

Acquisition by CVS Group plc of Quality Pet Care Ltd (trading as The Vet)

CMA/01/2022

Decision on relevant merger situation and substantial lessening of competition

ME/6967/21

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 18 February 2021. Full text of the decision published on 7 April 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

- The Parties and the Merger
1. The CMA has found that the completed acquisition by CVS Group plc (**CVS**) of Quality Pet Care Ltd (**The Vet**) (the **Merger**) gives rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in the supply of standard first opinion small animal veterinary services in the local areas of Bristol, Nottingham, Portsmouth, Southampton and Warrington.
 2. CVS and The Vet are together referred to as **the Parties**.
 3. CVS operates over 450 veterinary practices across the UK, including some that provide specialist referral treatment and some that provide out-of-hours care. It is also active in related services including (i) diagnostic laboratories, (ii) pet crematoria, and (iii) retail of prescription and non-prescription drugs, pet food, and other animal related products to consumers. It is one of six large corporate veterinary groups active in the UK.

4. The Vet is a chain of eight small animal veterinary practices in the UK located in Bristol, Liverpool, Morden, Nottingham, Waltham, Portsmouth, Southampton, and Warrington.
 - CMA jurisdiction
5. The Competition and Markets Authority (**CMA**) has jurisdiction to review a merger where either (a) the target company generates more than £70 million of turnover in the UK (the turnover test); or (b) the merger results in the parties having a share of supply of goods or services of any description in the UK of 25% or more, and the merger results in an increment to the share of supply (the share of supply test). The Vet's revenues do not meet the turnover test, but the CMA has concluded that CVS and The Vet have a combined share of supply exceeding 25% in various local areas in the UK, when measured either by their combined share of full-time equivalent (**FTE**) vets or by their combined 'share of shops', and that an increment in share of supply is brought about by the Merger. Therefore, the CMA has concluded that it has jurisdiction to review the Merger.
 - Frame of reference
6. The CMA's investigation considered whether the Merger would lead to a loss of competition between CVS and The Vet. To do so, the CMA considered in detail how their services overlap, which meant focussing its analysis on the most significant competitive alternatives available to the customers of the Parties. To this end, the CMA focussed on the supply of veterinary services that are:
 - (a) first opinion as opposed to provided only after a referral had been made;
 - (b) provided to small animals as opposed to farm or equine animals;
 - (c) provided on a commercial basis, instead of by charitable providers;
 - (d) administered during standard daytime hours, instead of as part of out-of-hours care; and
 - (e) located in the eight local areas in the UK where The Vet is active.
 - Competition Assessment: horizontal unilateral effects in the supply of standard first opinion small animal veterinary services in the UK

Competitive dynamics in the supply of veterinary services

7. There has been significant change in the ownership of vets' practices in recent years. While independent veterinary practices accounted for 89% of the UK veterinary industry in 2013, this had fallen to approximately 45% by 2021, primarily as the result of the acquisition of large numbers of independent practices (or smaller groups of vets' practices) by corporate groups.
8. These corporate groups, including CVS, typically use a significantly different business model to independent practices, in particular because other businesses that they own give them the ability to cross-sell products and services (such as referral treatment, out-of-hours care, and pet cremation). The evidence available to the CMA also shows that corporate groups often seek to establish a significant presence within specific localities, which can allow them to benefit from economies of scale and networks of linked services (but can result in competition concerns where an acquisition would reduce the competitive constraints that the acquirer would face in a given area following a merger).

The CMA's investigation

9. As part of its investigation, the CMA gathered information on over 200 small animal veterinary practices active in and around the local areas potentially affected by the Merger, as well as input from charitable providers of veterinary care, industry bodies and other interested third parties. This input, together with submissions from CVS and The Vet and internal business documents that the Parties had produced in the ordinary course of business, provides the basis for the CMA's decision.
10. In the course of its investigation, the CMA received a number of specific concerns relating to the Merger (and, more generally, about the potential harms raised by increasing levels of concentration in veterinary services). Some third parties suggested that high levels of corporate consolidation in local areas through the acquisition of independent vet practices were leaving consumers with a lack of sufficient alternatives. Third parties also noted that the implications of corporate consolidation were not always obvious to customers because some corporate owners decide not to rebrand independent veterinary practices after buying them.

The loss of competition within the areas affected

11. While CVS submitted that it does not compete closely with The Vet at present, the evidence provided does not fully support this position. Given the importance of location and reputation in customer decision-making, and the fact that CVS and The Vet are located in close proximity to each other (and no evidence was provided that they have significantly different reputations in any of the catchment areas), the CMA

considers that there is significant competitive interaction between them (and other suppliers of the same type) in each of these local areas.

12. As competition between individual practices takes place at the local level, the CMA carried out a local area analysis based on an estimation of the combined shares of supply of CVS and The Vet in the overlap areas. The CMA found that consumers generally select a vet within a relatively short distance of their home and based its analysis on a catchment area for veterinary practices (reflecting where 80% of the Parties' customers) is around 9-12 minutes' drive time.
13. The CMA calculated shares in these catchment areas based on the number of FTE vets employed at each of the practices in each catchment area. In the circumstances of this case, the CMA believes that calculating shares of supply based on the number of FTE vets provides a good indication of a practice's current competitive strength and capacity to compete for new customers, given the number of vets at a practice will reflect consumer demand for that practice's services. While the Parties suggested that market shares should be calculated on a 'share of shops' basis, the CMA found significant variance in the size of practices in the catchment areas, with some having less than one FTE vet and others having more than 15. On this basis, while the CMA recognises that no single measure can capture every aspect of competition in a market, it considers that the number of FTE vets is the most appropriate measure on which shares of supply can be systematically assessed in this case and will more accurately capture competition dynamics than the alternative method suggested by the Parties.
14. When calculating the shares of CVS and The Vet, the CMA considered the relevant competitor set to include other first opinion veterinary practices providing care to small animals during standard daytime hours on a commercial basis, with an equal weight applied to each practice based on the number of FTE vets. The CMA considered whether a different weight should be applied depending on whether the practice was independent or corporate owned but received mixed and insufficient evidence on this point. The CMA considered that the constraint exercised by practices outside the primary competitive set described in paragraph 5 above (such as charities or practices providing only out of hours care) is not material and therefore that such suppliers should not be included in market share calculations (or, as described below, given material weight in assessing the market share threshold at which concerns are considered to arise).
15. The threshold chosen for determining whether competition concerns arise is a case-by-case assessment taking into account all the facts and circumstances of a given

case. In this case, the CMA determined that a 30% share threshold is appropriate to identify areas in which there is a realistic prospect of a substantial lessening of competition (**SLC**) arising. This reflects, in particular, the weak nature of the out-of-market constraints (from different types of practices and practices located outside the catchment areas) in the case, as well as the absence of probative evidence (for example from a consumer survey or previous CMA analysis of the sector) that has been used to support higher thresholds in previous cases.

16. The CMA considered whether any additional factors or measures should be included in its local area analysis. CVS did not make specific proposals on this point, and the CMA did not identify any measure that could systematically capture other important aspects of competition in a sufficiently robust and consistent manner.
 - Decision
17. The CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of standard first opinion small animal veterinary services in the local areas of Bristol, Nottingham, Portsmouth, Southampton and Warrington.
18. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). CVS has until 25 February 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to section 22(1) and 34ZA(2) of the Act.

ASSESSMENT

PARTIES

19. CVS is an integrated veterinary services provider in the UK that is active across four main business areas: (i) veterinary practices (including 467 practices within the UK), (ii) diagnostic laboratories, (iii) pet crematoria, and (iv) business-to-consumer sales of prescription and non-prescription drugs, pet foods, and other animal related products.¹ CVS is UK-headquartered and listed on the London Stock Exchange.¹ In 2020, CVS generated a turnover of £[<] in the UK.²
20. The Vet is active in the operation of eight small animal veterinary practices in the UK.³ The Vet's practices are located in Bristol, Liverpool, Morden, Nottingham, Waltham, Portsmouth, Southampton, and Warrington.⁴ In 2020, The Vet generated a turnover of approximately £[<] in the UK.⁵

TRANSACTION

21. On 19 August 2021, CVS entered into a Share and Purchase Agreement to acquire The Vet from Bridges Community Ventures Nominees Limited (**Bridges Fund Management**), Jane Louise Baldwin, and Christopher Ian Jessop.⁶ The transaction completed on the same day. The value of the Merger was approximately £[<].⁷
22. CVS submitted that its business case for acquiring The Vet was influenced by the fact that all The Vet's sites have [<] enabling it to offer a broader range of products and services to its customers.⁸ CVS submitted that it expected the Merger to generate an internal rate of return of [<].⁹
23. CVS internal documents are broadly supportive of this stated rationale. More broadly, CVS internal documents highlight a general strategy of acquiring third party

¹ CVS' Response to the Enquiry Letter, 5 October 2021 (**Enquiry Letter Response**), paragraph 30.

² CVS' Response to Q2 of the CMA's notice under section 109, dated 9 December 2021.

³ Enquiry Letter Response, paragraphs 21 and 35. The nature of small animal veterinary practices is considered further in the 'Product Frame of Reference' section below.

⁴ CVS' Response to Mergers Intelligence Committee Request for Information, 14 September 2021 (**MIC RFI Response**), paragraph 1.

⁵ Enquiry Letter Response, paragraph 19.

⁶ Annex 3.1 'Sale and Purchase Agreement', page 14 to Enquiry Letter Response.

⁷ MIC RFI Response, paragraph 2.

⁸ Enquiry Letter Response, paragraph 15.

⁹ Enquiry Letter Response, paragraph 14.

veterinary practices,¹⁰ and identified The Vet practices as attractive because [X] and being in key locations of strategic importance to CVS.¹¹ This includes being able to redirect referrals and out-of-hours (**OOH**) care to CVS facilities and internalising crematoria and laboratory revenues.¹²

PROCEDURE

24. The CMA's mergers intelligence function identified this transaction as warranting an investigation.¹³
25. The Merger was considered at a Case Review Meeting.¹⁴

JURISDICTION

- Enterprises ceasing to be distinct
26. Each of CVS and The Vet is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
 - Relevant merger situation
 27. Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular description in the UK, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK as a whole or in a substantial part of it (the **share of supply test**).¹⁵
 28. The Parties overlap in the provision of first opinion veterinary care to small animals, from commercial practices during standard daytime hours (**standard small animal veterinary services**) in the UK, with a combined share of supply above 25% in several local areas.

¹⁰ See paragraph 50.

¹¹ Annex 9.1 and Annex 9.2 to Enquiry Letter Response.

¹² Annex 22.5, slides 7 and 14, to Enquiry Letter Response.

¹³ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, paragraphs 6.4-6.6.

¹⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, from page 46.

¹⁵ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, paragraph 4.62.

29. The CMA considers that the share of supply test is met on the basis that the Parties' combined share of supply of full-time equivalent (**FTE**) vets providing standard small animal veterinary services exceeds 25% in five local areas.
30. The CMA believes the share of supply test would also be met on alternative bases, including the Parties' combined share of veterinary practices within at least three overlap areas. CVS has conceded that the share of supply test is met based on this 'share of shops' measure in three overlap areas.¹⁶

CVS' submissions on FTE vets as a measure for jurisdiction

31. CVS argued that it would be inappropriate for the CMA to rely on FTE vets as a measure in assessing share of supply. CVS submitted that this measure is inappropriate because parties to future mergers in the veterinary sector will not have access to competitors' FTE vet numbers and this will make it impossible for them to determine whether the share of supply test is satisfied and so to self-assess whether their merger requires notification to the CMA.¹⁷ CVS also submitted that using FTE vets as a measure will undermine the CMA's mergers intelligence function because it will not be able to rely solely on information from merging parties, together with desktop research, to decide whether the share of supply test is met, risking an administratively burdensome situation.¹⁸

CMA's views

32. By way of context, the CMA notes that CVS' arguments in relation to the measure of FTE vets to assess share of supply are not material to the outcome of this decision: both the CMA and CVS are of the view that the share of supply test would also be met based on a 'share of shops' measure.
33. While the CMA's primary duty is to promote competition for the benefit of consumers, it also aims to facilitate the ability of businesses to self-assess the UK merger control requirements that might be raised by transactions (within the context of a voluntary merger control regime) to the extent possible, including through the publication of reasoned decisions and the provision of extensive guidance. Within that context, the CMA notes that:

¹⁶ Enquiry Letter Response, paragraph 23.

¹⁷ CVS' Response to the CMA's Issues Letter dated 25 January 2022, 30 January 2022 (**Issues Letter Response**), paragraph 6.11(a).

¹⁸ Issues Letter Response, paragraph 6.11(b).

- (a) As CVS acknowledged, the Act explicitly identifies ‘number of workers’ as a basis on which the CMA could assess the share of supply test.¹⁹ This approach was previously applied in *Roche/Spark*.²⁰ While CVS suggested that *Roche/Spark* presented ‘novel issues’ which do not apply here (eg because the CMA could rely on measures other than ‘number of workers’ in the present case),²¹ such a limitation on the use of this metric is not provided for in the Act (or in the CMA’s guidance).
- (b) The CMA notes that measures used to assess whether the share of supply test is met are commonly based on non-public data. This is typically the case, for example, for revenue, sales volume and capacity, which CVS pointed to as alternative ‘conventional metrics’.²² In any case, the CMA notes that a CVS internal document shows that CVS specifically researched [§<] during market research ahead of the Merger.²³
- (c) The CMA’s mergers intelligence function regularly assesses share of supply across a wide range of industries based on estimates supported by input from merging parties, publicly available information and its own industry knowledge. On this basis, the CMA does not consider that the use of non-public data to assess whether the share of supply test is met in this case is likely to undermine the proper functioning of the CMA’s mergers intelligence function.
- (d) The same principles apply to businesses self-assessing whether a merger requires notification to the CMA, given that businesses typically conduct such assessments (within the context of the UK’s voluntary merger control regime, which does not require any transaction to be notified) on the basis of similar data.
 - Statutory period for reference

34. The Merger completed on 19 August 2021 and was first made public on 20 August 2021.²⁴ The four-month deadline for a decision under section 24 of the Act is 18 February 2022, following extensions under both section 25(1) and 25(2) of the Act.

¹⁹ Section 23(5) of the Act.

²⁰ Roche Holdings Inc/Spark Therapeutics Inc [ME//6831/19], 16 December 2019.

²¹ Issues Letter Response, paragraphs 6.9 – 6.11.

²² Issues Letter Response, paragraph 6.10.

²³ Annex 22.5, slide 24, to the Enquiry Letter Response.

²⁴ See: [Bridges makes third exit of the summer with sale of The Vet to CVS Group \(privateequitywire.co.uk\)](https://www.privateequitywire.co.uk), last accessed on 18/02/2022.

35. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 21 December 2021 and the statutory 40 working day deadline for a decision is therefore 18 February 2022.
- Conclusion on jurisdiction
36. In light of the above, the CMA believes that it is or may be the case that a relevant merger situation has been created.

COUNTERFACTUAL

37. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.²⁵
38. CVS submitted that the CMA should consider the sale of The Vet to another 'large corporate veterinary group' within its assessment of the counterfactual and that the CMA 'cannot exclude a realistic possibility that the counterfactual to the [Merger] would have resulted in materially different market concentration levels in one or more locations where The Vet is present'.²⁶ CVS submitted that Bridges Fund Management 'would have approached all of the Corporate Groups in the UK ... and that some or all of them would have bid for The Vet'²⁷ and that it was then likely another corporate group would have acquired The Vet if CVS had not done so.²⁸
39. CVS's argument misunderstands the role of the counterfactual in the CMA's merger assessment. As explained in the CMA's guidance, '[w]hile the counterfactual is not a statutory test, the 'is or may be the case' standard in the Phase 1 [substantial lessening of competition (**SLC**)] test also has implications for [the CMA's] approach to the counterfactual'.²⁹ As the CMA goes on to explain in its guidance, in phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios

²⁵ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

²⁶ Issues Letter Response, paragraph 3.3.

²⁷ Issues Letter Response, paragraph 3.2.

²⁸ Issues Letter Response, paragraph 3.3.

²⁹ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.12.

where each of those scenarios is a realistic prospect, it will choose the most competitive counterfactual.³⁰

40. In the present case, there is no basis for either CVS or the CMA to consider that the most competitive counterfactual would be one in which The Vet were sold to another corporate group with overlaps with The Vet that would also give rise to competition concerns. As set out in the CMA's guidance, 'the CMA (at Phase 1 or Phase 2) will not have as its counterfactual a sale of the target firm to a purchaser that is likely to result in a referral for an in-depth phase 2 investigation, given the uncertainty over whether such an acquisition would, ultimately, be cleared or subject to subsequent remedial action.'³¹ If a counterfactual in which The Vet was sold to another corporate veterinary group would realistically have raised competition concerns, there is no basis to assume that such a transaction would not also have given rise to a CMA investigation, which would have led to a significant risk of the transaction being referred to an in-depth phase 2 investigation.³²
41. The CMA also considered whether plans to expand The Vet's geographic footprint were sufficiently developed as to be relevant to the counterfactual. [X].³³ The evidence received by the CMA indicates that The Vet's geographic expansion was not sufficiently likely to arise to be taken into account for the purposes of the appropriate counterfactual in this case.
42. The CMA therefore believes the pre-Merger conditions of competition to be the relevant counterfactual.

BACKGROUND

43. The demand for veterinary services in the UK has grown strongly in the past few years. This is due to (i) the 'humanisation' of pets – where 'pets are increasingly viewed as key family members, driving increased expenditure in the veterinary services market',³⁴ resulting in pet owners seeking out increasingly complex care for their animals; (ii) the increase in pet insurance, which similarly impacts on the

³⁰ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.12

³¹ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.11.

³² This approach, as set out in the CMA's guidance, is in line with the CMA's practice in cases such as FNZ/GBST [Final report \(publishing.service.gov.uk\)](#), 5 November 2020; Bauer Media Group [Final report \(publishing.service.gov.uk\)](#), 12 March 2020; and Paypal/ iZettle [Final report \(publishing.service.gov.uk\)](#), 12 June 2019.

³³ [X]; The Vet's response to question 1 of RFI 4.

³⁴ Annex 23.2, slide 10, to the Enquiry Letter Response.

demand for care, particularly complex care;³⁵ and (iii) the increase in pet ownership in the UK since the Covid-19 pandemic.³⁶

44. CVS is one of six large corporate veterinary groups active in the UK – along with IVC-Evidensia, VetPartners, Pets at Home, Medivet, and Linnaeus (collectively referred to as **Corporate Groups**). The Vet (prior to the Merger) and other chains and independent practices not currently owned by a Corporate Group (collectively referred to as **Independents**) make up the remainder of veterinary practices in the UK.

- Corporate Groups

45. The increasing presence of Corporate Groups has driven significant change in the veterinary industry in recent years.³⁷ In 2013, Independents accounted for 89% of the UK veterinary industry, though this had fallen to approximately 45% by 2021,³⁸ with the Corporate Groups growing by acquiring Independents as well as through greenfield expansion. There are some indications that the Corporate Groups compete with each other, across the UK, for the acquisition of additional practices.³⁹

46. The CMA has heard concerns from third parties that it can be unclear to customers when an independent practice has been taken over by a Corporate Group, as the name, branding and staff may remain unchanged following the acquisition.⁴⁰ CVS told the CMA that there is a deliberate strategy on the part of many corporate groups to avoid highlighting their acquisition or ownership of previous independent practices to consumers.⁴¹ CVS typically retains an existing practice's name and branding after acquisition and 'will not advertise corporate ownership.'⁴²

47. In addition to consolidation at practice level, there is evidence of increasing vertical integration in the veterinary sector. Many Corporate Groups own services such as

³⁵ Ibid.

³⁶ Ibid.

³⁷ See for example, '[Going to the vet: what happens when private equity invests in a cottage industry](#)' | [Financial Times \(ft.com\)](#), 20 April 2021.

³⁸ Annex 24.1, slide 11, to the Enquiry Letter Response.; Table 1 of the Parties' 'Submission on Closeness of Competition', 13 December 2021.

³⁹ See, for example, Annex 24.9H, slide 13; and Annex 24.9J, slides 18 and 19, to the Enquiry Letter Response, which demonstrates CVS board monitoring of other Corporate Groups' acquisitions; and detailed descriptions of corporate competitors in the Parties' 'Submission on Closeness of Competition', 13 December 2021.

⁴⁰ [3<]s response to the CMA's competitor questionnaire and note of call with a Third Party [3<] of 22 November 2021, paragraph 7.

⁴¹ Issues Letter Response, paragraph 6.18(c).

⁴² CVS response to question 14 of RFI 2.

pathology laboratories, specialist small animal hospitals and emergency care, OOH services, and crematoria.

48. This integration enables Corporate Groups to share resources such as staff between practices,⁴³ and capture additional revenues by referring customers to their own facilities such as referral centres or OOH clinics.⁴⁴ For example, between May 2021 and September 2021, approximately [redacted]% of referrals made by a CVS first opinion practice were made to a CVS facility.⁴⁵ As noted in paragraph 23, the ability to integrate these related services and internalise the associated revenue represented an important motivation for CVS' acquisition of The Vet, [redacted].⁴⁶ The 2021 CVS Annual Report described its 'fully integrated model' as the core of the business.⁴⁷
49. The ability to internalise revenues from related services represents an important distinction between the business models of Corporate Groups and most Independents. Some third parties have expressed concern about the impact of Corporate Groups' vertical integration, for example by reducing consumer choice for second opinions or specialist treatment.⁴⁸
50. CVS submitted that following a management restructure in 2019, it has moved its focus away from acquisitions to organic growth.⁴⁹ This submission does not, however, appear to be consistent with the evidence in CVS' internal documents:
 - (a) CVS acquired at least 11 entities between November 2019 and August 2021 and made 43 offers for new acquisitions between January 2021 and August 2021,⁵⁰ suggesting that acquisitions remain a significant part of CVS operations.
 - (b) The CVS acquisitions team developed a [redacted].⁵¹

⁴³ Annex 22.1, slide 21, to the Enquiry Letter Response.

⁴⁴ See, for example, CVS response to question 1 of RFI 2.

⁴⁵ CVS response to question 11 of RFI 2.

⁴⁶ Annex 22.1, slides 5, 9, 10; Annex 22.5, slide 14, to the Enquiry Letter Response.

⁴⁷ [CVS Group plc Annual Report and Financial Statements 2021 \(cvsukltd.co.uk\)](https://www.cvsukltd.co.uk), page 16.

⁴⁸ Note of call with a Third Party, [redacted] of 12 November 2021, paragraph 16 and [redacted]'s and [redacted]'s response to the CMA's competitor questionnaire.

⁴⁹ Enquiry Letter Response, paragraph 16.

⁵⁰ Annex 9.2, slide 5, to the Enquiry Letter Response; Enquiry Letter Response, paragraph 12.

⁵¹ Annex 9.2 to the Enquiry Letter Response.

- (c) The monthly CEO board reports [redacted].⁵²
- (d) The 2021 CVS Annual Report notes ‘sourcing and integrating acquisitions’ as one of the principal key risks, which could have a ‘significant’ impact on its business mitigated by a ‘dedicated team committed to sourcing acquisitions’.⁵³

51. The CMA believes that inorganic growth strategies are also an important commercial objective for other Corporate Groups – with CVS internal competitor assessments noting that, for example, [redacted] and [redacted].⁵⁴

- Cost increases

52. In addition to evidence of consolidation in the market for veterinary services, there is evidence of rapidly rising costs for such services. The Association of British Insurers reported that the average cost of a claim has increased by 13% since 2015 from £721 to £817.⁵⁵ The Vet’s former majority shareholder, Bridges Fund Management, noted that ‘veterinary service pricing and pet insurance cost inflation have far outstripped UK inflation over the past decade, putting such services out of reach of many lower-income pet owners’.⁵⁶

53. A 2019 study commissioned by the Royal College of Veterinary Surgeons (**RCVS**) found that the rising costs of veterinary care was identified as a challenge to the veterinary profession by 30% of respondents, with the following concerns raised by respondents:

- ‘...the referral of more and more cases pushing cost of vet care out of reach of many...The Corporates encourage internal referrals at great cost and younger vets become button pushers steering clients to other senior vets...’
- ‘Progress has been made in provision of excellent referral services but the fee inflation now associated with referral practice is cutting out more and more clients.’⁵⁷

⁵² For example, Annex 24.9A, slide 16 (Acquisition consideration); Annex 24.9Q, slide 11 (M&A Update); Annex 24.9T, slide 15 (Acquisition updates), to the Enquiry Letter Response.

⁵³ [CVS Group plc Annual Report and Financial Statements 2021 \(cvsukltd.co.uk\)](https://www.cvsukltd.co.uk), pages 51 and 55

⁵⁴ Annex 24.7, slides 4 and 7, to the Enquiry Letter Response.

⁵⁵ [Guide to Pet insurance ABI](#), last accessed on 18/02/2022.

⁵⁶ [The Vet - Bridges Fund Management](#).

⁵⁷ [1the-2019-survey-of-the-veterinary-profession-report-final.pdf](#), Institute for Employment Studies, November 2019.

FRAME OF REFERENCE

54. Market definition 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.⁵⁸
55. While market definition can sometimes be a useful tool, it 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 market, or other ways in which some constraints are more important than others. The CMA will generally not need to come to finely balanced judgements on what is 'inside' or 'outside' the market. Not every firm 'in' a market will be equal and the CMA will assess how closely two merger firms compete. The constraint posed by firms 'outside' the market will also be carefully considered.⁵⁹
56. As part of its analysis of the competitive effects of the Merger, the CMA has considered the product and geographic frames of reference.
57. The Parties overlap in the supply of standard small animal veterinary services in several local areas.

Product scope

58. The CMA believes that veterinary services can be segmented by:
 - (i) the type of animals treated, ie small animals versus equine versus production/farm animals;⁶⁰
 - (ii) whether the services are provided commercially or on a not-for-profit basis;
 - (iii) the nature of the consultation, ie first opinion versus referral (with some practices offering both types of service (**mixed practices**)); and

⁵⁸ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

⁵⁹ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.4.

⁶⁰ Note of call with a Third Party [redacted] of 4 November 2021. See also annex 5.1, page 17, to The Vet's response to the CMA's notice under section 109 dated 19 October 2021.

(iv) whether the services are predominantly provided during standard daytime hours or on an OOH basis.⁶¹

- Type of animal

59. As noted above, The Vet practices exclusively provide veterinary services to small animals. While CVS does have a limited number of practices providing services to other categories of animals, the Parties overlap only in the supply of veterinary services to small animals. ‘Small animals’ generally refers to cats, dogs, small mammals, and certain birds, reptiles and/or insects kept as pets.

60. The RCVS accreditation scheme registers practices as either treating small animals, farm animals or equine patients, or any combination of these.⁶² Third party evidence received by the CMA indicates that veterinary practices compete with other practices providing services to the same type/category of animal,⁶³ and that farm animal or equine practices often operate very differently to small animal practices. For example, farm or equine veterinarians commonly provide services outside a practice setting,⁶⁴ suggesting important supply-side differences that limit substitutability between these practices. The evidence received from small animal practices that responded to the CMA’s third-party questionnaire suggests that few of these practices provide services to additional categories of animals.

61. All small animal practices that responded to the CMA’s third-party questionnaire indicated that they provide services to cats and almost all indicated that they provide services to dogs. As noted by the Parties, cats and dogs comprise a large proportion of the domestic pets segment, with 38% of pets in the UK being dogs and 37% being cats, according to the Pet Food Manufacturers Association Survey 2021.⁶⁵ Given this, the CMA believes that small animal practices can be identified based on whether they provide veterinary services to either cats or dogs.

- Charitable practices

62. CVS submitted that charitable practices should be included within the product frame of reference because they offer similar (and in many cases the same) services for small animals, and that both commercial and charitable practices are options for

⁶¹ The CMA currently understands that standard daytime hours for a first opinion small animal veterinary practice would be during business hours on Monday to Friday, with more limited operating hours over the weekend.

⁶² [Categories of accreditation - Animal Owners \(rcvs.org.uk\)](https://rcvs.org.uk)

⁶³ Note of call with a Third Party [redacted] of 10 November 2021.

⁶⁴ Note of call with a Third Party [redacted] of 19 October 2021.

⁶⁵ The Parties’ response to question 8 of the CMA’s request for information, dated 18 October 2021, (RFI 1).

some customers.⁶⁶ CVS made several additional arguments supporting the inclusion of charitable practices in the product frame of reference, which are addressed below.

63. Evidence gathered by the CMA in the course of its investigation indicates that charities are not significant competitive alternatives for customers of commercial veterinary practices. In particular:
- (a) The Vet considers that charitable practices are not strong competitors but may be an alternative available to certain customers in some cases.⁶⁷
 - (b) Charities contacted by the CMA submitted that charitable veterinary providers do not compete with commercial providers like CVS and The Vet. Only customers who are eligible for particular income assistance (such as universal tax credit or working tax credit) are eligible to access their services and, as such, they attract a different client base to commercial practices. Customers are also only eligible to access services at charitable practices if they live within certain postcodes⁶⁸ and for a certain number of pets, unlike commercial practices which have no such restrictions.
64. In addition, the CMA considers that differences in the business models of charities and commercial practices would limit any competitive constraint from charities:
- (a) Commercial practices generate revenues through offering, among others, a wider range of services and membership plans that encourage recurring revenue streams through regular and repeat visits and preventative care. Commercial practices frequently compete to offer the highest quality service (eg using newer equipment and broader treatments options)⁶⁹ and engage in marketing activities to attract more customers.
 - (b) In contrast, charitable providers of veterinary services are reliant on external funding. This can create limitations or uncertainty of the breadth of charities' service offering over time; it also compels charities to restrict their services in order to operate within the confines of the available funds. For example, the Vendor Due Diligence prepared by CIL Management Consultants in relation to the Merger (**Vendor Due Diligence**) notes that 'in 2017, PDSA had to

⁶⁶ Issues Letter Response, paragraph 4.1.

⁶⁷ The Vet's response to question 2 of RFI 3.

⁶⁸ Given the other limitations on access to these services, it has not been necessary for the CMA to assess the extent to which these postcode areas overlap with the catchment areas around the Parties' practices.

⁶⁹ Annex 23.2 to the Enquiry Letter Response, page 23; Annex 8.1, page 9; Annex 89, page 5; Annex 6.9.

revaluate its provision due to funding issues: it reduced the number of eligible pets per house to one (from three)⁷⁰

65. Internal documents that the CMA reviewed in the course of its investigation support the conclusion that charities do not exert a material competitive constraint on the Parties:
- (a) The CMA has not found any references to charitable practices in The Vet's competitor price monitoring documents.⁷¹ CVS submitted that price monitoring evidence in internal documents is not a good indicator of whether charities compete, as the different business models mean that monitoring the prices of charities would be of limited interest.⁷² Charities in some instances provide subsidised rather than free care. The CMA believes that the lack of references to charities in these documents, which suggests that charities have little influence in practice on the setting of commercial strategy, suggests The Vet practices did not consider charitable practices as competitors.
 - (b) One of The Vet's internal documents [redacted].^{73,74} [redacted].
 - (c) The Vendor Due Diligence discusses that whilst 'charitable provision is part of the vet services market', 'since The Vet's strategy shift to focus on [redacted]'.⁷⁵ The Vet has transitioned from its previous [redacted].⁷⁶ In addition, the Vendor Due Diligence includes a 'competitive landscape' analysis that categorises charitable practices as not direct competitors to The Vet. While CVS argued that this document could not be relied on as its purpose was to portray The Vet in the most favourable light by diminishing the competitiveness of practices in the local areas,⁷⁷ the CMA notes that the information referenced in that document is consistent with other evidence gathered in the course of its investigation.

⁷⁰ Annex 23.2 to the Enquiry Letter Response, page 102.

⁷¹ Annex 71 – 74 to CMA's request for information dated 5 November 2021 (**RFI 2**).

⁷² Issues Letter Response, paragraph 4.1(d).

⁷³ Annex 91 to The Vet's response to the CMA's notice under s109 dated 9 November 2021 (**The Vet s109 Notice 2**).

⁷⁴ Annex 6.8 to The Vet's response to the CMA's notice under s109 dated 19 October 2021 (**The Vet s109 Notice 1**).

⁷⁵ Ibid, page 102.

⁷⁶ Annex 23.2 to the Enquiry Letter Response.

⁷⁷ Issues Letter Response, paragraph 4.1(e).

CVS additional arguments

66. CVS argues that (a) the CMA has erroneously concluded that customers who satisfy the eligibility criteria for using charitable practices will inevitably also be unable to make use of the services provided by commercial veterinary practices; and (b) it is not unusual for vets at commercial practices to provide services free of charge or at a significantly reduced rate for customers (either directly to customers or pursuant to their participation in certain charity schemes), with this being evidence that customers using charitable practices are choosing between those practices and commercial practices.⁷⁸
67. The purpose of market definition is to identify the most significant competitive alternatives for customers of the merging parties. CVS has not provided evidence to the CMA to suggest that there is any material customer overlap between its commercial practices and charitable practices. It is unclear what, if any, constraint would be imposed by an overlap with respect to a marginal segment of customers who are eligible to use charitable practices.
68. CVS submitted switching data analysis (**Switching Data Submission**) to support its assertion that charitable practices impose a competitive constraint.⁷⁹ As set out in paragraph 101, the CMA does not believe that material weight can be given to the Switching Data Submission. CVS submitted that it is ‘conjecture’ to conclude that instances of switching to charities would only arise from change in a customer’s financial circumstances,⁸⁰ but has not submitted any additional evidence to support that position. Due to the eligibility requirements for charitable practices, and the restrictions imposed on charities’ service offering as a result of being reliant on external funding, the CMA believes that it is plausible that a significant proportion of the observed instances of switching reflects customers that are no longer able to afford commercial veterinary services. While there may be some instances of switching that do represent competitive interaction, the fact that this proportion cannot be ascertained from the data means that this evidence cannot be relied on to establish a material competitive constraint – particularly in light of the other evidence discussed in this section.

CMA’s conclusion on charitable practices

⁷⁸ Issues Letter Response, paragraph 4.1(b).

⁷⁹ Submission on the Closeness of Competition in the Veterinary Services Market in the UK, 13 December 2021 (**Switching Data Submission**).

⁸⁰ Issues Letter Response, paragraph 4.1(c).

69. In conclusion, based on the Parties' internal documents and third-party evidence, the CMA believes that charitable veterinary practices are not significant competitive alternatives to commercial, non-charitable practices, except potentially for a limited subset of customers. On this basis, the CMA's analysis excludes charitable practices from the product frame of reference.
- Nature of consultation
70. The Parties overlap only in the provision of first opinion veterinary services. The CMA does not believe that the services of a referral-only practice are substitutable for those of a first opinion veterinary practice, because a customer is not able to register directly with a referral practice without a prior referral from a first opinion practice.⁸¹ Nor may a customer receive referral services from a practice only supplying first opinion care. The CMA also understands that referral services are typically more specialised or complex than the majority of the services provided in a first opinion setting. In this sense, the CMA believes that referral services fall outside the product frame of reference.
71. Where practices provide a mix of first opinion and referral services, the proportion of first opinion services provided is an important determinant of the degree to which they impose a competitive constraint on first opinion practices. The treatment of mixed practices is discussed further at paragraphs 118 – 121 below in the context of the CMA's competitive assessment. The CMA's analysis excludes from the product frame of reference those practices that do not offer any first opinion veterinary services.
- Opening hours of practices
72. The Parties only overlap in the provision of veterinary services during standard daytime hours, that is, there is no overlap in OOH veterinary care. The RCVS Practice Standards Scheme requires all participating practices to have arrangements in place to provide OOH care.⁸² CVS provides OOH care at some of its practices in-house, either by using practice vets on-call or using nearby CVS MiNightVet clinics (MiNightVet is an emergency OOH provider which is owned and operated by CVS). Where these arrangements are not available, CVS practices will

⁸¹ CVS's response to question 8 of RFI 1.

⁸² Note of call with Third Party [redacted], 4 November 2021.

use third party OOH providers.⁸³ The Vet uses a third party provider, Vets Now, to supply its OOH requirements.⁸⁴

73. CVS submitted that OOH practices impose a competitive constraint on first opinion practices. CVS submitted that whilst some services of first opinion and OOH practices differ, for example OOH practices do not offer routine care, both types of practices do provide emergency care. CVS also submitted that the opening times of first opinion practices and OOH practices can overlap, as some first opinion practices are open later in the evenings and at weekends.⁸⁵
74. The CMA does not believe that there can be any material demand-side substitutability between veterinary services provided during regular opening hours, and those provided outside of these hours. By its very nature, OOH care is to provide an option when customers do not have access to their regular vet and will generally incur premium pricing.⁸⁶ The CMA understands that the general nature of the services offered at an OOH practice is also different from those offered during standard daytime hours. For example, while OOH practices typically provide emergency treatment or observation, they would not typically provide vaccines or other routine services administered during standard daytime hours.
75. The Parties' internal documents clearly distinguish between the provision of veterinary services during standard daytime hours and OOH services. In a document assessing the rationale for acquiring The Vet, CVS discusses that OOH capacity relates to 'emergency care outside of the working day'.⁸⁷ Another CVS document which discusses the Merger notes that post-Merger there will be [X]; this highlights that there is a different competitor set for OOH services compared to veterinary services provided during standard daytime hours.⁸⁸
76. As such, the CMA's analysis does not recognise OOH services as falling within the product frame of reference.

⁸³ Annex 53 to RFI 2.

⁸⁴ The Parties' response to question 5 of RFI 2.

⁸⁵ Issues Letter Response, paragraph 4.1 – 4.3.

⁸⁶ RCVS Code of Professional Conduct for Veterinary Surgeons, Chapter 3 – Part 2.

⁸⁷ Annex 23.2 to the Enquiry Letter Response, page 16.

⁸⁸ Annex 22.5 to the Enquiry Letter Response, page 7.

Conclusion on product scope

77. For the reasons set out above, the CMA has considered the impact of the Merger in the product frame of reference of standard small animal veterinary services.

Geographic scope

78. CVS submitted that competition in the supply of veterinary services takes place on both a national and local level.⁸⁹

- Local competition

79. The CMA believes that competition between individual practices occurs on a local basis. On the demand side, owners of small animals are generally only willing to travel a particular distance to attend a first opinion veterinary practice. This implies that each veterinary practice has a catchment area, with customers coming from within this catchment area generating the majority of its business.⁹⁰

80. Third party questionnaire responses highlighted the importance of local competition between practices. In every instance of third parties providing reasons for the identification of their closest competitors, geographic proximity was a primary reason – in addition to other factors such as reputation. This was consistent across both Corporate Groups and Independents.

81. CVS did not challenge the CMA's findings on geographic scope in the Issues Letter Response. However, CVS submitted that the catchment areas identified by the CMA were narrow, which implied that the CMA should 'carefully assess the presence and magnitude of potential out-of-market constraints'.⁹¹ The CMA has considered these submissions in greater detail within its local area analysis below.

- National competition

82. The CMA believes that certain elements of competition between Corporate Groups are national in scope, with some parameters of competition being set nationally. For example, [redacted]. The CMA believes that when parameters of competition are set at a national level, these parameters will generally be affected by the aggregation of local competitive conditions across the country. Given that the Merger affects a relatively small number of local areas (The Vet operates in only eight local areas),

⁸⁹ Enquiry Letter Response, paragraphs 46-47.

⁹⁰ The methodology for identifying specific local catchment areas is set out at paragraph 118 below.

⁹¹ Issues Letter Response, paragraph 5.3.

and the CMA has not seen evidence to suggest that CVS' acquisition of The Vet would have a meaningful effect on the aggregation of local competitive conditions across the UK, the CMA has focused on the local effects of the Merger and has not found it necessary to further analyse elements of national competition in this investigation.

Conclusion on frame of reference

83. For the reasons set out above, the CMA has considered the impact of the Merger on the supply of standard small animal veterinary services on a local basis.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

84. 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.⁹² Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA has assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a SLC in relation to horizontal unilateral effects in the supply of standard small animal veterinary services on a local basis.
85. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA has:
- (a) considered the available evidence on the closeness of competition between the Parties; and
 - (b) conducted a local area analysis which looks at shares of supply within the Parties' catchment areas, including the competitive constraint exerted by alternative suppliers.

Closeness of competition

86. CVS submitted that it does not compete closely with The Vet. Specifically, CVS argued that:

⁹² [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.1.

- (a) reputation is an important parameter of competition between veterinary practices, in addition to proximity, and there is no evidence that CVS and The Vet compete closely on these grounds;⁹³
- (b) in none of the local areas considered by the CMA are the Parties' practices the most proximate to each other, ie other third party practices are situated more closely to both CVS and The Vet's practices in all overlapping catchment areas where the CMA has found competition concerns;⁹⁴
- (c) evidence provided by internal documents does not show that CVS and The Vet are close competitors;⁹⁵ and
- (d) the Switching Data Submission demonstrates that the Parties are not close competitors.⁹⁶

87. As a starting point, the CMA notes that CVS' submissions seem to dismiss competition concerns on the basis that the Parties are not each other's *closest* competitors. In its assessment the CMA will consider the degree of closeness of competition between the Parties – with competition concerns generally more likely to arise the more closely the Parties compete.⁹⁷ But the CMA notes that there is no requirement that merging parties be each other's closest competitors in order for a merger to raise competition concerns.

- Reputation

88. Regarding CVS' submissions on the reputation of CVS and The Vet referred to at paragraph 86(a), the CMA has not seen any evidence suggesting that there is any material reputational (or other) difference between the Parties' offerings to lead them to be considered more remote competitors to each other (as compared to any other third-party veterinary practice).

89. The CMA agrees with CVS' submissions regarding the importance of reputation as a competitive parameter in the supply of standard veterinary services. Calls with third party vets indicated that building clients' trust, as well as establishing a strong reputation in the form of a practice's online or 'word-of-mouth' reviews, is an important means of competing for clients. The CMA also found evidence in internal

⁹³ Issues Letter Response, paragraph 2.2.

⁹⁴ Issues Letter Response, paragraph 6.2(h).

⁹⁵ Issues Letter Response, paragraph 6.62

⁹⁶ Issues Letter Response, paragraph 6.61.

⁹⁷ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.8.

documents submitted by the Parties regarding the importance of reputation, with over [X]% of CVS customers identifying reputation as an important or very important factor in choosing a veterinary practice.⁹⁸ However, the CMA has reviewed no evidence suggesting that the Parties have different reputations with either existing or prospective clients. The CMA therefore does not consider reputation to be a differentiating factor between the Parties.

90. The CMA notes that CVS has submitted that independents are ‘unquestionably very strong competitors in the UK first opinion small animal veterinary services segment’⁹⁹ that they ‘exert at least as significant a competitive constraint as Corporate Groups’,¹⁰⁰ without explaining how these statements should be reconciled with its position that it does not compete closely with The Vet. In short, there has been no evidence provided to suggest that The Vet would exert a lesser competitive constraint on CVS than other Independents.

- Proximity

91. Regarding the submission on proximity referred to at paragraph 86(b), the CMA notes that while there is at least one third party practice located between the The Vet (CVS) centroid practice and the closest CVS (The Vet) practice in the catchment areas,¹⁰¹ the CMA has considered the loss of competition arising from the Merger in each of the catchment areas as a whole. Moreover, the CMA considers that this submission is in tension with other sections of CVS’ submissions, in particular those described at paragraph 112 regarding the alleged constraint imposed by practices located outside the catchment areas considered by the CMA.

- Internal documents

92. As set out at paragraph 86(c), CVS submitted that the Parties’ internal documents demonstrate that CVS and The Vet are not close competitors. In particular, CVS noted that:

- (a) it does not identify The Vet as a competitor in its internal documents. However, CVS does monitor other competitors in its internal documents, demonstrating that CVS does not consider The Vet a close competitor to its services.¹⁰²

⁹⁸ Annex 96 to RFI 3, page 6

⁹⁹ Issues Letter Response, paragraph 6.18(c).

¹⁰⁰ Issues Letter Response, paragraph 6.18.

¹⁰¹ See the section on catchment areas beginning at paragraph 109 below for a description of the CMA’s methodology for calculating these catchment areas.

¹⁰² CVS’ response to question 1 of the CMA’s request for information to CVS, dated 1 February 2022 (RFI 5).

Moreover, these documents do not provide any evidence of CVS responding in any way to The Vet's strategy of [redacted];¹⁰³ and

- (b) The Vet does include CVS' practices in its price monitoring exercises, but these practices are included alongside many other providers, with no [redacted] attached to CVS over these other practices.¹⁰⁴

93. As regards these internal documents, the CMA considers that:

- (a) None of the internal documents identified by CVS as evidence of monitoring competitors¹⁰⁵ are specific to the local areas relevant to this investigation. The internal documents provided are generally at Board level and demonstrate extensive monitoring of other Corporate Groups, but generally not any monitoring of local or practice-level competition. The absence of references to The Vet, or any other Independents, in these documents is not evidence that CVS does not compete with such practices at a local level.
- (b) Where specific competitor practices are identified in CVS internal documents, this has been in the context of assessing the opening of new practices or closing existing practices.¹⁰⁶ CVS noted that it '[redacted]'.¹⁰⁷ In this context, the CMA does not consider that the absence of internal documents demonstrating that CVS monitored The Vet or responded to The Vet's pricing demonstrates a lack of competitive interaction between the Parties. Moreover, the CMA does not consider that it is necessary to find evidence of CVS responding to The Vet's pricing strategy in order to conclude that the Parties are currently competing.
- (c) Regarding CVS' submission noted at paragraph 92(b), The Vet's price monitoring documents demonstrate that it competes with both third-party and CVS veterinary practices. As noted in paragraph 87, it is not necessary that any particular relevance be placed on CVS practices in these documents.

- Switching Data Submission

94. The Switching Data Submission was produced by RBB Economics (**RBB**) on behalf of CVS. It relies upon CVS' transfer data, ie data detailing instances of practices

¹⁰³ Issues Letter Response, paragraph 6.62.

¹⁰⁴ Issues Letter Response, Paragraph 6.62.

¹⁰⁵ CVS' response to question 1 of RFI 5.

¹⁰⁶ For example Annexes 55, 61, 64, 66, 69B and 70 to RFI 2.

¹⁰⁷ CVS' response to question 10 of RFI 1.

requesting the medical records of animals that had previously been treated by CVS over a seven month period from April 2021. This data was analysed for the majority of CVS' practices included in the CMA's local area analysis in Bristol, Nottingham, Portsmouth, Southampton and Warrington.^{108,109}

95. Switching analysis can provide useful insights regarding closeness of competition. The CMA carefully considered the analysis submitted by CVS in this case but believes that it does not provide reliable evidence on closeness of competition between the Parties and cannot be relied on for a number of reasons.
96. First, the CMA understands, including from CVS' submissions,¹¹⁰ that switching by veterinary customers is relatively unusual. The evidence reviewed by the CMA indicates that veterinary customer switching may often be driven by reasons unrelated to competition, including because customers have moved out of the area; or customers' financial circumstances have changed, leading them to qualify for charitable services, such as those provided by PDSA.
97. The Switching Data Submission submitted by CVS does not distinguish 'switches' on the basis of the reason motivating the customer to switch.¹¹¹ CVS also advised that an assessment of the distance between the origin and receiving practice across the full switching dataset would not be achievable within the timeframes of the investigation.¹¹² As such, it is impossible to systematically distinguish between switches to receiving practices that fall within the origin practices' catchment areas and switches to those that fall outside of these catchment areas. This approach therefore cannot be employed to identify switches that are more likely to correspond to genuine competitive interaction.
98. To the extent that the CMA has been able to assess the distance between origin and receiving practices, it considers that a material proportion of the switching observed in the Switching Data Submission is to practices well outside the

¹⁰⁸ Issues Letter Response, paragraph 6.57.

¹⁰⁹ Two out of the 8 CVS practices included in the CMA's local area analysis in Nottingham were not included in this analysis, as the relevant data were not available.

¹¹⁰ Issues Letter Response, paragraph 6.60.

¹¹¹ RBB explained in the original submission that it was unable to remove switches arising from customers moving house from the analysis. See Annex 110 to the submission on Closeness of Competition.

¹¹² CVS' response to question 5(c) of RFI 5.

catchment areas.^{113, 114} For example, in Bristol, the CMA was able to identify the locations of receiving practices corresponding to [10-20]% of the total 'switches'. Each of these practices was located 18-25 minutes away from The Vet's Bristol practice. The CMA notes that [60-70]% of the switches in this data set were allocated to unidentified 'other' competitor practices. The CMA considers that these results demonstrate that a sizeable proportion of 'switches' in Bristol have been made to practices that likely fall far beyond any of the relevant catchment areas considered in its analysis.^{115, 116}

99. Second, the CMA considers that the following additional weaknesses associated with the Switching Data Submission may limit its probative value:
- (a) as it is not possible to identify (or even estimate) the proportion of switching that might have been driven by competition between practices, it is not possible to determine the relative proportion of switching to The Vet as compared to switching to other competing practices;
 - (b) it is not possible to conduct any comparable analysis assessing switching from The Vet's practices, as The Vet does not maintain a database recording either incoming or outgoing customer switches;¹¹⁷ and
 - (c) it is not clear whether The Vet (and other) practices routinely request an animal's existing medical records if it is not clinically necessary to do so.¹¹⁸ If different practices' approach to requesting these records varies systematically, this would bias the results.

¹¹³ Due to the aggregation of the data submitted by CVS, the CMA has proxied the distance between the origin and receiving practices by approximating the drive-time between the receiving practice and The Vet's Bristol practice, using Google Maps. The CMA has been able to do this for Independent receiving practices only, as Corporate Group receiving practices were aggregated by group, with the individual receiving practices not being identified.

¹¹⁴ The CMA notes that in all areas where there were a material number of switches were observed, other CVS practices were either the most common or the second most common destination for switching customers.

¹¹⁵ Furthermore, as the CMA is unable to identify the specific CVS origin practice, it may be the case that receiving practices falling within the catchments of a relevant CVS practice do not fall within the catchment of the origin practice associated with a given switch.

¹¹⁶ In response to this concern, CVS conducted an augmented analysis for practices in Bristol using email address to assess the receiving practice location which showed many switches were 'within the Bristol catchments, just outside of the catchment, or within the city of Bristol more generally' (CVS' response to question 5(c) of RFI 5). The CMA cannot assess the rigor of this analysis or the significance of its results due to the limited data or submissions provided.

¹¹⁷ Annex 110 to the Closeness of Competition Submission.

¹¹⁸ In addition, in the case of Warrington the CMA considers that the total number of 'switches' (7 total) observed from the CVS practice included in the analysis is too low to be informative.

100. CVS submitted that, notwithstanding the CMA’s criticism of the Switching Data Submission as set out above, the low observed levels of switching from CVS’ practices to The Vet is not entirely without probative value.¹¹⁹ Specifically, CVS submitted that ‘the fact that of the customers which are switching, very few or none appear to be switching to The Vet should be taken into account in the assessment of closeness of competition between the Parties’.¹²⁰
101. However, given the fundamental limitations of the Switching Data Submission as set out above, the CMA does not consider that any material weight can be placed on this analysis in reaching its decision below.
- Conclusion on closeness of competition
102. Based on the available evidence, the CMA considers that there is material competitive interaction between the Parties and no reason to consider that the Parties would compete less closely with each other than they do with other standard first opinion small animal veterinary practices located within the catchment areas.
103. The CMA has considered what constraint these other providers located in the catchment areas around centroids where the CMA has identified an overlap between the Parties may impose upon the Parties in the local area analysis below.

Local area analysis

104. As competition between individual practices, and including those operated by the Parties, takes place at the local level, the CMA has carried out a local area analysis to identify specific areas where the Merger gives rise to a realistic prospect of an SLC. The CMA has based its analysis on an estimation of the Parties’ combined shares of supply in the overlap areas.¹²¹ In this case, the CMA has calculated these shares on the basis of the number of FTE vets employed at each of the practices in each catchment area.¹²²
105. The CMA notes that shares of supply are likely to be more useful evidence when there is persuasive evidence on demand- and supply-side substitution as to which potential substitutes should be included in or excluded from the assessment.¹²³ The

¹¹⁹ Issues Letter Response, paragraph 6.61.

¹²⁰ CVS’ response to question 5(b) of RFI 5.

¹²¹ This approach is consistent with the CMA’s approach in other recent local overlap cases such as *Huws Gray Ltd/Grafton Plc* [Full text decision \(publishing.service.gov.uk\)](#); *Stonegate Pub company/Ei Group Plc* [Full text decision \(publishing.service.gov.uk\)](#).

¹²² This approach is discussed in greater detail below from paragraph 114.

¹²³ [Merger Assessment Guidelines](#), paragraph 4.14.

CMA considers, as discussed further below, that sufficient evidence is available on substitutes in this case that shares of supply are likely to be informative as regards the competitive assessment.

106. In order to assess the competitive impact of the Merger at a local level, the CMA has considered:

- (a) which practices should be included in the effective competitor set, and the extent to which services provided by entities falling outside of this effective competitor set impose any competitive constraint;
- (b) the appropriate catchment areas, and what other competing practices exist within those areas;
- (c) which measure underlying the shares is most appropriate for use in this case; and
- (d) the appropriate threshold of combined share of supply, above which (in the absence of other evidence to the contrary) the CMA believes there will be a realistic prospect of an SLC arising.

- Effective competitor set

107. As described in the frame of reference section above, the CMA believes that the relevant competitor set consists of other commercial first opinion veterinary practices providing care to small animals during standard daytime hours.

108. The CMA does not believe that there are material out-of-market constraints in the supply of standard small animal veterinary services. As described above in the section on product scope, the CMA is aware of veterinary practices that operate outside of this effective competitor set, eg non-commercial, charitable practices. The CMA believes that such practices impose an immaterial constraint on the Parties, as outlined in the product frame of reference section above.

- Catchment areas

109. The CMA has identified the relevant local catchment areas in keeping with the approach set out in its Retail Mergers Commentary.¹²⁴ The CMA notes that whilst it

¹²⁴ See, for example, [CMA62](#): Retail Mergers Commentary, paragraph 2.20.

may in some cases depart from this standard practice, it has reviewed no evidence suggesting that this would be appropriate in this case.

110. In following its standard practice, the CMA has determined the catchment areas around The Vet's and CVS' practices by calculating the average 80th percentile drivetime, based on customer data for each The Vet practice and for CVS practices within a 30-minute drivetime of a The Vet practice (excluding those CVS practices that provide 'enhanced' services such as specialist referrals).^{125, 126} This approach yields catchment areas of:
- (i) 9.3 minutes drivetime for CVS practices; and
 - (ii) 12.3 minutes drivetime for The Vet practices.
111. In some merger investigations, catchment areas have been found to differ based on the characteristics of different areas, eg for sites in urban versus rural areas.¹²⁷ While the CMA does not exclude the possibility that catchment areas for veterinary practices could differ, for example, between rural and urban areas, the evidence in this case does not provide a basis to conclude that different catchment areas should be calculated based on the characteristics of different local areas because of the limited number of local areas considered in the analysis and the similar urban nature of these areas.
112. CVS submitted that the documents described at paragraph 93(c) above, recording The Vet's price monitoring exercises, show that the Vet monitors practices located outside of the catchment areas identified by the CMA.¹²⁸ CVS contends that this shows 'that the catchment areas established by the CMA are too narrow or that there are very significant out-of-market constraints'.¹²⁹
113. The CMA considers that the inclusion of these practices in The Vet's price monitoring could suggest that they exercise some degree of competitive constraint on The Vet's practices given that, in all local area analyses, there is the potential for competitors located outside the catchment area to exert some competitive

¹²⁵ CVS response to question 6 of the CMA's notice under s109 dated 25 November 2021 (**CVS s109 Notice 4**).

¹²⁶ Practices offering such services were excluded from the calculation of CVS' catchment as the 80th percentile drive times observed for these practices were significantly higher than those observed for standard first opinion veterinary practices.

¹²⁷ For example, [A report on the anticipated acquisition by Celesio AG of Sainsbury's Pharmacy Business \(publishing.service.gov.uk\)](#).

¹²⁸ Issues Letter Response, paragraph 6.63.

¹²⁹ Issues Letter Response, paragraph 6.41.

constraint. This is inevitable given that a catchment area centred on a party's site and encompassing 80% of its customers will exclude some competitors that are nevertheless close to customers located at the perimeters of the catchment area. This is not a feature specific to this investigation and the CMA does not consider it a basis for departing from standard practice in this case. The CMA has evaluated this evidence alongside the direct evidence regarding The Vet's customers' typical drive times that underlies the catchment area analysis. Given the evidential strength of the data on customers' drive times used in the analysis, the CMA does not believe it would be appropriate to depart from its standard practice in this case, notwithstanding some monitoring of these practices in The Vet's internal documents.

- Measure of shares

114. Even in differentiated markets, shares of supply are often an important element of the CMA's assessment of mergers as a firm with a higher share of supply is more likely to be a close competitor to its rivals, and therefore a merger that removes the competitive constraint such a firm exerts on its rivals would be more likely to raise competition concerns.¹³⁰ There are several measures that can be used for such an assessment and the relevance of different measures will depend on the specific circumstances of a case.¹³¹
115. During its investigation, the CMA contacted numerous third parties to understand the competitive dynamics of the veterinary industry and what type of data is commonly held by practices that could most accurately capture these dynamics. The CMA recognises that there is no single measure that can capture every aspect of competition in a market, and instead seeks to identify the most appropriate measure on which shares of supply can be systematically assessed.
116. The CMA considered a number of different measures to calculate the shares of supply based on the availability of reliable data and the evidence of competitive dynamics in the veterinary market. The CMA has chosen to calculate practices' shares within each of the catchment areas where the Parties overlap using FTE vet data. The CMA believes that FTE vet data provides a good indication of a practice's competitive strength because it not only captures its current position in the market, demonstrated by its capacity to sustain the number of FTE vets; but also its capacity to compete for new customers – which may be particularly relevant during periods of capacity constraints, such as those currently being experienced, when a practice's

¹³⁰ [Merger Assessment Guidelines](#), paragraph 4.14.

¹³¹ [Merger Assessment Guidelines](#), paragraph 4.4.

current number of FTE vets may more strictly determine the number of customers it can sustain.¹³² The ‘attractiveness’ of a practice being reflected in the number of FTE vets is demonstrated by [§<].¹³³

117. The CMA believes that FTE vets is the most appropriate basis upon which to calculate shares in this case, with this measure capturing important variation between practices that would be absent were shares instead to be calculated on the basis of a ‘share of shops’.¹³⁴

Methodology

118. The CMA received FTE data directly from practices for the vast majority of the 129 practices included in its analysis. For the small number of practices from which the CMA was unable to directly gather data, the CMA has applied a proxy for FTE vets using, where possible, the number of vets listed for the practice on the RCVS register. For the very small number of independent practices from which the CMA was unable to gather data directly and that also did not list vets on the RCVS register, the CMA has assumed that these practices employ the average number of FTE vets employed by independent practices for which the CMA was able to gather data directly.
119. As discussed in the section on product frame of reference above, some veterinary practices offer a mix of first opinion and referral services. These mixed practices may be considered to compete with first opinion practices to the extent that they provide first opinion services. In the context of this analysis, the CMA notes that the evidence it has reviewed indicates that there are only a small number of mixed practices located within the relevant catchment areas. However, the CMA considers that the total numbers of FTE vets submitted for these practices may overstate their competitive strength as regards first opinion services, given that these vets will also spend time providing referral services.
120. In such instances, the CMA considers that it may be appropriate to adjust the FTE vet numbers submitted to reflect the number of FTE vets that are involved in providing first opinion, rather than referral care. CVS provided to the CMA adjusted FTE vet numbers for its own practices.¹³⁵

¹³² See footnote 181.

¹³³ Annex 9.2, slide 9, to the Enquiry Letter Response.

¹³⁴ See further from paragraph 133 onwards below.

¹³⁵ CVS’ response to question 1 of the CVS s109 Notice 6.

121. The CMA has not been able to obtain similarly adjusted data for third-party mixed practices. As such, in those instances where such practices have been included in the analysis, the CMA considers it possible that their competitive constraint may be somewhat overstated. At the same time, the CMA also considers that mixed practices could provide a stronger constraint than first opinion-only practices as customers may consider mixed practices more attractive if they have highly qualified vets able to offer a wider range of services in-house, more advanced or newer equipment, and have a reputation for quality care. If this were the case, then the reduction to the total number of CVS FTE vets to account for those engaged in referral work may instead understate the competitive constraint that those CVS practices offer. The CMA has not received sufficient evidence in this case to conclude on this point. However, given the small number of mixed practices falling within the relevant catchment areas, the CMA does not currently consider that adjusting the current methodology would materially change the results of the analysis.

Weighting within the effective competitor set

122. The CMA's analysis applies an equal weighting to each practice within the catchment area based on the number of FTE vets at that practice. However, the CMA believes that in some instances this weighting may overstate the competitive constraint provided by certain competing practices. For example, within the Portsmouth catchment areas the CMA understands that there are two cat-only first opinion practices, including one that only provides home visits.¹³⁶ In the context of this investigation, applying a specific weighting to these practices that recognises the more limited competitive constraint they likely impose would not have a material impact on the CMA's current assessment, given the size of the Parties' combined share of supply in Portsmouth. As such, it has not been necessary for the CMA to conclude on the appropriate weighting of these practices.
123. Separately, the CMA has also considered whether practices owned and operated by one of the Corporate Groups, and those owned and operated by Independents, ought to be weighted equally. While the CMA has reviewed some evidence suggesting that there are various advantages and disadvantages to both ownership models, it has also seen some evidence that suggests *at least some* Independents may pose a weaker competitive constraint (for example because they lack the

¹³⁶ The CMA has particular concerns about the inclusion of a home visit only service in the competitor set given that such a service may be constrained in the types of treatments it can offer. For the reasons set out in paragraph **Error! Reference source not found.**, it has not been necessary for the CMA to reach a conclusion on this point. The relevant practice is called 'Vet2Cat' and has the following postcode: PO6 2TJ.

access to capital or marketing budgets of the larger Corporate Groups, are less able to offer a range of care packages, and do not benefit from vertical integration with services such as specialist referrals, laboratories or crematoria). Internal documents prepared by CVS assessing local competition around The Vet's practices supports this, with one document stating that '[c]entres with a greater number of competitors and a higher proportion of corporates face the most competitive intensity'.¹³⁷

124. On the other hand, CVS submitted that Independents experience advantages relating to customer acquisition and exercise a very significant constraint on Corporate Groups.¹³⁸ CVS further submitted that the competitive strength of Independents is demonstrated by Corporate Group practices opting not to advertise the nature of their corporate ownership, and that customers value the continuity that independent vets are better able to provide by having the same vet for each visit to the practice. CVS' submission regarding independent practices' advantages in customer acquisition is consistent with some submissions that the CMA received from third parties. These indicated that some customers may find Independents more appealing than practices which form part of a Corporate Group, if the independent practice allows the customer to see the same vet at every appointment or offers longer appointment times.
125. Beyond this conflicting evidence, the CMA believes that there is likely to be significant variation in the competitive constraint exerted by different Independents, including in terms of capacity, facilities, and marketing.
126. On balance, the CMA does not believe that it has sufficient information in this case to determine that Independent and Corporate Group practices should be weighted differently (and if such an approach were to be adopted, what the appropriate weighting would be).
127. Finally, CVS submitted that the CMA ought to consider whether to weight practices situated more closely to the centroid practice more heavily in its analysis. The CMA has not done so in this case. Notwithstanding the importance of proximity as a competitive parameter in the veterinary industry,¹³⁹ the CMA has not reviewed any evidence suggesting a reasonable basis for any weighting on the basis of proximity which would not then understate the other important parameters of competition like reputation.

¹³⁷ Annex 8.1 to the Enquiry Letter Response.

¹³⁸ Issues Letter Response, paragraph 6.18(c).

¹³⁹ See paragraph 91 above.

CVS' submissions on FTE as a measure of capacity and the CMA's conclusions

128. CVS submitted a number of concerns with the use of FTE vet data in calculating the shares of supply. In particular, CVS submitted that practices' FTE vet values are not an accurate measure of practices' capacities but are instead an indication of their response to current demand. CVS added that practices are able to flex their FTE vets to meet demand in a number of ways, including by: hiring more vets; using locums; shifting work responsibilities to non-vet staff;¹⁴⁰ and having staff work excess hours.¹⁴¹ As such, CVS submitted that practices' FTE vet values are 'a snapshot measure which [are] likely to fluctuate in response to demand, and will not provide an accurate reflection of the practice's ability to increase capacity and meet increased demand'.¹⁴²
129. The CMA considers that demand for the services of the Parties and their competitors is a relevant consideration when assessing what degree of market power they may exercise. To the extent that the FTE vets employed by a practice is determined by a need to meet consumer demand, the CMA considers these values reflect consumers' choice of practice and that they provide an indication of the competitive strength that the practice may enjoy. Moreover, given the necessity of vets in the provision of veterinary services, these values are likely also informative as regards practices' capacity, especially in the short-run, in the context of current recruitment challenges facing the veterinary industry.¹⁴³ Whilst the CMA agrees that there will likely be some degree of variability in the FTE values for practices over time, any cross-sectional share of supply analysis will similarly provide only a 'snapshot' of market conditions at a given time. In the context of the veterinary industry the CMA thus considers that the number of FTE vets at a practice is a reasonable indicator of a practice's competitive strength.
130. Moreover, the CMA notes that CVS' submissions regarding practices' ready ability to flex their FTE vet numbers to meet demand is inconsistent with a wide body of evidence gathered by the CMA (including in the Parties' own internal documents) indicating that there is currently a shortage of veterinary staff in the UK.

¹⁴⁰ Issues Letter Response, paragraph 6.17.

¹⁴¹ Issues Letter Response, paragraph 6.22

¹⁴² Issues Letter Response, paragraph 6.20.

¹⁴³ These are discussed further below at paragraph 166.

131. The CMA has received a number of submissions from third parties describing a shortage of vets resulting from Brexit and the COVID-19 pandemic.¹⁴⁴ Other third parties indicated that there is a general shortage of staff in the veterinary industry,¹⁴⁵ (including administrative staff).¹⁴⁶ These third-party submissions have been consistent with a wide body of additional evidence, including CVS' own internal documents.¹⁴⁷
132. The CMA notes CVS' submissions contesting that any such 'perceived shortage' will be short-term.¹⁴⁸ The CMA considers that the evidence available to it does not suggest this shortage of the vets is either an isolated view (but instead seems to be shared by a variety of market participants) or transitory. The CMA therefore considers that practices' ability to flex their FTE numbers can be limited. This evidence and the corresponding submissions made by CVS are discussed further in the section on barriers to entry and expansion below.

CVS' additional submissions on FTE and the CMA's conclusions

133. In addition to CVS' submission on the inappropriateness of FTE vet numbers as measure of capacity outlined above, CVS also submitted that FTE vet numbers:
- (a) do not reflect qualitative differences between practices, meaning that the CMA's assessment does not take account of important qualitative differences at the shares of supply stage;¹⁴⁹
 - (b) are not considered by customers when selecting their veterinary practice, and as such fail to reflect customers' perception of the number of choices available to them when selecting a practice;¹⁵⁰ and
 - (c) may be inconsistently defined, measured and recorded. CVS noted that if the CMA's data requests did not provide guidance on how to define an FTE vet, inconsistency issues may arise when comparing these data. CVS additionally submitted that FTE vet numbers may not accurately reflect the work completed in a given practice because: vets may work excess hours; it is unclear whether

¹⁴⁴ Note of call with a Third Party [redacted], of 12 November 2021. Note of call with a Third Party [redacted], of 12 November 2021. Note of call with a Third Party [redacted], of 10 November 2021. Note of call with a Third Party [redacted], of 19 October 2021.

¹⁴⁵ Note of call with a Third Party [redacted], of 4 November 2021.

¹⁴⁶ Note of call with a Third Party [redacted], of 20 October 2021.

¹⁴⁷ Annex 8.1, slide 14 to CVS s109 Notice 1; Annex 24.9T, slide 17 to the Enquiry Letter Response.

¹⁴⁸ Issues Letter Response, paragraph 8.8, 8.9.

¹⁴⁹ Issues Letter Response, paragraph 6.18.

¹⁵⁰ Issues Letter Response, paragraph 6.23.

locums were considered by the CMA; and allocating the correct number of vets completing first opinion work in mixed practices involves ‘subjective judgement’.¹⁵¹

134. In response to these submissions, the CMA notes that:

- (a) As explained above, the CMA considers that use of FTE vets allows for consideration of important observable differences between practices of different sizes and provides the best available means of assessing the relative competitive strength of practices. The CMA considers that no reasons or evidence have been submitted to show that the measures suggested by CVS, including a simple count of practices (as discussed at paragraph 136 below), would be better able to account for qualitative differences between practices.
- (b) As set out in paragraph 116 above, the number of FTE vets employed by a practice likely reflects the degree of consumer demand for that practice’s services, and consumers’ choice of that practice’s services, including when they are first selecting a veterinary practice.
- (c) FTE is a standard term and the businesses responding to the CMA’s inquiry are likely capable of calculating these values. Whilst FTE values may not entirely represent the hours of work completed, and there may be some degree of measurement error in the data, the CMA does not consider that this will result in any material bias in the analysis, as these factors are likely to affect all practices included in the sample. Additionally, the CMA’s data request asked third party practices to provide data on the number of FTE vets employed, including the number of locums generally used by the practice. The role of locums has therefore been accounted for in the analysis. Lastly, whilst the CMA acknowledges the challenges of assessing the number of FTE vets supplying first opinion services at mixed practices, the CMA believes that the approach it has adopted does not overstate the competitive strength of the Parties. By contrast, as set out at paragraph 121, the CMA considers the chosen approach may in fact understate CVS’ competitive strength.

Alternative measures

¹⁵¹ Issues Letter Response, paragraph 6.21.

135. CVS further submitted alternative shares calculated on the basis of (a) the number of practices in the catchment areas; and (b) the number of vets listed on the websites of practices located in the catchment areas (**observed vets**).
136. As regards the use of practice numbers, the CMA notes:
- (a) that there are material differences between vet practices which mean it would be incorrect to compare them on an equal basis or to imply that each exerts the same degree of competitive constraint. In particular, the data gathered by the CMA demonstrates that there are large differences in the number of FTE vets employed and in the revenues generated by practices.¹⁵² Indeed, the smallest number of FTE vets employed by a practice in our sample is [less than one] [redacted], and the largest is [greater than 15] [redacted].¹⁵³ Moreover, it is clear from CVS' own internal documents that the number of FTE vets employed [redacted] (see paragraph 116 above). As such, use of share of practices ignores material variation between sites that is relevant for the competitive assessment. This metric is therefore less well suited to inform the competitive assessment in this case; and
 - (b) CVS' submissions that '[s]hare of sites is a particularly suitable metric to reflect the way in which customers decide where to register their pets'.¹⁵⁴ As described at paragraph 129, the CMA considers that FTE vet data does reflect consumers' choice of practice, with more favoured practices being required to hire more vets to meet demand. In this way, practices' FTE vet stats are representative of consumer demand.
137. As regards the use of observed vets, the CMA notes that:
- (a) CVS submitted that observed vets is likely to act as 'a good cross-check on the CMA's FTE assessment', as vets would not permit their names to be listed on the websites of practices where they are not employed and as practices are unlikely to 'systematically overstate the size of their veterinary teams on their website'.¹⁵⁵ However, the evidence reviewed by the CMA does not suggest that this is necessarily the case. For example, the CMA is aware that some vets employed by CVS are listed on the websites for multiple practices, and

¹⁵² This variation is observed even between practices owned by the same Corporate Group, or amongst Independent practices.

¹⁵³ The smallest revenue generated by a practice in our sample is approximately [£redacted,000], [redacted]; and the largest is approximately [£redacted,000,000] [redacted].

¹⁵⁴ Issues Letter Response, paragraph 6.17.

¹⁵⁵ Issues Letter Response, paragraph 6.25.

sometimes their profiles note that they work across multiple practices, implying that they are highly unlikely to provide employed hours equivalent to one FTE vet at every practice where they are listed.¹⁵⁶ Generally, the CMA considers that it is unclear why observed vets would be a more accurate measure than FTE values gathered by the CMA directly from practices. Regarding the accuracy of the observed vet values, the CMA notes CVS' submission that '[n]either websites of individual practices nor RCVS data are likely to contain accurate information on number of FTEs'.¹⁵⁷

- (b) Contrary to CVS' submissions,¹⁵⁸ a site may not have the capacity to operate fully at the scale implied by its observed vets; for example, a practice listing four vets on its website may not have sufficient consulting rooms to operate at the scale of a four FTE vet practice. The CMA considers this is the case due to the prevalence of part-time working patterns in the veterinary industry, and the practice of splitting vets' time across practices.¹⁵⁹ As such, the CMA considers that this metric is unlikely to be an accurate 'upper bound' of a practice's capacity as suggested by CVS.

138. In addition to the shares submitted by the Parties, the CMA considered whether shares ought to be calculated on the basis of practices' revenues.¹⁶⁰ The CMA was able to gather revenue data from the majority of the 129 practices included in its analysis. This dataset was less comprehensive than that gathered detailing these practices' FTE vets and the data exhibited some inconsistency in the reporting period used by recipients, for example some recipients provided revenue data on the basis of financial years whilst others used calendar years. The CMA has opted to use FTE vets as the basis of its shares in this case as that data set is more complete and consistent, but considers that the evidence it has reviewed indicates that revenue-based shares may also be a reasonable indicator of competitive strength in the veterinary sector.

¹⁵⁶ For example, [Veterinary surgeons - Brook House Veterinary Centre \(brookhousevets.com\)](https://www.brookhousevets.com), last accessed on 18.02.2022; [Meet the team - Harbour Veterinary Group \(harbourvets.co.uk\)](https://www.harbourvets.co.uk), last accessed on 18.02.2022.

¹⁵⁷ Issues Letter Response, paragraph 6.5.

¹⁵⁸ Issues Letter Response, paragraph 6.25.

¹⁵⁹ The most recent RCVS survey results show that 27% of vets worked part-time in 2019. ([retention-recruitment-and-return-in-the-veterinary-profession-preliminary-report.pdf](#)). The report also noted that over the past 15 years there has been an increasing trend for veterinary surgeons working part-time.

¹⁶⁰ Revenues are commonly used by the CMA to calculate shares, see for example: *Celesio/Sainsbury's Pharmacy Business*, where shares amongst pharmacies were calculated on the basis of pharmacy licenses as well as on the basis of revenues ([A report on the anticipated acquisition by Celesio AG of Sainsbury's Pharmacy Business \(publishing.service.gov.uk\)](#)).

139. Notwithstanding the limitations associated with the revenue data, the CMA was able to establish a strong correlation between practices' reported FTE vets and revenues, using data for practices that submitted both values. The correlation observed in this data is consistent with internal documents reviewed by the CMA. For example, the Vendor Due Diligence observes that the recruitment of additional vets is a 'key growth driver' for The Vet;¹⁶¹ the same document later projects The Vet's future revenues on the basis of revenue generated per vet. In an internal document produced by CVS assessing the acquisition of The Vet, [redacted].¹⁶²
140. Given the relationship observed between practice revenues and the number of FTE vets employed, both in the data gathered by the CMA directly and in the Parties' internal documents, the CMA considers that shares calculated on the basis of revenues and shares calculated on the basis of FTE vets employed, are likely to yield similar results. The CMA further considers that both may be informative as regards the competitive assessment.
141. The CMA has in this case therefore chosen to calculate shares of supply for practices located within each of the catchment areas on the basis of these practices' FTE vet data.
- Threshold
142. The CMA believes that a threshold of a 30% combined share calculated on the basis of practices' FTE vet data is appropriate for the identification of areas in which there is (absent evidence to the contrary) a realistic prospect of an SLC in this case. In other cases, the CMA identified areas where there is a realistic prospect of competition concerns arising by identifying areas exceeding both a combined share threshold and an increment threshold of 5%.¹⁶³ The CMA notes that, in this case, the Merger gives rise to an increment exceeding 5% in all areas where the Parties' combined share exceeds 30%. As such, the CMA considers that it is not necessary to assess whether an additional threshold of 5% would be appropriate in this case.

¹⁶¹ Annex 5.1 to The Vet s109 Notice 1.

¹⁶² Annex 22.5, slide 24 to the CVS' response to the Enquiry Letter Response.

¹⁶³ See for example: Tarmac Trading Limited/Breed Group plc Decision [Tarmac Breedon full text decision \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

143. CVS submitted that a threshold of 30% is ‘highly conservative’, ‘unreasonable’, and ‘does not reflect how competition works in the sector’.¹⁶⁴ CVS further submitted that this threshold is ‘towards the more interventionist side of recent CMA cases’.¹⁶⁵
144. The CMA believes that a threshold of 30% is not unreasonable given the particular facts of the case. The CMA’s assessment of the appropriate threshold considered:
- (a) the nature of the CMA’s test for reference at the end of a Phase 1 investigation and the availability of evidence in relation to market characteristics that has been used, in previous cases, to support a higher threshold;
 - (b) the available evidence in relation to out-of-market constraints; and
 - (c) evidence that some aspects of the methodology for calculating the shares being likely to may understate CVS’ position and overstate some competitors’ strength.
145. In response to CVS’ comments, the CMA notes that the thresholds chosen in a given case are based upon the particular evidence available in that investigation. As such, it is not possible to infer the correct threshold in one case from the thresholds applied in previous cases in other industries. Notwithstanding that position, a number of factors (summarised below) distinguish the position in this case from those in other cases.

The CMA’s test for reference

146. The CMA notes that the threshold test in this case is intended to enable the CMA to assess whether there is a realistic prospect that a merger will lessen competition substantially. The CMA notes, in addition, that it has not previously investigated a transaction in this sector and therefore, unlike some other cases in which market share thresholds have been used, has not been able to draw on evidence or analysis from previous investigations.
147. A starting point of 30% to assess competition concerns is broadly consistent with the CMA’s prior practice, with higher thresholds being used where significant evidence or analysis was available to support such a position. For example, in the case of Ladbrokes/Coral,¹⁶⁶ the CMA considered a range of ‘candidate thresholds’ of between 30-40%. In this case, the CMA opted for a threshold of 35%, and was

¹⁶⁴ Issues Letter Response, paragraph 2.4.

¹⁶⁵ Issues Letter Response, paragraph 6.32.

¹⁶⁶ [Ladbrokes/Coral Final Report \(publishing.service.gov.uk\)](#), paragraph 7.134.

able to reject the lower threshold of 30% on the basis of an analysis of concentration and competitive outcomes completed during the phase 2 investigation. In this case, the Parties have presented little robust and probative evidence and the CMA is not able to call on existing industry research, such as consumer surveys, to inform the CMA's understanding on the nature of competition.

Evidence of out-of-market constraints

148. In past cases the CMA has adopted lower thresholds and a more cautious approach when analysing markets where limited evidence regarding out of market constraints has been provided. Conversely, the CMA has in the past adopted higher thresholds after reviewing robust evidence of material out-of-market constraints.
149. For example, in the case of pub mergers, the CMA adopted a more cautious approach when investigating earlier cases in the sector when the CMA had not received adequate evidence regarding the strength of out-of-market constraints, using a threshold of 25%.¹⁶⁷ The CMA adopted a higher threshold of 35% during the investigation of Spirit Pub Company PLC by Greene King PLC upon receiving robust evidence both from internal documents and from a survey that supported the strength of out-of-market constraints.¹⁶⁸
150. CVS submitted that a threshold of 40% would be more appropriate given the geographic out-of-market constraints.¹⁶⁹ As described above at paragraph 81, CVS submitted that the 'narrow isochrones' used by the CMA in its analysis imply that the CMA ought to 'carefully assess the presence and magnitude of potential out-of-market constraints'.¹⁷⁰ Additionally, as described at paragraph 112, CVS submitted that the inclusion in The Vet's price monitoring documents of practices located outside of the catchment areas around The Vet shows that there are material out-of-market constraints. CVS further submitted a local area analysis based upon catchment areas that extended those used by the CMA as 'sense-check' of the extent of any out-of-market constraint, and concluded that this exercise significantly decreased the Parties' combined shares in Bristol and Nottingham.¹⁷¹

¹⁶⁷ See for example: Punch/Spirit Decision [Completed acquisition by Punch Taverns plc of Spirit Group Holdings Ltd \(publishing.service.gov.uk\)](#); Greene King/Hardy and Hanson Decision [Anticipated acquisition by Greene King plc of Hardys and Hansons plc \(publishing.service.gov.uk\)](#).

¹⁶⁸ See paragraph 111 of the Decision: [Greene King/Spirit full text decision \(publishing.service.gov.uk\)](#) .

¹⁶⁹ Issues Letter Response, paragraph 2.5.

¹⁷⁰ Issues Letter Response, paragraph 5.3.

¹⁷¹ Issues Letter Response, paragraphs 6.42-6.43. This analysis used share of practices, rather than shares calculated on the basis of FTE vets, as the data used by the CMA is not accessible by CVS.

151. The CMA notes that the catchment areas calculated in this case are relatively small (in terms of numbers of minutes, compared to some previous cases). However, the CMA also notes that the approach adopted to determine these catchment areas does not differ from the standard approach used in previous cases and therefore the size of the catchment areas, which reflect the Parties' customer data, is therefore representative of the behaviour of the majority of the Parties' customers at the relevant practices.
152. As regards The Vet's price monitoring exercise, the CMA understands that whilst The Vet may have carried out some monitoring of practices outside of the catchment areas identified by the CMA, it then went on to identify the [X].¹⁷²
153. Finally, regarding the extended catchment area analysis submitted by CVS where the catchment areas are flexed by two minutes,¹⁷³ the CMA notes generally that the two-minute extension is an arbitrary one and comprises a sizeable fraction of the original catchments (over a fifth of CVS' catchment area, and just under a sixth of The Vet's).
154. Moreover, the CMA considers that the purpose of this analysis is unclear. Whilst it demonstrates that there are practices operating outside of these catchment areas which may arguably exert some constraint on the Parties' practices, this is not a feature unique to this case. As noted in paragraph 113, by definition, any local catchment area based on 80% of customers will invariably result in some degree of out-of-market constraint being present. The thresholds used by the CMA in any local area analysis take this into account. CVS has provided no evidence in this case suggesting that the geographic out-of-market constraint is any stronger than in any other case where the CMA has followed its standard approach.

Over/understating competitive strength

155. As noted in paragraph 121, the CMA considers that the FTE vet data may overstate some third-party practices' competitive strength, while also understating CVS' competitive strength where these are mixed practices. The competitive strength of third-party practices may also be overstated in the limited instances where direct data was not available. The CMA considers that a threshold of 30% is also appropriate to account for these potential discrepancies.

¹⁷² The Vet response to question 6(a) of RFI 3.

¹⁷³ Issues Letter Response, paragraph 6.42.

- Additional measures considered for the local area analysis

156. The CMA may apply additional filters where the evidence suggests that such additional filters would provide a more accurate assessment of competitive constraints in the local areas. In this case, the CMA has not found that such additional filters would be appropriate.
157. The CMA invited CVS to make submissions regarding the appropriateness of any secondary measures. CVS did not make any proposals as to what secondary measures could be used in this case. CVS did make submissions regarding additional measures, which it submitted the CMA should make a ‘holistic assessment’ of.¹⁷⁴ These were shares calculated on the basis of number of sites; shares calculated on the basis of observed vets; the increment on the basis of share of sites; and the number of remaining competitor sites in each catchment area.
158. The first three of these measures have been addressed in greater detail at paragraphs 136 – 137. Regarding the competitor sites in each catchment area, the CMA notes CVS’ submissions that ‘even practices which are owned by the same corporate group will often compete with each other in the local market’. CVS submitted that this may arise as a result of some Corporate Groups choosing to adopt a ‘joint venture approach’ ie a joint venture involving shared ownership between an individual and the relevant Corporate Group. CVS submitted that under this approach the vet at each practice has the independence to set competitive parameters, and the incentive to compete with other practices under common ownership.¹⁷⁵ The CMA has not reviewed any evidence demonstrating that this is the case but notes that there is evidence which suggests that some practices within the same local area are owned by the same joint venture partners.¹⁷⁶
159. CVS further submitted that another Corporate Group ‘appears to give significant responsibility for operational and pricing decisions to each practice’. The CMA does not have evidence regarding the underlying reason for this strategic decision but notes that as these practices fall under common ownership, the strategy adopted may typically be assumed to be profit maximising for the group as a whole and these practices cannot be considered as independent competitors.

¹⁷⁴ Issues Letter Response, paragraph 6.45.

¹⁷⁵ Issues Letter Response, footnote 49.

¹⁷⁶ For example, one joint venture partner owns at least five Vets4Pets practices in the Portsmouth area, see [Vets in Portsmouth | Companion Care](#) and [Practices | Vets4Pets](#), last accessed on 18/02/2022.

160. More broadly, the CMA notes that its approach to local area analysis in its phase 1 assessments is to adopt an approach that allows for the systematic evaluation of each relevant catchment area. A ‘holistic’ assessment of each local area would not facilitate this. Furthermore, the CMA considers that this may result in inconsistent treatment across different local areas.

161. The CMA has not identified any measure that would systematically capture important aspects of competition in the market that are not reflected in the 30% combined share threshold. As such the CMA has not identified any appropriate measures that may be additionally used in this case and has therefore chosen to rely exclusively on a 30% combined share threshold, calculated on the basis of FTE vets.

- Outcome of local area analysis

162. Based upon the methodology set out above, the CMA’s local area analysis yields shares of supply as set out in Table 1 below.

Table 1: Combined shares of supply

Catchment Area	Centroid practice name	Centroid practice type	Range of combined share (by FTE vets)
Bristol	Highcroft Veterinary Group - Ashton Veterinary Surgery	CVS	50-60%
Bristol	Highcroft Veterinary Group - Brislington Veterinary Surgery	CVS	50-60%
Bristol	The Vet Bristol	The Vet	40-50%
Nottingham	Ambivet Veterinary Group (DE7 4LY)	CVS	30-40%
Nottingham	Ambivet Veterinary Group (NG8 1GR)	CVS	80-90%
Nottingham	Ambivet Veterinary Group (NG8 5RR)	CVS	90-100%
Nottingham	Davison Veterinary Care	CVS	50-60%
Nottingham	Priory Veterinary Group – Beeston	CVS	50-60%
Nottingham	Priory Veterinary Group – Ilkeston	CVS	50-60%
Nottingham	The Vet Nottingham	The Vet	40-50%
Portsmouth	Harbour Veterinary Group – Portsmouth	CVS	30-40%
Portsmouth	Harbour Veterinary Group (PO6 2AA)	CVS	30-40%
Southampton	Brook House Veterinary Centre	CVS	30-40%
Warrington	Rees Veterinary Centre	CVS	30-40%

163. The CMA’s analysis therefore identifies the following areas as yielding combined shares for the Parties in excess of 30%, indicating that there is a realistic prospect

of competition concerns arising in Bristol, Nottingham, Portsmouth, Southampton and Warrington.

Conclusion on horizontal unilateral effects

164. For the reasons set out above, the CMA believes that there is a realistic prospect of a SLC arising in the following local areas: Bristol, Nottingham, Portsmouth, Southampton and Warrington, in relation to horizontal unilateral effects in the supply of standard small animal veterinary services.

BARRIERS TO ENTRY AND EXPANSION

165. 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.¹⁷⁷

- Access to vets

166. As noted in paragraph 131 **Error! Reference source not found.**above, the CMA has reviewed a range of evidence indicating that there is a shortage of vets, made more acute recently because of Brexit and the COVID-19 pandemic. This evidence, includes:

- (a) submissions from third-parties, as noted above in paragraph 131;
- (b) recruitment and retention issues experienced by The Vet, as explained by The Vet in support of derogations granted on 20 December 2021 and 13 January 2022, and observations made by the Monitoring Trustee;¹⁷⁸
- (c) public statements made by relevant industry bodies such as RCVS and BVA noting the critical shortage of vets impacting on practices' ability to provide services, including that 'this is not a new phenomenon';¹⁷⁹

¹⁷⁷ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 8.40.

¹⁷⁸ The Monitoring Trustee was appointed on 15 October 2021 in accordance with directions issued by the CMA on 7 October 2021 pursuant to paragraph 10 of the Initial Enforcement Order.

¹⁷⁹ See for example: '[Home - Find A Vet](#)' (rcvs.org.uk), last accessed 18.02.2022; '[Vet practices managing triple whammy of Brexit, Covid, and pet boom](#)' (bva.co.uk); '[retention-recruitment-and-return-in-the-veterinary-profession-preliminary-report \(1\).pdf](#)' RCVS Workforce Summit 2021 Preliminary Report.

- (d) a 2019 survey of the veterinary profession commissioned by RCVS which found that over a quarter of respondents identified the recruitment of vets as a key challenge to the veterinary profession;¹⁸⁰
- (e) desk research based upon the websites of practices located within the catchment areas used by the CMA in its analysis, explaining that they are unable to accept new customers or must provide more limited services due to capacity constraints;¹⁸¹ and
- (f) CVS' own internal documents, which indicate a shortage of veterinary staff.¹⁸²

167. As set out above, CVS submits that there is no shortage of veterinary staff, and that any perceived shortage is caused by short-term factors only.¹⁸³ However, the CMA considers that the reasoning to support this position is flawed. In particular:

- (a) CVS submitted that its competitors are not materially capacity constrained and are continuing to accept new customers. However, as cited at paragraph 166(e) above, various CVS' competitors' websites state otherwise.
- (b) Veterinary surgeons have been added to the Immigration Rules Appendix Shortage Occupation List in December 2019, which relaxed the eligibility criteria for sponsored work visa applications for veterinarians. CVS contends that the full effect of this change has not yet been realised due to the various COVID-19 related travel restrictions, but that as these are now being lifted, 'it is reasonable to expect more vets to come to the UK in the near future'.¹⁸⁴ Whilst this measure may increase the future supply of FTE vets somewhat, the full effect is unclear, and no evidence has been provided as regards the magnitude of the expected increase.
- (c) The UK has removed visa restrictions on EU qualified vets working in the UK such that any EU-accredited vet can work in the UK subject only to certain language proficiency requirements.¹⁸⁵ CVS argues that this, together with the removal or relaxation of travel restrictions, is expected to result in a material increase in the number of EU-qualified vets (from an EAEVE accredited vet

¹⁸⁰ [1the-2019-survey-of-the-veterinary-profession-report-final.pdf](#), Institute for Employment Studies, November 2019.

¹⁸¹ See for example [St Peters Vets - Petersfield | Horndean | Liss](#), last accessed on 18.02.2022; [The Grove Veterinary Practice | Southsea \(thegrovetvets.co.uk\)](#), last accessed on 18.02.2022.

¹⁸² Annex 8.1, slide 14 to CVS s109 Notice 1; Annex 24.9T, slide 17 to the Enquiry Letter Response.

¹⁸³ Issues Letter Response, paragraph 8.7.

¹⁸⁴ Issues Letter Response, paragraph 8.7.

¹⁸⁵ Issues Letter Response, paragraph 8.7(c).

school, which the vast majority of European veterinary schools are) working in UK practices. Similarly to its comments on point (b), the CMA considers that while the removal of these restrictions may increase the future supply of FTE vets somewhat, the full effect is unclear, and no evidence has been provided as regards the magnitude of the expected increase.

- (d) RCVS has made proposals to amend the Veterinary Surgeon Act 1966 and in doing so increase the range of procedures which can be performed by veterinary nurses in the UK without direct vet supervision. CVS contends that this will 'significantly increase the amount of work which nurses can carry out' and 'reduce the burden for UK vets'. The CMA understands that these changes relate to a very restricted range of procedures,¹⁸⁶ and that no evidence has been provided to substantiate the scale at which these changes, if and when they are implemented, will redistribute the workload of vets.
- (e) There has been 'steady year-on-year growth in the number of vets practising in the UK' and there has also been 'significant growth in the number of students studying veterinary sciences at UK universities'. The CMA notes that whilst the number of vets practising in the UK has been growing, this growth has been declining since 2019. Moreover, since 2018 there has been an increase in vets leaving the 'UK-Practising' category. As a result, RCVS observes that the net increase in the number of vets practicing in the UK 'has fallen substantially since 2019'. In particular, the net increase in the number of vets practicing in the UK exceeded 1000 between 2015-2019, but was only 269 in 2021.¹⁸⁷ Additionally, any increase in the supply of veterinary professionals resulting from a current increase in veterinary students will not be realised for several years. Any such increase is unlikely to assist with practices' ability to increase their FTE vet numbers in the short-term.
- (f) Veterinary surgeons undertake tasks that may be handled by other staff, eg nurses or administrative staff. CVS therefore argues that any 'perceived shortage of veterinarians... can be alleviated in certain practices by reallocating certain non-clinical activities'. The CMA considers that this submission is inconsistent with the wide range of evidence it has reviewed suggesting that there is a shortage of veterinary professionals in the UK.

¹⁸⁶ See: [Part 2: Enhancing the VN role - Professionals \(rcvs.org.uk\)](#)

¹⁸⁷ [retention-recruitment-and-return-in-the-veterinary-profession-preliminary-report.pdf](#).

(g) The comments in CVS' documents referred to at footnote 147 above relating to a shortage of vets were made in the context of the COVID-19 pandemic, with the impacts on vet availability arising from the associated travel restrictions and self-isolation requirements. CVS submitted that any such problem will resolve itself once these restrictions are removed. CVS further submitted that the comments in the documents regarding increasing CVS' use of nurses demonstrates 'that re-allocation of work between vets and nurses is an efficient way of scaling capacity to meet demand'.¹⁸⁸

(h) In relation to RCVS' and BVA's comments above, CVS submitted that '[i]t is also somewhat difficult to reconcile the statements by the RCVS and BVA, referred to by the CMA, with the observable increase in the number of UK veterinary practices'.¹⁸⁹

168. On balance, the CMA does not consider that CVS' response to the CMA's comments regarding this shortage of vets adequately identifies any means by which this shortage will be remedied in a timely manner. As such, the CMA considers that this ongoing shortage of key veterinary staff is likely to pose a material and ongoing barrier to entry and expansion in the veterinary industry.

- Other barriers to entry and expansion

169. The CMA has also reviewed some evidence suggesting that access to capital may act as a barrier for new entrants. Evidence regarding the scale of this barrier to entry was mixed. Some market participants indicated this this did not pose a large barrier to entry.¹⁹⁰ However, one third-party practice explained that starting a new practice is 'risky' and that it would be difficult for such a practice to compete until it had reached a certain size.¹⁹¹ An Independent submitted that 50% of practices set up 'from scratch' fail within 5 years and are unlikely to yield large returns for several years.¹⁹²

170. The CMA notes the following submissions made by CVS regarding additional barriers to entry in the veterinary industry:

¹⁸⁸ CVS' response to question 4 of RFI 5.

¹⁸⁹ CVS' response to question 4 of RFI 5.

¹⁹⁰ Note of call with a Third Party [redacted], of 4 November 2021. Note of call with a Third Party [redacted], of 12 November 2021. Note of call with a Third Party [redacted], of 20 October 2021.

¹⁹¹ Note of call with a Third Party [redacted], of 12 November 2021.

¹⁹² Note of call with a Third Party [redacted], of 10 November 2021.

- (a) Smaller practices, including those with only a single vet, can ‘exercise a very significant competitive constraint and can quickly grow’.¹⁹³
- (b) It is not necessary for new competitors to purchase a practice; entrants may instead lease a practice site or convert residential property they own.¹⁹⁴
- (c) RCVS data shows that the number of practices in the UK continues to increase year-on-year.¹⁹⁵
- (d) CVS also provided two illustrative examples of new practices being opened recently, specifically: Werrington Vets in Peterborough; and Pattenden Vets in Kent.¹⁹⁶

171. In response to these submissions, the CMA considers that:

- (a) CVS provided no evidence to substantiate the first and second of these submissions. On this basis, the CMA is unable to conclude that the entry and subsequent growth of (unidentified) competitors would be sufficient to prevent the SLCs that arise as a result of the Merger (even leaving aside whether such entry is timely and likely).
- (b) Whilst the RCVS data may demonstrate an increase in practices, it does not detail whether these practices have been opened as part of greenfield expansion by Corporate Groups, which may be less constrained by access to capital.
- (c) The CMA considers that two anecdotal examples of new practices being opened recently are not conclusive evidence that successful new entry is possible or that new practices may quickly expand, particularly as both examples are situated outside of the overlap areas considered in this case. The CMA notes that unique features of these examples may have assisted with these practices’ success. For example, the CMA is aware that the staff at the Pattenden Vet surgery comprises three vets, a Practice Manager, an Animal Care Assistant and a Veterinary Nurse formerly of CVS. Given the information gathered by the CMA regarding customers’ willingness to switch to

¹⁹³ Issues Letter Response, paragraph 8.3.

¹⁹⁴ Issues Letter Response, paragraph 8.4.

¹⁹⁵ Issues Letter Response, paragraph 8.4.

¹⁹⁶ Issues Letter Response, paragraphs 8.5 – 8.6.

'follow' a vet, the CMA considers that the example of Pattenden Vets may not be illustrative of the general experience of opening a new practice.

- Conclusion on barriers to entry and expansion

172. For the reasons set out above, in particular the evidence gathered regarding the ongoing shortage of key staff in the veterinary industry, the CMA believes that entry or expansion would not be sufficient, timely or likely to prevent a realistic prospect of an SLC as a result of the Merger.

THIRD PARTY VIEWS

173. The CMA contacted customers and competitors of the Parties as well as other interested third parties. Some competitors raised concerns regarding the effects of the Merger in their local area and the effects of corporate consolidation in the veterinary sector.

174. The CMA received input from the practice owners of over 200 small animal veterinary practices active in and around the local areas where the Parties' activities overlap, charitable providers of veterinary care and industry bodies to inform its understanding of the veterinary industry in the UK and to provide context to its review of the Parties' submissions and internal documents provided throughout this investigation.

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

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

176. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the supply of standard small animal veterinary services in the local areas of Bristol, Nottingham, Portsmouth, Southampton and Warrington.

DECISION

177. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (iii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
178. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.¹⁹⁷ CVS has until 25 February 2022¹⁹⁸ to offer an undertaking to the CMA.¹⁹⁹ The CMA will refer the Merger for a phase 2 investigation²⁰⁰ if CVS does not offer an undertaking by this date; if CVS indicates before this date that it does not wish to offer an undertaking; or if the CMA decides²⁰¹ by 4 March 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by CVS, or a modified version of it.
179. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 18 February 2022. For the avoidance of doubt, the CMA hereby gives CVS notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by CVS and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from CVS stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
18 February 2022

ⁱ CVS is quoted on the Alternative Investment Market, not listed on the London Stock Exchange.

¹⁹⁷ Section 22(3)(b) of the Act.

¹⁹⁸ Section 73A(1) of the Act.

¹⁹⁹ Section 73(2) of the Act.

²⁰⁰ Sections 22(1) and 34ZA(2) of the Act.

²⁰¹ Section 73A(2) of the Act.