame of reference

58. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects

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<sup>37</sup> *Health Technical Memorandum 01-04: Decontamination of linen for health and social care: Management and Provision*, UK Department of Health, March 2016 (HTM 01-04).

<sup>38</sup> Elis UK submitted that BS EN 14065 certification means that a linen and laundry service provider has a system in place to control microbiological contamination in laundered textiles. Footnote 24, Elis Response.

of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>39</sup>

59. The Parties overlap in the supply of general linen and laundry services to healthcare customers.<sup>40</sup>

### **Product scope**

60. Elis UK submitted that there is a wider market for the supply of linen and laundry services, not just to healthcare customers, but also to hospitality and ICS customers.<sup>41</sup> Elis UK also submitted that there is ample scope for supply-side substitution between these customer groups, ie there is a strong basis for adopting an overall linen services product frame of reference.<sup>42</sup>
61. The CMA's starting point for the product frame of reference is the narrowest overlap between the Parties, ie the supply of general linen and laundry services to healthcare customers.
62. The CMA has further considered whether the product frame of reference should include the following elements or segmentations:
- (a) Type of linen: Whether it is appropriate to segment the product frame of reference by the type of linen provided to healthcare customers, ie whether surgical gowns and textiles should be included alongside general linen;
  - (b) Type of service: Whether it is appropriate to segment the product frame of reference by the type of service provided to healthcare customers, ie where the linen and laundry service provider owns the linen and where the healthcare customer owns the linen;
  - (c) Type of customer: Whether the CMA should delineate the market wider or narrower than healthcare customers:

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<sup>39</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>40</sup> The Parties also overlap in the supply of linen and laundry services to hospitality and ICS customers. This overlap is not, however, considered further in this decision, as no competition concerns arise on any plausible basis. In particular, the revenues from these activities account for less than [%] of CLL's revenue. In addition, Elis UK submitted that CLL has no intention of servicing new hospitality or ICS customers and that these contracts will not be extended once they reach expiration.

<sup>41</sup> Paragraphs 10.4 – 10.10, Elis Response.

<sup>42</sup> Paragraph 10.6, Elis Response.

- (i) Wider than healthcare: Whether it is appropriate to widen the scope of the product frame of reference to include the supply of linen and laundry services to all types of customers, including hospitality and ICS customers, alongside healthcare customers;
  - (ii) Sub-segmentation within healthcare: Whether it is appropriate to segment the product frame of reference further by the type of healthcare customer;
- (d) FM: Whether the product frame of reference should include FMs; and
- (e) In-house supply: Whether the product frame of reference should include the in-house provision of linen and laundry service to healthcare customers.

### *Type of linen*

63. As set out in paragraph 51 above, Elis UK submitted that CLL does not offer surgical gowns and textiles, as it does not have the [REDACTED].
64. Elis UK submitted that the cleaning standard for surgical gowns and textiles<sup>43</sup> differs from general linen due to the fact that it covers the classification of air cleanliness in the processing environment and that a cleanroom environment is necessary.<sup>44</sup>
65. Third parties who responded to the CMA's merger investigation explained that the supply of surgical gowns and textiles is governed by the Medical Devices Directorate under which the linen is classified as a 'medical device' that needs to be sterilised.<sup>45</sup> Finally, the evidence received by the CMA indicates that the supply of linen and laundry services for surgical gowns and textiles is typically tendered for separately.<sup>46</sup>

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<sup>43</sup> ISO 14644-1:1999: Class 8.

<sup>44</sup> Paragraph 3.5 of Elis UK's response dated 14 July 2020 to the first request for information (**RFI1 Response**). Elis UK explained that cleanrooms are designed to maintain extremely low levels of particulates, such as dust, airborne organisms, or vaporized particles. Cleanrooms typically have a cleanliness level quantified by the number of particles per cubic meter at a predetermined molecule measure and are generally sealed structures accessed by air locks within a building. Paragraph 3.1, RFI1 Response.

<sup>45</sup> [REDACTED]. One third party explained that Elis UK processes its sterile linen at a separate plant from its general linen ([REDACTED]).

<sup>46</sup> For example, the CCS has separate lots for suppliers of surgical gowns and textiles and for suppliers of general linen and the only three suppliers listed as providing surgical gowns and textiles services on the CCS framework are Elis UK, Synergy and East Lancashire Hospitals NHS Trust (see [CCS Framework for Linen and Laundry Services](#)).

66. In light of the above, the CMA believes that it is not appropriate to widen the product frame of reference to include the supply of surgical gowns and textiles to healthcare customers.

#### *Type of service*

67. There are two types of linen and laundry services offered to healthcare customers where the linen is: (i) supplier-owned and rented to a customer; and (ii) customer-owned. Elis UK submitted that suppliers (including the Parties) tend to offer both types of service and therefore both models should be included in the same product scope.<sup>47</sup>
68. Previous OFT cases that have investigated this sector did not segment the product frame of reference on this basis.<sup>48</sup>
69. Elis UK submitted that CLL generates [X] of its revenue from 'rental only' services.<sup>49</sup> One third party told the CMA that the rental service is overwhelmingly the most popular choice among healthcare customers.<sup>50</sup>
70. In light of the above, the CMA believes that it is not appropriate to segment the product frame of reference by the type of service provided to healthcare customers.

#### *Type of customer*

##### *Type of customer: Wider than healthcare*

71. As set out in paragraph 60 above, Elis UK submitted that there is supply-side substitution between healthcare, hospitality, and ICS customers.
72. Previous OFT cases have segmented the market by type of customer.<sup>51</sup>
73. As set out in paragraph 56(b) above, all laundries that service healthcare customers must be compliant with HTM 01-04, which is not a requirement for serving hospitality and ICS customers. Some examples of this requirement include linen that is thermally disinfected, washed at a certain temperature for a certain amount of time, and that has not been re-contaminated during

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<sup>47</sup> Paragraph 10.10, Elis Response.

<sup>48</sup> Paragraph 13, [OFT's decision in the anticipated acquisition of Johnsons Apparelmaster Limited of the Cannon textile Care Business](#); and paragraph 11, [OFT's decision in the completed acquisition by Fishers Services Limited of assets of the Sunlight Service Group Limited](#).

<sup>49</sup> Paragraphs 7.1 and 7.2, Follow Up Response.

<sup>50</sup> [X].

<sup>51</sup> Paragraph 30, [OFT's decision in the anticipated acquisition of Johnsons Apparelmaster Limited of the Cannon textile Care Business](#).

packing or transport.<sup>52</sup> Evidence from third parties notes these requirements are higher than any requirements for serving hospitality or ICS customers.<sup>53</sup> The majority of non-healthcare laundries that responded to the CMA's merger investigation indicated that healthcare is considered to be a separate market and that servicing healthcare customers would require large capital costs.<sup>54</sup>

74. In light of the above, the CMA believes that it is not appropriate to widen the product frame of reference to include the supply of linen and laundry services to all types of customers, including hospitality and ICS customers, alongside healthcare customers. The CMA has considered the extent of any constraint posed by non-healthcare laundries currently considering entering the healthcare sector in our assessment of barriers to entry and expansion (see paragraphs 185-193 below).

*Type of customer: Sub-segmentation within healthcare*

75. Elis UK submitted that the core products that fall within the general linen category (such as bedsheets, towelling, pillowcases, patient gowns, and scrub uniforms) are generally used by all healthcare customers.<sup>55</sup>
76. The CMA considered whether further segmentations within healthcare customers were appropriate on the basis of:
- (a) the type of a healthcare customer (NHS hospital, private hospital, care home); and
  - (b) the volume requirements of a healthcare customer.
77. The CMA notes that whilst, on the demand side, the requirements of healthcare customers vary to some extent depending on the type of healthcare customer, the evidence indicates that these differences are not always clear-cut. In particular:
- (a) Although suppliers may need to be listed on public procurement frameworks in order to serve certain NHS hospitals, some laundries are able to win work with NHS hospitals without being listed on a framework, eg [REDACTED]. This is likely because some NHS contracts are small enough that they do not need to be tendered for under the Official Journal of European

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<sup>52</sup> [REDACTED].

<sup>53</sup> [REDACTED].

<sup>54</sup> [REDACTED].

<sup>55</sup> Paragraph 10.8.1, Elis Response.

Union (**OJEU**) rules, or because not all NHS contracts are awarded through a framework; and

(b) Ultimately, all healthcare customers generally have the same broad requirements. In particular, all healthcare customers that responded to the CMA's merger investigation thought that cleaning standards were very important in their choice of linen and laundry services supplier and all required that their suppliers complied with HTM 01-04.<sup>56,57</sup> Other factors noted by healthcare customers as important were security of supply, laundry capacity, and price. The CMA considers that while there are differences in the importance of these factors between healthcare customers, these are not always clear-cut.

78. With regard to volumes, the requirements of healthcare customers vary considerably, both between and within healthcare customer types. Similarly, suppliers' ability to serve healthcare customers with different volume requirements can vary significantly. While suppliers generally serve healthcare customers with a range of volume requirements (for example, Elis UK, CLL, and Synergy all serve care homes, private hospitals, and some larger and smaller NHS hospitals), smaller suppliers may be constrained in the extent to which they can service large healthcare customers. For example, while both Elis UK and CLL serve customers with significant weekly requirements, CLL's largest customer has a weekly requirement of over [REDACTED] pieces and Elis UK's largest customer has a weekly requirement of over [REDACTED] pieces.
79. Smaller suppliers may have more limited total capacity available due to the size of their plant. For example, CLL's plant has a total capacity of [REDACTED] pieces per week whereas Elis UK's plants have an average capacity of [REDACTED] pieces per week.<sup>58</sup> This affects the number and size of healthcare customers which laundries are able to service. However, the level of utilisation of capacity is also important, as laundries will have greater capacity to bid for larger healthcare customers when they have spare capacity available. Suppliers may also need to leave some spare capacity available as a contingency in case of equipment breakdown or higher than usual requirements from healthcare customers.<sup>59</sup> Therefore, the size of healthcare customer which each supplier is able to bid for will vary depending on their capacity and

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<sup>56</sup> [REDACTED].

<sup>57</sup> The CMA notes that certain NHS hospitals also require the BS EN 14065 standard to be met in order to list a supplier on a framework. The CMA understands that the main difference between HTM 01-04 and BS EN 14065 is that laundries that meet the BS EN 14065 standard have been audited and their compliance with HTM 01-04 is assured (see the [TSA Guidance on the Interim Laundry Healthcare Certification/Covid 19 Response](#)).

<sup>58</sup> Paragraph 28.23 of Elis UK Response. Elis UK has [REDACTED].

<sup>59</sup> Elis UK email to the CMA dated 8 October 2020.



capacity utilisation over time, among other factors, and will vary from supplier to supplier.

80. In light of the above, the CMA believes that it is not appropriate to further segment the product frame of reference based on the type and volume requirements of healthcare customers as, while there is some differentiation in the requirements of healthcare customers and in the ability of suppliers to serve them, this is not always clear-cut (and, in particular, there is no clear cut-off between smaller and larger customers). However, the CMA notes that suppliers may be stronger or weaker in serving different types of healthcare customers and healthcare customers of different sizes and has taken account of these differences in the competitive assessment.

### *FMs*

81. Elis UK submitted that FMs are direct competitors of the Parties in the supply of general linen and laundry services to NHS Trusts. Elis UK stated that in those instances where FMs win the customer contract, the FMs may carry out certain linen management and on-premise distribution activities themselves.<sup>60</sup>
82. The CMA notes that, within Elis UK's internal documents, FMs are presented as customers rather than competitors.<sup>61</sup> Furthermore, based on the available third-party evidence,<sup>62</sup> the CMA believes that FMs are not competitors to the Parties, in particular because:
- (a) FMs do not launder the linen themselves; and
  - (b) even if a FM is managing a contract, suppliers of general linen and laundry services must still compete to provide the service as part of that contract.
83. In light of the above, the CMA believes that it is not appropriate to widen the product frame of reference to include FMs.

### *In-house supply*

84. Elis UK submitted that it faces the possibility and threat of NHS hospitals switching between the external outsourced provision of linen and laundry services and in-house supply.<sup>63</sup>

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<sup>60</sup> Paragraph 22.4, Second Follow Up Response.

<sup>61</sup> Annex 22.03 (slide 6), Elis Response.

<sup>62</sup> [redacted].

<sup>63</sup> Paragraphs 28.19 and 28.20, Elis Response.

85. The CMA will generally include self-supply when identifying the relevant product market, if the ability of customers to choose this option affects the profitability of a price rise by the hypothetical monopolist.<sup>64</sup>
86. In the recent *Berendsen (Elis)/Kings Laundry* case, the Irish Competition and Consumer Protection Commission (**CCPC**) concluded that self-supply by healthcare customers is not in the same product frame of reference as outsourced linen and laundry services.<sup>65</sup> The OFT has also excluded on-premise laundry from the scope of the frame of reference in its previous decisions.<sup>66</sup>
87. Third party evidence indicates that it is unlikely to be feasible for NHS hospitals that currently outsource their linen and laundry requirements to switch to in-house supply due to the high costs involved in this process, including the cost of premises, machinery, and a stock of linen.<sup>67</sup> One NHS hospital explained that it was recently able to switch from outsourcing to in-house supply of its linen and laundry services only because it already had the equipment and a working laundry on its site.<sup>68</sup>
88. The evidence received by the CMA indicates that it would be difficult for private hospitals to switch from outsourcing of linen and laundry services to in-house supply as this would require the right space, equipment, staff, training, and compliance with relevant healthcare laundry standards.<sup>69</sup>
89. One of Elis UK's internal document suggests that the vast majority ([90-100]%) of care homes manage their own linen and laundry in-house.<sup>70</sup> The evidence received from third parties suggests that smaller care homes are more likely to have in-house laundries as this is more cost-effective.<sup>71</sup> However, the CMA also received evidence that care homes which currently outsource their linen and laundry requirements would find it difficult to bring this back in-house as it would require new equipment, potentially new sluice rooms, upgraded electrics, ventilation. It would also require investment in infection control and new linen.<sup>72</sup>

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<sup>64</sup> [Merger Assessment Guidelines](#), paragraph 5.2.20.

<sup>65</sup> Paragraphs 3.61-3.63, CCPC decision in *Berendsen (Elis)/Kings Laundry* (8 July 2019).

<sup>66</sup> Paragraph 20, *OFT's decision in the anticipated acquisition of Johnsons Apparelmaster Limited of the Cannon textile Care Business*; paragraph 11, *OFT's decision in the completed acquisition by Fishers Services Limited of assets of the Sunlight Service Group Limited*.

<sup>67</sup> [REDACTED].

<sup>68</sup> [REDACTED].

<sup>69</sup> [REDACTED].

<sup>70</sup> Annex 22.01 (slide 12), Elis Response.

<sup>71</sup> [REDACTED].

<sup>72</sup> [REDACTED]. For example, one care home told the CMA that to bring it in-house would be very complex and estimated that this would take 12 months and cost £150,000 to £200,000.

90. In light of the above, the CMA believes that for most healthcare customers the cost of switching to in-house supply is high and a small increase in the price of outsourced linen and laundry services is unlikely to outweigh the costs of setting up an in-house laundry. Therefore, the CMA believes that it is not appropriate to widen the product frame of reference to include in-house supply.

### *Conclusion on product scope*

91. Based on the evidence set out above, the CMA believes that the appropriate product frame of reference is the supply of general linen and laundry services to healthcare customers.

### **Geographic scope**

92. Elis UK submitted that each Elis UK's site is geared towards servicing a customer base of up to a 100-mile radius of the operational site (with some customers being further afield), while CLL's customer delivery locations can exceed 100 miles.<sup>73</sup> Nevertheless, Elis UK submitted that the geographic frame of reference is either Great Britain-wide or, in the case of the supply of linen and laundry services to NHS Trusts, England-wide, on the basis of the following:<sup>74</sup>
- (a) Elis UK operates [redacted] sites which offers it broad coverage across Great Britain;
  - (b) CLL is able to cover a wide area so long as the volumes justify the additional costs of travel – CLL is not precluded from credibly competing in other parts of the country;
  - (c) While pricing is commonly negotiated on a customer-by-customer basis, the pricing agreed for those customers with sites across several regions of the country will usually be set uniformly; and
  - (d) Transportation costs are likely to represent, on average, only around [redacted] of the delivered price to customers, including vehicle costs and fuel. The operation of commercial laundry businesses has a relatively large fixed cost component and, therefore, a broad geographic reach can be justified to cover its central overheads.

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<sup>73</sup> Paragraphs 16.2 and 16.3, Elis Response.

<sup>74</sup> Paragraphs 16.1 – 16.16, Elis Response.

93. The CMA’s starting point for the geographic frame of reference is the narrowest overlap between the Parties. As set out in paragraph 15 above, CLL operates one site in Burton-upon-Trent. Elis UK operates three sites (Leicester, Wednesbury, Coventry (Whitley)) that lie within 100 miles of CLL’s plant. The CMA calculated an 80% catchment area for CLL’s plant and Elis UK’s plants that lie within 100 miles of Burton-upon-Trent.<sup>75</sup> The results are presented in Table 1 below.

**Table 1: 80% catchment areas for Elis UK and CLL sites**

Site	80% catchment area (driving distance, miles)
CLL – Burton-upon-Trent	99
Elis UK – Leicester	77
Elis UK – Wednesbury	86
Elis UK – Coventry (Whitley)	85

Source: CMA analysis.

94. The CMA’s catchment area analysis found that an 80% catchment area corresponds to between 77 and 99 miles driving distance from the Parties’ sites.
95. The majority of competitors that responded to the CMA indicated that they earn 80% of their revenues from 60 miles or less driving distance from their plants. No competitors estimated that they receive 80% of their revenues from a distance further than 100 miles drive.<sup>76</sup>
96. The CMA considered whether it would be appropriate to widen the scope beyond 100 miles driving distance from CLL’s plant. In doing this, the CMA sought evidence on how easy it would be for laundries to expand their geographical reach. The third-party evidence received by the CMA was mixed but generally supported the view that there are challenges to expanding geographically, especially for smaller suppliers. A few third parties noted that expansion could be achieved relatively easily with costs of around £50,000, or require a set-up of a regional distribution hub.<sup>77</sup>

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<sup>75</sup> These catchment areas were calculated by the CMA by (i) calculating the driving distances between the Parties’ sites and the customers that are served from those sites; (ii) ranking the customer sites based upon how close they were to the Elis UK/CLL site; (iii) ascertaining the revenue that Elis UK/CLL earned from each customer site (where a customer had more than one site, Elis UK told the CMA how much they earned for each individual customer site; if this information was not available, Elis UK divided the overall customer revenue across the customer sites weighted by the number of deliveries made to each customer site); (iv) cumulatively summing the revenue that the Parties make from their customers for each of their sites (this would start from the customer that is closest to the Parties’ site and work towards the customer site which is furthest away); and (v) determining the driving distance to the customer site which accounts for 80% cumulative revenue.

<sup>76</sup> [REDACTED].

<sup>77</sup> [REDACTED].

### *Conclusion on geographic scope*

97. Based on the evidence set out above, the CMA believes that the appropriate geographic frame of reference is up to 100 miles driving distance from CLL's plant in Burton-upon-Trent. However, where appropriate, the CMA has considered the supply by non-healthcare suppliers of general linen and laundry services to healthcare customers and suppliers active beyond the geographic frame of reference as out-of-market constraints within the competitive assessment.

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

98. For the reasons set out above, the CMA believes that the appropriate frame of reference for its assessment of the Merger is the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

## **Competitive assessment**

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

99. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>78</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
100. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.
101. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA has considered:
- (a) shares of supply;
  - (b) closeness of competition between the Parties;
  - (c) competitive constraints posed by alternative suppliers; and

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<sup>78</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

(d) competitive constraint from in-house supply.

### *Shares of supply*

102. Elis UK estimated that the Parties have a combined share of [30-40]% (with an increment of [0-5]%) in the supply of general linen and laundry services to healthcare customers up to 100 miles trucking distance<sup>79</sup> from CLL's plant in Burton-upon-Trent.<sup>80</sup>
103. In assessing Elis UK's estimated shares of supply, the CMA notes the following:
- (a) The Estates Returns Information Collection (**ERIC**) data<sup>81</sup> used by Elis UK includes revenues earned by FMs. Where an FM manages the contract, the Parties have allocated [X] of the contract revenue to the FM and [X] to the subcontracted general linen and laundry services provider on the basis that an FM may carry out some linen management and distribution activities.<sup>82</sup> The CMA does not believe it is appropriate to include FMs in the shares of supply since, as set out in paragraph 82, FMs do not launder the linen themselves.
  - (b) The ERIC data may include a proportion of revenues from laundering surgical gowns and textiles which is excluded from the CMA's frame of reference.<sup>83</sup>
  - (c) The ERIC data may include NHS hospitals' costs for direct purchases of textiles and linen and laundry services carried out on-site.<sup>84</sup>
  - (d) Elis UK has assigned one supplier for each NHS hospital site in the ERIC data. However, NHS hospitals might be using more than one supplier which might not be appropriately recorded.<sup>85</sup>
  - (e) Elis UK's estimates of the potential market size for private hospitals and care homes appear to be unreliable. In particular, Elis UK estimated that the market for care homes within 100 miles' driving distance of CLL's site

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<sup>79</sup> Trucking distance refers to driving distance by a truck. The CMA has compared trucking and driving distances and concluded that this makes no material difference to the catchment area.

<sup>80</sup> Annex 2.02, Third S109 Response.

<sup>81</sup> The ERIC data is compiled by the NHS and Elis UK indicated which supplier(s) supplied each NHS hospital: <https://digital.nhs.uk/data-and-information/publications/statistical/estates-returns-information-collection/england-2018-19>.

<sup>82</sup> Paragraph 22.5, Second Follow Up Response.

<sup>83</sup> Paragraph 10.2, Second Follow Up Response.

<sup>84</sup> Elis UK's response dated 15 September 2020 to the CMA's request for information dated 10 September 2020.

<sup>85</sup> This could be the case, for example, if an NHS hospital was being served by another supplier, while Elis UK also started providing services to that NHS hospital in the middle of the NHS financial year.

is worth £[40-50] million, which contradicts one of Elis UK’s internal documents indicating that the care home market is worth less than £[5-10] million across the whole of the UK.<sup>86</sup> The estimated market size also does not account for the fact that some private hospitals and many care homes do not outsource their general linen and laundry services.<sup>87</sup>

104. Based on the above, the CMA believes that Elis UK’s estimated shares of supply for the Parties are underestimated and the CMA has therefore calculated shares of supply based on the Parties’ and third parties’ actual revenue data.<sup>88</sup>
105. As it would have been difficult for third parties to provide their revenues up to 100 miles driving distance from CLL’s plant in Burton-upon-Trent, and in order to ensure the data collected from third parties was accurate, the CMA requested revenues within the Midlands region. This is in line with the NHS’s Midlands Commissioning Region as presented in the ERIC data. While this accounts for a subset of the revenues within the geographic frame of reference, the CMA believes that the Midlands region captures the area where most of CLL’s healthcare customers are located. In particular, according to the CLL tender data provided, of the [X] tenders that CLL have bid for up to 100 miles driving distance from its plant, [X] were in the Midlands region.
106. The CMA used the revenue figures to estimate shares of supply for all healthcare customers in the Midlands region. These estimates are presented in Table 2 below.<sup>89</sup>

**Table 2: CMA estimated shares of supply of general linen and laundry services to healthcare customers in the Midlands region, 2019**

<i>Supplier</i>	<i>Share of supply (%)</i>
Elis UK	[70-80]
CLL	[10-20]
<b>Parties’ combined</b>	<b>[80-90]</b>
Synergy	[10-20]
Imperial	[0-5]
<b>Total</b>	<b>100</b>

Source: CMA calculations using the Parties’ and third-party responses.

<sup>86</sup> Internal Document Exhibit ID115 (slide 12), ‘UK Textiles Commercial Review, [X] – Commercial Director, 24-01-2020’.

<sup>87</sup> Annex 22.01 (slide 12), Elis Response and [X].

<sup>88</sup> Consistent with the frame of reference, the CMA’s estimates exclude surgical gowns and textiles, FMs and in-house supply.

<sup>89</sup> Mid-Cheshire NHS hospital was excluded from the share of supply calculations as it has recently exited the market and is not outsourcing its general linen and laundry services to [X]. In addition, [X] told the CMA that it has recently started servicing [X] in the Midlands region, with a current revenue of [X]. This was not included in the share of supply calculation as it only won [X] in 2020.

107. Table 2 shows that Elis UK is by far the largest supplier in the Midlands region with a share of supply of [70-80]%. Synergy is the second largest supplier with a [10-20]% share of supply, followed by CLL with a [10-20]% share of supply. Imperial is a very small supplier in the Midlands region with a share of supply of [0-5]%.
108. The CMA therefore estimates that the Parties have a combined share of supply of [80-90]% with a [10-20]% increment brought about by the Merger. The CMA believes that the Parties' high combined share of supply raises *prima facie* competition concerns.
109. The CMA notes that the Midlands region is narrower than the geographic frame of reference used as the starting point for the competitive analysis of the Merger (as defined in paragraph 97 above). There are a number of smaller laundries which have generated some revenues from NHS hospitals within the geographic frame of reference but which are not active in the Midlands region, suggesting that the CMA's shares of supply will, to some extent, overstate the position of the Parties in the supply of general linen and laundry services to healthcare customers within the geographic frame of reference. However, based on the ERIC data, the CMA believes that all of these suppliers are likely to have a relatively limited presence within the relevant geographic frame of reference, and therefore that the shares of supply for the Midlands region will be indicative of the Parties' position within the frame of reference used for the competitive analysis of the Merger.<sup>90</sup>

#### *Closeness of competition between the Parties*

110. The CMA has assessed the closeness of competition between the Parties and considered within its assessment:
- (a) the Parties' service offerings;
  - (b) analysis of the Parties' tender data;
  - (c) analysis of other evidence of competition for healthcare customers;
  - (d) the Parties' internal documents; and

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<sup>90</sup> Annex 2.02, Third S109 Response. Elis UK used ERIC data to estimate shares of supply to NHS hospitals in the geographic frame of reference. These shares identified a number of other suppliers who are not present in the shares of supply estimated by the CMA in the Midlands region, such as Pennine Acute Hospitals NHS Trust, Express Linen Services, and Salisbury NHS. Whilst these suppliers may be active in the geographic frame of reference but not in the Midlands region, their estimated share of supply in the geographic frame of reference is never more than 2% under Elis UK's calculations.



(e) third party views.

*The Parties' service offerings*

111. The CMA has assessed the Parties' service offerings and considered within its assessment:

(a) the differences in the Parties' capacity and operations; and

(b) the differences in the customers that the Parties serve.

- *Differences in the Parties' capacity and operations*

112. CLL operates one plant compared to [REDACTED] plants operated by Elis UK across the UK, of which three are within 100 miles driving distance from CLL's plant. CLL's plant has a capacity of approximately [REDACTED] pieces per week, whilst Elis UK has a combined capacity of approximately [REDACTED] pieces per week across its [REDACTED] plants.<sup>91</sup> CLL's plant has [REDACTED]. A continuous tunnel washer is an industrial washing machine designed specifically to handle heavy loads of laundry. A third party explained to the CMA that a 'large scale' laundry needs two to three tunnel washers.<sup>92</sup>

113. The CMA has also considered the size of the Parties' respective truck fleets. CLL has a fleet of [REDACTED] vehicles including [REDACTED] trucks.<sup>93</sup> In contrast, Elis UK has [REDACTED] vehicles, the majority of which are [REDACTED] trucks. Elis UK also operates two [REDACTED] trucks.<sup>94</sup>

- *Differences in the customers that the Parties serve*

114. Elis UK submitted that, given its limited capacity, CLL is unlikely to bid for contracts that require volumes greater than [REDACTED] pieces per week.<sup>95</sup>

115. CLL's capacity data indicated that it used between [REDACTED] and [REDACTED] of its available weekly capacity, with an average capacity utilisation of 80%, in 2018 and 2019. Elis UK submitted that, although CLL has spare capacity, it needs to maintain a degree of spare capacity to manage any fluctuations in customer demand.<sup>96</sup> A spare capacity level of 20% equates to approximately [REDACTED] pieces

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<sup>91</sup> Paragraph 28.23, Elis Response.

<sup>92</sup> [REDACTED].

<sup>93</sup> Annex 13.1, Second S109 Response.

<sup>94</sup> Elis UK noted that the majority (80-90%) of its healthcare customers are serviced by [REDACTED] or larger trucks with the most commonly used being the [REDACTED] truck. This is because larger vehicles can carry cages, while smaller ones can only carry bagged linen. Paragraph 14.2, Second S109 Response.

<sup>95</sup> Paragraph 4.7 of Elis UK's response to the Issues Letter dated 2 October 2020 (**IL Response**).

<sup>96</sup> Elis UK email to the CMA dated 8 October 2020.

per week. Therefore, while it would be possible for CLL to take on a new customer with requirements greater than [REDACTED] pieces per week, it would be difficult for CLL to do this without occupying a large proportion of its spare capacity, which would risk hitting its capacity limit in the event of higher demand or breakdown. Another customer of [REDACTED] pieces per week, for example, would leave CLL with limited spare capacity ([REDACTED] pieces per week in spare capacity, amounting to only around [REDACTED] of its total capacity). [REDACTED].<sup>97</sup>

116. The CMA requested tender data from the Parties which included information on the volumes required by each of their NHS tender bids since 2014 (for customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent).<sup>98</sup> The data showed that CLL has bid less frequently for NHS hospital contracts that require more than [REDACTED] pieces per week than for contracts below that level, and that it has not bid for such contracts at all since it secured the one large NHS hospital contract that it holds at present ([REDACTED]).
117. Figure 1 and Figure 2 below present the weekly volume requirements of CLL's and Elis UK's NHS hospital customers within the geographic frame of reference, respectively.

**Figure 1: Distribution of CLL's NHS hospital customers by volume requirements**

[REDACTED]

Source: Annex 2, IL Response.

**Figure 2: Distribution of Elis UK's NHS hospital customers by volume requirements**

[REDACTED]

Source: Annex 2, IL Response.

118. Figure 1 shows that only one of CLL's NHS hospital customers ([REDACTED]) within the geographic frame of reference has a volume requirement above [REDACTED] pieces per week. This contrasts with Elis UK which has many customers with volume requirements above this threshold within the geographic frame of reference (see Figure 2). Nevertheless, Elis UK has [20-30] customers with volume requirements below [REDACTED] pieces per week.
119. This indicates that the Parties mainly overlap in respect of customers with volume requirements below [REDACTED] pieces per week.
120. This analysis is consistent with third-party submissions. In particular, third parties that responded to the CMA's merger investigation explained that CLL's

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<sup>97</sup> [REDACTED].

<sup>98</sup> The CMA does not have volume figures for the Parties' non-NHS customers.

size relative to Elis UK limits its ability to compete against Elis UK for customers with larger volume requirements. For example:

- (a) One large acute NHS hospital and one FM submitted that CLL does not have the capacity to compete to serve it or participate in larger tenders.<sup>99</sup>
- (b) Another acute NHS hospital submitted that although CLL did not submit a bid during their tender process, it believed that capacity could be an issue for a smaller linen and laundry service provider like CLL.<sup>100</sup>
- (c) A competitor submitted that the Parties mainly compete against each other for private hospitals and NHS community hospitals. This is because CLL only has capacity to service one acute NHS hospital at a time.<sup>101</sup>
- (d) [redacted] submitted that there were a number of occasions where, despite CLL submitting a competitive bid for a tender, the customer perceived the size of CLL to be a risk compared to the other larger suppliers competing in the tender.<sup>102</sup> Further, [redacted] told the CMA that CLL's niche market was community healthcare, which has different needs to acute NHS hospitals.
- (e) [redacted] noted that CLL is a small supplier and only services one large NHS hospital ([redacted]), whereas Elis UK services around 70-80 large NHS hospitals.<sup>103</sup>
- (f) Three FMs submitted that they use Elis UK and Synergy, with one also using Salisbury NHS. All three FMs explained that security of supply is important to them, as any shortages of linen would reflect poorly on them. This criterion results in FMs favouring the two largest general linen and laundry services suppliers in the market (ie Elis UK and Synergy), as they have access to multiple sites and thus good contingency planning in place.<sup>104</sup>

121. Similarly, the evidence collected by the CMA shows that the Parties differ in their ability to compete for contracts with private hospitals. In particular, both Parties service local independent private hospitals and national private healthcare groups such as Nuffield Health (**Nuffield**), Ramsay Healthcare UK Limited (**Ramsay**), and Spire Healthcare plc (**Spire**).<sup>105</sup> However, while Elis UK is able to service national private healthcare groups through a nationwide

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<sup>99</sup> [redacted].

<sup>100</sup> [redacted].

<sup>101</sup> [redacted].

<sup>102</sup> [redacted].

<sup>103</sup> [redacted].

<sup>104</sup> [redacted].

<sup>105</sup> Elis UK has a national contract with [redacted] and is able to service all their hospitals across the UK.

contract, CLL is only able to compete for these contracts through participation in the National Laundry Group (**NLG**).<sup>106</sup> For example, one private hospital submitted that it only contracts for its linen and laundry services on a national basis, and thus CLL would not be able to compete for this customer.<sup>107</sup>

#### *Analysis of the Parties' tender data*

122. The Parties provided data on the tenders that they participated in from 2014 onwards.
123. As discussed above in paragraph 119, the Parties predominantly overlap in the supply of general linen and laundry services to smaller healthcare customers. Although there is no clear-cut distinction between large and small healthcare customers, as discussed above, the Parties have explained that CLL is constrained in its ability to compete for larger contracts and rarely bids for contracts with a volume greater than [REDACTED] pieces per week (see paragraph 115). Therefore, the CMA has analysed the tender data overall as well as broken down into contracts below and above [REDACTED] pieces per week.
124. Since 2014, Elis UK has participated in [REDACTED] tenders for healthcare customers that lie up to 100 miles driving distance from CLL's plant in Burton-upon-Trent. Of these [REDACTED] tenders, it has won [REDACTED] (60%) and lost [REDACTED] (40%). Table 3 below provides more detail in relation to the tenders that Elis UK participated in.

**Table 3: Analysis of Elis UK's tenders for healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent<sup>108</sup>**

[REDACTED]

Source: CMA analysis of Parties' data.

125. Table 3 shows that:
- (a) over two-thirds of tenders that Elis UK participated in were for NHS hospitals with volume requirements above [REDACTED] pieces per week. Elis UK did not participate in any tenders for care homes or private hospitals since 2014; and

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<sup>106</sup> The NLG won contracts to serve [REDACTED] and, as part of that contract, CLL is servicing hospitals close to its plant in Burton-upon-Trent while other laundries service other sites which are further away.

<sup>107</sup> [REDACTED].

<sup>108</sup> For tenders that included several healthcare customer sites, the site with the maximum distance from CLL's plant was considered. There were occasions where a healthcare customer (or potential healthcare customer) with multiple sites had some sites within and some beyond 100 miles driving distance of CLL's plant. In these cases, if any of the customer's sites were beyond 100 miles driving distance from CLL's plant, the CMA classified that healthcare customer as being more than 100 miles driving distance from CLL's plant in Burton-upon-Trent.

(b) of the [X] tenders that Elis UK bid for, it faced competition from CLL in [X] (22%) of them. Elis UK faced CLL in a larger proportion of tenders when bidding for tenders with volume requirements below [X] pieces per week compared to when it bid for tenders with volume requirements above [X] pieces per week.

126. Since 2014, CLL has competed in [X] tenders for healthcare customers that lie up to 100 miles driving distance from CLL's plant in Burton-upon-Trent. Of these [X] tenders, it has won [X] (81%) and lost [X] (19%). The CMA notes that:

(a) CLL only participated in [X] tenders (out of [X] tenders in total) for NHS customers with a weekly volume requirement greater than [X] pieces. The remaining tenders were for either NHS hospitals with lower volume requirements, private hospitals or care homes; and

(b) in 85% of the occasions that CLL participated in a tender for NHS hospitals, it competed with Elis UK.

127. Table 4 below provides information on the CLL win rate for the tenders in which it participated.

**Table 4: Analysis of CLL's win rates in tenders for healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent**

[X]<sup>109</sup>

Source: CMA analysis of Parties' data.

128. Table 4 shows that:

(a) CLL won 84% of the tenders it participated in;

(b) CLL is less successful when bidding for NHS hospitals with volume requirements greater than [X] pieces per week. Of the [X] NHS hospital tenders CLL has bid for since 2014, only [X] tenders have been for hospitals with volume requirements of more than [X] pieces per week and it has only won one of these contracts. The CMA notes that this contract was for [X], which is close to CLL's plant, and CLL has not bid for a tender with volume requirements greater than [X] pieces per week since it was awarded this contract; and

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<sup>109</sup> [%].

- (c) CLL is successful when bidding for NHS hospitals with volume requirements lower than [REDACTED] pieces per week, as well as private hospitals and care homes (which tend to have lower volume requirements).

*Other evidence of competition for healthcare customers*

129. The CMA notes that not all of the Parties' healthcare customers are acquired through a formal tender process. Many contracts may be awarded through an informal tender process or by direct award (see paragraph 55). Table 5 and Table 6 below illustrate the number of CLL and Elis UK's contracts that are formally awarded through a tender process.

**Table 5: CLL healthcare customer contracts by award type**

[REDACTED]

Source: CMA analysis of Parties' data.

**Table 6: Elis UK healthcare customer contracts by award type**

[REDACTED]

Source: CMA analysis of Parties' data.

130. The figures in Table 5 and Table 6 show that [REDACTED] of CLL contracts and [REDACTED] of Elis UK's contracts are awarded directly. This demonstrates that the tender data analysis presented above does not provide a complete picture of how the Parties compete with each other. Table 6 also shows that [REDACTED] of Elis UK's contracts are awarded through a FM. This is an area where CLL does not compete with Elis UK since, as mentioned in paragraph 120(f), FMs are reluctant to use smaller suppliers such as CLL.
131. The CMA has seen some evidence that the Parties compete with each other outside of formal tender processes. For example, one private hospital did not appear in the Parties' tender data but submitted to the CMA that it reviews its general linen and laundry services supplier annually and that CLL and Elis UK both took part in its most recent tender.<sup>110</sup> Furthermore, while Elis UK has a contract to serve [REDACTED] on a national basis (for which CLL did not compete), the CMA is aware that [REDACTED].<sup>111</sup> In addition, CLL currently services the [REDACTED].
132. Overall, the tender analysis shows that the Parties have competed against each other for NHS hospitals. While CLL is successful when it bids for contracts with volume requirements below [REDACTED] pieces per week, it is relatively

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<sup>110</sup> [REDACTED].

<sup>111</sup> Annex 15.23, Second S109 Response.

unsuccessful when competing for contracts with volume requirements above [REDACTED] pieces per week (and may not bid at all when it is closer to its capacity limits because it is already servicing one larger customer). The CMA also notes that the Parties compete against each other outside of formal tender processes, especially for private hospitals and care homes.

#### *The Parties' internal documents*

133. The CMA considered the extent to which the Parties view each other as close competitors based on their internal documents.
134. Although Elis UK's internal documents do not single out CLL as a particularly [REDACTED], CLL is mentioned [REDACTED] other suppliers of general linen and laundry services, such as [REDACTED].<sup>112</sup> Furthermore, commercial review documents prepared by Elis UK frequently highlight [REDACTED] to which they have lost customers, also describing [REDACTED].<sup>113</sup> Finally, an Elis UK document pertaining to an overview of NHS framework suppliers shows that [REDACTED] in the Midlands and East of England regions.<sup>114</sup>
135. With regard to CLL's internal documents, the CMA has seen internal CLL emails between senior staff members discussing the competition CLL is facing from Elis UK for private hospitals and care homes.<sup>115</sup>
136. Based on the evidence set out above, the CMA believes that the Parties' internal documents support the position that the Parties monitor each other and consider each other to be close competitors.

#### *Third party views*

137. The majority of third parties that responded to the CMA's merger investigation and were aware of CLL indicated that the Parties are close competitors for the supply of general linen and laundry services to healthcare customers in the Midlands region.<sup>116</sup> For example:
  - (a) one competitor said that the Parties compete vigorously with each other and that Elis UK's closest competitors were CLL and Synergy;<sup>117</sup>

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<sup>112</sup> Annex 22.03, Elis response; Internal Document Exhibits 001, 002, 008, 022, 027, 088, 090, 096, 098, 109, 116 and 118.

<sup>113</sup> Internal Document Exhibit ID 112 (slide 6), Internal Document Exhibit ID 115 (slide 22), Internal Document Exhibit ID 019 (slide 3).

<sup>114</sup> Annex 22.10, Elis Response.

<sup>115</sup> Annex 15.23, Second S109 Response.

<sup>116</sup> See paragraph 105 above.

<sup>117</sup> [REDACTED].

- (b) one competitor said that CLL and Elis UK are also close competitors in East of England and the Midlands;<sup>118</sup> and
- (c) another third party told the CMA that CLL would come across Elis UK in most tenders.<sup>119</sup>

#### *Conclusion on closeness of competition between the Parties*

138. CLL competes in fewer NHS hospital tenders than Elis UK. As a result, Elis UK competes in a much higher proportion of the tenders that CLL participates in (85%) than the other way around (22%). CLL's high win ratio also suggests that, where it does compete, it is a credible and effective competitor. However, CLL's win ratio is substantially lower for NHS hospitals with volume requirements above [REDACTED] pieces per week, compared to NHS hospitals with volume requirements below [REDACTED] pieces per week. While the Parties have not competed in a formal tender for private hospital or care home customers, they have competed outside formal tender processes in these segments.

#### *Competitive constraints from alternative suppliers*

139. Unilateral effects are more likely where customers have little choice of alternative supplier.<sup>120</sup> The CMA considered whether there are alternative suppliers of general linen and laundry services which would provide a competitive constraint on the Merged Entity.
140. Elis UK submitted that the Merged Entity will remain subject to significant competitive constraints from Synergy, Grosvenor London,<sup>121</sup> Express, Imperial, NHS Laundries, Fishers, the NLG,<sup>122</sup> and other regional operators servicing the healthcare customers (including Lincoln Laundry, Spinfast Laundry, Queens Drive Laundry, Telford Laundry, Leicester Linen and Laundry, Blackpool Laundry Company, East Anglia Laundry, and Blue Dragon). Elis UK submitted that the Merged Entity will also face competitive constraints from in-house supply, non-healthcare laundries and FMs.<sup>123</sup>
141. Elis UK also provided the following examples of linen and laundry services suppliers that started serving healthcare customers over the past five years:

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<sup>118</sup> [REDACTED].

<sup>119</sup> [REDACTED].

<sup>120</sup> [Merger Assessment Guidelines](#), paragraph 5.4.5.

<sup>121</sup> Owned by Synergy's sole shareholder.

<sup>122</sup> The NLG provides a mechanism for small regional operators to participate in larger and national customer accounts.

<sup>123</sup> Paragraph 28.17, Elis Response.



(i) CLL; (ii) Salisbury NHS; (iii) Crystal Laundry Services; and (iv) Telford Laundry.<sup>124</sup>

142. The CMA notes that of the competitors referred to by Elis UK, Synergy, Express, some NHS Laundries, Imperial, the NLG, and some other small suppliers of general linen and laundry services are active in the CMA's frame of reference. The CMA assessed the extent of the competitive constraint imposed by each of these suppliers below.

### *Synergy*

143. Synergy has four large scale healthcare laundries in Dunstable, Derby, Sheffield, and St Helens, all of which are up to 100 miles driving distance from CLL's plant in Burton-upon-Trent. These laundries are capable of laundering [REDACTED] pieces of laundry per week.<sup>125</sup>
144. The CMA's share of supply estimates (see Table 2) indicate that Synergy is the second largest competitor (albeit significantly smaller than Elis UK) with a [10-20]% share of supply with respect to all healthcare customers in the Midlands region.
145. The majority of third parties that responded to the CMA's merger investigation considered Synergy to be a significant competitor to both Parties, noting that Synergy is the only competitor that can compete with Elis UK on capacity<sup>126</sup> and that Synergy would be expected to compete for every contract that CLL bids for.<sup>127</sup>
146. Consistent with third party evidence, Elis UK's internal documents indicate that Elis UK views Synergy as a strong competitor. For example:
- (a) A document pertaining to an overview of NHS framework suppliers notes that Elis UK and Synergy are both listed on all frameworks and compete for the same contracts nationally (ie London, North East, North West, Midlands, East of England, South East and South West Regions);<sup>128</sup>
  - (b) A presentation on Elis UK's commercial review shows that Elis UK intended to bid [REDACTED];<sup>129</sup> and

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<sup>124</sup> Elis UK submitted that Crystal Laundry Services and Telford Laundry have entered the healthcare segment as a result of the Coronavirus (COVID-19) pandemic. Paragraph 6.7, IL Response.

<sup>125</sup> [REDACTED].

<sup>126</sup> [REDACTED].

<sup>127</sup> [REDACTED].

<sup>128</sup> Annex 22.10, Elis Response.

<sup>129</sup> Internal Document Exhibit 019 (slide 8).

- (c) Another internal document related to a bid for [REDACTED] identifies Synergy as the only threat to Elis UK, as [REDACTED] in 2017 when it was challenged by Elis UK. This document includes comparison between Elis UK and Synergy, stating that [REDACTED].<sup>130</sup>
147. CLL's internal documents also indicate that CLL views Synergy as a strong competitor. For example:
- (a) An email from [REDACTED] of CLL to [REDACTED] of CCS states that [REDACTED];<sup>131</sup> and
- (b) In an email exchange between Deloitte and the TSA, forwarded by [REDACTED] of the TSA to the TSA members, [REDACTED] identifies Elis UK and Synergy as the only two key suppliers at a national level.<sup>132</sup>
148. Based on the evidence set out above, the CMA believes that Synergy imposes a significant competitive constraint on the Parties in the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

### *Express*

149. Express is based in Blackpool which is just over 100 miles driving distance from CLL's plant in Burton-upon-Trent. Although Express does not service any NHS hospitals in the Midlands region, it does service NHS hospitals in the geographic frame of reference (in the North West region).
150. Express was mentioned by one third party in the CMA's market testing as a competitor to both the Parties. However, that third party was unable to assess how strong Express is as a competitor to the Parties as Express has only recently joined an NHS framework.<sup>133</sup>
151. The CMA notes that Express is listed as a supplier on the CCS framework in the East Midlands, East of England, West Midlands, and North West England regions.<sup>134</sup> Express is also listed on the NOECPC and Commercial Procurement Services Cheshire frameworks and competes for the same contracts as the other laundry service providers within these frameworks.<sup>135</sup>

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<sup>130</sup> Internal Document Exhibit ID 108.

<sup>131</sup> Annex 02.02 (Exhibit 02.13), Second Follow Up Response.

<sup>132</sup> Annex 02.02 (Exhibit 02.35), Second Follow Up Response.

<sup>133</sup> [REDACTED].

<sup>134</sup> [REDACTED].

<sup>135</sup> Annex 22.10, Elis Response.

152. Elis UK submitted that Express made approximately £1 million of revenue from NHS hospitals that lie up to 100 miles trucking distance from CLL's plant in 2019.<sup>136</sup>
153. Although a number of Elis UK's internal documents list Express as a competitor, they do not provide any details as to the strength of the competitive constraint imposed by it.<sup>137</sup>
154. Based on the evidence set out above, the CMA believes that Express imposes a limited competitive constraint on the Parties in the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

### *NHS Laundries*

155. According to the ERIC data provided by Elis UK, there are four NHS hospitals supplying general linen and laundry services to customers in the CMA's geographic frame of reference. These are:
- (a) Pennine Care, which is located at the Royal Oldham Hospital just over 70 miles driving distance from CLL's plant and serves customers in the North West of England and Yorkshire. It has no customers within the Midlands region. It generated approximately £1.1 million in revenue within the geographic frame of reference in 2019. Elis UK submitted that [REDACTED];<sup>138</sup>
  - (b) Salisbury NHS, which is located around 145 miles driving distance from CLL's plant. It generated approximately £490,000 in revenue within the geographic frame of reference in 2019 from one customer (Oxford University Hospital), which is on the edge of the geographic frame of reference (over 90 miles driving distance from CLL's plant);
  - (c) The Aintree University Hospital, which is just over 90 miles driving distance from CLL's plant. It serves customers on the edge of the geographic frame of reference in the North West of England and has no customers in the Midlands region. It generated approximately £400,000 in revenue in the geographic frame of reference in 2019; and
  - (d) The East Lancashire Hospitals, which are based at the Royal Blackburn Teaching Hospital, just over 100 miles driving distance from CLL's plant. They serve customers on the edge of the geographic frame of reference

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<sup>136</sup> Annex 2.02, Third S109 Response.

<sup>137</sup> Annex 22.01, Annex 22.03, 22.05, Internal Document Exhibit IDs 001, 002, 008, 022, 090, 096, 098, 102, 109, 112, 114, 115 and 116.

<sup>138</sup> Paragraph 5.4, IL Response. Elis UK has not substantiated its submission about [REDACTED].

in the North West of England, have no customers in the Midlands region and generated approximately £30,000 in revenue in the geographic frame of reference in 2019.

156. Mid-Cheshire NHS Laundry is also based within the CMA's geographic frame of reference but has recently exited the market and is now outsourcing its general linen and laundry service to Elis UK (see footnote 89). Furthermore, based on the ERIC data, Nottingham NHS Laundry is an in-house laundry that does not offer its services commercially.
157. A minority of third parties told the CMA that the NHS Laundries listed above provide some competitive constraint on the Parties in the Midlands region but were unsure about the extent of this constraint.
158. Although some of the Parties' internal documents list NHS Laundries as competitors, they do not provide any details as to the strength of the competitive constraint imposed by them.<sup>139</sup> Nevertheless, the CMA notes that Elis UK's presentation on the UK Healthcare textile market states: '16 NHS laundries remain open in England. These have an open market value of [redacted] "outsourced to them"'.<sup>140</sup>
159. In addition, in one of CLL's internal documents, an email exchange between Deloitte and the TSA states: '[the TSA members service] [v]irtually all of the NHS estate, at least 400 different Health Care Trusts, they also support most of the private operators and care homes which outsource, there are now very few NHS laundries'.<sup>141</sup>
160. Based on the evidence set out above, the CMA believes that, on the whole, NHS Laundries active up to 100 miles driving distance from CLL's plant in Burton-upon-Trent impose a limited competitive constraint on the Parties.

### *Imperial*

161. Imperial provides general linen and laundry services to healthcare customers and has one plant in Mansfield, which is approximately 37 miles from CLL's plant in Burton-upon-Trent. Healthcare customers account for around [redacted]% of Imperial's total revenue.<sup>142</sup> Imperial's core geographic regions are the East

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<sup>139</sup> Annex 22.01, Annex 22.03, Annex 22.05, Elis Response; Internal Document Exhibit IDs 001, 002, 007, 008, 022, 027, 088, 089, 090, 098, 102, 109, 114, 116, 118.

<sup>140</sup> Internal Document Exhibit ID 096.

<sup>141</sup> Annex 02.02 (Exhibit 02.35), Second Follow Up Response.

<sup>142</sup> [redacted].

Midlands and Yorkshire. Imperial services some NHS hospitals within 100 miles driving distance from CLL's plant in Burton-upon-Trent.

162. Imperial is not a member of any public procurement frameworks and is not audited (ie it does not meet the BS EN 14065 standard). [REDACTED].<sup>143</sup>
163. The CMA's estimates set out in Table 2 show that Imperial has a very low ([0-5]%) share of supply of general linen and laundry services to healthcare customers in the Midlands region.
164. Only one third party who responded to the CMA's merger investigation cited Imperial as being an alternative to both Elis UK and CLL.<sup>144</sup> This third party considered that Imperial competes closely with the Parties.
165. The CMA notes that Imperial is not mentioned in any of the Parties' internal documents.
166. Based on the evidence set out above, the CMA believes that Imperial imposes a very limited competitive constraint on the Parties in the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

#### *The NLG*

167. The NLG is a marketing organisation comprised of 28 independent laundries that are based throughout the country. The membership allows smaller laundries to compete for national contracts. All of the NLG's laundries have turnovers of between [REDACTED] per annum.<sup>145</sup>
168. [REDACTED].
169. [REDACTED].<sup>146</sup> [REDACTED].<sup>147</sup>
170. Only one third party that responded to the CMA's merger investigation listed the NLG as a competitor to Elis UK, describing it as an emerging competitor, especially in the private sector.<sup>148</sup> Further, the Parties' internal documents do not indicate that the NLG imposes a competitive constraint on the Parties.
171. Based on the above evidence, the CMA considers that the NLG imposes a very limited competitive constraint on the Parties in the supply of general linen

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<sup>143</sup> [REDACTED].

<sup>144</sup> [REDACTED].

<sup>145</sup> [REDACTED].

<sup>146</sup> [REDACTED].

<sup>147</sup> [REDACTED].

<sup>148</sup> [REDACTED].

and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

*Other small suppliers of general linen and laundry services*

172. Telford Laundry is located just over 40 miles driving distance from CLL's plant. It makes [redacted] providing services to [redacted].<sup>149</sup> Queens Drive Laundry is located in Bedford, approximately 95 miles driving distance from CLL's plant. Queens Drive Laundry told the CMA that it services [redacted], the majority of which are within a [redacted] radius of its plant.<sup>150</sup> It generates revenue of approximately [redacted] per year [redacted]. Blackpool Laundry Company is located approximately 118 miles driving distance from CLL's plant. Blackpool Laundry Company told the CMA that it services [redacted] and generates revenue of approximately [redacted] per year.<sup>151</sup> No third parties cited Telford Laundry, Queens Drive Laundry or Blackpool Laundry Company as alternatives to either of the Parties, and they are also not mentioned in any of the Parties' internal documents.
173. One of the third parties who responded to the CMA's merger investigation noted Clean Sheet as a competitor to the Parties and described it as a 'local independent specialist supplier in the sector especially care homes'.<sup>152</sup> The CMA has found two laundries with this name within 100 miles driving distance from CLL's plant in Burton-upon-Trent.<sup>153</sup> Elis UK's internal documents do not discuss Clean Sheet as a competitor and, according to the ERIC data, it does not service any NHS hospitals within the geographic frame of reference.
174. The CMA identified two additional small suppliers of linen and laundry services within the geographic frame of reference – [redacted] and [redacted]. Both of these suppliers have plants 80 and 90 miles' driving distance from CLL's plant in Burton-upon-Trent, respectively, and service care homes and private hospitals, but not NHS hospitals. None of the third parties that responded to the CMA's merger investigation cited [redacted] or [redacted] as alternatives to either of the Parties. [redacted] and [redacted] are also not mentioned in any of the Parties' internal documents.
175. Based on the above evidence, the CMA considers that the other small suppliers listed above impose a very limited competitive constraint on the Parties in the supply of general linen and laundry services to healthcare

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<sup>149</sup> [redacted].

<sup>150</sup> [redacted].

<sup>151</sup> [redacted]. The CMA is not aware of the proportion of this revenue being generated within the geographic frame of reference.

<sup>152</sup> [redacted].

<sup>153</sup> See the websites of [Clean Sheet Laundry Limited](#) and [Clean Sheet Laundry](#).

customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

*Conclusion on competitive constraints from alternative suppliers*

176. On the basis of the evidence presented above, the CMA believes that the Merged Entity will only face a significant competitive constraint from Synergy, and a limited constraint from other alternative suppliers of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

*Competitive constraint from in-house supply*

177. Elis UK submitted that it faces the possibility and threat of NHS hospitals switching between the external outsourced provision of linen and laundry services and in-house supply.<sup>154</sup>
178. As stated in paragraphs 87-89 above, the evidence available to the CMA indicates that for most healthcare customers the cost of switching to in-house supply is high and a small increase in the price of outsourced linen and laundry services is unlikely to outweigh the costs of setting up an in-house laundry.
179. However, in relation to care homes, the CMA notes that an Elis UK internal document suggests that around [90-100]% of care homes manage their own linen and laundry in-house.<sup>155</sup> Third party evidence has confirmed that most care homes carry out their own laundry in-house and it is relatively easy for care homes (particularly small care homes) to switch from outsourcing to self-supply.<sup>156</sup>
180. In light of the above, the CMA considers that the in-house supply will exert a very limited constraint on the Merged Entity, with the exception of care homes, where it is relatively easy for small care homes to self-supply.

*Conclusion on horizontal unilateral effects*

181. For the reasons set out above, the CMA believes that the Merged Entity will have a strong position in a concentrated market with a share of supply of [80-90]% and an increment of [10-20]% brought about by the Merger.

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<sup>154</sup> Paragraphs 28.19 and 28.20, Elis Response.

<sup>155</sup> Annex 22.01 (slide 12), Elis Response.

<sup>156</sup> [REDACTED].

182. Although CLL is a relatively small supplier of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent, the Parties compete closely, most significantly for smaller NHS hospitals with volume requirements below [redacted] pieces per week. While the Parties are also likely to compete for smaller private hospitals, the extent of head-to-head competition appears to be limited in practice, as many of Elis UK's private hospital customers are part of national contracts for which CLL does not tend to compete. The CMA found that there is limited competition between the Parties for larger NHS hospitals (ie those with volume requirements greater than [redacted] pieces per week), where CLL appears to only be a sporadic constraint. The CMA also found that, while the Parties compete for the supply of general linen and laundry services to care homes, the majority of care homes have the ability to self-supply.
183. The CMA found that there will not remain sufficient competitors post-Merger to effectively constrain the Merged Entity. In particular, while Synergy appears to be a significant constraint, there is no indication that other suppliers are (individually or in aggregate) a significant constraint.
184. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent. However, the CMA has taken into account that the Parties principally compete for smaller healthcare customers and that, in practice, the Merger will have limited impact on competition in relation to larger NHS hospitals and care homes.

### ***Barriers to entry and expansion***

185. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>157</sup>
186. Elis UK submitted that there are no significant barriers to entry or expansion and that the threat of entry by companies serving the hospitality segment poses a significant constraint on the Parties.<sup>158</sup> It does not consider there to be significant barriers to entry by suppliers to hospitality customers because:
- (i) most of the underlying products such as bedlinen and towels are the same;

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<sup>157</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

<sup>158</sup> Paragraph 31.4, Elis Response.



and (ii) the core washing and finishing equipment needed to supply healthcare and hospitality customers are the same.<sup>159</sup> Elis UK also submitted that CLL's costs for converting its hospitality focused site to one servicing healthcare customers was approximately £[REDACTED].<sup>160</sup>

187. Further, Elis UK submitted that a new entrant from hospitality into the supply of general linen and laundry services to healthcare customers would need to:<sup>161</sup>

(a) invest in plant and machinery. Elis UK estimated that the cost of converting an existing hospitality laundry would not be very high (around £[REDACTED]) and could be achieved within weeks; and

(b) secure the BS EN 14065 certification. Elis UK estimated that the cost of acquiring such a certification for an average sized plant would be around £10,000.

188. Elis UK submitted that complexity, costs and risks are much lower if the plant is to service lower volume healthcare customers.<sup>162</sup>

189. Third party responses indicate that, for non-healthcare laundries, barriers to entry and expansion in the supply of general linen and laundry services to healthcare customers (and in particular to NHS hospitals) are significant. For example:

(a) Several third parties submitted that 'there are many stringent rules and procedures and checks required when servicing healthcare customers compared to hospitality customers' and that commercial laundries must be compliant with HTM 01-04 and, in case of NHS hospitals, BS EN 14065.<sup>163</sup> One third party explained that 'the cost of auditing [BS EN 14065] is a barrier to entry' and that it would only commence the audit process if it was 'asked to tender and had a high chance of succeeding'.<sup>164</sup>

(b) Several third parties submitted that 'the only way to access' the NHS hospitals market was to get listed on the public procurement framework(s)<sup>165</sup> and that framework agreements are 'very off-putting' as it takes a long time to get listed on them and there is a lack of clarity

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<sup>159</sup> Paragraph 31.4, Elis Response.

<sup>160</sup> Paragraphs 7.4(a) and 7.10, IL Response.

<sup>161</sup> Paragraph 31.5, Elis Response.

<sup>162</sup> Paragraphs 7.4(a) and 7.10, IL Response.

<sup>163</sup> [REDACTED].

<sup>164</sup> [REDACTED].

<sup>165</sup> [REDACTED].

regarding 'what is on offer'.<sup>166</sup> Another explained that, if a general linen and laundry services provider is able to get listed on a public procurement framework, there are still significant barriers to expanding in the market as NHS contracts can last for as long as ten years.<sup>167</sup>

- (c) One non-healthcare laundry also submitted that this market is predominately supplied by Elis UK and Synergy, and because of their large size, economies of scale and knowledge of the sector, it is hard for other laundry service providers to enter.<sup>168</sup>

190. Third party responses also indicated significant barriers to entry and expansion for suppliers not currently active in the supply of general linen and laundry services. For example:

- (a) Several third parties submitted that the chances of a completely new entrant starting a business are very slim as they will lack a track record of work with healthcare customers.<sup>169</sup>
- (b) One third party explained CLL is one of the very few suppliers in the market that do NHS work and one of the few that has managed to reach this standard in the past 15 years.<sup>170</sup>

191. As noted in paragraph 45 above, the TSA has launched a scheme in response to the Coronavirus (COVID-19) pandemic to help non-healthcare laundries and smaller healthcare laundries attain an interim BS EN 14065 certification subject to commitment to work towards full accreditation. The CMA has received evidence of several non-healthcare laundries working or intending to work towards BS EN 14065 certification. However, most of them were uncertain of the timing of their entry or expansion in the healthcare sector. In particular:

- (a) [redacted] submitted that it is working towards BS EN 14065 so that it can bid for NHS work in the future. However, the CMA notes that at this stage [redacted] is a relatively weak competitor in the supply of general linen and laundry services to healthcare customers in the catchment area (see paragraph 174 above).<sup>171</sup>

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<sup>166</sup> [redacted].

<sup>167</sup> [redacted]. Third parties submitted that, while under the public procurement rules, the contracts last for four years, the customers can call-off contracts for up to seven years. However, the contracts running for a duration of five years in the first instance is the usual practice ([redacted]).

<sup>168</sup> [redacted].

<sup>169</sup> [redacted].

<sup>170</sup> [redacted].

<sup>171</sup> [redacted].

- (b) [redacted] told the CMA it intends to apply for BS EN 14065 accreditation [redacted], but it does not intend to serve customers in the Midlands region.<sup>172</sup>
- (c) [redacted] is working towards BS EN 14065 accreditation and is intending to serve customers in the Midlands region.<sup>173</sup> However, the CMA notes that [redacted] its plants ([redacted]) are more than 150 miles driving distance from CLL's plant in Burton-upon-Trent. On this basis, it is unclear how much NHS business it will win in the catchment area or the Midlands.
- (d) [redacted] told the CMA that it is also working towards BS EN 14065 accreditation. [redacted]. However, at this stage it has no plans to fully enter the healthcare market. [redacted].<sup>174</sup>

192. As noted in paragraph 190 above, even if these suppliers do enter or expand in the provision of general linen and laundry services to healthcare customers in a timely manner, these suppliers will still lack a track record of work with healthcare customers which may inhibit their expansion in the market.

193. For the reasons set out above, the CMA believes that entry or expansion would not be sufficient, timely and likely to prevent a realistic prospect of an SLC as a result of the Merger.

### ***Countervailing buyer power***

194. 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. The existence of countervailing buyer power will be a factor in making an SLC finding less likely.<sup>175</sup>

195. Elis UK submitted that the supply of general linen and laundry services to healthcare customers is characterised by strong buyer power. In particular, all healthcare customers can and do organise tenders to secure competitive terms, while NHS hospitals and other public healthcare customers can access public procurement frameworks to leverage collective bargaining power.<sup>176</sup>

196. The CMA notes that generally, an individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, and typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch. Given

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<sup>172</sup> [redacted].

<sup>173</sup> [redacted].

<sup>174</sup> [redacted].

<sup>175</sup> [Merger Assessment Guidelines](#), paragraph 5.9.1.

<sup>176</sup> Paragraph 8.2, IL Response.

that the Merger would result in a reduction in the number of credible competitors in a concentrated market, the CMA does not believe that this is the case.

### **Third party views**

197. The CMA contacted customers and competitors of the Parties, as well as framework providers. Some of these third parties raised concerns that the Merger could further reduce competition in an already concentrated market and result in increased prices for general linen and laundry services to healthcare customers. The CMA has taken these third-party comments into account in the competitive assessment above.

### **Conclusion on SLC**

198. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

### **Exceptions to the duty to refer**

199. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 22(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the ***de minimis* exception**).<sup>177</sup>

200. As set out above, the CMA believes that its duty to refer is engaged in relation to the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent. The CMA has considered below whether it is appropriate to apply the *de minimis* exception to the present case.

### **Markets of insufficient importance**

201. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, taking into account

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<sup>177</sup> [Mergers: Exception to the duty to refer](#), paragraph 7.

also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.<sup>178</sup>

*'In principle' availability of UILs*

202. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* exception where clear-cut UILs could, in principle, be offered by the parties to resolve the concerns identified.<sup>179</sup> In most cases, a clear-cut UIL will involve a structural divestment.<sup>180</sup> The CMA will not consider that UILs are in principle available where the CMA's competition concerns relate to such an integral part of a transaction that to remedy them via a structural divestment would be tantamount to prohibiting the merger altogether.<sup>181</sup> Nor will the CMA consider UILs to be in principle available where the minimum structural divestment that would be required to ensure the remedy was effective would be wholly disproportionate in relation to the concerns identified.<sup>182</sup>
203. The CMA considered whether its concerns regarding the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent could have been addressed in a clear-cut way by the divestment of the CLL business.
204. The Parties have submitted that there are no clear-cut UILs which could remedy any competition concerns save for a structural divestment of the entirety of the CLL business or the divestment of such a significant portion of it such that no viable business would remain, therefore being tantamount to prohibiting the Merger altogether.<sup>183</sup>
205. In this case, the CMA believes that, since CLL only has a single plant in Burton-upon-Trent, the divestment of the CLL business would be tantamount to prohibition.
206. Accordingly, the CMA does not consider that an 'in principle' clear-cut UILs are available in this case.

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<sup>178</sup> *Mergers: Exceptions to the duty to refer* (CMA64), 13 December 2018

<sup>179</sup> *Mergers: Exceptions to the duty to refer*, paragraph 28.

<sup>180</sup> *Mergers: Exceptions to the duty to refer*, paragraph 31.

<sup>181</sup> *Mergers: Exceptions to the duty to refer*, paragraph 32.

<sup>182</sup> *Mergers: Exceptions to the duty to refer*, paragraph 33.

<sup>183</sup> Paragraph 9.4, IL response.

## *Relevant factors*

207. Where the CMA concludes that clear-cut UILs are not available in principle, the CMA will consider the likely level of consumer harm by reference to a number of factors when deciding whether or not to apply the *de minimis* exception: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost by the merger, and the likely durability of the merger's impact.<sup>184</sup> The CMA will also consider the wider implications of a *de minimis* decision.<sup>185</sup> Each is considered in turn below.
208. Consistent with the approach set out in the CMA's guidance, the fact that one of these factors may point towards or against exercise of the discretion should not be regarded as decisive in any individual case. The CMA considers these factors in the round as part of its overall assessment of whether the expected impact of the merger in terms of customer harm is likely to materially exceed the public costs of a reference.<sup>186</sup>

## *Market size*

209. The starting point for the CMA's considerations is the size of the market(s) concerned. For the purposes of applying the *de minimis* exception, the market concerned is the affected market.<sup>187</sup> The affected market may be a subset of the relevant market as defined for the purposes of the competition assessment where it is clear that the size of any customer detriment will be experienced by only a proportion of the relevant market.<sup>188</sup>
210. Consistent with the CMA's guidance, the CMA has focussed on a subset of the relevant market on the basis that a substantial size of the customer detriment will be experienced by only a proportion of the relevant market. The CMA has focused in particular on contracts with NHS hospitals with volume requirements of up to [✂] pieces per week (see paragraph 123 above) and private hospitals up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.
211. Based on the data provided by the Parties and third parties, the CMA has estimated that the affected market size is approximately £[10-15] million.

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<sup>184</sup> *Mergers: Exceptions to the duty to refer*, paragraph 35.

<sup>185</sup> *Mergers: Exceptions to the duty to refer*, paragraphs 47-51.

<sup>186</sup> *Mergers: Exceptions to the duty to refer*, paragraph 36.

<sup>187</sup> *Mergers: Exceptions to the duty to refer*, paragraph 37.

<sup>188</sup> *Mergers: Exceptions to the duty to refer*, footnote 14

212. The CMA notes that the available evidence does not suggest that the market size may significantly expand (or contract) in the foreseeable future.

*CMA's belief regarding the likelihood of an SLC*

213. The CMA considers it appropriate to attach weight to the belief it holds regarding the likelihood of an SLC (ie whether its level of belief is on the 'may be the case' standard rather than on the 'is the case' (more likely than not) standard).<sup>189</sup>
214. In this case, the CMA's level of belief in relation to the market concerned is higher than the minimum required to make a reference. In particular, the market for the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent is concentrated and the Parties' combined share of supply will be high post-Merger (with the Merged Entity being the largest supplier). The Parties compete closely with each other and there will not remain sufficient competitors post-Merger to effectively constrain the Merged Entity.
215. The CMA notes, however, that this strong belief that the Merger will have an anti-competitive effect applies only to smaller hospitals. As set out in paragraph 182, the CMA considers that the impact of the Merger is expected to be more limited in relation to larger NHS hospitals (ie those with volume requirements of above [✂] pieces per week) and care homes.

*Magnitude of competition lost*

216. In accordance with its guidance, the CMA has considered the magnitude of competition lost by the Merger. The CMA notes the Merger involves two of the largest players in a concentrated market, albeit that the market position of CLL is modest (at [10-20]%).
217. The CMA has also had regard to whether a substantial proportion of the likely detriment would be suffered by vulnerable customers.<sup>190</sup> While the Parties' direct customers are hospitals (which would typically not be considered to be vulnerable customers), the CMA has also considered the potential impact on the end-users of those hospitals (who may be vulnerable). The CMA notes, in this regard, that NHS expenditure on general linen and laundry services accounts only for a minimal proportion of overall NHS expenditure, and

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<sup>189</sup> [Mergers: Exceptions to the duty to refer](#), paragraph 38.

<sup>190</sup> [Mergers: Exceptions to the duty to refer](#), paragraph 44.

therefore considers that any detriment is not liable to have a material impact on vulnerable consumers.<sup>191</sup>

### *Durability*

218. The CMA may not be sufficiently confident that entry would be timely, likely and sufficient such as to prevent competition concerns from arising in the first place but may believe that barriers to entry are such that effective new entry is likely ultimately to occur.<sup>192</sup>
219. As set out in paragraphs 185-193, the CMA did not identify evidence of sufficiently likely and timely entry or expansion into the relevant market. However, the CMA believes that the costs of entry are not prohibitive and that the Coronavirus (COVID-19) pandemic may help promote entry (at least in the short-term) by lowering regulatory barriers to entry and providing an incentive for hospitality suppliers to diversify their business.

### *Wider implications of a 'de minimis' decision*

220. The CMA is less likely to apply the *de minimis* exception where it believes that the merger is one of a potentially large number of similar mergers that could be replicated across the sector in question.<sup>193</sup>
221. Given the nature of the market concerned, the CMA considers it possible that similar mergers could potentially be replicated in this sector. However, the CMA has seen no evidence of Elis UK's intention to proceed to similar acquisitions in the future or any other similar mergers being in contemplation in this sector. The CMA notes that its consideration of the *de minimis* exception has, on the facts of this case, primarily focussed on the impact on smaller hospital customers in a limited geographical area of the UK and should not be considered of broader application.
222. As regards the economic rationale for the Merger, the evidence available to the CMA does not suggest that the Merger was solely or primarily motivated by the acquisition of market power. The available evidence indicates that the Merger was an opportunistic transaction driven by the seller's desire to sell

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<sup>191</sup> [https://www.kingsfund.org.uk/sites/default/files/2018-11/budget-2018-what-it-means-for-health-and-social-care\\_0.pdf#page=3](https://www.kingsfund.org.uk/sites/default/files/2018-11/budget-2018-what-it-means-for-health-and-social-care_0.pdf#page=3).

The overall NHS England budget in 2018-19 was £129 billion. Based on the ERIC data, the total NHS England's expenditure on linen and laundry services (including surgical gowns and textiles) was £195 million in 2018-19. The expenditure in relation to general linen and laundry services would be even lower and constitute a very small percentage of the total NHS England budget (c. 0.15%). The same holds true for the supply of general linen and laundry services to healthcare customers up to 100 miles driving distance from CLL's plant in Burton-upon-Trent.

<sup>192</sup> *Mergers: Exceptions to the duty to refer*, paragraph 46.

<sup>193</sup> *Mergers: Exceptions to the duty to refer*, paragraph 48.



the CLL business. Further, the CMA's assessment of the valuation of the transaction and has found that it is broadly consistent with CLL's revenues and that there is no basis to believe that any price premium has been paid for removing CLL as a competitor from the market.

#### *Conclusion on the application of the de minimis exception*

223. Taking all of the above factors into consideration, on balance the CMA believes that the market concerned in this case is not of sufficient importance to justify the making of a reference. As such, the CMA believes that it is appropriate for it to exercise its discretion to apply the *de minimis* exception in accordance with section 22(2)(a) of the Act.

#### **Decision**

224. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom. However, pursuant to section 22(2)(a) of the Act, the CMA believes that the market concerned is not of sufficient importance to justify the making of a reference.

**Colin Raftery**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**23 October 2020**

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<sup>i</sup> In response to a clarification from the Parties, paragraph 30 is intended to read "The [X] tender was challenged and the Trust made a direct award to CLL".