Anticipated acquisition by Montagu Private Equity LLP where it agreed to (i) acquire certain ParentPay (Holdings) Limited (PPH) securities, and (ii) sell its shares in Capita ESS Limited (ESS) to PPH, in consideration for further securities in PPH.

Decision on relevant merger situation and substantial lessening of competition

ME/6921/20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 July 2021. Full text of the decision published on 24 August 2021.

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

SUMMARY

1. On 14 December 2020, funds managed and/or advised by Montagu Private Equity LLP (collectively referred to as **Montagu**) acting through Tiger Topco Limited, ParentPay (Holdings) Limited (**PPH**) and the shareholders of PPH agreed to create a joint venture combining PPH and one of Montagu's subsidiaries, Capita ESS Limited (**ESS**) (the **Merger**). Montagu and PPH 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 Montagu, ESS and PPH is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. ESS and PPH overlap in the supply of parental engagement software to schools in the UK. ESS also supplies management information system

software (**MIS**) to UK schools and PPH supplies payments software to UK schools. The CMA has therefore assessed the impact of the Merger in the following frames of reference:

(a) Supply of parental engagement software to schools in the UK

(b) Supply of MIS to schools in the UK; and

(c) Supply of payments software to schools in the UK.

Horizontal unilateral effects in the supply of parental engagement software

4. The CMA investigated whether the Merger could lead to horizontal unilateral effects in the supply of parental engagement software given that both Parties are active in the supply of such software.

5. The CMA found that, while the Parties are close competitors in the supply of parental engagement software to schools in the UK, they have a modest combined share of supply of under 15%. The Parties will continue to be constrained by the two largest suppliers ParentMail (IRIS Group) and Teachers2Parents (Community Brands), as well as Juniper and School Cloud which will have similar shares of supply to the Merged Entity and a large number of smaller suppliers. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.

Conglomerate effects in the supply of MIS and payments software

6. MIS software interacts with a variety of complementary software such as payments, parental engagement and other types of software (eg accounting). In order to operate effectively these complementary software products need to access the data that is stored in a school's MIS.

7. Montagu's MIS software (SIMS) is used by the large majority of UK schools and PPH's main payments software (ParentPay) is the leading payments software among UK schools. The CMA also found that only a limited number of schools have switched MIS in the past (albeit this is slowly changing for particular types of schools) due to considerable switching costs, eg the need to provide staff training, the risks associated with large data transfers and time-consuming switching processes. Switching payments software has also been limited.

8. Various third parties raised concerns with the CMA that the Merged Entity would foreclose competitors by worsening the quality and/or increasing prices

for the integration with SIMS and PPH’s payments software or stopping access to those products for competing suppliers altogether.

9. The CMA has therefore considered whether the Merged Entity could use:

   (a) PPH’s payments software to foreclose competing MIS software providers to protect the position of SIMS; and/or

   (b) SIMS to foreclose competing providers of payments software.

Foreclosure of competing MIS software providers

10. In relation to the potential foreclosure of competing MIS software providers, the CMA found that payments software is an important complementary product to MIS software. PPH’s payments software (ParentPay) is also the leading product in the market. The CMA therefore could not exclude that the Merged Entity would have the ability to engage in total foreclose of other MIS software providers by preventing them from integrating their software with ParentPay (ie only offering ParentPay to schools using SIMS).

11. However, the CMA found that the Merged Entity would lack the incentive to foreclose rival MIS software providers in this way. The direct effect of total foreclosure is that a PPH payments customer that is currently using MIS software other than SIMS would be forced to make a choice between switching from their current MIS to SIMS or switching away from PPH. Due to the relatively higher barriers to switching MIS software, the declining competitiveness of SIMS, and the availability of alternative payments software with equivalent functionality to PPH’s payments software, the CMA considers that the majority of such customers would switch away from PPH as a result of such a foreclosure strategy.

12. Although foreclosure might have some benefits, for example by reducing churn of SIMS customers, taking account of current churn rates and the number of customers that currently use PPH’s payment software with a different MIS to SIMS, the CMA does not consider that the likely reduction in churn would be sufficient to offset the losses of PPH payments customers. There are also additional costs that would reduce the Merged Entity’s incentive to engage in such a strategy. For example, such a strategy would prevent PPH from competing to supply schools that use a MIS other than SIMS and that currently have no payments software. The number of schools using payments software is growing rapidly and so the loss of potential customers could be significant (there are approximately 2,000 non-SIMS schools that do not have payments software).

13. The CMA also investigated whether the Merged Entity would have the ability and incentive to partially foreclose rival MIS software providers, such as through reducing the quality of the integration between PPH's payments software and rival MIS software and/or deciding to only offer certain payments functionality to SIMS customers.

    (a) As regards ability, the CMA has doubts as to whether the Merged Entity would be able to partially foreclose rival MIS software providers. This is because the CMA considers differences in functionality or the level of integration between PPH's payments software and a MIS may not be enough to influence a school's choice of MIS.

14. On a cautious basis, however, the CMA considered whether the Merged Entity would have the incentive to engage in partial foreclosure and found that it would not. In particular, the CMA considered that in order for partial foreclosure to generate some benefit for the Merged Entity, any changes in integration and/or functionality would need to be significant enough to affect a customer's decision about its MIS (most likely by discouraging a customer from switching away from SIMS if they also currently use PPH's payments software). However, the CMA considers that any change that is significant enough to affect a customer's decision whether to switch from SIMS, would also risk losing customers that currently use PPH's payments software with a different MIS (bearing in mind the higher costs of switching MIS and the availability of other payments software). It may also discourage schools that do not currently use payments software that use non-SIMS MIS from using PPH's payments software in the future. The CMA considers that these losses would outweigh the benefits of a partial foreclosure strategy.

15. The CMA therefore believes that there is no realistic prospect that the Merged Entity would have the incentive to engage in the foreclosure of competing MIS providers.

Foreclosure of competing payments software providers

16. In relation to this theory of harm, the CMA considered whether the Merged Entity would have the ability and incentive to foreclose rival payments software providers, such as by not providing access to data stored on SIMS to competing providers of payments software (total foreclosure), or by reducing the quality of the integration between SIMS and competing payments software or increasing prices for data access (partial foreclosure).

17. The large majority of schools in the UK use SIMS as their MIS, and payments software requires access to data stored on a MIS to function. The CMA found that the Merged Entity would not be able to engage in total foreclosure (ie

preventing schools that use rival payments software from using SIMS) because the Merged Entity will be under a legal obligation to offer manual access to data stored in SIMS. However, the CMA found that the Merged Entity would have the ability to prevent payments software competitors from accessing data stored in SIMS via an API. The Merged Entity could also contractually restrict aggregators from sharing data with specific third party software suppliers. This would leave payments software competitors with the only option of manually downloading data from SIMS. As this is less attractive (time consuming), the CMA considers that the Merged Entity would have the ability to engage in partial non-price foreclosure.The CMA does not consider that the Merged Entity would have the ability to foreclose rival payments software providers through increasing the cost of API access given the low value of these fees relative to software providers' revenues.

18. The CMA also found that the Merged Entity would not have the incentive to foreclose rival payments software providers. While SIMS has a large share of supply, SIMS is much more profitable than PPH's payment software and the Merged Entity would risk losing a significant proportion of SIMS customers that do not use PPH's payments software, in particular given that SIMS has been losing customers in recent years. The CMA considers that this significantly dampens the Merged Entity's incentive to engage in a foreclosure strategy. In addition, the CMA considers that such a strategy would be contrary to the rationale of the Merger which is to reduce churn away from SIMS.

19. The CMA therefore believes that there is no realistic prospect that the Merged Entity would have the incentive to engage in the foreclosure of competing payments software providers.

20. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects.

21. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

Montagu

22. Montagu Private Equity LLP is a private equity investment management firm. Funds which are managed and/or advised by Montagu Private Equity LLP (collectively referred to as **Montagu**) control a number of portfolio companies

active in a range of industries. In 2020, these portfolio companies generated global turnover of £[✂] and UK turnover of £[✂].[1]

23. Montagu's portfolio companies include ESS[2] a supplier of software to UK schools. In 2020 ESS generated global turnover of £[✂][3] and UK turnover of £[✂].[4]

PPH

24. ParentPay (Holdings) Limited (**PPH**) supplies software to UK schools and caterers. In 2020 PPH generated global turnover of £[✂] and UK turnover of £[✂].[5]

Transaction

25. On 14 December 2020, Tiger Topco Limited (a company indirectly owned by Montagu, (**Tiger Topco**)), PPH and the shareholders of PPH entered into a share purchase deed (**PPH SPD**),[6] pursuant to which they agreed to create a joint venture combining PPH and ESS.

26. Under the PPH SPD:

    (a) Tiger Topco will acquire certain PPH shares from the shareholders of PPH; and

    (b) Tiger Topco will sell its shares in ESS to PPH and PP Newco (a newly formed subsidiary of PPH) in consideration for further shares in PPH or PP Newco.

    (the **Merger**).

27. As a result of the Merger, Montagu (through Tiger Topco) will hold shares in PPH, alongside the existing PPH shareholders, and also hold shares in PP Newco. Specifically:

    (a) the existing PPH shareholders will hold [✂]% of the issued voting shares in PPH, with Montagu (through Tiger Topco) holding the remaining [✂]%.

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[1] Final Merger Notice submitted to the CMA on 14 May 2021 (**FMN**), paragraph 3.5 and Table 5.
[2] A company indirectly owned by Montagu (Tiger UK Bidco Limited) purchased 100% of the shares of ESS (previously owned by Capita plc) on 1 February 2021. Capita plc agreed to carve SIMS Pay (ESS's payments software solution) out of ESS prior to Montagu's purchase of ESS. See further 'ESS Transaction' section below.
[3] Calculated by combining ESS' turnover in the UK and in the European Economic Area. FMN, Table 5.
[4] FMN, paragraph 3.8 and Table 5.
[5] FMN paragraph 3.17 and Table 5.
[6] FMN, Annex 002.

(b) PPH in turn will hold [✂]% of the shares in PP Newco, with Montagu (through Tiger Topco) holding the remaining [✂]%.[7]

28. As a result of the Merger, ESS will become an indirect wholly-owned subsidiary of PP Newco (and, in turn, an indirect subsidiary of PPH). Following the Merger, PPH, PP Newco and each of their subsidiaries (including ESS) will comprise a new corporate group, with PPH as the overall holding company (the **Enlarged PPH Group**).

29. A diagram showing the pre and post-Merger structure of ESS and PPH and the Parties' voting rights is provided in Figure 1.

Figure 1: the pre and post-Merger structure

Pre-Merger **Post-Merger**

[✂]

Source: FMN, Figure 1.

ESS Transaction

30. One of the conditions to close the Merger is the completion of Montagu's acquisition of ESS from Capita plc (**Capita**) (the **ESS Transaction**),[8] pursuant to a share and IPR business purchase agreement entered into between Tiger UK Bidco (a wholly owned subsidiary of Tiger Topco), Capita and certain Capita group companies on 14 December 2020 (the **ESS SPA**).[9] This condition has been satisfied, as the completion of the ESS Transaction took place on 1 February 2021.[10]

31. Prior to the ESS Transaction, ESS also owned a payments software solution called SIMS Pay. SIMS Pay has been retained by Capita.

Transaction rationale

32. The Parties submitted that they intend to use their combined expertise and network to support and accelerate innovation both within the ESS product portfolio and amongst third party application developers. To this end the Parties propose to:[11]

[7] FMN, paragraph 2.9 and Figure 1.
[8] PPH SPD, clause 7.1.1 (FMN, Annex 002).
[9] FMN, Annex 004.
[10] FMN, paragraph 2.5
[11] FMN, paragraph 2.27 and 20.03

(a) modernise SIMS from a server-based software solution (SIMS 7) to a cloud-based software solution (SIMS 8). The roll out of SIMS 8 has faced several delays under Capita's ownership;

(b) reduce the churn of SIMS customers;

(c) roll out other value-added services that improve school productivity and reduce the total ownership costs of ESS products; and

(d) use their combined expertise and network to pursue investment opportunities in Continental Europe.

33. The CMA considers that the Parties' internal documents broadly confirm the above rationale.[12]

Procedure

34. The Merger was considered at a Case Review Meeting.[13]

Jurisdiction

35. The Act requires the CMA to assess whether arrangements are in progress or contemplation which, if carried into effect, will result in a relevant merger situation.[14] A relevant merger situation is created where two or more enterprises cease to be distinct, and either the turnover or the share of supply test is met.[15]

Enterprises ceasing to be distinct

36. The CMA believes that the Merger (as described in paragraphs 26-29) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.[16]

37. Two enterprises cease to be distinct if they are brought under common ownership or control.[17] Control is not limited to the acquisition of outright voting control and includes the ability to exercise material influence over a

[12] See for example: FMN Annex 019, pages 12-13 and FMN Annex 031, page 2.
[13] *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), December 2020, part 5.
[14] Section 33(1)(a) of the Act.
[15] Section 23 of the Act.
[16] Section 33(1)(a) of the Act.
[17] Section 26 of the Act.

company's policy.[18] Enterprises are also treated as being under common control if they are enterprises of interconnected bodies corporate.[19]

38. The Parties submitted that the Merger will result in ESS and PPH (currently separate enterprises) ceasing to be distinct, and in Montagu and PPH jointly controlling ESS.[20]

39. The CMA considers that:

(a) Each of PPH, ESS and Montagu is an enterprise, as each carries out activities for gain or reward.[21]

(b) As a result of the Merger, Montagu will hold [✂]% of the voting rights in PPH and [✂]% of the voting rights in the Enlarged PPH Group.[22] Further, under the terms of a shareholders' agreement to be entered into on completion (**SHA**),[23] Montagu and certain PPH shareholders will each appoint [✂] directors to PPH's board,[24] and Montagu will acquire veto rights over certain reserved matters of the PPH board that require the consent of at least one Montagu director.[25] The CMA considers that these veto rights, in particular over the approval of the annual business plan, and the appointment of certain senior management,[26] as well as Montagu's share of voting rights, confer on Montagu the ability to materially influence the policy of PPH.[27]

(c) Also as a result of the Merger, ESS will become a wholly-owned subsidiary of PP Newco (a subsidiary of PPH).[28] ESS and PPH will therefore become interconnected bodies corporate under the Act.[29]

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[18] Section 26(3) of the Act. See also *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraphs 4.20-4.21.
[19] Section 26(2)(a) of the Act.
[20] FMN, paragraphs 2.4 and 5.1.
[21] An enterprise is defined under section 129(1) of the Act as the activities, or part of the activities, of a business. A business includes a professional practice and any other undertaking which is carried on for gain or reward, or which supplies goods or services otherwise than free of charge. See also *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraphs 4.10-4.19.
[22] Montagu's voting rights in the Enlarged PPH group will be comprised of a [✂]% shareholding held by Tiger Topco directly in PP Newco and a [✂]% shareholding in PP Newco held indirectly (via Tiger Topco's direct [✂]% shareholding in PPH). FMN, paragraph 2.9.
[23] FMN, Annex 003. The SHA will be entered into between Tiger Topco, PPH, PP Newco and the relevant shareholders of PPH and PP Newco.
[24] The board of PPH shall consist of [✂]. [✂]. Clause 2.1, 2.3, 2.5, 2.9, 2.10 and 2.17 of the SHA (FMN, Annex 003).
[25] SHA, clause 5.1; Part 2 of Schedule 4, clause 1.1 (FMN, Annex 003).
[26] SHA, Part 2 of Schedule 4, paragraphs 4-5 (FMN, Annex 003).
[27] *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraphs 4.25-4.26, 4.29 and 4.32-4.34.
[28] Within the meaning of "subsidiary" and "wholly-owned subsidiary" under section 1159(1) and section 1159(2) of the Companies Act 2006, respectively. PPH will own [✂]% of PP Newco and hold a majority of the voting rights ([✂]%) in the Enlarged PPH Group. FMN, Figure 1 and paragraph 2.9.
[29] Section 129(2)(a) of the Act.

Accordingly, pursuant to section 26(2) of the Act, ESS and PPH will be enterprises brought under common control.

40. The CMA therefore considers that, as a result of the Merger, PPH will cease to be distinct from each of ESS and Montagu.

Turnover test

41. The turnover test requires the value of the turnover in the UK of the enterprise being taken over to exceed £70 million.[30] This value is determined by taking the total UK turnover of the enterprises which cease to be distinct, and deducting the UK turnover of any enterprise which continues to be carried on under the same ownership and control.[31]

42. Of the enterprises ceasing to be distinct as a result of the Merger, Montagu (including its portfolio companies other than ESS) will continue to be carried on under the same ownership and control. Accordingly, the UK turnover of the enterprises being taken over is the combined UK turnover of ESS and PPH (disregarding the turnover of Montagu, as the enterprise remaining under the same ownership and control).[32]

43. In 2020, PPH's UK turnover was £[✂], and ESS's UK turnover was £[✂]. The CMA therefore considers that the turnover test is satisfied as the combined UK turnover of PPH and ESS exceeds £70 million.

Conclusion on jurisdiction

44. For the reasons set out above, the CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

45. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 14 May 2021 and the statutory 40 working day deadline for a decision is therefore 12 July 2021.

Counterfactual

46. The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie, the counterfactual).[33] In an anticipated merger

[30] Section 23(1)(b)(i) of the Act.
[31] Section 28(1)(a) of the Act. Alternatively, under section 28(1)(b) of the Act, if no enterprise continues to be carried on under the same ownership and control, the relevant turnover is the turnover in the UK which, of all the turnovers concerns, is the turnover of the highest value.
[32] Section 28(1)(a) of the Act.
[33] *Merger Assessment Guidelines* (CMA129), 18 March 2021, paragraph 3.1.

the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.[34]

47. In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.[35]

48. The Parties submitted that the CMA should assess the competitive effects of the Merger according to the prevailing conditions of competition.[36]

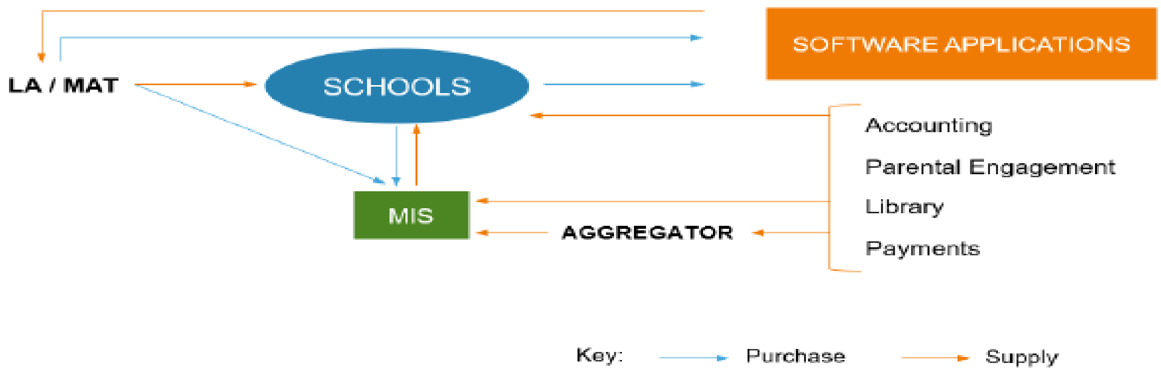
49. The CMA has not received any evidence that indicates that a different counterfactual is more appropriate. As the ESS Transaction was not conditional on the Merger completing, and has already completed, the CMA considers that the prevailing conditions of competition include the market structure following the completion of the ESS Transaction, ie where Montagu owns ESS (but not SIMS Pay).

Background

The education software sector

50. Montagu and PPH supply education software solutions in the UK. Education software solutions are used to support a range of day-to-day operational and management activities undertaken by schools. An overview of the UK education software sector is provided in Figure 2 below.

Figure 2: Overview of the education software sector



Source: Final Merger Notice (**FMN**), Figure 2.

[34] *Merger Assessment Guidelines*, paragraph 3.2 and footnote 54.
[35] *Merger Assessment Guidelines*, paragraph 3.9.
[36] FMN, paragraph 11.1.

51. Schools are the primary customers for these education software solutions. State-funded schools can be local authority[37] (**LA**) schools (**LA-maintained**) or academy trusts. LAs may provide support for setting up, training staff, and running the software used by LA-maintained schools. Academy trusts have autonomy and are run independently of an LA. Individual academies can also group together into multi academy trusts (**MAT**s). MATs typically choose a preferred supplier for their education software solutions centrally.[38]

The Parties' products

52. Montagu's main product is ESS' SIMS, which is a MIS. A MIS is a key education software product used to record a large volume of staff, student and parent/carer information (including personal details of students, attendance records, and academic performance). All schools are required by law to have a MIS.

53. ESS' current MIS (SIMS 7) runs on a school's own computer system.[39] Over the last decade, a number of suppliers have developed cloud-based MIS. SIMS has been developing its own cloud-based product (SIMS 8) for a number of years.[40] The Parties submitted that ESS has started to roll out SIMS 8 to primary schools but [✄].[41]

54. Data stored in a MIS is used in a wide range of complementary software. Complementary software 'reads' the data held in the MIS software in order to perform additional tasks the MIS cannot do. For example, pupil admission, attendance and assessment data, combined with parent contact details stored in a MIS may be used by a messaging service provider to send messages to parents about the performance of their child at school. The complementary software may also 'write' back data into the MIS, for example email responses from parents.[42]

55. PPH and ESS both offer a number of complementary software products. Of these complementary products, payments software and parental engagement software are particularly relevant to the CMA's assessment of the Merger.

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[37] LAs are public entities that are responsible for all the public services and facilities in a particular area within the UK.
[38] FMN, paragraph 12.21
[39] SIMS 7 can be provided as an internet hosted product but requires a stable internet connection. Cloud-based software can be accessed over a range of connectivity solutions. The Parties' response to question 9 of the CMA's Request for Information dated 10 March 2021.
[40] Competitors have been selling cloud-based systems for over a decade ([✄] call note). However, SIMS 8 is now envisaged to be rolled out on a large scale in a number of years.
[41] See for example, FMN, Annex 012, page 8 and FMN, Annex 019, page 32.
[42] FMN, paragraph 12.65 and 12.83.

(a) Payments software enables parents to make secure online payments to schools and allows schools and parents to keep records of payments made and due. PPH offers two products with payments functionality: ParentPay and Schoolcomms.[43] ESS does not offer payments software.

(b) Parental engagement software enables communications between schools and parents. PPH offers Schoolcomms and ESS offers InTouch and Parent App.[44]

56. SIMS' MIS software accounted for the large majority (almost [80-90]%) of ESS' 2019 and 2020 revenues while its parental engagement software accounted for less than [0-5]%. PPH's payments software accounted for the majority of PPH's revenue in 2019 in 2020 ([60-70]% and [50-60]% respectively), while its parental engagement software accounted for [10-20]% in 2019 and [10-20]% in 2020.[45]

Interaction between different types of software

57. In order for these complementary software products to operate effectively they need to be able to easily access the data held in a school's MIS. Access can be (a) through a native application programming interface (**API**), (b) indirectly through an aggregator, or (c) through manual data download and upload.[46]

58. Aggregators are third parties who develop a single API that supports access to data from a broad range of MIS. This allows a complementary software provider to develop an integration with the aggregator's API rather than each individual MIS.

59. Of the three methods mentioned above, the CMA understands that native APIs allow for the greatest level of integration between MIS software and complementary software products.

(a) The Parties submitted that '[n]ative APIs provide a wider range of data than that supplied by aggregators who only collect a limited subset of MIS data'.[47]

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[43] FMN, paragraph 12.119.
[44] FMN, paragraph 12.45
[45] FMN, Table 7 and Table 8; Draft Merger Notice (**DMN**) submitted to the CMA on 23 February 2021, Table 2 and Table 3. Particularly for PPH, the CMA considers that 2019 revenue is more indicative of its relative competitive position because PPH generates revenue from transaction fees and due to the Covid-19 pandemic there were far fewer payments made to schools during 2020.
[46] FMN, paragraph 12.11.
[47] FMN, paragraph 12.83.

(b) PPH submitted that native APIs may provide more frequent updates than aggregators and allow for tighter integration than aggregators.[48]

(c) An EY due diligence report states that 'most large 'best in suite' 3rd party applications have direct integrations with key MIS providers'.[49]

(d) Third parties consider that native APIs allow for greater integrations between software products and are important to enable them to compete.[50]

60. The CMA nevertheless understands that using aggregators provides some benefits to complementary software providers and customers.

(a) The Parties submitted that '[a]ccessing the MIS indirectly via an aggregator is advantageous insofar as an application developer does not need to write separate code for each MIS API, with development limited to interfacing with the aggregator's API'.[51] Some developers (in particular smaller developers) may therefore prefer to integrate with MISs via aggregators to keep costs down.

(b) A third party stated that for schools, there is a significant benefit to using an aggregator in circumstances where there is no native API between the MIS and complementary software, because it removes the need to retrieve data manually and ensures data consistency and integrity.[52]

Switching rates

61. The CMA has received evidence that switching between MIS providers has traditionally been limited (approximately 4% of all schools per annum)[53] for a number of reasons.

(a) First, LAs have traditionally required LA-maintained schools to use a single MIS provider. LAs also employ people to provide technical support to LA-maintained schools. This technical support is typically only provided for a single MIS supplier, which adds a further barrier to those schools switching suppliers. This has resulted in most LA-maintained schools using SIMS.[54] This is slowly changing with some LAs supporting multiple software providers, but many LA-maintained schools are still limited in

48 PPH response to question 2 of the CMA's s.109 notice dated 23 April 2021.
49 FMN, Annex 013, page 115.
50 [✂] call note, [✂] response to competitor questionnaire, [✂] response to competitor questionnaire.
51 FMN, paragraph 12.82.
52 [✂] call note.
53 FMN, Annex 019, page 44.
54 FMN, Annex 019, page 25.

their choice.[55] An LA-maintained school that decides to switch to an alternative software provider that is not selected by their LA, may also have to continue paying for the software their LA has selected (via their LA) even after switching to another provider.

(b) Second, a number of third parties told the CMA that switching can involve staff training costs and changes to other software (such as timetabling software).[56]

(c) Third, the MIS is the core software system schools need to run, as it stores key data and runs workflows. School leaders, teachers, administration staff, parents, and students interact with the MIS every day.[57] School staff expect switching MIS providers to be time consuming and perceive significant risks around transferring data to another system.[58]

62. However, the evidence indicates that schools are increasingly willing to switch from SIMS' MIS to cloud-based alternatives. Market feedback indicates that this has been predominately driven by academies and MATs, who have greater autonomy regarding their choice of supplier. However, some LAs have also provided schools with greater flexibility to choose MIS provider and switching has occurred where this is the case. The increased willingness of schools to switch MIS provider is illustrated by the decline in SIMS' share of schools from [80-90]% in October 2017 to [70-80]% in October 2020.[59]

63. There are also some barriers to switching payments software provider because it requires all parents of students at the school to switch to using the new payments software.[60]

Frame of reference

64. Market definition is an analytical tool that forms part of the analysis of the competitive effects of a merger. It involves identifying the most significant alternatives available to customers of the merging firms, but it is not an end in itself and the CMA's competitive assessment can consider constraints posed

[55] FMN, Annex 019, page 25.
[56] [✂]'s questionnaire response, [✂] call note, and [✂] call note.
[57] [✂] call note.
[58] FMN, Annex 012, pages 48 and 49. See also Annex 076, page 1, which highlights that for secondary schools it may be even more difficult to switch: [✂]'
[59] This is based on state schools in England, using the Tableau data set provided by [✂].
[60] [✂] call note, [✂] call note, and [✂] call note. The CMA considers that the difficulty competitors have had gaining market share in the supply of payments software is consistent with significant barriers to entry and expansion. In addition, this is consistent with internal documents, eg an L.E.K. due diligence report which [✂]. This report also states that [✂]. See FMN, Annex 015, page 4.

by firms ‘outside’ the market or differences in the competitive constraints of firms ‘in’ the market.[61]

65. The Parties overlap in the supply of parental engagement software to schools in the UK. As noted above, ESS also supplies MIS to UK schools and PPH supplies payments software to UK schools.

Product scope

66. The CMA’s approach to product scope is to start with the relevant products of the merging firms and to pay particular regard to demand-side factors. The CMA may also consider supply-side factors.[62]

67. The Parties submitted that it is appropriate to segment education software on the basis of functionality.[63] In particular, the Parties submitted that there should be separate frames of reference for MIS, payments software, and parental engagement software. The Parties stated that this is appropriate on both the demand side (as schools cannot use different software for the same purpose) and on the supply side (as the software cannot be repurposed quickly by suppliers).

68. The evidence gathered by the CMA is consistent with the Parties’ submissions with regard to product scope. Third parties indicated that there are different categories of software (consistent with products not being demand-side substitutes)[64] and there is some specialisation across suppliers in the software provided (suggesting limited supply-side substitution).[65]

Conclusion on product scope

69. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:

(a) Supply of MIS to schools;

(b) Supply of parental engagement software to schools; and

(c) Supply of payments software to schools.

[61] *Merger Assessment Guidelines*, paragraphs 9.1-9.5.
[62] *Merger Assessment Guidelines*, paragraph 9.6.
[63] FMN, paragraph 12.26.
[64] Note of call with [✂], [✂], and [✂].
[65] Note of call with [✂] and [✂].

Geographic scope

70. The Parties submitted that the geographic market for the supply of education software solutions is national in scope.[66] The Parties stated that the products sold by the Parties are sold throughout the UK and submitted that this approach is consistent with precedents of other mergers in the IT sector or involving the supply of services to schools.

71. All of the major products sold by the Parties are available across the UK. This includes SIMS (and its parental engagement modules InTouch and Parent App), ParentPay and Schoolcomms.

72. There are differences in the requirements of schools in different nations within the UK and in the main competitors in these nations. For instance, language or reporting requirements (as a result of devolution) can be different particularly for the MIS. In addition, in Northern Ireland and Scotland, schools procure MIS on a central basis in a way which is similar to some large MATs or independent school groups.[67] The CMA had regard to these differences in its competitive assessment where relevant.

Customer segments

73. The CMA received some evidence of differences across customer groups (eg between primary and secondary schools, and between LA-maintained schools, academy trusts and independent schools).[68] Particularly for MISs the strength of some competitors may vary between customer groups (and some competitors are only active in certain segments).[69] The CMA had regard to these differences in its competitive assessment where relevant.

Conclusion on frame of reference

74. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

    (a) Supply of MIS to schools in the UK;

    (b) Supply of parental engagement software to schools in the UK; and

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[66] FMN, paragraph 12.29.
[67] In Scotland, LAs have jointly built their own MIS (SEEMiS). In Northern Ireland, the curriculum and statutory reporting requirements led to some customization of the SIMS product. All schools in Northern Ireland use SIMS and have for over 30 years.
[68] Note of call with [✂], [✂] and [✂].
[69] Note of call with [✂], [✂], [✂] and [✂].

(c) Supply of payments software to schools in the UK.

Competitive assessment

75. In assessing the impact of the Merger on competition, the CMA considered one horizontal theory of harm and two related conglomerate theories of harm:

(a) Horizontal unilateral effects in the supply of parental engagement software;

(b) Foreclosure of competing MIS providers using PPH's payments software; and

(c) Foreclosure of competing payment software providers using ESS' SIMS.

Horizontal unilateral effects in the supply of parental engagement software

76. 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.[70] Horizontal unilateral effects are more likely when the merging parties are close competitors.[71] 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 parental engagement software to schools in the UK.

Shares of supply

77. The Parties estimated that their combined share of supply for parental engagement software, calculated by reference to the number of licences held by all schools in the UK, was [10-20]% in 2020.[72] The Parties' submissions regarding their largest competitors and their relative market positions are broadly consistent with data collected by the CMA from third parties.[73]

[70] *Merger Assessment Guidelines*, paragraph 4.1.
[71] *Merger Assessment Guidelines*, paragraph 4.8.
[72] FMN, Table 21.
[73] The CMA gathered some data from competitors on share of supply, but others did not respond, only provided an upper bound for their share, or did not consider that they competed with the Parties. The CMA was therefore unable to calculate precise shares of supply.

Table 1: Shares of Supply (2020) – Parties' estimates

Provider	Number of licences	Share of supply
ESS (Parent App and InTouch)	[✂]	[0-5]%
PPH (SchoolComms)	[✂]	[5-10]%
Parties (combined)	**[✂]**	**[10-20]%**
Community Brands (Groupcall Messenger and Teachers2Parents)	[✂]	[20-30]%
IRIS (ParentMail, Engage)	[✂]	[10-20]%
Juniper Horizons (Primary Site and Pupil Asset)	[✂]	[5-10]%
School Cloud	[✂]	[5-10]%
RM Integris	[✂]	[0-5]%
Netmedia	[✂]	[0-5]%
ScholarPack	[✂]	[0-5]%
Arbor	[✂]	[0-5]%
Bromcom	[✂]	[0-5]%
Advanced	[✂]	[0-5]%
Other competitors*	[✂]	[10-20]%

Source: FMN, Table 21
Notes: *Other competitors include TASC Insight, Edulink One, Satchel, Weduc, Firefly, Clarion Call, Parent Hub, SchoolPost, MySchoolOffice, and Connaught.

78. The above shares of supply indicate that post-Merger, Community Brands (including their brand Teachers2Parents) will continue to have the largest share of supply, followed by IRIS Group (including their brand ParentMail). Juniper and School Cloud will have similar shares of supply to the Merged Entity and there are also a large number of smaller suppliers.

Closeness of competition

79. The Parties submitted that parental engagement software is a relatively minor part of both ESS and PPH's businesses and that the Parties' products do not compete particularly closely.[74]

[74] FMN, paragraph 12.48 – 12.49.

80. The Parties' internal documents indicate that they view each other as competitors in parental engagement software.[75] Internal documents also indicate that the Parties monitor each other in relation to functionality and brand recognition, alongside a large number of other suppliers.[76] Further, the majority of competitors that responded to the CMA's merger investigation considered that they compete with both of the Parties' parental engagement software products.[77] Responses from customers to the CMA's questionnaire also indicate that the Parties are competitors in the supply of parental engagement software. However, no customers raised concerns relating to the loss of competition in the supply of parental engagement software as a result of the Merger.[78]

81. The CMA considers that the Parties are important competitors in the supply of parental engagement software but (as set out below) face competitive constraint from a large number of other suppliers.

Competitive constraints

82. The Parties submitted that the supply of parental engagement software is highly competitive with a large number of competing suppliers.[79]

83. The Parties' internal documents indicate that there are a large number of suppliers of parental engagement software and many offer the same or greater functionality than the Parties' software,[80] although the CMA notes that some suppliers (School Cloud and Netmedia) may not offer the full range of functionality that the Parties' products do (such as information on behaviour incidents, student timetables and achievements).[81]

84. The majority of competitors that responded to the CMA's merger investigation identified both the Parties and a number of alternative suppliers as key competitors.[82] Responses from customers also highlighted the availability of a number of credible alternatives to the Parties' products.[83] These alternative suppliers include both standalone parental engagement software providers,

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[75] FMN, Annex 048, page 4.
[76] FMN, Annex 072, comparison table of the Parties and their competitors in parental engagement.
[77] Responses to competitor questionnaires. During a call with the CMA, [✂] also stated that SIMS and SchoolComms are its biggest competitors.
[78] Responses to customer questionnaires.
[79] FMN, paragraph 15.1.
[80] FMN, Annex 072, comparison table of Parties and their competitors in parental engagement.
[81] FMN, Annex 071, tab [✂] and FMN, Annex 072.
[82] Responses to competitor questionnaires. During calls with the CMA, [✂] noted SchoolComms and Teachers2Parents as their main competitors.
[83] Responses to customer questionnaires.

such as Teachers2Parents, and MIS providers with integrated parental engagement software, such as ParentMail[i].

85. The CMA considers that this evidence is also consistent with the shares of supply above.

86. The CMA therefore considers that post-Merger the Parties will continue to face competitive constraint from the two largest suppliers as well as a large number of smaller suppliers.

Conclusion on horizontal unilateral effects

87. For the reasons set out above, the CMA believes that whilst the Parties are important competitors in the supply of parental engagement software to schools in the UK, they will continue to be constrained by the two largest suppliers ParentMail (IRIS Group) and Teachers2Parents (Community Brands), as well as Juniper and School Cloud which will have similar shares of supply to the Merged Entity, and a large number of smaller suppliers. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of parental engagement software to schools in the UK.

Conglomerate effects

88. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets, but which are nevertheless related in some way. For example, the products may target similar customers, or may be purchased alongside each other. These mergers raise the possibility that competition in one market may be indirectly affected by actions in the other.[84] The concern in these mergers is that the merged firm may foreclose its rivals by preventing them from accessing customers in one market using its strong position in another related market, ultimately leading to higher prices or lower quality products for customers. The merged firm could do this, for example, by linking sales of the two products in some way, thereby forcing customers to use them together, at the expense of rivals.

89. As described in the background section (paragraphs 51 to 64), educational software (such as payments software and parental engagement software) needs to access the data held in a school's MIS in order to operate effectively.

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[84] *Merger Assessment Guidelines*, paragraph 7.1(b).

These software products are complementary to MIS because they provide schools with additional functionality not provided by the core MIS software.

90. Therefore, the CMA has considered two related foreclosure theories of harm:

(a) foreclosure of competing MIS providers using PPH's payments software; and

(b) foreclosure of competing payment software providers using ESS' SIMS.

91. In principle these theories of harm could reinforce each other (for example one potential benefit of foreclosing competing payment software providers could be to reinforce SIMS' position in MIS software).

92. The CMA's approach to assessing conglomerate theories of harm is to analyse (a) the ability of the Merged Entity to foreclose competitors, (b) its incentive to do so, and (c) the overall effect of the strategy on competition.[85]

Foreclosure of competing MIS providers

93. The CMA has considered whether the Merged Entity could use PPH's payments software to foreclose competing MIS software providers to protect SIMS market position. SIMS is currently used by the large majority of schools in the UK but has been losing share in recent years to cloud-based alternatives. There is therefore a potentially large benefit to the Merged Entity if it can leverage PPH's payments software to prevent the loss of further SIMS customers while its own cloud-based solution (SIMS 8) remains in development. The CMA has considered whether the Merged Entity could use either of the following foreclosure mechanisms to discourage switching from SIMS 7:[86]

(a) total foreclosure, ie only offering PPH's payments software to SIMS customers, and

(b) partial non-price foreclosure, such as reducing the quality of the integration between PPH's payments software and rival MIS software and/or only offering certain functionality to SIMS MIS customers.

[85] *Merger Assessment Guidelines*, paragraph 7.32
[86] Third parties have raised concerns in relation to each of these foreclosure mechanisms.

Ability

94. To assess the ability of the Merged Entity to foreclose competing MIS providers the CMA considered whether:

(a) The Parties have the technical ability to affect the integration between PPH's payments software and rival MIS providers and/or offer separate versions of PPH's payments software with different functionalities to different MIS.

(b) PPH's contracts with caterers and for mixed estates[87] would prevent the Merged Entity from engaging in these foreclosure strategies.

(c) PPH's payments software products are important complementary products for competing MIS providers.

(d) Payments software is an important complementary product to MIS.

The Parties' ability to affect the integration between PPH's payments software and rival MIS and/or offer separate versions with different functionality

95. As a preliminary point, the CMA notes that the Merged Entity could refuse to make PPH's payment software available to customers that do not use SIMS (ie only offer PPH's payment software to SIMS users) (total foreclosure).

96. This section therefore focuses on whether the Merged Entity could pursue a partial foreclosure strategy as an alternative by technically altering the integration between PPH's payments software and rival MIS and/or offer different versions of PPH's payments software with different functionalities depending on the MIS the customer is using.

Ability to affect the integration between PPH's payments software and rival MIS

97. As described at paragraph 58, complementary software products (including payments software) integrate with MIS software either:

(a) through a native API;

(b) indirectly through an aggregator; or

(c) through manual data downloads and uploads.

[87] Ie where a single contract covers a number of schools which use different MIS software. The Parties submitted that local authorities can issue tenders for payments software for all of the schools in their area.

98. Evidence from the Parties and third parties indicates that manual data downloads and uploads are a poor means of integrating MIS and complementary software.[88] Additionally, as described at paragraph 60 and acknowledged by the Parties, native APIs have certain advantages over access via aggregators such as more frequent updates and the ability to write back data to a MIS.[89] PPH's decision to incur the expense of integrating its main payments software (ParentPay) with MISs using native APIs suggests that native API access confers advantages over alternatives.[90]

99. The Parties' internal documents also recognise the benefits of closer integration through the use of native APIs, and following the Merger, the Parties plan to improve the integration between their products:

(a) Montagu's internal documents indicate closer integration between its products will enable it to better meet customers' increasingly sophisticated needs (eg bi-directional information and multi-platform access) and enable better performance.[91]

(b) PPH's internal documents similarly indicate that post-Merger the integration between PPH and SIMS can be 'enhanced'.[92]

100. Therefore, the CMA's analysis has focused on the actions that could be taken by the Merged Entity in relation to integrations via native APIs between PPH's payments software and rival MIS. To foreclose rival MIS providers the Merged Entity could:

(a) cut off native API access between PPH's payments software and rival MIS providers completely; or

(b) degrade the native APIs between PPH's payments software and rival MIS providers resulting in different/worse functionality compared to the integration with SIMS' MIS software.

101. If the Merged Entity were to completely cut off native API access with rival MIS providers[93] customers would have no choice but to manually transfer data between the MIS and PPH's payments software (using an aggregator is

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[88] For example, FMN, Annex 013, page 115 states that [✂]. Third party evidence indicated that customers integrate their MIS to ParentPay via a native API rather than using a direct data download and that customers consider the integration between an MIS and complementary software to be important.
[89] FMN, paragraph 12.83.
[90] The Parties stated that ParentPay is compatible with all of the major MIS using native APIs. Parties' response to question 4 of the CMA's Request for Information dated 10 March 2021. It would be PPH's decision whether to start using aggregators or not. PPH's response to question 7 of s109 notice dated 7 April 2021.
[91] FMN, Annex 019, page 71 and FMN, Annex 015, pages 5 and 165.
[92] Annex PPH127, page 22.
[93] Which it would be able to do because it is the complementary software provider that integrates with the rival MIS.

not an alternative as ParentPay, PPH's main payments software, does not currently integrate with MISs via an aggregator).[94] Due to the advantages of native APIs (paragraph 60 above), the CMA considers that this would reduce the attractiveness of using PPH's payments software with rival MIS software.

102. The CMA also considers that the Merged Entity may also have some limited ability to degrade access between PPH's software and rival MIS providers via native APIs in order to reduce the functionality available to customers using rival MISs:

(a) The Merged Entity could offer the ability to write back data into a MIS only to SIMS customers and not customers of rival MIS providers, or vary what data can be written back for different MIS providers. Data writeback can enable greater functionality, such as the ability to record details of payments received from parents/carers in a school's MIS.[95] However, PPH's main payments software, ParentPay, does not currently write back data into any MIS, while its Schoolcomms payments software performs only limited write back of meal data into SIMS.[96] This suggests that data write back is not currently seen as an important type of functionality (although there is some evidence it may become more important[97]).

(b) The core MIS data that payments software needs to access in order to function is limited to 25 data fields and there is limited benefit in accessing additional data from a MIS.[98] Therefore, the CMA considers that there is unlikely to be scope for the Merged Entity to vary the data PPH's payment software pulls from different MIS providers in order to offer different payments functionality to customers of non-SIMS MIS.

Ability to offer separate versions of PPH's software with different functionality

103. The CMA also received complaints from competing MIS providers that the Merged Entity could offer certain payments functionality exclusively to SIMS customers, which could reduce the relative attractiveness of rival MIS providers.[99] This could include:

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[94] The choice of whether to use an aggregator to integrate with an MIS is at the discretion of PPH.
[95] FMN, paragraph 12.83.
[96] Parties' response to Issues Letter, paragraph 4.14.4.
[97] FMN, Annex 019, page 11.
[98] Parties' response to Issues Letter, paragraph 3.17.
[99] [✂] and [✂] call notes.

(a) the Merged Entity updating PPH's payments software user interface and functionality and providing this improved interface and functionality only to schools using SIMS.[100]

(b) developing an app enabling customers to use PPH's payments software on their phones but only offering this to SIMS customers.[101]

104. The Parties submitted that in order for the Merged Entity to offer different payments functionality to customers using different MIS software it would need to run two versions of PPH's payments software.[102]

105. The CMA considers that the Parties have not sufficiently substantiated these claims.[103] The CMA notes in this respect that the Parties already offer different payments functionalities to customers using different MISs to some extent, and that some of the integration benefits from the Merger rely on them being able to do this.[104]

106. As a result, the CMA considers that the Merged Entity would have the ability to affect the integration between PPH's payments software and non-SIMS MIS software by cutting off native API access to SIMS, degrading that access (for example, to prevent data write back) or by offering specific functionality (such as, a specific user interface or an app) only to SIMS customers.

Effect of PPH's contracts with caterers and for mixed estates on the Merged Entity's ability to engage in any foreclosure strategies

107. The Parties submitted at a late stage in the Phase 1 process that PPH's contracts with caterers and for mixed estates (ie where a single contract covers a number of schools that use different MIS software), would prevent the Merged Entity from engaging in any foreclosure because:[105]

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[100] [✂] call note.
[101] FMN, Annex 019, page 47.
[102] Parties' response to Issues Letter, paragraph 3.18.
[103] The Parties include this assertion in response to the Issues Letter but did not include detailed reasons why the Merged Entity would need to run two versions of its software or provide any information on the potential cost implications of doing so.
[104] PPH's internal documents show that it already offers different payments functionality to different MIS providers. For example, a PPH internal document highlights that its integration of Schoolcomms with ScholarPack and Arbor is [✂] (Annex PPH032, page 11). Another PPH internal document shows that PPH considered a [✂] and a '[✂]' (Annex PPH144, page 3). The Parties' internal documents discuss the benefits of closer integration as a result of the Merger. A PPH internal document discusses that post-Merger, the integration between SIMS and ParentPay can be enhanced (Annex PPH127, page 22). A Montagu due diligence document highlights that post-Merger, the Parties' MIS and payments software can be more '[✂]' and an '[✂]' (FMN, Annex 015, pages 5 and 165). A further Montagu due diligence document discusses the benefits to schools and parents of a closer integration between SIMS and ParentPay (FMN, Annex 019, page 71).
[105] Parties' response to Issues Letter, paragraph 1.5.3.

(a) [40-50]% of PPH's contracts and [50-60]% of its total revenues are caterer-led, where the caterer has no ability to influence the choice of MIS. The Parties submitted that in response to any foreclosure strategy these caterers would have to change payments software provider in order to continue to supply schools using multiple MIS software; and

(b) [30-40]% of PPH's revenues are derived from contracts that mandate support for mixed MIS estates, and any refusal to provide PPH's payments software to customers of other MIS providers would result in a breach of contract and a total loss of revenue from these customers.

108. The evidence available to the CMA on this issue is mixed. It is unclear to what extent caterers make the decision about what payments software a school uses, and to what extent mixed estate contracts require PPH to integrate with, and provide the same functionality to, rival MIS providers.

109. The evidence from the Parties' internal documents generally does not support the Parties' submission that the caterer is often the decision maker on the type of payments software used by a school, nor that a caterer can only work with a single payments provider. One internal document indicates that caterers recommend software to schools and that this has some influence on ParentPay's success.[106] Another PPH internal document indicates that the decision maker for MIS is the same as for payments software.[107]

110. As regards the Parties' argument that mixed estate contracts would require the Merged Entity to integrate with multiple MIS providers, the Parties' internal documents[108] indicate that offering to supply services on a MIS-agnostic basis may be important to win certain types of contracts (eg with MATs). This may therefore limit the Merged Entity's ability to engage in a total foreclosure strategy in relation to certain types of contract.

111. However, the CMA considers that Merged Entity could still affect the integration with rival MIS providers by deteriorating the access given via native APIs or by offering additional functionality without risking the loss of all its caterer-led or mixed estate contracts.

[106] (FMN, Annex 019, page 22 and FMN, Annex 067, page 1).
[107] (Annex PPH010, page 13.). A further PPH internal document indicates that the choice of payments provider may be influenced by its integration with the caterer, but that the school is the decision maker (FMN, Annex 015, page 45).
[108] One PPH internal document discusses that it is important that ParentPay is MIS agnostic '[✂]'. (Annex PPH103.) Another PPH internal document states that integration with key MIS providers is '[✂]'. (Annex PPH127, page 30.)

Importance of PPH’s payments software as complementary products for competing MIS providers

112. The Merged Entity is more likely to have the ability to foreclose competing MIS providers if PPH’s payments software is an important complementary product for rival MISs, such that not being able to use PPH’s payments software (or having access to more limited functionality/features) might affect a school’s decision to use a particular MIS. The CMA has therefore considered whether PPH has market power in the supply of payments software, and the alternatives available to PPH’s payments software products.

113. The Parties submitted that ‘the payments solution segment is very competitive with many strong alternative providers’, referring to the near doubling of providers in the five years between 2013 and 2018.[109] However, PPH’s market share has been consistent over this time frame and even increased slightly after 2015/2016.[110]

114. PPH is the largest supplier of payments software to schools in the UK. The Parties estimated that PPH has a share of supply of [50-60]% ([40-50]% for ParentPay alone) [✂].[111] This is consistent with the CMA’s estimated shares of supply (using data from payments software providers, evidence from third

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[109] Parties’ response to Issues Letter, paragraph 3.13.
[110] Parties’ Issues Meeting presentation, slide 11.
[111] FMN, Table 30.

parties[112] and evidence from internal documents) as set out in Table 2 below.[113]

115. **Table 2: UK shares of supply (2020) – Payments – by number of licences – all schools using payments software**

	CMA estimates		**Parties' estimates**	
Firm	**Volume**	**Estimated share**	**Volume**	**Estimated share**
PPH	[✂]	[50-60]%	[✂]	[50-60]%
SIMS Pay	[✂]	[0-5]%	[✂]	[0-5]%
Tucasi	[✂]	[10-20]%	[✂]	[10-20]%
ParentMail (IRIS)	[✂]	[10-20]%	[✂]	[10-20]%
Community Brands	[✂]	[10-20]%	[✂]	[10-20]%
School Spider	[✂]	[0-5]%	[✂]	[0-5]%
sQuid	[✂]	[0-5]%	[✂]	[0-5]%
Other	[✂]	[0-5]%	[✂]	[0-5]%
Total	**23,159**	**100%**	**23,143**	**100%**

*Parties' estimate used given lack of data from Payments competitors.
Note: CMA estimated share adds to 100 when rounding is accounted for.

116. The CMA has also received evidence from MIS suppliers that a high proportion of their customers [✂] use PPH's payments software.[114]

117. The alternative payments software suppliers to PPH include:

(a) providers that supply payments software as well as MIS software, such as Bromcom, IRIS Group, and Arbor. Bromcom and Arbor only offer their payments software as an add-on integrated with their MIS software. IRIS Group also offers its payments software on a standalone basis; and

(b) payment software providers that do not have an MIS offering, such as Community Brands, Tucasi, SIMS Pay (owned by Capita), and a number of smaller players (with a cumulative share of supply in payments software of [5-10]%).

118. The evidence received by the CMA on the strength of alternatives was mixed. Alternative payments software suppliers individually have relatively small shares of supply compared to PPH, and some MIS suppliers said that they

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112 [✂].
113 For example, a L.E.K due diligence report (FMN, Annex 015, slides 4 and 37) states that PPH is '[✂]' and is '[✂]' and has '[✂]'. An EY due diligence report (FMN, Annex 013, page 103) states that the [✂]'.
114 [✂].

recommend PPH's payments software to customers in preference to their own payments software and/or view other payments software as poor alternatives to PPH's payments software.[115] However, other evidence received by the CMA suggests that PPH's payments software does not offer different functionality to that offered by alternatives:

(a) [✄].[116] [✄].[117]

(b) [✄].[118]

(c) [✄].[119]

(d) A number of competitors (including those that were concerned by the Merger) felt that their payments software was as good as or better than ParentPay.[120]

(e) Customers that responded to the CMA's investigation generally considered that they had a range of alternatives, although the majority tended to give ParentPay a higher rating than alternatives.[121]

119. Therefore, the CMA considers that PPH has a strong market position currently, but that there are a number of viable standalone payment software alternatives, and that some MIS providers offer their own in-built payments solution. Customers using rival MISs therefore have alternatives they could use if PPH's payment software were no longer available to them (or if they could not access PPH's full functionality).

Importance of payments software as a complementary product to MIS

120. The CMA has also considered whether payments software is an important complementary product to MIS more generally, such that an inability to integrate with payments software (or a lower quality integration) could materially affect the competitiveness of rival MIS providers.

121. There is a wide range of complementary software that schools can use in conjunction with MIS. The evidence the CMA has received is consistent with

[115] [✄].
[116] [✄]
[117] FMN, Annex 015, page 48.
[118] Annex PPH164, page 1.
[119] FMN, Annex 019, page 47.
[120] [✄]
[121] Customer questionnaire, average rating of customers that expressed a view on how suitable the products were, question 5.

payments software being one of a number of important complementary software products.[122] Specifically:

(a) In response to the Issues Letter the Parties submitted that payments software is an important complementary product to MIS,[123] but also noted that other complementary software (eg safeguarding management, parental engagement, finance and payroll) are used by more schools than payments software.[124]

(b) A Montagu internal document compares the penetration of eleven complementary software products. Parental engagement software has an estimated 80% penetration, followed by safeguarding (71%), finance and payroll (61%), payments (57%) and assessments (56%). The other complementary products listed have less than 50% penetration.[125]

(c) An internal document produced by Montagu states that [✂].[126] This indicates that access to payments software is becoming increasingly important to schools.

122. On the basis of the above, the CMA considers that payments software is one of a number of complementary software products that a school is likely to take into account when choosing a MIS software.

123. The Parties' internal documents also indicate that a school's decision about which MIS provider to use is based on a range of different factors, not only the ease of integrating its preferred complementary software.

(a) In a survey conducted by EY-Parthenon, ease of use was the top key purchasing criteria for MIS (rated by 75% of primary schools and 73% of secondary schools), ease of integration with other educational software was ranked as less important (rated by 48% of primary schools and 49% of secondary schools), while payments software was not specifically mentioned.[127]

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[122] Other important complementary products include parental engagement, finance, and timetabling software. The CMA is not aware of any important complementary products that the Merged Entity would not supply that are supplied by competing MIS providers.
[123] Parties' response to Issues Letter, paragraph 3.4.
[124] Parties' response to Issues Letter, paragraph 3.8.
[125] FMN, Annex 012, page 21.
[126] FMN, Annex 019, page 37.
[127] FMN, Annex 012, pages 44 – 45.

(b) A Montagu document setting out the key purchasing criteria for SIMS 7 does not list the ability to integrate with complementary software as one of the key criteria. The key purchasing criteria include [✄].[128]

(c) A different Montagu internal document states that [✄].[129]

124. There is also some evidence that the choice of MIS is likely to be more important to a school than its choice of payments software:

(a) An internal document produced by Montagu states that [✄] and represent approximately 10% of the school's ICT budget. In contrast, payments software typically represents approximately 1% of the school's ICT budget.[130]

(b) The Parties also submitted that payments software interacts with only 1.3 other software programmes on average (such as finance, timetabling, and communication applications) whereas a MIS interacts with more than ten software programmes, and has many more daily users than payments software.[131]

125. The CMA considers that the relative importance to a school of its choice of MIS compared to its choice of payments software, and the range of factors that are important to schools when selecting their MIS supplier, may limit the extent to which a degradation of API access or changes to the payments functionality available with PPH's payment software when used with particular MIS would influence a school's choice of MIS supplier.

126. The CMA considers that total foreclosure (ie refusing to supply PPH's payments software to schools that use a rival MIS) may have a comparatively greater impact on customer choice in particular where a customer that currently uses PPH's payments software with SIMS is deciding whether or not to switch from SIMS to a rival MIS. This is because in this situation a customer would be forced to switch payments software if they want to use a rival MIS. Although there are alternative payments software solutions available, evidence on the strength of these alternatives is mixed. There are also costs associated with switching payments provider even if these are lower than for switching MIS. In particular, all parents/carers of students at the school would need to need to sign up to the new payments software.

[128] FMN, Annex 019, page 42.
[129] FMN, Annex 021, page 78.
[130] FMN, Annex 019, pages 48 – 49.
[131] Parties' response to Issues Letter, paragraph 3.6.

127. By contrast, in a partial foreclosure scenario a customer would not need to switch payments provider, but its experience with PPH's payments software would deteriorate.

Conclusions on ability

128. The CMA considers that the Merged entity could pursue a number of different foreclosure mechanisms post-Merger. These include:

  (a) Only offering PPH payments software to customers that use SIMS (total foreclosure), albeit that some of PPH's contracts for mixed estates might require the Merged Entity to offer PPH's payments software to a small sub-set of customers that use rival MIS;

  (b) degrading API access between PPH's software and rival MIS (for example, to prevent data write back) or offering specific functionality (such as a specific user interface or an app) only to SIMS customers (partial foreclosure).

129. The CMA considers that payments software is an important complementary product to MIS software. PPH's payments software (ParentPay) is also the leading product in the market by some distance and third-party MIS providers estimated that [✂]% of their customers use PPH's payments software. Although there are alternative payment software tools available that offer comparable functionality, evidence on the strength of these is mixed. There are also costs associated with switching payments software provider. The CMA therefore could not exclude that the Merged Entity would have the ability to engage in total foreclose of other MIS software providers by only offering PPH's payment software to schools that use SIMS.

130. The CMA has some doubts as to whether the Merged Entity would have the ability to foreclose rival MIS providers through a partial foreclosure strategy. This is because the CMA considers differences in functionality or the level of integration between PPH's payments software and a MIS may not be enough to influence a school's choice of MIS.

131. On a cautious basis, however, the CMA has assessed the Merged Entity's incentive to engage in both total and partial foreclosure.

Incentive

132. The Parties submitted that the Merged Entity would not have an incentive to foreclose competing MIS providers because such a strategy would be unprofitable. Further, the Parties submitted that the previous conduct of both

Parties was consistent with the Merged Entity not having an incentive to engage in foreclosure.

133. The CMA has assessed the Merged Entity's incentives to foreclose competing MIS providers separately for total foreclosure and partial non-price foreclosure strategies.

Total foreclosure

134. In assessing the Merged Entity's incentive to engage in total foreclosure the CMA has considered:

(a) the market position of SIMS;

(b) the market position of PPH's payments software;

(c) the relative barriers to switching for MIS and payments software;

(d) the relative profitability of SIMS and PPH's payments software; and

(e) the relative costs and benefits of total foreclosure.

Market position of SIMS

135. The Parties' submissions[132] and data collected by the CMA from third parties[133] shows that SIMS is currently the largest supplier of MIS in the UK, supplying over 60% of schools and that it has held this position for a significant period of time.[134]

[132] FMN, Table 27 estimated SIMS share as [60-70]%. [✂] submitted that SIMS share was [70-80]% ([✂] presentation, slide 9). [✂]'s estimate is based on state schools in England, SIMS is not present in Scotland and may have a lower share of independent schools.
[133] Data collected by the CMA includes MIS supplied to independent schools which we understand was not included in the Parties' estimates.
[134] For example, the 2014 OFT market study stated that SIMS' share of supply had been over 80% since 2005 (Annex B, para B41). [✂] stated that SIMS had dominated the market for '30+ years' ([✂] presentation, slide 9). SIMS is used in all schools in Northern Ireland and in almost all schools in Wales. In Scotland, the MIS software SEEMiS is used by all schools.

Table 3: UK shares of supply (2020) – MIS software – by number of all schools

	CMA Estimates (Inc independent schools)		**Parties' Estimates** (Exc independent schools)	
Firm	**Volume (2020)**	**Share**	**Volume**	**Share**
ESS/SIMS	[✄]	[60-70]%	[✄]	[60-70]%
SEEMiS	[✄]	[5-10]%	[✄]	[5-10]%
RM Integris	[✄]	[5-10]%	[✄]	[5-10]%
Advanced Learning	[✄]	[0-5]%	[✄]	[0-5]%
ScholarPack	[✄]	[5-10]%	[✄]	[5-10]%
Arbor	[✄]	[0-5]%	[✄]	[0-5]%
Bromcom	[✄]	[0-5]%	[✄]	[0-5]%
Pupil Asset	[✄]	[0-5]%	[✄]	[0-5]%
Teacher Centre	[✄]	[0-5]%	[✄]	[0-5]%
ISAMS	[✄]	[0-5]%	[✄]	[0-5]%
Total	28,188	100%	26,632	100%

*Parties estimate used given lack of data from third parties. The CMA has not included in its estimate SchoolPod by Community Brands because the CMA understands that this product is not a MIS.

136. However, as described at paragraph 63, SIMS' share of supply has been decreasing in recent years, declining by 10% between 2014 and 2019.[135] The evidence the CMA has received indicates that this decrease has been driven by the increase in the number of academy trusts (that are not bound by LA restrictions on MIS providers), the greater willingness of LAs to allow LA-maintained schools to select their MIS provider, and the emergence of a number of cloud-based competitors while SIMS, as an on-premise product, has become 'less competitive'.[136]

137. The Parties' internal documents note that SIMS 7's market position is eroding compared to its cloud-based rivals.[137] Montagu submitted that [✄].[138] Likewise PPH also indicated in its internal documents that SIMS' market position is weak.[139] Both Parties' internal documents discussing their post-Merger plans note that a key objective following the Merger will be to reduce

[135] FMN paragraph 12.88. This is consistent with [✄] analysis ([✄] presentation, slide 13).
[136] FMN, paragraphs 12.22-12.23 and 12.88 and [✄] call note and presentation, slides 10-23.
[137] FMN, Annex 019, pages 42 and 43.
[138] FMN, paragraph 12.88.
[139] See FMN, Annex 031.

churn away from SIMS and to develop and roll out SIMS's cloud based solution (SIMS 8).[140]

138. The CMA considers that these market developments, and the threat to SIMS' position, mean that there are likely to be benefits to the Merged Entity if it can: (a) discourage schools from considering switching [✄]; and (b) encourage schools to select SIMS 8 over a competing MIS provider when a school does decide to move to a cloud-based alternative. Therefore, the CMA considered whether PPH's payments software could be used to achieve these two outcomes.

Market position of PPH's payments software

139. The costs of a foreclosure strategy would be lost sales of PPH's payments software if customers of other MIS providers that currently use PPH's payments software switch to competing payments software providers.

140. As described above in paragraphs 113 to 120, PPH's payments software ParentPay is the leading payments software in the UK. However, the CMA considers that there are a number of viable alternatives currently available in the market. Therefore, customers of competing MIS products may switch away from PPH's payments software as a result of any foreclosure strategy.

Relative barriers to switching for MIS and payments software

141. The available evidence, as outlined in paragraphs 62 to 64, indicates that there are high barriers to switching for both MIS and payments software.

142. However, both the Parties and third parties indicated that the costs associated with switching MIS software were substantially higher than the costs associated with switching payments software.[141] As such, the CMA considers that if a customer is faced with the choice of switching either MIS software or payments software, they are more likely to switch payments software.

Relative profitability of SIMS and PPH's payments software

143. SIMS is a significantly more profitable product than PPH's payments software. In 2020, SIMS' gross margin per school was £[✄],[142] compared with £[✄] per

[140] FMN Annex 019, pages 12-13 and FMN Annex 031, page 2.
[141] See for example: FMN Annex 109 pages 44 and 48; Parties' response to Issues Letter, paragraph 3.12; [✄].
[142] The gross margin per school is calculated as the total gross margin (£[✄]m) divided by the number of schools that use SIMS ([✄]). FMN, Annex 136; Table 7, RFI3.

school for ParentPay in 2019.[143] Therefore, the Merged Entity will have a stronger incentive to retain and/or win SIMS customers relative to customers of PPH's payments software.

Costs and benefits of total foreclosure

144. Based on evidence submitted by the Parties,[144] the CMA has assessed the scale of the expected costs and benefits to the Merged Entity of engaging in total foreclosure of competing MIS providers (ie refusing to make PPH's payments software available to schools that use a rival MIS). In the following analysis, the CMA focusses on ParentPay, as this accounts for the vast majority of PPH's payments software revenue.[145]

145. The CMA considers that the direct impact of total foreclosure is that a customer of PPH's payments software that is currently using MIS software other than SIMS would be forced to make a choice between either switching away from their MIS to SIMS or switching away from PPH. There are [✄] such customers, representing a significant proportion (around [30-40]%) of ParentPay's customer base.[146] Due to the relatively higher barriers to switching for MIS software, and the declining competitiveness of SIMS, the CMA considers that the majority of such customers would switch away from PPH's payments software as a result of any total foreclosure strategy. Given ParentPay's gross margin per school of £[✄] per year, the Merged Entity could lose gross margin of up to £[✄]m in the short run if all [✄] customers switched away from ParentPay.

146. The CMA considers that total foreclosure of competing MIS providers could also affect other customer groups:

(a) Customers of both SIMS and PPH's payments software may be less likely to switch away from SIMS because they would have to switch their payments software at the same time. This would be a benefit to the Merged Entity. However, this benefit may be limited due to the relatively higher barriers to switching MIS software compared with switching payments software and that decisions about which MIS to use will be driven by a number of factors, not only integration with complementary software. Customers that were already considering switching away from

[143] FMN, Annex 137. Data for 2019 is more likely to be reflective of ParentPay's long-term performance due to the disruption associated with the Covid-19 pandemic in 2020. This is consistent with the Parties' expectation of a near full recovery (FMN, Annex 019, page 68). The gross margin per school is calculated as the total gross margin (£[✄]m) divided by the number of schools that use ParentPay ([✄]).
[144] Parties' response to Issues Letter, paragraphs 3.32–3.42.
[145] FMN, Table 30, and FMN, Annex 019, page 19.
[146] Parties' response to Issues Letter, paragraphs 3.37 and 3.54.

SIMS pre-Merger, may therefore be unlikely to change that decision even if it required switching payments software as well.

To counteract a lost gross margin of £[✂]m (ie if all [✂] ParentPay customers that do not use SIMS switch away from ParentPay), the total foreclosure strategy would need to prevent [✂] customers of both SIMS and ParentPay from switching away from SIMS (and hence ParentPay, which would no longer be available to customers of MIS software other than SIMS).[147] The CMA considers this unrealistic given that it would be [20-30]% of the [✂] customers that currently use both SIMS and ParentPay, and that in 2020 only [0-5]% of SIMS customers switched to another provider (equivalent to [✂] out of the [✂] customers).[148]

(b) Customers of MIS software other than SIMS with payments software from a provider other than PPH may be less likely to switch to PPH's payments software because they would have to switch their MIS software at the same time. This would be an additional cost to the Merged Entity.

(c) Customers of MIS software other than SIMS that currently have no payments software but intend to purchase payments software (so-called 'greenfield' customers) may be less likely to choose PPH's payments software because they would need to switch their MIS software to SIMS in order to purchase PPH's payments software. This would be a cost to the Merged Entity. According to the Parties, there are approximately [✂] greenfield customers that could adopt payments software in the coming years, of which approximately [✂] do not have SIMS.[149]

147. In total, groups (b) and (c) are likely to number at least [✂] customers.[150] For illustration, if 10% of these customers changed their decision (ie decided not to use ParentPay) as a result of total foreclosure, the Merged Entity would lose approximately a further £[✂] million.[151]

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[147] This number is calculated as £[✂]m divided by the combined gross margin per school of SIMS and ParentPay (£[✂] + £[✂] = £[✂]).
[148] If only 80% of the [✂] ParentPay customers that do not use SIMS switched away from ParentPay, meaning that 20% of customers switch to SIMS and provide a benefit of £[✂] gross margin per customer, the total foreclosure strategy would need to prevent at least [✂] (9.7%) out of the [✂] ParentPay customers that use SIMS from switching away from SIMS. The CMA considers it unrealistic both that 20% of ParentPay customers that do not use SIMS would switch to SIMS, and that, if this were the case, almost 10% of ParentPay customers that use SIMS would be prevented from switching away from SIMS.
[149] Parties' response to Issues Letter, paragraphs 3.5 and 3.15.
[150] SIMS is used by [✂] schools out of a total of 29,157 schools in the UK. Of the [✂] schools that do not use SIMS, [✂] use ParentPay. This leaves [✂] schools that do not use either SIMS or ParentPay. However, some of these schools will be unlikely to ever require payments software (eg schools with a small number of pupils).
[151] Calculated as 10% of [✂] customers ([✂]) multiplied by ParentPay's gross margin per school (£[✂]).

Conclusion on incentive to engage in total foreclosure

148. The CMA's assessment of the available evidence indicates that the costs of refusing to supply PPH's payments software to schools using rival MIS providers would exceed the benefits and therefore that the Merged Entity would not have an incentive to engage in total foreclosure.

Partial foreclosure

149. Similar to total foreclosure, the direct impact of any partial non-price foreclosure would be on the group of customers that use PPH's payments software with a MIS other than SIMS. In a partial foreclosure scenario these customers have three possible options: (i) switch away from their MIS to SIMS; (ii) switch away from PPH's payment software; or (iii) do not switch providers.

150. As noted in the discussion regarding ability, the CMA considers that any feasible partial non-price foreclosure strategies might have a limited effect on a customer's choice of MIS. As a result, the direct impact of partial non-price foreclosure is likely to be small, as many customers would remain with their current providers.

151. As noted in the total foreclosure discussion above, there are relatively higher barriers to switching MIS software than payments software, SIMS 7 is [✂] when compared with rival cloud-based offerings, and there are viable alternatives to PPH's payments software. Therefore, the CMA considers that any change to PPH's payments software offering for non-SIMS customers that is significant enough to affect a current SIMS customer's decision whether to switch from SIMS, would also risk losing non-SIMS customers of PPH's payments software as these customers would be more likely to switch payments software rather than switch MIS provider to SIMS.

152. Other groups of customers could also be affected by partial non-price foreclosure of competing MIS providers:

(a) Customers of both SIMS and PPH's payments software may be less likely to switch away from SIMS due to the higher quality of integration between their payments software and SIMS compared with competing MIS providers. The CMA considers that this would be the main objective of partial non-price foreclosure for the Merged Entity. Due to the limited expected impact of partial non-price foreclosure strategies on a customer's choice of MIS software, it would be unlikely that such strategies would significantly reduce the number of customers that switch

away from SIMS post-Merger compared with the counterfactual. Therefore, this benefit to the Merged Entity would likely be small.

(b) The CMA believes that PPH's payments software would be less likely to win greenfield customers that do not use SIMS as a result of partial non-price foreclosure compared with the counterfactual. Greenfield customers do not face the high barriers to switching that are faced by existing payments customers, which means that any difference between PPH's payments software and competing payments software (and therefore any degradation in quality or functionality when PPH's payments software is used with rival MIS software) may be more influential in a greenfield customer's decision of which software to purchase. As noted above, there are approximately [✄] greenfield customers that do not have SIMS, and therefore could be impacted by partial non-price foreclosure strategies. The CMA considers that this could represent a material loss to the Merged Entity.

153. The costs and benefits described above reveal an inherent tension in the incentives to engage in partial non-price foreclosure. For any partial non-price foreclosure strategy to benefit the Merged Entity, the strategy must: (i) sufficiently affect the quality of integration between PPH's payments software and MIS software other than SIMS such that customers of both PPH's payments software and SIMS are less likely to switch away from SIMS (ie a benefit for the Merged Entity); but (ii) not affect this quality so much that PPH loses customers that currently use PPH's payments software with a different MIS, and discourages schools that use a different MIS and that do not currently use any payments software from using PPH's payments software in the future (ie a cost for the Merged Entity). The CMA considers that this is a difficult balance to achieve and therefore the costs of a partial non-price foreclosure strategy would outweigh the potential benefits.

Conclusion on incentive to foreclose competing MIS providers

154. The CMA believes that the available evidence, as described above, indicates that the costs of refusing to supply PPH's payments software to rival MIS providers' customers would exceed the benefits and therefore that the Merged Entity would not have an incentive to engage in total foreclosure.

155. The CMA also believes that the Merged Entity would have a limited ability to engage in partial non-price foreclosure and that this would risk a significant impact on PPH's revenues, as a result of which the Merged Entity would not have an incentive to engage in such foreclosure.

Effect

156. Having found that the Merged Entity would not have the ability and/or the incentive to engage in any type of foreclosure of competing MIS providers, the CMA did not need to assess the possible effect of such strategies.

Conclusion on the foreclosure of competing MIS providers

157. For the reasons set out above, the CMA cannot rule out that the Merged Entity may have an ability to totally foreclose competing MIS providers and will only have limited ability to partially foreclose these providers. However, the CMA believes that the Merged Entity will not have the incentive to engage in either type of foreclosure strategy.

158. Accordingly, the CMA finds that the Merger does not give rise to a realistic prospect of an SLC as a result of the foreclosure of competing MIS providers.

Foreclosure of competing providers of payments software

159. The CMA considered whether SIMS might be used to foreclose competing providers of payments software.[152]

160. Some competitors raised concerns regarding the risk of foreclosure as a result of the Merger.[153] The CMA considered whether the Merged Entity might pursue the following foreclosure strategies:

(a) partial non-price foreclosure, such as enhanced integration with SIMS and/or features for PPH's customers that are not available for SIMS' customers using rival payments software;

(b) partial price-based foreclosure, such as lower SIMS prices for PPH's customers, or higher prices for other payments software to access SIMS APIs compared with PPH's payments software; and

(c) total foreclosure, ie making PPH's payments software the only payments software available to SIMS customers.

[152] Although the CMA also received a few complaints from third parties about the potential foreclosure of parental engagement providers, the CMA considered that the Merged Entity would not have the ability or the incentive to foreclose rival parental engagement software providers because: (i) the Parties have much smaller combined shares of supply in parental engagement software compared with payments software (there are a large number of alternative suppliers including Community Brands and IRIS Group that are each larger than the Merged Entity; and (ii) parental engagement software is less profitable than payments software, so the difference in margins between parental engagement software and MIS software is larger than the difference between payments software and MIS software.

[153] [✂].

Ability

161. To assess the ability of the Merged Entity to foreclose competing payments software providers the CMA has considered whether:

   (a) it is technically possible for the Parties to restrict integration between SIMS and competing payments software;

   (b) it is possible for the Merged Entity to materially affect the costs of payment software rivals through the fees charged to competing payments software providers to access data in SIMS; and

   (c) SIMS' MIS software is an important complementary product to payments software.

Is it technically possible for the Parties to restrict integration between SIMS and competing payments software?

162. The Parties submitted that they have no ability to foreclose competing payments software providers because statute requires all MIS to export core data and the data belongs to the school, who decides which applications can access the data.[154] The Parties also submitted that voluntary assurances given by Capita Business Services Ltd to the OFT in 2003 to allow open access and not to limit interoperability with SIMS, have been honoured and have effectively become a de facto accessibility standard (**Voluntary Assurances**).[155]

163. However, the CMA considers that the Merged Entity could still affect how payments software providers obtain data from SIMS (eg whether data can be accessed through native APIs or via aggregators or only manually) because:

   (a) The statutory obligations to make data available for schools appear to be satisfied by allowing manual data export (eg via Excel) and do not require SIMS to support APIs with competing payments software providers or with aggregators. Similarly, the fact that the school owns the data in SIMS does not mean that SIMS must offer API access.

   (b) Capita Business Services Ltd offered the Voluntary Assurances in relation to SIMS to the OFT. The Voluntary Assurances can be unilaterally changed or revoked.[156] Therefore, the CMA considers that the Voluntary

[154] FMN, paragraph 19.4.
[155] FMN paragraphs 19.2 and 19.13. Also see Case Closure Summaries, 2003, Office of Fair Trading, pages 6-7.
[156] Voluntary Assurances, paragraph 8.

Assurances do not prevent Montagu from affecting the way data is transferred between SIMS and rival payments software.

164. Therefore, the CMA has considered the ability of the Merged Entity to degrade the integration via a native API and access via aggregators between SIMS and competing payments software providers.

Native APIs

165. As described at paragraph 60 and acknowledged by the Parties,[157] native APIs have advantages over other means of integrating complementary software to MIS. Although for payments software the minimum number of data fields required to operate a school payments system is 25 and there is limited benefit in retrieving more data,[158] the CMA considers that the wider benefits of native APIs access (such as more frequent updates and the ability to writeback data) are still relevant.

166. SIMS 7 is not cloud-based, so to enable the use of native APIs individual schools must download separate software to gather data from SIMS on site. This data is then loaded to the cloud where it can be accessed by complementary software products.

167. The Parties submitted that ESS has no technical means of disabling the integration with SIMS 7 and its only recourse is contractual.[159] However, the CMA considers that the ability to impose contractual restrictions gives the Merged Entity the ability to affect the integration between SIMS and rival payments software. SIMS has a Technical Integrator Programme that offers third party software providers access to data held on SIMS via an API for a fee.[160] The CMA understands that the contracts associated with this programme are very detailed and can be subject to lengthy negotiation with individual companies.[161] The fact that third-party software providers individually negotiate the terms of Technical Integrator Programme contracts indicates that ESS has the ability to offer bespoke terms (including price, access to certain types of data, and frequency of data transferred) to specific software providers (including payments software providers).[162]

168. Furthermore, the Parties acknowledge that once SIMS 8 has been developed the Merged Entity will be able to affect integrations between SIMS and

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[157] FMN, paragraph 12.83.
[158] Parties' response to Issues Letter, paragraphs 4.5 and 4.6. Third parties also confirmed that current payments software only needs basic data from the MIS.
[159] FMN, paragraph 19.5.
[160] FMN, paragraph 12.85.
[161] Annex PPH195, Annex PPH204 and Annex PPH208.
[162] [✂].

competing payments software providers.[163] This is because the MIS information is not stored on premise and thus controlled by the school, but in the cloud which is maintained by ESS.

Aggregators

169. The Parties submitted that they lack the ability to foreclose competing payments software providers because aggregators provide an alternative means of accessing SIMS data to native APIs. The Parties also submitted that the Merged Entity would not be able to restrict rival payment software providers from accessing SIMS data via aggregators. This is because SIMS has no technical ability to discriminate between the particular third-party software that can access SIMS via an aggregator. SIMS's attractiveness as a MIS is predicated in part on SIMS integrating with a wide range of third party complementary software, and cutting off aggregator access to SIMS would mean that it would lose access to all third party complementary software that relies on aggregators.[164]

170. The CMA considers that the evidence indicates that aggregators do not provide competing payments software providers with the ability to circumvent any foreclosure of access to SIMS data via native APIs for three reasons:

   (a) First, the CMA considers that SIMS could impose contractual restrictions on the types of complementary software aggregators provide data to.[165] In response to the Issues Letter, the Parties argued that aggregators would resist any such restrictions. However, the CMA considers that aggregators are unlikely to be in a position to do so given their dependence on SIMS (as the leading MIS) for their business. In addition, in other countries the contracts between MIS and aggregators distinguish between different types of software and specify which types the aggregator is allowed to transfer data to.[166] [✂].[167] The CMA therefore considers that competing payments software providers could be targeted without affecting the ability of other software providers to integrate with SIMS via an aggregator.

   (b) Second, SIMS could also specify in its contracts with aggregators the costs of reading or writing particular types of data that would be used by

[163] Montagu response to question 7 of the CMA's s.109 notice dated 11 March 2021.
[164] FMN, paragraph 19.4.3.
[165] Montagu response to question 7 of the CMA's s109 notice dated 11 March 2021.
[166] [✂]
[167] [✂]

particular types of software.[168] As explained above, the CMA understands that payments providers only need to read the basic information held in SIMS to operate, limiting the Merged Entity's ability to target payments providers specifically as this data is also used by other types of software (such as parental communications).[169] However, some payments providers write back data into SIMS and therefore the Merged Entity could target payments providers by increasing the costs for doing this.[170]

(c) Third, as discussed in paragraph 60 there are advantages to using a native API over an aggregator. In particular, PPH noted that 'using a native API allowed more functionality than available through any aggregator; and a native API integration avoided the need to pay aggregator fees'. PPH has also chosen to integrate with SIMS and other MISs via a native API rather than via an aggregator.[171] Other suppliers have also stated that using a native API, or providing MIS and payments as a one-stop shop, allows greater integration and user experience such as having a common interface on an app.[172]

171. Therefore, although the Merged Entity would not be able to prevent rival payment software providers from accessing SIMS data manually and stop schools that use SIMS as their MIS from using different payments software altogether (ie total foreclosure), the CMA considers that the Merged Entity could degrade the integration between SIMS and rival payments software providers either by cutting off native API access or preventing rivals from using aggregators to access SIMS data (partial foreclosure).

Is it possible for the Merged Entity to materially affect the costs of competing payments software providers

172. SIMS charges an integrator fee (or API fee) to aggregators and payment software providers that wish to integrate with SIMS via a native API. These fees are set by SIMS. The Parties stated that the level of these fees in 2019 was low.[173]

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[168] With SIMS, there are different costs for writing back different types of data. Aggregators pass on this cost to the educational software provider, which is ultimately passed on to the school. It is less complex and cheaper to read data compared to writing back data. [✂] call note.
[169] [✂] call note.
[170] FMN, paragraph 12.83.
[171] PPH response to question 7 of the CMA's s.109 notice dated 7 April 2021.
[172] [✂]
[173] The Parties stated that ESS charges only a nominal fixed fee for API access to SIMS, accounting for only around 1% of ESS's total revenue in 2019 (FMN, paragraph 12.85).

173. However, the CMA has received complaints from third parties that SIMS has increased data access charges and plans to increase these further.[174]

174. Montagu has also recently changed the Technical Partner Programme pricing model from a flat rate to access data from any school to a variable rate per school, which has increased the cost for aggregators.[175] [✂].[176] [✂].[177]

175. The evidence the CMA has received suggests that current integration fees represent a small proportion (around [0-5]%)[178] of the average revenue a payments software provider receives per school.

176. The current (and planned for 2025) integration fee levels therefore appear unlikely to affect payment software providers' ability to compete due to the low proportion of the integration fee cost compared to the average revenue from payments software. The Merged Entity would therefore likely have to significantly increase these fees to levels that do not appear feasible, in order to lead rival payments providers to pass them on to their customers.

177. As a result, the CMA does not consider the Merged Entity would have the ability to foreclose rival payments providers through increasing the cost of API access.

Is SIMS' MIS software an important complementary product to payments software?

178. All schools that use payments software require and use a MIS provider. The CMA has considered whether there are good alternatives to SIMS' MIS for competing payments software providers.

179. Some competing payments software is only offered on an integrated basis with a MIS. This applies to Arbor and Bromcom who are both very small suppliers (<[0-5]%) of payments software.[179] For these providers SIMS' MIS is not currently a complementary product to their payments software (as their

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[174] [✂]
[175] [✂]. Also see Parties' response to question 15 of the CMA's Request for Information dated 10 March 2021, which notes that the annual fee to aggregators is currently capped at £81,000 but that this will increase to £101,000 in 2023-2024.
[176] Annex 18 of PPH's response to the CMA's s. 109 notice dated 6 May 2021.
[177] See [✂], and Parties' response to question 15 of the CMA's Request for Information dated 10 March 2021, which notes that [✂].
[178] Calculated as £25/£[✂] (standard integration fee divided by average PPH revenue by school. On average, PPH charges schools £[✂] per annum to use its ParentPay software (Parties' response to question 7 of the CMA's Request for Information dated 23 April 2021, and FMN, Annex 137. Average cost per school calculated as £[✂] (FMN, Annex 137, 'Mgmt P&L 2019' tab, cell C33) divided by [✂] (FMN, Annex 137, '[✂]' tab, cell E30). The CMA has used 2019 values, due to the impact of the Covid-19 pandemic on PPH business).
[179] Arbor and Bromcom would both be considered part of 'other' in the Parties' estimates so combined would account for at most [0-5]% of the payments market.

software cannot be used with SIMS) and the Merged Entity would not therefore be able to foreclose these payments software providers.

180. However, the larger payments software providers (Tucasi, Community Brands, Capita (SIMS Pay), and IRIS) as well as other smaller providers, offer payments software on a standalone basis. For these providers SIMS appears to be an important complementary product. SIMS is currently the largest MIS provider in the UK by a significant margin and is used by the majority of customers of standalone payment software providers.[180]

Conclusion on ability to foreclose payments rivals using SIMS

181. The CMA considers that the Merged Entity would not be able to engage in total foreclosure (ie preventing schools that use rival payments software from using SIMS) because the Merged Entity will be under a legal obligation to offer manual access to data stored in SIMS. The CMA also does not consider that the Merged Entity would have the ability to foreclose rival payments software providers through increasing the cost of API access given the low value of these fees relative to software providers' revenues.

182. However, the CMA considers that the Merged Entity would have the ability to foreclose rival payments software providers through partial non-price foreclosure because:

(a) the Merged Entity can restrict native API access to SIMS by competing payment software providers;

(b) native APIs have advantages compared to accessing SIMS data via an aggregator or manually;

(c) the Merged Entity can also prevent payment software rivals from using aggregators to access SIMS data; and

(d) payments software providers need access to MIS data to work and SIMS is the leading MIS product and a significant proportion of customers of standalone payments software providers use SIMS (although some payments software providers are integrated with a competing MIS and do not integrate with SIMS and so cannot be foreclosed).

[180] [✂]

Incentive

183. The Parties submitted that the Merged Entity would not have an incentive to foreclose competing providers of complementary payments software for several reasons:

   (a) a selling point of SIMS is its wide integration with third-party applications, which would be damaged by any foreclosure;[181]

   (b) the risk of retaliation from other MIS providers against PPH’s complementary software (including ParentPay, Schoolcomms and Cypad);[182] and

   (c) the previous conduct of SIMS is consistent with the Merged Entity not having an incentive to engage in foreclosure (for example, ESS has not pursued a foreclosure strategy in the past, despite previously providing its own payments software (SIMSPay)).[183]

184. To assess the Merged Entity’s incentive to foreclose competing providers of payments software, the CMA has considered:

   (a) the market position of PPH’s payments software;

   (b) SIMS’ MIS market position and the likelihood that schools would switch away from SIMS as a result of any foreclosure; and

   (c) the relative margins for SIMS’ MIS and PPH’s payments software.

185. Given the above conclusion that the Merged Entity would not have the ability to engage in total foreclosure nor the ability to foreclose rival payments software providers through increasing the cost of API access, the discussion below focusses on partial non-price foreclosure.

Market position of PPH’s payments software

186. A potential benefit for the Merged Entity from any foreclosure of providers of competing payments software would be an increase in the number of SIMS customers using PPH’s payments software. As described in the assessment of the other foreclosure theory of harm at paragraphs 113 to 120, PPH’s payments software currently has a strong position in the market with good brand recognition, but there appear to be limited differences in functionality between PPH’s payments software and that of competing providers. There

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[181] FMN, paragraphs 19.9 and 19.10.
[182] FMN, paragraph 19.11.
[183] FMN, paragraph 19.12.

are also barriers to switching payments software, such as the need for parents to download new software (see paragraph 64).

187. There are currently between [✂] and [✂] SIMS customers that use payments software not provided by PPH.[184] Given the strong market position of PPH's payments software, the CMA considers it possible that a material proportion of these customers could switch to PPH's payments software as a result of any foreclosure. However, the extent of any switching will depend on whether the effects of partial non-price foreclosure strategies are sufficient to overcome the barriers to switching payments software.

Market position of SIMS

188. There is a risk to the Merged Entity that foreclosing competing providers of payments software would lead some of the [✂] to [✂] SIMS customers that do not use PPH's payments software to switch away from SIMS.

189. As noted previously, SIMS has a high share of supply of MIS software and there are high barriers to switching MIS software. However, SIMS' share of supply has been decreasing in recent years, declining by 10% between 2014 and 2019. [✂]. Hence, any foreclosure that further reduces the quality of SIMS relative to other MIS software (by affecting its integration with payments software that is not provided by PPH) would increase the likelihood that a customer switches away from SIMS. This would be contrary to one of the key objectives of the post-Merger strategy set out in the Parties' internal documents which is to reduce the number of customers switching away from SIMS, [✂].[185]

190. Furthermore, [✂]. Foreclosure would be likely to increase this risk by further reducing the quality of SIMS relative to competing MIS software. This would weaken the incentive for the Merged Entity to foreclose competing providers of payments software due to the potential loss of SIMS customers.

191. [✂].

Relative profit margins for SIMS and PPH's payments software

192. As noted in paragraph 144, the gross margin per school for ParentPay (£[✂]) is much lower than that for SIMS (£[✂]). This means that for each SIMS

[184] The Parties estimate that approximately [✂] of the [✂] schools that have SIMS do not have any payments software. Of the [✂] schools that have SIMS and payments software, [✂] have ParentPay (some of which also have Schoolcomms) and [✂] have only Schoolcomms (see FMN, Annex 019, page 71). Not all Schoolcomms customers use the payments functionality, so the number of schools that have SIMS and a payments software not provided by PPH is between [✂] and [✂].
[185] FMN, Annex 019, page 11, and Annex PPH018.

customer lost as a result of foreclosure, the Merged Entity would need to gain almost two ParentPay customers in order for the benefits of foreclosure to outweigh the costs.

Conclusion on incentive to foreclose competing providers of payments software

193. The CMA believes that the available evidence, as described above, indicates that the costs of foreclosing competing providers of payments software would exceed the benefits and therefore that the Merged Entity would not have an incentive to engage in foreclosure.[186] This is in particular because of the higher gross margin of SIMS compared with ParentPay, and the risk of losing profitable SIMS customers through foreclosure by further reducing the quality of SIMS relative to competing cloud-based MIS software. [✂].

Effect

194. Having found that the Merged Entity would not have the ability and/or the incentive to engage in foreclosure of competing providers of payments software, the CMA has not needed to assess the possible effect of foreclosure.

Conclusion on the foreclosure of competing providers of payments software

195. For the reasons set out above, the CMA believes that although the Merged Entity would not have the ability to totally foreclosure competing providers of payments software, the Merged Entity may have the ability to engage in partial non-price foreclosure of competing providers of payments software.[187] However, the CMA believes that the Merged Entity will not have the incentive to engage in such foreclosure due to the risk of losing profitable SIMS customers.

196. Accordingly, the CMA finds that the Merger does not give rise to a realistic prospect of an SLC as a result of the foreclosure of competing providers of payments software.

Conclusion on conglomerate effects

197. For the reasons set out above, the CMA believes that:

[186] The CMA's assessment indicates that the Merged Entity would have neither the ability nor the incentive to foreclose competing providers of complementary education software, other than payments software.
[187] The CMA also believes that the Merged Entity would have neither the ability nor incentive to engage in price foreclosure.

(a) The Merged Entity may have an ability to totally foreclose competing MIS providers but will have limited ability to partially foreclose these providers. However, the Merged Entity will not have the incentive to engage in any foreclosure of MIS providers.

(b) The Merged Entity may have the ability to engage in partial non-price foreclosure of competing providers of payments software but will not have the ability to engage in total foreclosure. However, the Merged Entity will not have the incentive to engage in foreclosure of payments software providers, in particular due to the higher gross margin of SIMS compared with ParentPay.

198. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the supply of MIS and payments software to UK schools.

Third party views

199. The CMA contacted customers and competitors of the Parties. A few customers and other third parties raised concerns regarding the potential for the Merger to lead to increased prices and reduced choice. The majority of the MIS and payments software competitors of the Parties who responded to the CMA raised concerns.

200. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

201. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

202. The Merger will therefore **not be referred** under section 33(1) of the Act.

Joel Bamford
Senior Director, Mergers
Competition and Markets Authority
12 July 2021

[i] The last word of paragraph 84 should read IRIS/ParentMail.