

## Anticipated acquisition by Scape Living plc of certain assets of GCP Student Living plc

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

**ME/6953/21**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 6 December 2021. Full text of the decision published on 14 January 2022.

Please note that [X] 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. Scape Living plc (**SL Co**) has agreed to acquire certain assets belonging to GCP Student Living plc (**GCP**), a real estate investment trust (**REIT**) listed on the London Stock Exchange (the **Merger**).
2. The transaction is structured as a break-up bid, whereby SL Co and iQ Holdco Limited (**iQ**) will together acquire the entire share capital of GCP, before dividing up GCP's assets between them. The GCP assets to be acquired by SL Co are referred to as the **Target Business**.<sup>1</sup> SL Co and GCP are together referred to as the Parties; SL Co and the Target Business are together referred to as the **Merged Entity**.
3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of SL Co and the Target Business is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply 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.

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<sup>1</sup> The acquisition by iQ of GCP's other assets results in the creation of a separate relevant merger situation, and is therefore subject to a separate merger investigation: [iQSA Holdco Limited / GCP Student Living Plc](#).

4. SL Co and the Target Business overlap in the supply of corporate purpose-built student accommodation (**PBSA**) to full time higher education students seeking accommodation (**FTSSA**) in London and in Guildford.
5. The CMA assessed the impact of the Merger on the supply of corporate PBSA (**corporate PBSA**) on (1) a UK-wide basis and (2) in local catchment areas based on walking distances of 20 minutes and 30 minutes from HEI campuses in Guildford. However, the CMA also took account of constraints from corporate PBSA located further away, and from other forms of student accommodation, including PBSA provided by higher education institutions (**HEIs**) to their students (**HEI PBSA**) and houses in multiple occupation (**HMO**) where relevant in its competitive assessment in local areas. This is consistent with the approach taken by the CMA in its 2019 decision in *Unite/Liberty*.<sup>2</sup> The CMA did not receive any evidence to suggest that it would be appropriate to depart from this precedent.
6. The CMA found no realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects at a national level, based on the Merged Entity's small share of supply (less than [0-5]%), and given that the Merged Entity will continue to be constrained by a large number of corporate PBSA competitors.
7. The CMA similarly found no realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of corporate PBSA in the local areas where SL Co and the Target Business overlap.<sup>3</sup> In particular, the CMA believes that there will be sufficient competitive constraints on the Merged Entity, including from alternative corporate PBSA providers, certain non-purpose-built student accommodation, and a more limited constraint from HMO and HEI PBSA.
8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

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<sup>2</sup> CMA, Case ME/6825/19, Anticipated acquisition by Unite Group plc of Liberty Living Group plc, [Phase 1 decision of 6 November 2019 \(Unite/Liberty\)](#).

<sup>3</sup> To identify the local HEI campus catchment areas in which the Merger could raise competition concerns, the CMA applied a filter based on the Merged Entity's share of supply and the increment to the share of supply brought about by the Merger. For the two HEI campus catchment areas in Guildford that failed the filter, the CMA conducted a more detailed analysis of the competitive conditions.

## ASSESSMENT

### Parties

9. GCP is a REIT listed on the London Stock Exchange, and owns a portfolio of 11 PBSA properties located in London, Brighton, Guildford, Egham and Bristol. GCP's turnover in the financial year ended 30 June 2020 was £47.8 million in the UK.
10. SL Co is a REIT listed on the International Stock Exchange, with investments focused on UK PBSA and 'City Living' residential real estate assets. SL Co is majority owned by an asset pool managed by APG Asset Management N.V. (**APG**), and minority owned by [REDACTED] (the **Scape Principals**). SL Co was incorporated in September 2020, and its annual turnover information is not yet available.
11. APG is an investment manager for several Dutch pension funds, and is a wholly-owned subsidiary of APG Groep N.V., the biggest pension administrator in the Netherlands, which in turn is 92% owned by Stichting Pensioenfondsen ABP, the pension fund for government and education employees in the Netherlands. APG's 2020 turnover was £[REDACTED] worldwide, and £[REDACTED] in the UK.
12. The Scape Principals jointly control a number of companies including Scape UK Management Limited (**Scape**). Scape is an operator of PBSA properties owned by GCP and SL Co, as well as a developer of PBSA. Scape is also the owner of one PBSA property which it operates in London.

### Transaction

13. The transaction involves a two-step break-up bid whereby SL Co and iQ<sup>4i</sup> will acquire GCP, before dividing up GCP's PBSA properties between them and then winding up the GCP group.
14. Firstly, Gemini Jersey JV L.P. (**Bidco**), a newly-formed vehicle jointly owned by SL Co and iQ, will acquire the entire issued share capital of GCP by way of a court-sanctioned scheme of arrangement under Part 26 of the Companies Act 2006 (the **First Step Transaction**). For the period that Bidco holds the assets of GCP, relevant governance arrangements reserve to SL Co sole control of the five properties it will ultimately acquire, and to iQ sole control of the six properties it will ultimately acquire (see Table 1 below). During this

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<sup>4</sup> iQ is an owner, operator and developer of corporate PBSA, and is owned by funds advised or managed by affiliates of The Blackstone Group Inc., a global alternative asset manager, headquartered in the United States.

interim period, SL Co's and iQ's information rights will also be limited to the information concerning the properties they will ultimately acquire.<sup>5</sup>

15. Secondly, pursuant to the terms of a Separation Agreement between Bidco, SL Co and iQ, Bidco will transfer six of the former GCP corporate PBSA properties to iQ, and five of the former GCP corporate PBSA properties to SL Co (the **Second Step Transaction**). The GCP corporate PBSA properties which will be acquired by SL Co (ie the Target Business) and those which will be acquired by iQ (the **iQ Target Business**) are set out in Table 1 below. SL Co's acquisition of the Target Business and iQ's acquisition of the iQ Target Business are interrelated, and both transactions are conditional on confirmation that neither transaction will be referred to a phase 2 investigation by the CMA.<sup>6</sup>

**Table 1: GCP corporate PBSA properties which will be acquired by iQ and SL Co**

Property	Location
<b>iQ Target Business</b>	
Scape Brighton	Moulsecoomb, Brighton
Scape Mile End	Mile End, London
Scape Greenwich	Greenwich, London
Water Lane Apartments	Redcliffe, Bristol
The Pad	Egham
Podium	Egham
<b>Target Business</b>	
Circus Street	Circus Street, Brighton
Scape Shoreditch	Shoreditch, London
Scape Bloomsbury	Bloomsbury, London
Scape Wembley	Wembley, London
Scape Guildford	Guildford

Source: Final Merger Notice, Tables 1 and 2.

16. The Parties informed the CMA that the Merger is not subject to review by any other competition authority.

<sup>5</sup> Final Merger Notice, submitted to the CMA on 13 October 2021 (**FMN**), Annex 002, Shareholders Agreement, clause 4.1 and 4.2.

<sup>6</sup> FMN, Annex 021.1, 'Final Scheme Document', page 45.

## Jurisdiction

17. The CMA believes that the Merger is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.<sup>7</sup>

### *The First Step Transaction*

18. The CMA has considered whether the First Step Transaction in the break-up bid may amount to a separate relevant merger situation.

### *The legal framework*

19. The Act does not define the period of time that a merger situation should last in order for it to qualify as a relevant merger situation under the Act. In theory, therefore, acquisitions of control intended purely as a temporary step in a wider overall transaction might constitute a relevant merger situation.<sup>8</sup>
20. As set out in the CMA's guidance, where merging parties elect not to notify the initial acquisition in a break-up bid, the CMA is unlikely to treat it as a separate relevant merger situation concerning the entire target enterprise where it is clear that it will be merely an interim step in the context of a wider transaction and that the subsequent steps will occur within the four-month time period within which the CMA has the ability to refer the initial acquisition.<sup>9</sup>
21. However, where it appears that the subsequent steps may not take place within four months of completion of the initial acquisition, the CMA will not risk losing its ability to refer the initial acquisition simply on the basis that it is intended that the current situation will not be permanent.<sup>10</sup>

### *Parties' submissions*

22. The Parties submitted that they were not notifying the First Step Transaction, because it is merely an interim transaction in the context of ultimate acquisitions by SL Co and iQ, which will occur within four months of completion of the First Step Transaction.<sup>11</sup>

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<sup>7</sup> Section 33(1)(a) of the Act.

<sup>8</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, paragraph 4.44.

<sup>9</sup> [CMA2revised](#), paragraph 4.47.

<sup>10</sup> [CMA2revised](#), paragraph 4.47.

<sup>11</sup> FMN, paragraph 5.2.

## *CMA assessment*

23. The CMA decided not to investigate the First Step Transaction as a separate relevant merger situation. The CMA is satisfied that the First Step Transaction is merely an interim step in the context of wider transactions involving SL Co's acquisition of the Target Business and iQ's acquisition of the iQ Target Business, and that the Second Step Transaction will occur within the four month period within which the CMA has the ability to refer the First Step Transaction.
24. In reaching this view the CMA took account of the following considerations:
- (a) the Parties are contractually bound to complete the Second Step Transaction on or as soon as reasonably practicable following completion of the First Step Transaction;<sup>12</sup>
  - (b) the only condition to completion of the Second Step Transaction is CMA approval, which is also a condition of completion of the First Step Transaction;<sup>13</sup>
  - (c) the First Step Transaction is subject to the UK City Code on Takeovers and Mergers, and the Rule 2.7 public announcement of a firm intention to make an offer sets out SL Co and iQ's intention to carry out the Second Step Transaction;<sup>14</sup> and
  - (d) the terms of iQ's acquisition finance facility require the Second Step Transaction to occur within 14 days of completion of the First Step Transaction.<sup>15</sup>

## ***The Second Step Transaction***

25. Each of SL Co and the Target Business is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
26. The CMA has considered whether Scape has the ability to exercise material influence over SL Co and would therefore also cease to be distinct with the Target Business as a result of the Merger. The CMA considers that a number of factors suggest that Scape may have the ability to exercise material influence over SL Co, including the fact that one of the Scape Principals is currently appointed as a director (one of three in total) of SL Co, and that

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<sup>12</sup> FMN, Annex 001, Separation Agreement, clause 2.1.

<sup>13</sup> FMN, Annex 001, Separation Agreement, clause 23.

<sup>14</sup> FMN, Annex 003, Rule 2.7 Announcement, page 3.

<sup>15</sup> Parties' Response to RFI 3, paragraphs 1.10 to 1.15.

Scape provides strategic property advisory services to SL Co under an advisory agreement,<sup>16</sup> which may result in the views of the Scape director being afforded more weight.<sup>17</sup>

27. However, the CMA has not found it necessary to conclude on whether Scape will acquire material influence over the Target Business. Even if Scape is considered to be an enterprise ceasing to be distinct with the Target Business, only one additional local overlap would fail the CMA's filter, and the CMA considers that the Merger would not give rise to competition concerns in this area.<sup>18</sup>
28. SL Co and the Target Business overlap in the supply of corporate PBSA. The Parties submitted that the share of supply test may be met in two local catchment areas in Guildford, applying the product and geographic frame of reference used by the CMA in *Unite/Liberty*. In both of these catchment areas, the CMA found that the Merged Entity would have a combined share of supply of [30-40]%, with an increment of [5-10]%.<sup>19</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.

### ***Conclusion on jurisdiction***

29. 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.
30. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 October 2021 and the statutory 40 working day deadline for a decision is therefore 13 December 2021.

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<sup>16</sup> FMN, Annex 011, Advisory Agreement.

<sup>17</sup> *CMA2revised*, paragraphs 4.33, 4.35.

<sup>18</sup> If Scape were considered an enterprise ceasing to be distinct with the Target Business, then a 20 minutes' walking distance catchment area centred on the University of Westminster, Cavendish campus would fail the CMA's filter due to the inclusion of Scape Kings Cross, a PBSA property owned by Scape. In this catchment area, the Merged Entity would have a share of supply of [40-50]%, with a small increment of [5-10]%. The Merged Entity's properties in this catchment area would continue to be constrained by a number of large corporate PBSA properties in the Kings Cross area, located just outside a 20 minute walking distance from the Cavendish campus and in close proximity to Scape Kings Cross. The CMA notes that the 30 minutes' walking distance catchment does not fail the CMA's filter, which shows the significance of the corporate PBSA properties located in this area. Based on a 30 minutes' walking distance catchment area, the Merged Entity would have a share of supply of [20-30]%, with an increment of [0-5]%. This conclusion is supported by responses to third party questionnaires, and the findings of the CMA in *Unite/Liberty* (see footnote 2) at paragraph 213, which suggest that students are generally prepared to travel further than a 20 minute walk in London. The local catchment overlap centred on the University of Westminster, Cavendish campus is therefore not considered further in this Decision.

<sup>19</sup> See Table 4.

## Counterfactual

31. The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).<sup>20</sup> In anticipated mergers, 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.<sup>21</sup>
32. The CMA's assessment of the counterfactual will often focus on significant changes affecting competition between the merger firms, such as entry into new markets in competition with each other.<sup>22</sup> The CMA is also likely to focus only on significant changes where there are reasons to believe that those changes would make a material difference to its competitive assessment.<sup>23</sup> The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the merger. Those conditions are better considered in the competitive assessment.<sup>24</sup>
33. In this case, the Parties submitted that the relevant counterfactual should be the prevailing conditions of competition.<sup>25</sup> [✂].<sup>26</sup> The CMA found no evidence to support the use of a different counterfactual, and therefore assessed the Merger against the prevailing conditions of competition.

## Background

### ***Student accommodation***

34. The Parties are active in the supply of accommodation to FTSSA.<sup>27</sup> Student accommodation consists of rooms that are available to be let by students on a short-term basis (typically on 40-51 week terms).<sup>28</sup>
35. Student accommodation comprises two main types:
  - (a) PBSA, which consists of properties developed specifically for students. Bedrooms are typically single occupation, while kitchens and common areas are typically shared, as are bathrooms in the case of 'standard' or

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<sup>20</sup> [Merger Assessment Guidelines](#) (CMA129), 18 March 2021 (**Merger Assessment Guidelines**) paragraph 3.1.

<sup>21</sup> [Merger Assessment Guidelines](#), paragraph 3.2.

<sup>22</sup> [Merger Assessment Guidelines](#), paragraph 3.8.

<sup>23</sup> [Merger Assessment Guidelines](#), paragraph 3.9.

<sup>24</sup> [Merger Assessment Guidelines](#), paragraph 3.7.

<sup>25</sup> FMN, paragraph 11.1.

<sup>26</sup> [✂].

<sup>27</sup> FTSSA excludes those students who live in their own/family residence.

<sup>28</sup> FMN, paragraph 12.1



'non-ensuite' rooms. Frequently, PBSA consists of large developments, accommodating hundreds of students;<sup>29</sup> and

(b) HMO. A house (or flat) in multiple occupation is traditionally a property where different individuals who are not family members share a single residence, typically with individual bedrooms and shared use of that residence's common areas (kitchen, bathrooms etc). For the purposes of the CMA's investigation, HMO includes non-purpose-built houses, flats and studios rented by FTSSA from a private landlord.<sup>30</sup> HMO therefore captures almost all properties at which FTSSA<sup>31</sup> reside, other than PBSA.<sup>32</sup>

36. PBSA is supplied both by corporate PBSA providers (including the Parties) and by HEIs.<sup>33</sup> The CMA considers the differences between corporate PBSA, HEI PBSA and HMO within the frame of reference section below.

### ***The provision of student accommodation***

37. The end users of student accommodation are FTSSA.

38. First-year students, international students and students with disabilities are typically offered an 'accommodation guarantee' by the HEI.<sup>34</sup>

39. In order to meet the capacity demands of these accommodation guarantees, HEIs will typically offer their own PSBA (where available). If their own PBSA is insufficient to meet this demand, HEIs will typically contract with corporate PBSA providers through nomination agreements to secure a set number of beds.

40. Returning students are usually not covered by an accommodation guarantee. These students are generally responsible for finding their own accommodation and will typically elect to let a room directly from a corporate PBSA provider or to rent HMO accommodation.<sup>35</sup>

41. Therefore, in relation to corporate PBSA, students will obtain a room either:

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<sup>29</sup> FMN, paragraph 12.2.

<sup>30</sup> The CMA notes that there is one property – The Bridge – considered as part of the competitive assessment which does not fit neatly into these categories: see paragraphs 121 to 124.

<sup>31</sup> FTSSA excludes those students who live in their own/family residence. FMN, paragraph 13.2.

<sup>32</sup> FMN, paragraph 12.2.

<sup>33</sup> FMN, paragraph 12.3.

<sup>34</sup> *Unite/Liberty*, paragraph 49.

<sup>35</sup> Some HEIs also work to some extent with HMO providers (albeit to a lesser extent than corporate PBSA providers), both by running housing lists (which in some circumstances are accredited) and by entering into both formal (head lease schemes) and informal agreements with local HMO providers.

- (a) directly from a corporate PBSA provider through the 'direct let' channel (either directly through their websites or through, for instance, agents); or
  - (b) indirectly through their HEI, where the latter has entered into a nomination agreement with the PBSA provider.
42. The Parties' customers therefore comprise both individual students and HEIs, although the Parties submitted that the properties involved in the Merger currently consist almost entirely of direct lets to students.<sup>36</sup>
43. The CMA also notes that different corporate PBSA providers have different business models. Some providers (such as GCP and SL Co) own corporate PBSA properties, but outsource management and branding of those properties to an asset manager/operator. Some providers are asset managers/operators only (eg CRM), and do not own the underlying properties. Finally, some providers are both owners and operators (eg Unite and iQ).
44. As part of the *Unite/Liberty* investigation in 2019 the CMA conducted a survey of individual direct let students. Online questionnaires were sent to 18,816 students. In total, 998<sup>37</sup> students completed the survey. The CMA did not complete a further survey as part of this investigation but has referred to the results of the *Unite/Liberty* survey below where appropriate.

## Frame of reference

45. Market definition is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment.<sup>38</sup> It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.<sup>39</sup>
46. Market definition is not an end in itself. The outcome of any market definition exercise does not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant

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<sup>36</sup> FMN, paragraph 12.6.

<sup>37</sup> At least as far as question 8 of the survey.

<sup>38</sup> [Merger Assessment Guidelines](#), paragraph 9.1.

<sup>39</sup> [Merger Assessment Guidelines](#), paragraph 9.2.

market, or other ways in which some constraints are more important than others.<sup>40</sup>

47. SL Co and the Target Business' activities overlap only in the supply of corporate PBSA in the UK, and at the local level, in Guildford and London.

### **Product scope**

48. The Parties submitted that the relevant product market includes all forms of accommodation available to FTSSA (excluding those students who live in their own / family residence) because:<sup>41</sup>
- (a) HEI PBSA is a viable alternative to corporate PBSA, specifically for those students who qualify for HEI accommodation guarantees; and
  - (b) HMOs are a viable alternative to PBSA (corporate and HEI) for returning international and local/domestic students.
49. This contrasts with the CMA's product frame of reference in *Unite/Liberty* which considered the effect of the merger on the provision of corporate PBSA. On the basis of the evidence received in its investigation, set out below, the CMA considers that the product frame of reference used in *Unite/Liberty* remains appropriate.

### **Corporate PBSA**

50. The CMA notes that the Parties' activities overlap only in the provision of corporate PBSA. The CMA has therefore started with corporate PBSA as the narrowest candidate frame of reference and looked at whether this should be widened to include other types of student accommodation.
51. Third party evidence confirmed that relative to other forms of student accommodation, corporate PBSA is usually of a higher quality with more expensive rooms (typically en-suite and studios) and is more likely to offer facilities such as cinema rooms, gyms and other on-site amenities.<sup>42</sup>
52. Consistent with the findings of *Unite/Liberty* the CMA received evidence that these features may differentiate corporate PBSA from the other forms of student accommodation.

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<sup>40</sup> [Merger Assessment Guidelines](#), paragraph 9.4.

<sup>41</sup> FMN, paragraphs 13.3 and 13.5.

<sup>42</sup> [REDACTED] Third party call note; [REDACTED] Third party call note.

## HEI PBSA

53. The CMA notes that HEI PBSA tends to be lower quality and cheaper than corporate PBSA. HEI PBSA more commonly offers rooms with shared bathrooms in addition to en-suite rooms, with limited provision of studios. In addition, the facilities available within HEI PBSA are typically more basic than those found in corporate PBSA.<sup>43</sup>
54. However, the CMA recognises that HEI PBSA may be an alternative to corporate PBSA for some students. The presence of some constraint from HEI PBSA can be seen in the results of the CMA's *Unite/Liberty* survey (which was sent exclusively to direct let students). In response to the question asking respondents what they would have done if the corporate PBSA property where they were resident had been fully booked, 21% responded that they would have rented a room in an HEI PBSA property.<sup>44</sup>
55. The degree of substitutability of HEI PBSA for students booking through the direct let route will depend on the proportion of students that benefit from HEI PBSA accommodation guarantees and whether there is spare capacity after students who benefit from those guarantees have taken up their offers of accommodation. The evidence gathered by the CMA suggests that HEI institutions often have insufficient capacity to meet their accommodation guarantees (and so contract additional capacity from corporate PBSA providers), and those that do have a variable amount of spare capacity after guaranteed places are filled.
56. These findings are supported by the third party evidence received from competitors and HEIs, who submitted that HEI PBSA is only suitable for certain students, typically students that benefit from an accommodation guarantee, such as first year students, international students and students with disabilities. In addition, these student groups may have a preference towards HEI-arranged PBSA accommodation, as staying in university halls ensures that they are living close to other students and benefit from a degree of assurance about security, amenities, and service levels.<sup>45</sup> This suggests that HEI PBSA provides a limited constraint on corporate PBSA pricing.
57. As such, and since the proportion of students that benefit from HEI PBSA accommodation guarantees, and the extent of any spare capacity after accommodation guarantees are taken up, varies between HEIs, the CMA has excluded HEI PBSA from the relevant frame of reference but considered the

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<sup>43</sup> See for instance Sarah Jones and Martin Blakey, Higher Education Policy Institute, '[Student Accommodation: The Facts](#)' (2020), page 23.

<sup>44</sup> *Unite/Liberty*, paragraph 63.

<sup>45</sup> *Unite/Liberty*, paragraphs 49 to 51; [§] Third party call note.

constraint from HEI PBSA as part of the competitive assessment where relevant.

## HMO

58. The CMA also considered whether HMO should form part of the product frame of reference.
59. HMO accommodation is differentiated from both corporate and HEI PBSA and is typically materially cheaper.
60. The CMA believes that HMO may not be considered as substitutable with corporate PBSA for many students booking through the direct let route. In particular, third parties indicated that HMO is often not suitable for first year and international students, because the former will not have had sufficient time to form a group of friends with which to book an HMO, and the latter may not have access to a UK guarantor, which is required by many HMO landlords.<sup>46</sup> The CMA therefore believes HMO only provides a limited constraint on corporate PBSA pricing.
61. For HEIs entering into nomination agreements, the evidence does not suggest that HMO is considered suitable for these purposes. The CMA has seen little evidence of HEIs entering into nomination agreements with HMO providers.<sup>47</sup>
62. However, the CMA recognises that HMO may be a viable alternative for certain direct let students, in particular returning students and postgraduate students. Consistent with the findings of *Unite/Liberty*, the CMA received evidence from some third parties that returning students may consider HMO as an attractive alternative as they may prefer to live together with friendship groups.<sup>48</sup>
63. The presence of some constraint from HMO can also be seen in the results of the CMA's *Unite/Liberty* survey (which was sent exclusively to direct let students). In response to the question asking respondents what they would have done if the corporate PBSA property where they were resident had been fully booked, 24% responded that they would have used HMO.<sup>49</sup>

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<sup>46</sup> [redacted] response to third party questionnaire.

<sup>47</sup> [redacted] submitted that historically it had taken on some HMO properties and acted as the landlord but has now ceased using this model. [redacted] Third party call note.

<sup>48</sup> For example [redacted], [redacted] and [redacted] response to third party questionnaires.

<sup>49</sup> *Unite/Liberty*, paragraph 68.

64. As such, the CMA has excluded HMO from the relevant product frame of reference, but considered the constraint from HMO as part of the competitive assessment where relevant.

*Conclusion on widening the frame of reference from corporate PBSA*

65. For the reasons set out above, the CMA considers that the frame of reference should not be widened to include HEI PBSA or HMO for the product frame of reference.

*Corporate PBSA room type and type of customer*

66. The CMA has also considered whether the product scope should be narrower than corporate PBSA.
67. In respect of room type, while the Parties and their corporate PBSA competitors may provide different types and quality of rooms in individual properties, across different properties they generally offer a similar range of room types. Consistent with the findings of *Unite/Liberty*, the CMA received evidence that there is relatively limited differentiation in the quality of the rooms supplied by the majority of corporate PBSA providers.<sup>50</sup> The Parties submitted that all corporate PBSA assets compete for the same customers regardless of the supply-side quality of the room and industry reporting<sup>51</sup> does not segment PBSA suppliers based on the quality of their rooms.<sup>52</sup> Although the CMA does not consider that the product frame of reference should be narrowed in this respect, it has taken differences or similarities in the Parties' offerings in specific locations into account in the competitive assessment.
68. As noted above (see paragraph 41), there are two groups of corporate PBSA customers: HEIs via nomination agreements and students via direct lets. Average prices for equivalent 'direct let' corporate PBSA rooms and corporate PBSA rooms subject to nomination agreements with HEIs are generally similar, though prices for the latter may be lower due to lower marketing costs<sup>53</sup> and the CMA therefore considers it appropriate to assess the two customer groups within a single frame of reference. However, the CMA recognises that there are differences in these two customer sets and will take this into account in the competitive assessment where relevant.
69. In addition, as outlined in paragraphs 38 and 40, the CMA notes that different types of student (including first years, returners and international students)

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<sup>50</sup> *Unite/Liberty*, paragraph 102.

<sup>51</sup> For example, FMN, Annex 024, 'Cushman & Wakefield 2020/21 UK Student Accommodation Report'.

<sup>52</sup> FMN, paragraph 13.7.

<sup>53</sup> FMN, paragraph 13.7.

have different demand preferences and different levels of reliance on (corporate) PBSA. The CMA will take these differences into account in the competitive assessment but considers it appropriate to assess all types of student within a single frame of reference, because all corporate PBSA providers offer rooms to each of these different types of student.

70. In line with *Unite/Liberty* the CMA has, therefore, not further narrowed the product frame of reference of corporate PBSA.

### *Conclusion on product scope*

71. For the reasons set out above, the CMA has considered the impact of the Merger in the provision of corporate PBSA. The CMA will consider the constraint from other forms of student accommodation as part of its competitive assessment.

### **Geographic scope**

72. The Parties submitted that the appropriate relevant geographic market should be national and city/town-wide.<sup>54</sup> The Parties submitted that it was not appropriate to adopt a narrower frame of reference based on catchment areas around HEI campuses because:

- (a) students consider the location of accommodation not only in respect of their campus, but also in respect of other amenities (eg gyms, 'student neighbourhoods');
- (b) in particular, walking-distance catchment areas are not appropriate in London, due to the availability of public transport links.

73. In *Unite/Liberty*, the CMA found evidence of competition at the national level in respect of the acquisition of sites and development of corporate PBSA. In addition, third parties indicated that the decisions of students and HEIs may be influenced by the national branding and reputation of corporate PBSA providers.<sup>55</sup>

74. Nevertheless, the CMA found that competition primarily occurs on a local basis such that decisions on pricing and quality are always taken in the context of the individual asset and its relative position at a local (intra-city) level. The CMA found that proximity to the HEI campus is the primary factor when customers are choosing corporate PBSA accommodation, both for

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<sup>54</sup> FMN, paragraph 13.9.

<sup>55</sup> *Unite/Liberty*, paragraph 81.

students booking accommodation through the direct let route or HEIs entering into nomination agreements.<sup>56</sup> Based on survey evidence and submissions from HEIs on how far students are prepared to travel to reach their HEI, on a cautious basis, the CMA used ‘campus catchment areas’ of 20 minutes’ and 30 minutes’ walking distance from the affected HEI campuses.<sup>57</sup>

75. However, the CMA recognised that other factors such as public transport options may be relevant in some cities and took this into account within the local competitive assessments.<sup>58</sup>
76. Evidence received by the CMA in this investigation was broadly consistent with the findings of *Unite/Liberty* with respect to national and local competition and the CMA has therefore adopted the same approach to the geographic frame of reference.

### *Conclusion on geographic scope*

77. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- (a) a UK-wide frame of reference; and
  - (b) local frames of reference based on (i) catchment areas of 20 minutes’ walking distance from the affected HEI campuses; and (ii) catchment areas of 30 minutes’ walking distance from the affected HEI campuses.
78. As in *Unite/Liberty*, the CMA recognises that other factors such as public transport options may also be relevant and result in student accommodation located outside of the catchment areas exerting a competitive constraint in some cities. This will be taken into account within the local competitive assessments.

### *Conclusion on frame of reference*

79. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) a UK-wide frame of reference for the provision of corporate PBSA; and
  - (b) local frames of reference for the provision of corporate PBSA in each city where both SL Co and the Target Business are present, within (i)

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<sup>56</sup> *Unite/Liberty*, paragraph 81.

<sup>57</sup> *Unite/Liberty*, paragraphs 84 to 85.

<sup>58</sup> *Unite/Liberty*, paragraph 90.



catchment areas of 20 minutes' walking distance from the relevant HEI campuses and (ii) catchment areas of 30 minutes' walking distance from the relevant HEI campuses.

## **Competitive assessment**

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

80. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>59</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
81. 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 corporate PBSA at both a national and local level.

### ***National competitive assessment***

82. The Parties submitted that:
- (a) The parameters of competition at the national level are limited, and most competitive decisions are taken in the context of the individual assets and their position in the relevant city.<sup>60</sup>
  - (b) There will be no merger-specific changes in respect of market position or brand or reputation, because the Parties are investors in/owners of corporate PBSA, and the Target Business will be managed by the same entity (ie Scape) as pre-Merger.
  - (c) The Merger is incapable of giving rise to an SLC in 'site acquisition', given the Merged Entity's estimated share of supply of [0-5]%, with a [0-5]% increment.<sup>61</sup>
83. The evidence received by the CMA is consistent with the CMA's findings in *Unite/Liberty* that competition at the national level is limited.<sup>62</sup> The evidence related to the national competitive assessment is considered below.

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<sup>59</sup> [Merger Assessment Guidelines](#), paragraph 4.1.

<sup>60</sup> FMN, paragraph 15.1.

<sup>61</sup> FMN, paragraph 15.4.

<sup>62</sup> *Unite/Liberty*, paragraph 80.

## Shares of supply

84. The Parties presented shares of supply based on numbers of beds, calculated using third party industry reporting by real estate consultancy Cushman & Wakefield (**C&W**).<sup>63</sup>
85. Table 2 contains the Parties' estimates of the national shares of supply of the main providers of corporate PBSA beds in the UK.<sup>64</sup>

**Table 2: Estimated national shares of supply in corporate PBSA<sup>65</sup>**

Corporate PBSA Provider	Number of beds	Shares of supply
SL Co + APG + Scape (excluding assets managed for GCP)	[REDACTED]	[0-5]%
GCP	[REDACTED]	[0-5]%
Target Business	[REDACTED]	[0-5]%
<b>Merged Entity</b>	[REDACTED]	<b>[0-5]%</b>
Unite Students	[REDACTED]	[20-30]%
iQ Student	[REDACTED]	[5-10]%
Student Roost	[REDACTED]	[5-10]%
Fresh Student Living	[REDACTED]	[5-10]%
CRM Students	[REDACTED]	[5-10]%
Homes for Students	[REDACTED]	[5-10]%
Host Students	[REDACTED]	[0-5]%
Campus Living Villages	[REDACTED]	[0-5]%
Hello Student	[REDACTED]	[0-5]%
The Student Housing Company	[REDACTED]	[0-5]%
<i>Other</i>	[REDACTED]	[30-40]%
<b>Total corporate PBSA Beds in the UK</b>	[REDACTED]	<b>100%</b>

Source: Parties' estimates; Parties' response to RFI 6, Table 1.

86. The Merged Entity's combined share of supply in corporate PBSA is small at [0-5]% with a [0-5]% increment and Table 2 also shows that there will be many other providers with a larger national presence.
87. The CMA therefore believes that there is no realistic prospect of an SLC at a national level.

<sup>63</sup> C&W estimated a total of [REDACTED] private sector PBSA beds in the UK, which the Parties used, combined with internal data on their own room numbers, and C&W data on the room numbers of competitors, to calculate national shares of supply. The CMA found in *Unite/Liberty* that the use of the number of beds as a measure of the size of PBSA properties and providers is appropriate and common practice in the industry.

<sup>64</sup> Although there are some differences in the competitor shares of supply estimated by SL Co and those estimated by iQ in Case ME/6954/21, differences are not material, and shares of supply are small in any event.

<sup>65</sup> Figures presented for the Parties also include Scape Kings Cross, a property separately owned and operated by Scape. As noted in footnote 18 the CMA has not found it necessary to conclude on whether Scape will cease to be distinct from the Target Business, but beds owned by Scape are included in national share of supply figures on a conservative basis.

## **Local competitive assessment**

### *Local overlaps between SL Co's and the Target Business' properties*

88. At a city-wide/town-wide level, local overlaps arise between SL Co's and the Target Business' properties in London and Guildford.
- (a) In London, SL Co will acquire 'Scape Shoreditch' ([REDACTED] beds), 'Scape Bloomsbury' ([REDACTED] beds) and 'Scape Wembley' ([REDACTED] beds). SL Co currently owns a single corporate PBSA property in London, 'Scape Mile End Canalside' ([REDACTED] beds), while APG currently owns [REDACTED],<sup>66</sup> and [REDACTED].<sup>67</sup>
- (b) In Guildford, SL Co will acquire a single corporate PBSA property 'Scape Guildford 1' ([REDACTED] beds). SL Co currently owns 'Scape Guildford 2' ([REDACTED] beds) in Guildford.
89. SL Co will also acquire 'Circus Street', a corporate PBSA property in Brighton ([REDACTED] beds), which is subject to a long lease to Kaplan Living. Neither SL Co nor APG currently owns any corporate PBSA in Brighton, so the Merger does not give rise to a local overlap in this city.

### *Share of supply filter for HEI campus catchment areas*

90. In merger investigations where merger firms tailor their offering to each specific local area, this may result in the CMA having to consider a large number of overlaps between the merger firms. In such cases, the CMA may employ a filtering approach, which involves identifying some areas as requiring no further consideration based on systematic information that is relatively easy to gather. This allows the CMA to gather further information for a more manageable number of areas (ie those that fail the filter), and give them further consideration based on factors that can be systematically analysed across all local areas.<sup>68</sup>
91. Consistent with the approach taken in *Unite/Liberty*, the CMA applied a filter to identify HEI campus catchment areas<sup>69</sup> giving rise to an overlap where either the Merged Entity's share of supply or the increment arising from the Merger is sufficiently low that the CMA believes there can be no realistic

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<sup>66</sup> [REDACTED].

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

<sup>68</sup> [CMA2 revised](#), paragraph 4.32 to 4.33.

<sup>69</sup> For the purposes of its investigation, the CMA reviewed HEI campuses identified by the Parties, from which the Higher Education Statistics Agency (**HESA**) collects data, and which have FTSSA >1,000, based on location data, bed numbers and FTSSA estimates provided by the Parties.

prospect of a substantial lessening of competition.<sup>70</sup> Any given HEI campus is considered to 'fail' the filter, and to warrant further consideration, when both the Merged Entity's share of supply and the share of supply increment resulting from the Merger exceed 30% and 5% respectively.

92. The catchment areas set out in Table 3 have failed this filter and as such have been identified as requiring further consideration to determine whether there is a realistic prospect of an SLC arising in these local areas as a result of the Merger.

**Table 3: HEI campus catchment areas that failed the CMA's filter**

<b>Guildford</b>	1.	Stag Hill Campus (University of Surrey)
	2.	Academy of Contemporary Music

***Detailed local competitive assessment***

93. The CMA conducted a detailed competitive assessment for the Guildford campus catchment areas that failed the filter. The CMA has assessed:
- (a) Shares of supply and increments for each campus that failed the filter;
  - (b) The closeness of competition between the Parties within the catchment areas;
  - (c) The competitive constraint from alternative corporate PBSA providers within the catchment areas (including the extent to which alternative corporate PBSA beds to those of the Parties are available to HEIs to meet their commitments, eg to guarantee beds to first year students);<sup>71</sup> and
  - (d) The out of market constraint from corporate PBSA properties located outside the catchment areas, HMO and HEI PBSA.<sup>72</sup>

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<sup>70</sup> SL Co used the London and Guildford Knight Frank Q4 2020 Reports to identify the corporate PBSA situated in London and Guildford respectively, and the number of beds for each PBSA asset, and Google Maps to calculate the walking distances between HEI campuses and corporate PBSA assets. This data was used to calculate the shares of supply and increments brought about by the Merger.

<sup>71</sup> For both closeness of competition between the Parties and the competitive constraint from alternative corporate PBSA providers, the CMA's systematic assessment in each local area has included consideration of the evidence available on: (i) the location of the relevant corporate PBSA properties (ii) price (iii) room mix and (iv) facilities/amenities offered.

<sup>72</sup> The CMA's assessment in each local area has included consideration of the evidence available on: (i) the use of public transport by students (ii) the extent to which HEIs have sufficient HEI PBSA stock to meet their accommodation guarantees and any excess capacity (iii) the quality of HEI PBSA and (iv) the prevalence of first year and international students staying in the Parties' properties.

## *Market context*

### *Price setting*

94. Consistent with the CMA's findings in *Unite/Liberty*, the CMA has received evidence that students are price sensitive.<sup>73</sup> Students will typically compare prices across student accommodation providers, which are generally transparent on websites, and weigh up price against other property specific characteristics including location, quality and facilities. From the point of view of HEIs sourcing beds under nomination agreements, price is an important factor, as well as location and the type of room.
95. The Parties submitted that prices for their rooms are typically set well in advance of the next academic year.<sup>74</sup> Price setting is informed primarily by [redacted] along with a variety of other factors.<sup>75</sup>
96. The CMA has not seen any evidence that the Parties are able to price discriminate between different types of students and the CMA understands that corporate PBSA providers therefore have to set their prices for a given room type based on the average student.

### *Approach to pipeline properties*

97. As part of its investigation, the CMA has been made aware of instances where corporate PBSA properties are in the process of being developed or have recently been completed (**pipeline properties**).
98. The CMA has considered these pipeline properties to be part of the relevant frame of reference when the property is already under construction and the supplier has confirmed that it will start housing students from the start of the next academic year (ie September 2022). The Parties confirmed that their sales cycle begins in [redacted] prior to the start of the academic year in question and so any corporate PBSA property opening in the next academic year will already be competing with and providing a constraint on the Parties.

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<sup>73</sup> CMA assessment of responses to third party questionnaires. [redacted], [redacted] and [redacted] responses to third party questionnaire.

<sup>74</sup> Parties' Response to RFI 2, paragraph 18.5.

<sup>75</sup> Parties' Response to RFI 2, paragraph 18.2.

## ***Guildford***

### *Local context*

99. The CMA's filter was failed in relation to two HEI campus catchment areas in Guildford: The University of Surrey, Stag Hill campus, and the Academy of Contemporary Music.<sup>76</sup>
100. Due to the relatively small size of Guildford, the shares of supply are almost identical for both campus catchment areas and when considering a Guildford city-wide catchment.<sup>77</sup> The CMA therefore considers that it is appropriate to consider these catchment areas together.<sup>78</sup>
101. The Merger will result in SL Co acquiring the 'Scape Guildford 1' property from GCP meaning that it would own two corporate PBSA properties in Guildford: the newly acquired 'Scape Guildford 1' and its existing property 'Scape Guildford 2'.

### *Shares of supply*

102. Table 4 below shows SL Co's and the Target Business' combined share of supply and increment from the Merger for academic year 2022/23 for Guildford town, and for 20 and 30 minutes' walking distance catchment areas around The University of Surrey, Stag Hill campus, and the Academy of Contemporary Music.<sup>79</sup>

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<sup>76</sup> The Parties also identified Guildford College, a further and higher education college, as an HEI campus in Guildford. The CMA notes that Guildford College does not appear as an HEI in HESA statistics, and therefore has not been expressly considered as part of the local competitive assessment. In any case, due to the relatively small size of Guildford, the shares of supply would be the same for this HEI campus as for the Academy of Contemporary Music.

<sup>77</sup> The shares of supply are identical for the University of Surrey, Stag Hill campus and are very similar for the Academy of Contemporary Music. See footnote 76.

<sup>78</sup> Given that all corporate PBSA in Guildford is located within a 30 minute walk from the two relevant HEI campuses, the CMA did not find it necessary to assess the use of public transport by students.

<sup>79</sup> As Ash Grove is 28 minutes' walk from the Academy of Contemporary Music it falls outside a 20 minutes' walking distance catchment area (although see footnote 81). The Parties' combined share of supply in a 20 minutes' walking distance catchment area from the Academy of Music would be slightly higher at [30-40]%.

**Table 4: University of Surrey, Stag Hill and Academy of Contemporary Music, 20 and 30 minutes' catchment area shares of supply**

PBSA site	Provider	Number of Beds	Shares of supply	Walking distance to UoS Stag Hill	Walking distance to ACM
Scape Guildford 1	GCP	[X]	[5-10]%	5 minutes	11 minutes
Scape Guildford 2	SL Co	[X]	[20-30]%	5 minutes	11 minutes
<b>Merged Entity</b>		[X]	<b>[30-40]%</b>		
Guilden Village	Prestige Student Living	[X]	[30-40]%	c. 20-21 minutes <sup>80</sup>	19 minutes
Weyside Student Village*	CRM	[X]	[20-30]%	5 minutes	11 minutes
Riverside House †	Unilife	[X]	[5-10]%	7 minutes	9 minutes
Ash Grove† <sup>81</sup>	CRM	[X]	[0-5]%	16 minutes	28 minutes
<b>Total corporate PBSA Beds</b>		[X]	<b>100%</b>		

Source: CMA calculations based on capacity information provided by the Parties and competitor respondents to the CMA's merger investigation; walking distances provided by Parties in response to RFI 2, Annex 011, save Ash Grove, which is estimated by the CMA

\* Appears on CRM website as 'Bankside Student Village'

† Pipeline property, operational for September 2022

### *Closeness of competition*

#### *Parties' submissions*

103. The Parties submitted that there is no material difference in the offerings of Scape Guildford 1 and Scape Guildford 2, and that because the two properties do not currently compete, there will be no merger-specific change in respect of their competitive offerings.
104. The Parties argued that although they are currently separately owned, both Scape Guildford 1 and Scape Guildford 2 are operated by Scape, and are effectively operated as one asset, which will continue to be the case following the Merger. In support of this, the Parties submitted that:
- (a) As far as customers, and the public generally, are concerned, the two properties are part of one facility.<sup>82</sup>

<sup>80</sup> The CMA notes that walking distances for Guilden Village vary depending on the precise 'end point' which is used for the Stag Hill campus.

<sup>81</sup> The CMA notes that walking distances estimated using Google Maps for this property, for which construction has not yet been completed, may overstate the accurate walking distance once construction has been completed.

<sup>82</sup> FMN, paragraph 15.38.

- (b) SL Co and GCP have consented to a common property manager for both properties [REDACTED].<sup>83</sup>
- (c) The two properties are marketed as one.<sup>84</sup>
- (d) 2021/22 rates for rooms of equivalent type are the same across both properties [REDACTED].<sup>85</sup>
- (e) Similarly, although the Parties recognised that Scape could be replaced as the manager of either or both of the properties, [REDACTED].<sup>86</sup>

#### *CMA assessment*

- 105. The CMA does not accept that the Merger will not result in any merger-specific loss of competition. The Parties acknowledged that as owners of Scape Guildford 1 and Scape Guildford 2 respectively, they (and not Scape) have ultimate responsibility for setting room rates. Therefore, absent the Merger, the Parties could reject Scape's recommended prices, which could lead to different prices being adopted for each property. This might occur, for example, if one owner felt they could achieve better value at a different price point given their expectations around demand/occupancy.
- 106. Similarly, with respect to refurbishments, the ultimate decision on the nature of improvements carried out rests with the Parties (and not with Scape).<sup>87</sup> This means that, absent the Merger, the two properties could be subject to different refurbishment plans at different times, leading to a divergence between them in terms of the quality of accommodation or facilities offered.<sup>88</sup>
- 107. Moreover, the CMA notes that although these two properties are currently both managed by Scape, the Parties acknowledged that, absent the Merger, different managers for the two properties could be appointed in future, which may increase the extent of competition between the two properties in respect of marketing/branding.
- 108. The CMA notes however that the sharing of facilities between Scape Guildford 1 and Scape Guildford 2 significantly reduces the scope for the Merged Entity to benefit from degrading the quality of the common areas (eg

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<sup>83</sup> FMN, paragraph 15.38.

<sup>84</sup> FMN, paragraph 15.38.

<sup>85</sup> Parties' Response to RF15, paragraphs 1.8 to 1.11.

<sup>86</sup> Parties' Response to RF15, paragraph 1.15.

<sup>87</sup> Parties' Response to RF15, paragraphs 1.2 to 1.7.

<sup>88</sup> The CMA notes that Scape Guildford 1 is approximately five years older than Scape Guildford 2, which may prompt refurbishments to occur at different times for the two properties in future. [REDACTED].



by underinvesting in the renovation of shared facilities), because none of the diverted sales would be captured by the other property.

#### *Conclusion on closeness of competition*

109. For the reasons above, the CMA does not accept that there will be no Merger-specific loss of competition between SL Co and the Target Business. However, the CMA does recognise that SL Co and the Target Business do not currently compete on certain elements of their offering (eg the amenities provided, given that Scape Guildford 1 and Scape Guildford 2 share facilities). On balance, given their neighbouring locations, and similarity in the types of rooms offered, the CMA would expect SL Co and the Target Business to be close alternatives in Guildford. The CMA has therefore considered the competitive constraints that will exist post-Merger.

#### *In-market competitive constraints*

##### *Alternative corporate PBSA providers*

110. The Parties submitted that post-Merger, the Merged Entity will remain constrained by a number of significant rival corporate PBSA providers in Guildford, each of which is discussed below. The Parties also submitted that they would face constraint post-Merger from Unilife's 'Riverside House' (opening September 2022).

##### *Guilden Village, Prestige Student Living*

111. The Parties submitted that they would face a significant competitive constraint from Guilden Village, a new entrant for the 2021/22 academic year operated by Prestige Student Living, which with [REDACTED] beds, will remain the largest corporate PBSA provider in Guildford post-Merger.<sup>89</sup> The Parties also submitted that [REDACTED].<sup>90</sup> The Parties' internal documents indicate that [REDACTED].<sup>91</sup>
112. The CMA notes that Guilden Village is located around 20 minutes' walk away from the University of Surrey Stag Hill campus and is in the north-east of the town which is further away from the centre of Guildford than the Parties' properties. One third party noted that students in Guildford often consider Guilden Village as being quite far from HEI campuses.<sup>92</sup>

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<sup>89</sup> FMN, paragraph 15.42.

<sup>90</sup> FMN, paragraph 15.43.

<sup>91</sup> FMN, paragraph 15.44.

<sup>92</sup> [REDACTED] Third party call note.

*Weyside Student Village/Bankside Student Living, CRM*

113. This property opened for the 2021/22 academic year offering [X] beds.<sup>93</sup> The property is located very close to Scape Guildford 1 and Scape Guildford 2 and has similar facilities and room prices. Given its recent opening, this property does not yet have a long track record of housing students, however some students may be attracted to the prospect of staying in a brand-new building. The property offers both ensuite and studio rooms, similar to Scape Guildford 1 and 2.
114. The Parties' internal documents indicate that [X].<sup>94</sup>

*Riverside House, Unilife*

115. This property will provide [X] beds,<sup>ii</sup> and will be operational for the 2022/23 academic year.<sup>95</sup> The property will be located very close to Scape Guildford 1 and Scape Guildford 2, and will have similar facilities and room prices. The property will be exclusively studios unlike Scape Guildford 1 and 2, which also offer some ensuite rooms.
116. Internal documents indicate that [X].<sup>96</sup>

*Ash Grove, CRM*

117. In addition to the properties identified by the Parties, responses to third party questionnaires revealed this additional [X]-bed property, which is expected to be operational for the 2022/23 academic year.<sup>97</sup>
118. This property will be located within close proximity of the University of Surrey, on the north-west side of the Stag Hill campus, and will offer similar facilities to SL Co and the Target Business' properties in Guildford. The property will be exclusively studios, unlike Scape Guildford 1 and 2, which also offer some ensuite rooms.

*Conclusion on in-market competitive constraints*

119. Based on the assessment above, the CMA considers that the Merged Entity will continue to be constrained by three alternative corporate PBSA suppliers post-Merger which will cumulatively account for more than [60-70]% of

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<sup>93</sup> CRM response to third party questionnaire.

<sup>94</sup> GCP internal document, RFI 2 Annex GCP 014, [X].

<sup>95</sup> Unilife confirmed that this property will provide [X] beds, and will be operational for the 2022/23 academic year. Unilife response to third party questionnaire.

<sup>96</sup> GCP internal document, RFI 2 Annex GCP 010, [X].

<sup>97</sup> CRM response to third party questionnaire.

corporate PBSA beds in Guildford. The CMA also considers that there would remain sufficient alternative corporate PBSA providers from which HEIs in Guildford could source beds under nomination agreements.

### *Out-of-market competitive constraints*

120. As set out in paragraphs 57 and 64 above, the CMA believes that HMO and HEI PBSA will provide some more limited constraint on the Parties as they may be viable alternatives for certain direct let students.

#### *The Bridge, YMCA<sup>iii</sup>*

121. The Bridge is a property located in Guildford town centre which offers student accommodation, and is run by the YMCA. [REDACTED].

122. The Bridge is different from corporate PBSA in Guildford in a number of ways:

(a) The property is run by the YMCA, for whom student accommodation is not core to their mission as a charity.<sup>98</sup>

(b) The Bridge entered the market in 2017-18 by converting the existing building from a YMCA hostel to student accommodation (ie it is not purpose-built for student accommodation).

(c) Unlike other PBSA providers in Guildford, The Bridge includes food in its offering, and residents receive breakfast and supper seven days a week included with the room price they pay.

(d) The Bridge mainly provides non-ensuite rooms [REDACTED] ensuite rooms [REDACTED] and no studios. This is different from the corporate PBSA providers in Guildford, which focus on ensuite and studio rooms.<sup>99</sup>

(e) The advertised price of the en-suite rooms at The Bridge is comparable to the Parties' pricing but would likely be significantly cheaper when adjusted for the fact that The Bridge includes food as part of its room price.

123. Notwithstanding these differences, there is evidence that The Bridge does exert some competitive constraint on the Parties' properties:

(a) The Bridge is conveniently located in Guildford city centre, and is advertised as a 12 minute walk from the University of Surrey Stag Hill

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<sup>98</sup> The [YMCA's website](#) states that 'all profits we generated the bridge kitchen and the bridge rooms are invested into our YMCA supported accommodation project at our new purpose built site in Wharf Road (near the Guildford cricket ground) offering 34 bedrooms, as well as providing advice and guidance to our young people.'

<sup>99</sup> YMCA response to third party questionnaire.

campus and two minutes' walk from the Academy of Contemporary Music.

(b) A third party commented that in spite of its differences to corporate PBSA properties, The Bridge was a viable option for some students in Guildford.<sup>100</sup>

(c) Internal documents indicate that [REDACTED].<sup>101</sup>

124. The CMA therefore considers that, although The Bridge competes less closely with SL Co and the Target Business' properties than other corporate PBSA properties in Guildford, it will provide some constraint on the Merged Entity by offering a suitable alternative to the Merged Entity's properties for some students.

#### *HEI PBSA*

125. The Parties submitted that HEI PBSA in Guildford is a significant competitive constraint, and that this is evidenced by commentary in the Parties' internal documents.<sup>102</sup>

126. There are a relatively large number of HEI PBSA beds in Guildford, mainly provided by the University of Surrey, which has over 6,000 beds in the town, compared to [REDACTED] corporate PBSA beds which will be operational for the 2022/23 academic year.<sup>103</sup>

127. The CMA has assessed whether there is evidence that students who benefit from an HEI accommodation guarantee consider corporate PBSA to be a viable alternative in Guildford. The CMA understands that the University of Surrey guarantees accommodation for all 'new' undergraduate and postgraduate students (ie those who have not studied at the University of Surrey before, typically first year undergraduates and first year postgraduates). Data provided by the Parties shows that [REDACTED].<sup>104</sup> As a result, the CMA considers that HEI PBSA is a viable alternative for a significant number of students in the Parties' properties in Guildford.

128. A third party The University of Surrey told the CMA that once the university has allocated beds in its own PBSA to students holding accommodation

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<sup>100</sup> [REDACTED] response to third party questionnaire.

<sup>101</sup> Scape internal document, RFI 2 Annex 004, [REDACTED].

<sup>102</sup> FMN, paragraph 15.53.

<sup>103</sup> See Table 4 above.

<sup>104</sup> Parties' Response to RFI 2, question 7.

guarantees, it typically has 1,500 to 1,600 beds left to allocate to returning students who do not benefit from an accommodation guarantee.<sup>105</sup>

129. Consequently, in Guildford there appears to be ‘excess capacity’ in HEI PBSA such that a material number of HEI PBSA rooms are offered to returning students who do not benefit from an accommodation guarantee, and the number of these beds is significant relative to the total stock of corporate PBSA available in Guildford.
130. Internal documents also indicate that the Parties consider that a degree of competitive constraint is exercised by HEI PBSA. For example, a GCP internal document noted [REDACTED].<sup>106</sup> Similarly, a Scape internal document [REDACTED].<sup>107</sup>
131. However, the CMA notes that HEI PBSA in Guildford appears to be significantly differentiated from the offering of the Parties and other corporate PBSA providers, which may limit the extent of the out-of-market constraint they impose. In particular:
- (a) The mix of room types in HEI PBSA is different to that of corporate PBSA, with most of the University of Surrey’s properties offering non-ensuite rooms in addition to ensuite rooms, and only [REDACTED] studios in total. In contrast, the majority of rooms in corporate PBSA in Guildford are either ensuite or studios.<sup>108</sup>
  - (b) HEI PBSA rooms are significantly cheaper than rooms of the same type in corporate PBSA. For example, HEI ensuite rooms in Guildford were typically [REDACTED] per week in 2020/21,<sup>109</sup> compared to [REDACTED] per week for corporate PBSA ensuite rooms.<sup>110</sup>

### *HMO*

132. The Parties submitted that the University of Surrey has its own lettings service to provide students with advice on renting in the HMO sector. A third party The University of Surrey confirmed that the university does provide such an advice service to students. However, the CMA has not seen anything to suggest that such a service is exceptional amongst HEIs.
133. A third party noted that for returning undergraduate students, HMO was generally seen as an attractive alternative to corporate PBSA, because it was

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<sup>105</sup> [REDACTED] Third Party call note.

<sup>106</sup> GCP internal document, RFI 2 Annex GCP 011, [REDACTED].

<sup>107</sup> Scape internal document, RFI 2 Annex 004, [REDACTED].

<sup>108</sup> FMN, Annex 026 ‘Knight Frank Report Q4 2020 for Guildford’.

<sup>109</sup> FMN, Annex 026 [REDACTED].

<sup>110</sup> CMA analysis of responses to third party questionnaires.

cheaper and enabled students to live together in a group of friends. However, one third party noted that international students can disfavour HMOs due to the UK guarantor requirements of landlords and lower quality or levels of services provided.<sup>111</sup> The CMA notes that [redacted] of students staying in the Parties' properties in Guildford are international students,<sup>112</sup> which may limit the extent to which HMO is a constraint on the Parties.

134. [redacted].

#### *Conclusion on horizontal unilateral effects in Guildford*

135. The Merged Entity will continue to be constrained post-Merger by three alternative corporate PBSA providers that cumulatively account for more than [60-70]% of corporate PBSA beds in Guildford. It will also face some constraint from alternative accommodation including the YMCA's The Bridge, HEI PBSA and HMO. 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 corporate PBSA in the HEI campus catchment areas for the University of Surrey, Stag Hill campus, or the Academy of Contemporary Music.

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

136. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>113</sup>

137. The CMA saw some evidence in internal documents that barriers to entry for corporate PBSA in Guildford have historically been considered high.<sup>114</sup> On the other hand, the CMA notes that there is evidence of ongoing entry in Guildford with two new properties opening in the coming year, and further corporate PBSA at earlier stages of development/planning, which have not been taken into account in the CMA's competitive assessment but which may provide further constraint on the Merged Entity in future.

138. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

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<sup>111</sup> [redacted] response to third party questionnaire.

<sup>112</sup> [redacted].

<sup>113</sup> [Merger Assessment Guidelines](#), from paragraph 8.40.

<sup>114</sup> GCP internal document [redacted].

## ***Countervailing buyer power***

139. The Parties submitted that they face strong countervailing buyer power when selling corporate PBSA rooms both to HEIs under nomination agreements, and directly to students because:<sup>115</sup>
- (a) In respect of nomination agreements, HEIs have their own PBSA available to offer students, and they also have the potential to be a significant introducer of students to corporate PBSA providers.
  - (b) In respect of direct lets to students, customers will either be first year students, who will benefit from an HEI PBSA guarantee, or returning undergraduates, who will be more familiar with the area near campus and thus able to rent in HMOs.
140. However, the CMA notes that the buyer power of HEIs is limited by the extent of alternative corporate PBSA providers available with which they can enter nomination agreements. Similarly, any buyer power of individual students is limited by the range of local accommodation options which are available to them.<sup>116</sup>
141. In any event, the CMA has not had to conclude on countervailing buyer power as the Merger does not give rise to competition concerns on any basis.

## **Third party views**

142. The CMA contacted customers and competitors of the Parties. One third party raised a concern which the CMA found was not merger-specific.<sup>117</sup> No other third parties raised concerns about the Merger.

## **Decision**

143. 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.
144. The Merger will therefore **not be referred** under section 33(1) of the Act.

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<sup>115</sup> FMN, paragraphs 23.2-23.3.

<sup>116</sup> Where buyer power does not result in new entry, it is unlikely to prevent an SLC that would otherwise arise from the elimination of competition between the merger firms, because a customer's buyer power depends on the availability of good alternatives to which they can switch to, which in the context of an SLC will have been reduced. See [Merger Assessment Guidelines](#), paragraph 4.20.

<sup>117</sup> [REDACTED] response to third party questionnaire.

**Naomi Burgoyne**  
**Director, Mergers**  
**Competition and Markets Authority**  
**6 December 2021**

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<sup>i</sup> The reference in footnote 4 to ‘The Blackstone Group Inc.’ should read ‘Blackstone Inc.’, following the group changing its name on 6 August 2021.

<sup>ii</sup> The references to Unilife’s Riverside House property in paragraph 115 and Table 4 should state that the property will offer [~~8~~] beds.

<sup>iii</sup> References in this Decision to ‘the YMCA’ should be read as referring to ‘YMCA DownsLink Group’, a formation of local YMCAs across Sussex and Surrey.