# Anticipated joint venture between Cheetah Concert Holdco Limited and Fora Holdings Limited

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

**ME/6993/22**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 3 August 2022. Full text of the decision published on 23 August 2022.

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

## SUMMARY

1. The notified transaction involves the creation of a joint venture by which the businesses of Cheetah Holdco Limited – trading as The Office Group (**TOG**) – and Fora Holdings Limited (**Fora**) will, on completion, be held by a new joint venture company, Concert JV Holdco Limited (**JV Co**), with TOG shareholders (via Cheetah Concert Holdco Limited) owning [✂] of JV Co's share capital and Fora shareholders (via Fora) owning the remaining [✂] (the **Merger**). JV Co will be jointly controlled by the TOG shareholders and Fora shareholders. TOG and Fora are together referred to as **the Parties**, and for statements referring to the future (if the Merger were to proceed), as the **Merged Entity**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of TOG and Fora is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. The Parties are flexible workspace operators whose activities overlap in the provision of serviced office space and co-working space (each described in further detail in paragraph 22 below) in central London, as well as meeting rooms and

corporate events space.[1] The CMA assessed whether the Merger may give rise to a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the following frames of reference:

(a) Serviced office space in: central London as a whole, with a cross-check of the following areas (in which the Parties overlap) on a cautious basis: Aldgate & Whitechapel, Clerkenwell & Shoreditch, City, Mayfair & St James, North of Oxford Street (including separately its North-East and North-West Quadrants), Southbank, Victoria, and the West End (Soho & Covent Garden).

(b) Co-working space in: central London as a whole, with a cross-check of the following areas (in which the Parties overlap) on a cautious basis: Clerkenwell & Shoreditch, North of Oxford Street (including separately its North-East Quadrant), Southbank, and the West End (Soho & Covent Garden).

4. The CMA believes that the Parties are close competitors but that the Parties currently face significant competitive constraints from a number of other providers of serviced office space and/or co-working space in central London, as well as in narrower areas within central London. The CMA found that these are dynamic and growing markets, and considers that the Parties would continue to be constrained by a number of competitors in the foreseeable future. This is supported by evidence submitted by the Parties, including internal documents, and the low number of competition concerns raised by third parties in response to the CMA's investigation.

5. The CMA believes that these constraints are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to serviced office space or co-working space, in central London or in any local area in which the Parties overlap.

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

[1] See footnote 68 for the CMA's delineation of central London for the purposes of this decision. Flexible workspace operators refer to suppliers of serviced office space and/or co-working space.

# ASSESSMENT

## PARTIES

### TOG

7. Cheetah Holdco Limited – trading as TOG – is a private company incorporated in the UK. TOG operates 47 flexible workspaces in the UK (45 in central London, one in Bristol and another in Leeds) and five in Germany. Across these sites, it provides flexible office space solutions, meeting rooms, corporate events space, and virtual offices. TOG is majority owned and controlled by funds affiliated with Blackstone Inc. (**Blackstone**), an investment management firm listed on the New York Stock Exchange. Blackstone owns [✂] of TOG (via Cheetah-Wild Holdco Limited) with the remaining [✂] owned by TOG's management (together, the **TOG Shareholders**).[2]

8. The turnover of TOG in 2020 was approximately £120,050,000 worldwide and approximately [✂] in the UK.[3]

### Fora

9. Fora is a private company registered in Guernsey. It operates 20 flexible workspaces in the UK (17 in central London and one in each of Cambridge, Reading, and Oxford). Fora provides flexible office space solutions, meeting rooms, and corporate events space. It is majority owned and controlled by funds affiliated with Brockton Capital Fund III GP Limited (**Brockton**), a private equity real estate fund. Brockton owns [✂] of Fora (via Fora Group Holdings Limited) with the remaining [✂] owned by Fora management (together, the **Fora Shareholders**).[4]

10. The turnover of Fora in 2020 was approximately £33,843,557 (all of which was generated in the UK).[5]

## TRANSACTION

11. The Merger is anticipated to take place pursuant to a joint venture by which the businesses of TOG and Fora will, on completion, be held by JV Co, with TOG Shareholders (via Cheetah Concert Holdco Limited) owning [✂] of JV Co's share capital and Fora Shareholders (via Fora Holdings Limited) owning the remaining

[2] Final Merger Notice, submitted on 11 June 2022 (**FMN**), paragraphs 2.1 – 2.4.
[3] FMN, paragraph 6.1, Table 1. TOG's turnover is based on its latest audited financial statements.
[4] FMN, paragraphs 2.7 – 2.8 and 2.10.
[5] FMN, paragraph 6.1, Table 1. Fora's turnover is based on its latest audited and finalised financial statements.

[✂]. JV Co will be jointly controlled by the TOG Shareholders and Fora Shareholders.[6]

## JURISDICTION

12. Two or more enterprises will cease to be distinct if they are brought under common ownership or control.[7]

13. Each of TOG and Fora is an 'enterprise' within section 129 of the Act.[8] As a result of the Merger, the TOG Shareholders will own [✂] of JV Co, via Cheetah Concert Holdco Limited. The Fora Shareholders will own [✂] of JV Co via Fora Holdings limited. Blackstone (the majority owner of TOG) and Brockton (the majority owner of Fora) [✂][9] [✂]. In addition, each of Blackstone and Brockton must [✂].[10] This, therefore, confers on each of TOG and Fora the ability to jointly control JV Co's policy, and therefore the policy of the TOG and Fora businesses. The CMA therefore considers that as a result of the Merger, TOG and Fora will cease to be distinct from one another.[11]

14. TOG's 2020 UK turnover was approximately £[✂] and Fora's 2020 UK turnover was approximately £33,843,557, which together exceed £70 million. Accordingly, the turnover threshold in section 23(1)(b) of the Act is satisfied.

15. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 June 2022 and the statutory 40 working day deadline for a decision is therefore 9 August 2022.

## COUNTERFACTUAL

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).[12] For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition, or conditions

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[6] FMN, paragraph 2.41.
[7] Section 26(1) of the Act.
[8] 'Enterprise' is defined in section 129 of the Act as the activities, or part of the activities, of a business. See also *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2 - 2022 revised guidance), paragraphs 4.6 to 4.16.
[9] Blackstone and Brockton have [✂] (FMN, paragraph 2.52 and Annex T008 to the FMN, [✂]).
[10] FMN, paragraph 2.52.
[11] *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2 - 2022 revised guidance), paragraph 4.25 and 4.54(b).
[12] *Merger Assessment Guidelines (CMA129)*, March 2021, (**Merger Assessment Guidelines**) paragraph 3.1.

of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.[13]

18. In this case, there is no evidence supporting a counterfactual other than the prevailing conditions of competition and neither the Parties[14] nor any third parties have put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## INDUSTRY BACKGROUND

19. The Parties are flexible workspace operators whose activities overlap in the supply of Serviced Office Space and Co-Working Space (each types of flexible workspace, defined in paragraphs 22(a) to (c) below), as well as meeting rooms and corporate events space, in Central London.[15] The CMA's investigation focused primarily on flexible workspace in Central London.[16]

### Types of flexible workspace

20. The concept of flexible workspace is not consistently defined within the industry,[17] but generally centres on two key components:

    (a) 'Ready to use' spaces: fully fitted and furnished workspaces, and usually with the provision of services and amenities such as office management, meeting rooms, cafes/catering, reception, and IT; and

    (b) Contracts that are typically in the form of licences agreed on a short-term basis (for example, 6 to 24 months).

21. These features stand in contrast to the concept of **Conventional Leasehold Office Space**, which is typically provided as an empty space (for the customer to fit and

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13 *Merger Assessment Guidelines*, paragraph 3.2.
14 FMN, paragraph 11.1.
15 The CMA's understanding of what constitutes 'Central London' for the purposes of this decision is set out at footnote 68 below. In addition to their activities in Central London, as noted in paragraphs 7 and 9, the Parties each also operate in several other locations (TOG in Leeds, Bristol, and Germany; Fora in Cambridge, Reading, and Oxford). However, there are no current or expected future overlaps in these other locations. FMN paragraphs 2.1 and 2.7.
16 With regard to meeting rooms and corporate events space, in line with the Parties' submissions (FMN paragraphs 14.72 to 14.78, 14.81, 14.85 to 14.89, and 14.92), the CMA considered it likely that the Merged Entity would be constrained by a large number and range of competitors, including other office space providers, specialist meeting venue and corporate events space providers, and other formal providers such as academic venues, conference centres, and hotels. The CMA provided third parties an opportunity to comment on any potential impacts of the Merger on meeting rooms and corporate event space; however, no concerns were raised. The CMA has therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects related to these overlaps and they are not covered further in this decision.
17 For example, Annex T053 to FMN, '[✂] January 2020', page 64; and Annexes F017 and T115 to the FMN, 'Savills Report, UK flex office perspectives, October 2021'. The CMA also found this to be true in its discussions with third parties.

furnish itself), without additional services and amenities included, on a leasehold basis,[18] and typically for much longer terms (for example, 5 to 15 years).

22. There are different categories of flexible workspace that fall along a spectrum ranging from ‘Co-Working Space’, to ‘Serviced Office Space’, to ‘Managed Office Space’:

(a) **Co-Working Space** provides access to communal workspace, made available either on demand or on a fixed short-term basis (monthly, weekly, daily, or even hourly). Customers often have the option of either a ‘dedicated’ (reserved) desk or an ‘open’ (non-reserved) desk. Users of Co-Working Space are predominantly small businesses or individuals (eg freelancers or individuals whose employer has provided them with a Co-Working membership to work remotely). Most providers of Co-Working Space are also providers of Serviced Office Space, and offer the former within dedicated areas of the same buildings as the latter, as opposed to operating separate Co-Working buildings, and sometimes offer the two together as part of a package.[19]

(b) **Serviced Office Space** provides customers with their own allocated (private) office. Customers usually share most facilities and amenities, such as meeting rooms and cafes, with other occupants of the building. Users of Serviced Office Space are often small to medium-sized businesses, but increasingly also include large businesses (the largest of which are sometimes referred to as ‘enterprise’ clients).

(c) **Managed Office Space** provides customers with a large, dedicated space (for example, a whole floor or a whole building), often with their own private entrance, and usually for a longer term (eg 1 to 5 years). In instances where Managed Office Space is provided by workspace operators who do not own the building (as opposed to where it is offered directly by the landlord itself), this often involves the operator entering into a lease with the landlord, before entering into a back-to-back sublease with the potential customer or operating as the agent of the landlord. Managed Office Space may be provided on a licence or a leasehold basis,[20] and is much closer than the other types of flexible workspace to Conventional Leasehold Office Space. The Parties do not overlap in the supply of Managed Office Space.[21]

[18] Leases and licences are different types of tenancy agreements. Under a lease agreement, tenants have the right to exclusive possession of the space and may be allowed to carry out certain types of alterations; office leases usually cover a long period of time (eg 5-10+ years). By contrast, a licence simply grants the tenant the permission to occupy a space, and they usually cover a shorter period of time (up to two years).
[19] FMN, paragraph 12.33.
[20] For example, one operator informed the CMA that its Managed Office Space is provided on a leasehold basis (via ‘short-form’ leases which are shorter/simpler contract documents and do not impose repair obligations on the tenant, as compared to traditional long-form leases).
[21] FMN footnote 29.

23. As noted above, types of flexible workspace exist along a spectrum, and the above distinctions are not always absolute; some providers may offer solutions that mix and match elements from across different types or offer bespoke solutions for customers depending on their requirements. Nevertheless, these categories are broadly consistent with the depiction in the Parties' internal documents,[22] industry reports,[23] and descriptions provided to the CMA by third parties during the investigation.

## Trends in the flexible workspace sector in Central London

24. London's flexible workspace sector is rapidly evolving and characterised by strong growth in both demand and supply. While it is clear that Central London office real estate was negatively impacted during the Coronavirus (COVID-19) pandemic, with occupancy rates at historic lows (given lengthy periods of government-mandated 'working from home'), and providers – including the Parties – obliged to offer customers heavy discounts, these effects appear to have been temporary. Indeed, as discussed below in paragraph 25, the main impact of the pandemic has been to accelerate pre-existing trends towards greater demand for flexible workspace. Third parties told the CMA that occupancy rates have now rebounded (or almost rebounded) to their pre-pandemic levels, which is consistent with the Parties' recent internal documents.[24]

25. Demand for flexible workspace is increasing and predicted to continue increasing. This is driven by a range of factors, including (i) the rise in remote and hybrid working, (ii) a growing preference for short-term contracts over lengthy leases (which tied many businesses into paying for empty real estate during the Coronavirus (COVID-19) pandemic), (iii) changes in the preferred size and configuration of space (eg a greater emphasis on the collaborative function of offices), and (iv) the need to attract and retain employees by creating appealing working environments and offering wellness features (eg on-site gyms or exercise classes). Relatedly, third parties and the Parties' internal documents emphasise a recent 'flight to quality', whereby customers are now attaching greater value to the quality of their workspace (see more on parameters of competition from paragraph 33).[25]

26. Another important demand-side trend is a 'softening' of geographic preferences among (at least some) customers. For example, where a customer may once have sought an office in a narrow geographic area (eg Soho, or even a particular street), it may now be willing to consider a wider area (Soho and the surrounding areas of

[22] For example, Annex F013 to the FMN, '[✂] October 2020'.
[23] For example, Annexes F017 and T115 to the FMN, 'Savills Report, UK flex office perspectives, October 2021'.
[24] For example; Annex T078 to the FMN, '[✂] Q1 2021'; and Annex T081 to the FMN, '[✂] Q3 2021'.
[25] For example; Annex F012 to the FMN, '[✂] 2020'; and Annex F017 to the FMN, 'Savills Report, UK flex office perspectives 2021'.

Covent Garden, Fitzrovia, Holborn and Chancery Lane, for instance). This is discussed further in the frame of reference section from paragraph 54).

27. On the supply side, there has been a substantial increase in the amount of flexible workspace over the past decade. According to various industry reports, Serviced Office Space has risen from 1.9% to 7% of total office space in London, with industry commentators predicting that flexible workspace will increase to 20-30% of the total by 2030.[26]

28. The number and variety of flexible workspace providers has also grown significantly. This includes specialist operators that are focused purely on flexible workspace (as the Parties are) as well as entry from some traditional landlords that have converted parts of their portfolio into flexible workspace or have partnered with specialist operators to do so. Prominent examples of such landlords include Great Portland Estates, British Land, and the Crown Estate.[27]

29. In terms of scale, there are broadly three tiers of flexible workspace operators in London.

(a) Large operators: several operators offer dozens of sites across numerous locations in London (as well as other parts of the UK and internationally). Their portfolios include large buildings/office spaces, which tend to make them more suitable for customers that require a large private office space (eg enterprise clients). The main examples are TOG, IWG (which includes the brands Regus, Spaces and Signature, among others), and WeWork.

(b) Medium-sized operators: several operators offer multiple sites (around 5-20) in various locations in London, although the footprint of their overall portfolio is not on the same scale as that of the large operators, and the size of their individual buildings/spaces tends to be somewhat smaller. Examples include Fora, The Argyll Club, and the Boutique Workplace Company.

(c) Small operators: there is a long tail of operators that each operate only a few sites or a single site. These tend to be less suitable for large customers (and less willing to take them on, due to the disproportionate risk to their business when the contract ends). Some have a local focus and/or specialise in a specific type of customer (eg charities, start-ups, or tech businesses).[28]

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[26] FMN, paragraph 12.32. HubbleHQ article (December 2021) 'Everything You Need to Know about Flexible Office Space' (accessed 14 July 2022). Annex T111 to the FMN, 'JLL 2020 report: 'The impact of Covid-19 on flexible space'. Annex T112 to the FMN, 'JLL 2019 report: 'Disruption or distraction: where next for the UK flex space market?'.

[27] See for example Annex F015 to the FMN, '[✂] 15th July 2020', Annex T055 to the FMN, '[✂] Q4 2019', and Annex F017 to the FMN, 'Savills Report, UK flex office perspectives 2021'.

[28] For example, one operator told the CMA that it is an outlet of a hotel and offers flexible meeting space and co-working mainly for hotel residents and local residents. Another operator told the CMA that it focuses on customers in the technology and ICT sector.

Examples include Techspace, SohoWorks Shoreditch, and Whitechapel Think Factory.

30. Quality is not necessarily correlated with scale. There are examples of higher- and lower-quality providers in each of the three tiers above.[29] TOG and Fora are both high-quality providers; this is discussed further in the closeness of competition section from paragraph 82.

## Process of procuring flexible workspace

31. The majority of flexible workspace customers – across industries and size categories – use a broker or agent to identify suitable options and negotiate contracts.[30,31] Brokers first discuss with the customer their requirements (such as location, size and configuration of space, length of term, and budget) and then search available inventory. Some brokers maintain their own database of flexible workspace, updated periodically through conversations with operators; others use third-party platforms (eg Valve). Brokers then identify a list of suitable options, which they discuss with the customer, before arranging site visits to a subset of these. Finally, once the preferred option is chosen, the contract is negotiated, usually by the broker on the customer's behalf. Prices for Serviced Office Space (but not usually Co-Working Space) are often negotiated down from the initial or list price, depending on factors such as length of time the space has been vacant, occupancy rates and demand for that building, size of the deal, length and start date of contract, and attractiveness of the customer (eg their future expansion potential).[32]

32. Not all customers use brokers; some deal directly with workspace operators or use specialist websites that facilitate searches for available office space. In addition,

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[29] For instance, one broker told the CMA that a provider in the large tier is often regarded as somewhat lower-quality. Conversely, another broker noted the presence of several smaller or 'boutique' operators who are focused on providing quality rather than expanding their scale.

[30] One broker told the CMA that it believes the majority of customers use a broker when searching for workspace because the market is so wide-ranging and would be time-consuming to research themselves – customers prefer to use the services of a specialist, who can also provide representation (in contract negotiations). A second broker said that, in its experience, all types of customers use a broker (not confined to specific sectors) and that a large proportion of office providers' revenue would come from broker/agent leads. Another broker confirmed that it works with customers of all types and sizes, ranging from single-desk deals to enterprise clients. The Parties submitted that [✂] of Fora's business leads come from brokers (equivalent information for TOG was not provided), FMN paragraph 12.35. The CMA received questionnaire responses from a number of brokers, a few of whom said they specialised in small customers or large/corporate customers, but most of whom said they dealt with a wide range of customer sizes and industries. Due to the large range of customers supplied by the Parties and their competitors, and the heterogeneity of customers' preferences (see paragraph 35), the CMA did not contact customers directly. However, given that brokers represent a large proportion of flexible workspace customers (of diverse sizes and types) and are independent sources of expertise about the industry, the CMA has placed a significant amount of weight on the views of brokers and taken them to be representative of the views of customers.

[31] Although brokers work on behalf of customers, the industry norm is for their fee to be paid by the operator on successful completion of a transaction.

[32] FMN paragraphs 15.42 to 15.46 and 15.64. TOG explained that [✂]; TOG's response to the CMA's notice under section 109, dated 26 April 2022. Similarly, Fora has a [✂]. FMN paragraph 15.65. See also Parties' response to question 1 of the CMA's request for information, dated 16 June 2022.

new 'aggregator' platforms have emerged, such as Desana, which provides a service to businesses whereby its app is offered to the business' employees, allowing them to search across numerous operators and make on-demand bookings for available workspace (for example, the employee could book a desk in a Co-Working Space for a day to work remotely from the main office). The rise of such specialist search websites and aggregator platforms appears to have facilitated competition by exposing workspace operators to new customers and vice versa.[33]

## Parameters of competition

33. The Parties submitted that customers primarily make decisions on the basis of: (i) location; (ii) price; (iii) size; (iv) design and other physical characteristics of the space; and (v) contract flexibility,[34] and that providers of Serviced Office Space and Co-Working Office Space differentiate their offerings in a variety of ways, including: range of amenities available; branding; charging model and billing transparency; the quality of fit-out (eg lower desk densities, premium furnishings, skyline views); and level of service (eg concierge, food and beverage services, housekeeping, security).[35]

34. Evidence gathered by the CMA is broadly consistent with the Parties' submission. Third parties emphasised the importance of location,[36] the quality of the space (eg extent of natural light, amount of break-out space, quality of fixtures and fittings), the design and aesthetic of the building and workspaces, the quality of customer service, and price. In response to the CMA's third party questionnaires, brokers and workspace operators ranked location, price, and quality of space as the top three important factors when selecting both Serviced Office Space and Co-Working Space,[37] but a wide array of others were also considered important.[38]

35. The fact that a wide array of factors are considered important speaks to two significant features of this industry. First, customer preferences are heterogeneous;

[33] For example, one such third party told the CMA that it has experienced its customers signing agreements with operators after having initially been introduced via its service.
[34] FMN, paragraph 15.26.
[35] FMN, paragraph 15.37.
[36] As noted above, the scope of the geographic area customers are willing to consider appears to have become less tightly circumscribed in recent years, but the evidence points clearly to location in general remaining highly important.
[37] The importance of location, price and quality of space is also reflected in the Parties' internal documents. For example, Annex T072 to the FMN, '[✂] 2021', states in relation to TOG's expanding portfolio that TOG prides itself in identifying the best locations in terms of convenience and quality. [✂], for example, in Annex T035 to the FMN, '[✂] January 2019', in Annex T050 to the FMN, '[✂] December 2019', and in Annex F035 to the DMN, '[✂] 30 September 2020'.
[38] The features rated as most important in customers' choice of Serviced Office Space (all rated 3/5 or above) were (in order): location, price, quality of space, size of space, quality of customer service, aesthetic/style of design, technology (eg user-friendly booking apps), amenities offered within the private office space (eg meeting rooms, kitchen), flexibility (eg to scale up/down size requirements), communal amenities offered within the building, and range of services offered. The features rated as most important for Co-Working Space were largely very similar, with location, price, and quality of space likewise emerging as the top three.

some will greatly value certain attributes of a workspace and others will put more weight on other attributes (as emphasised by third parties). Second, this heterogeneity, coupled with the potential trade-offs for customers when choosing their workspace (eg a better-quality space but not in their top preferred location, or for a higher price than they initially sought) suggests there is room for a diverse range of providers to compete.

36. In its approach to the competitive assessment, the CMA has taken into consideration the key features of the industry and parameters of competition described above.

## FRAME OF REFERENCE

37. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[39]

38. As noted above, the Parties overlap in the supply of flexible workspace in Central London.[40]

### Product scope

39. The CMA previously assessed flexible workspace in its 2015 investigation of the completed acquisition by Regus plc of Avanta Serviced Office Group (***Regus/Avanta***).[41] In *Regus/Avanta*, the CMA identified the following product frames of reference: (i) Co-Working Space; (ii) Serviced Office Space; and (iii) Managed Office Space.[42] The CMA distinguished these products from (iv) Conventional Leasehold Office Space.

40. The Parties submitted that the market has evolved since *Regus/Avanta* such that the boundaries between these markets (ie the four products listed in paragraph 39) are more fluid today.[43] Nevertheless, they submitted that for the purposes of the

[39] Merger Assessment Guidelines, paragraph 9.4.
[40] As discussed above, the Parties also overlap in the supply of meeting rooms and corporate events space; however, the CMA is satisfied that no plausible competitive concerns regarding either of these products arise from the Merger.
[41] CMA decision of 18 November 2015, case ME/6537-15 Regus plc/Avanta Serviced Office Group plc.
[42] *Regus/Avanta* paragraphs 33 to 58. In *Regus/Avanta* the CMA also defined frames of references for meeting rooms and virtual offices; however, the Parties do not overlap in virtual offices, and as noted above, the CMA was satisfied that no plausible competitive concerns arose in relation to meeting rooms.
[43] FMN paragraph 13.2.

Merger Notification, the Parties consider the narrowest possible market definitions arise through assessing the Merger on the basis of the CMA's descriptions in *Regus/Avanta*.[44] When using these definitions, the Parties argued that Conventional Leasehold Office Space and Managed Office Space still exert a competitive constraint on the supply of Serviced Office Space. In particular, the Parties stated that TOG's and Fora's leads and lost customers data suggest that a significant portion of customers view Managed Office Space and Conventional Leasehold Office Space as alternatives to Serviced Office Space.[45]

41. The CMA has considered substitutability between different types of flexible workspace, as well as between these and Conventional Leasehold Office Space.

***Demand-side substitutability***

42. On average, brokers indicated that only 8% of their customers considering Serviced Office Space would seriously consider Co-Working Space as a suitable alternative, and fewer than a quarter of customers considering Serviced Office Space would seriously consider Managed Office Space or Conventional Leasehold Office Space.[46] For Co-Working Space, on average, brokers' responses indicated that 42% of customers considering Co-Working Space would seriously consider Serviced Office Space as a suitable alternative, and only 8% and 3% would seriously consider Managed Office Space and Conventional Leasehold Office Space, respectively, as a suitable alternative.

43. This broadly aligns with evidence gathered from third parties, which suggested that: (i) flexible workspace categories fall along a spectrum (as described above at paragraph 22); (ii) there is greater substitutability between categories that are adjacent on the spectrum than between further-apart categories;[47] and (iii) there is variability between customers, such that some have strong preferences for one specific type of flexible workspace or for Conventional Leasehold Office Space, whereas others are willing to consider different types. Third party evidence indicates that the size of the customer and the amount of space it requires is often a primary driver of preferences: whereas Co-Working Space best suits individuals and small businesses, and Serviced Office Space often suits small to medium-sized

[44] FMN paragraph 13.2.
[45] FMN paragraph 13.4.
[46] The CMA asked each broker to estimate the proportion of customers that would seriously consider the other workspace options (respectively) as a suitable alternative; these percentages represent a straight average across brokers' responses. For customers considering Serviced Office Space, the range of responses was wide: 2-20% for Co-Working Space as an alternative; 0-50% for Managed Office Space as an alternative; and 0-80% for Conventional Leasehold Office Space as an alternative), reinforcing the notion of heterogeneity in customer preferences.
[47] For example, one broker told the CMA that it would not usually put both Co-Working Space and Managed Office Space options in front of the same client because these are 'very different solutions'.

businesses, large businesses might consider one or more of Serviced Office Space, Managed Office Space, or Conventional Leasehold Office Space.[48]

44. In regards to the various ‘leads’ analyses submitted by the Parties (referred to at paragraph 40),[49] the CMA considers that these are consistent with a degree of demand-side substitutability between Serviced Office Space and Conventional Leasehold Office Space. However, the CMA has placed limited weight on this evidence due to a number of data limitations.[50] Moreover, it is not clear from these data alone the extent to which flexible and conventional options are interchangeable for a given customer at a given point in time, as opposed to customers’ preferences shifting over time to increasingly favour flexible workspace, or reverting to favouring Conventional Leasehold Office Space if their circumstances or the wider context (eg recovery from the Coronavirus (COVID-19) pandemic) change.[51] Finally, to the extent there may be a degree of substitutability between flexible workspace and Conventional Leasehold Office Space, the CMA considers this to be relevant for only some customers (ie mostly larger businesses), in line with the third party evidence cited above.

***Supply-side substitutability***

*Between Serviced Office Space and Co-Working Space*

45. The Parties’ internal documents often distinguish between Serviced Office Space and Co-Working Space (even if not using these precise terms); for example, the Parties set prices separately for ‘Offices’ versus ‘Hot Desks’.[52]

46. However, most of the providers operating Co-Working Space also operate Serviced Office Space (Co-Working Space being provided within the same buildings as

[48] For example, one broker told the CMA that the majority of its transactions up to 10,000 sq. ft are for flexible workspace (as opposed to conventional leasehold); once a customer’s requirement reaches 5,000 sq. ft, its traditional leasing and flexible teams will work together to look at both types of options; and beyond 10,000 sq. ft, customers tend to take conventional leases.
[49] These are: (i) Annex T084 to FMN, ‘[✂] May 2022’, which is a dataset produced by TOG concerning all new customer enquiries and renewals of existing customers received between December 2018 and December 2021, as well as deal and termination data for office contracts finalised between November 2020 and October 2021; (ii) Annex T085 to FMN, ‘[✂] May 2022’, which contains some information on TOG’s customer viewings, opportunities, leads lost to conventional workspace providers, and reasons for contract terminations between September 2018 and December 2021; and (iii) Annex F141 to FMN, [✂], which summarises the previous work environment of prospective clients collected during the tour booking process for a sample of approximately 20% of client leads during the period August 2019 to December 2021.
[50] For example, some of these datasets provide only a limited sample (which may not be representative); furthermore, they largely coincide with the period of the Coronavirus (COVID-19) pandemic, in which workspace customers may have exhibited unusual preferences/behaviours.
[51] The explanation of shifting demand-side preferences would be consistent with third party comments that (especially larger) businesses are increasingly favouring flexible workspace solutions over Conventional Office Leasehold Space due to the factors set out in paragraph 25.
[52] See Annex F017 to FMN, ‘Savills Report, UK Flex Office Perspectives 2021’ page 3; Annex F013 to FMN, ‘[✂] dated October 2020’, page 118; and Annex T053 to FMN, ‘[✂] January 2020’, page 64.

Serviced Office Space).[53] The Parties submitted that costs for suppliers to switch between Serviced Office Space and Co-Working Space are limited, since the basic structure of the building and the services provided are likely to remain very similar and the space can be configured easily and quickly (eg through use of partition walls and sound insulation).[54] The CMA considers the Parties' submissions to be highly plausible and the CMA has not received evidence to the contrary. Nevertheless, bearing in mind the more limited demand-side substitutability discussed above in paragraphs 42 and 43, on a cautious basis, the CMA has treated Serviced Office Space and Co-Working Space as separate frames of reference.[55]

*Between flexible workspace and Conventional Leasehold Office Space*

47. The Parties submitted that there have been a number of successful entrants from Conventional Leasehold Office Space to Serviced Office Space or Managed Office Space, and that Conventional Leasehold Office Space operators who offer, or are expected to offer, 'fully serviced' options include large providers such as British Land, Canary Wharf Group, Derwent London, Great Portland Estates, HB Reavis, Howard de Walden, Land Securities, Moorgarth, The Crown Estate, and The Langham Estate.[56] Furthermore, the Parties' internal documents note that it is becoming increasingly difficult to draw hard lines between the different categories (including between flexible workspace and Conventional Leasehold Office Space).[57]

48. For the reasons explained in paragraph 42, there is currently limited demand-side substitution between flexible workspace and Conventional Leasehold Office Space.

49. The CMA found evidence of entry into flexible workspace by some Conventional Leasehold Office Space providers and that some landlords are adding more flexible elements to their Conventional Leasehold Office Space products.[58] This seems to be a recent trend, and the entry of Conventional Leasehold Office Space providers into the supply of flexible workspace is limited so far. Notably, the four traditional landlords offering Conventional Leasehold Office Space with whom the CMA engaged during its investigation (taken from the list submitted by the Parties at paragraph 47) characterised their products as wholly or substantially distinct from Serviced Office Space and Co-Working Space. For example, two of these traditional landlords explicitly told the CMA that they do not consider themselves as competing closely with TOG or Fora because they do not operate a fully managed or serviced offering, and have no plans to do so. A third explained that it does not currently offer

[53] Annex T208 to TOG's response to the CMA's RFI, dated 1 April 2022, '[✂]' and third party questionnaire responses.
[54] FMN paragraph 12.40.
[55] The CMA notes in any case that treating Serviced Office Space and Co-Working Space as two segments of a broader frame of reference would not materially impact the conclusion of its assessment.
[56] FMN paragraph 12.48.
[57] For example, Annex F017 to FMN, 'Savills Report, UK Flex Office Perspectives 2021'.
[58] Such as shorter leases or partly pre-furnished spaces.

any Serviced Office Space or Co-Working Space and is more aligned to the Managed Office Space category since it provides larger spaces, typically on single floors, for which customers have their own front door. The fourth submitted that its presence in the London flexible workspace sector is tiny (comprising a single Serviced Office Space building).

50. Based on the evidence above, the CMA has concluded that: (i) the product categories set out above (at paragraph 39) remain meaningful to market participants; (ii) there is limited demand-side substitutability between each of Co-Working Space, Serviced Office Space, Managed Office Space, and Conventional Leasehold Office Space; and (iii) there is limited supply-side substitutability between flexible workspace and Conventional Leasehold Office Space. However, there does appear to be some competitive interaction across product categories, which is taken into account in the competitive assessment.

***Conclusion on product scope***

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

    (a) Serviced Office Space; and

    (b) Co-Working Space.

52. In relation to some aspects of its competitive assessment, the CMA has largely considered the Parties' flexible workspace products together (eg when considering closeness of competition), due to similarities in the Parties' offerings and position in the market. In relation to other aspects of its competitive assessment, the CMA considered it appropriate to assess Serviced Office Space and Co-Working Space separately (eg in calculating shares of supply).

53. Potential competitive constraints exerted on the Merged Entity by providers of Managed Office Space and/or Conventional Leasehold Office Space are also taken into account, where relevant, in the competitive assessment.

## Geographic scope

54. In *Regus/Avanta*, the CMA considered that choices by customers are made locally and that, consequently, incentives for providers to compete are driven by competition at the local level.[59] As such, in *Regus/Avanta* the CMA segmented Central London into a number of geographic areas based on postcodes,[60] using the

[59] *Regus/Avanta* paragraph 64.
[60] The local areas of London were: Hammersmith, Kensington, Knightsbridge, Paddington, Euston/Kings Cross, North of Oxford Street, West End (Soho/Covent Garden), Mayfair/St James, Victoria, Midtown, Clerkenwell/Shoreditch, City, Hackney, Aldgate/Whitechapel, Ealing, Canary Wharf/Docklands, Stratford,

narrowest plausible delineation on a cautious basis, whilst recognising that 'the boundaries of these areas are not clear-cut and there is some variation in the delineations adopted by different sources'.[61] The CMA also noted that some aspects of providers' offerings are set nationally, but considered that any effect on competition at the national level would be an aggregation of local competitive effects.[62]

55. The Parties submitted that they consider that the geographic frame of reference for the provision of Serviced Office Space and Co-Working Office Space should encompass the whole of Central London. Taking a conservative approach, however, the Parties also provided data on the basis of the local areas presented in *Regus/Avanta*.[63]

56. In determining the geographic frame of reference, the CMA has taken into account important features of the flexible workspace sector. The CMA assessed whether:

(a) key parameters of competition are determined at national and/or local level; and;

(b) in relation to the parameters of competition set at a local level, whether it is appropriate to assess the effects of the Merger on the basis of narrower local areas (eg those presented in *Regus/Avanta*) or by reference to a broader area (eg Central London).

57. In relation to the first question, from a demand-side perspective, as noted at paragraph 26, there is evidence that while location is an important parameter of competition, many customers are now willing to consider broader geographic areas than previously.[64]

58. From a supply-side perspective, most key parameters of competition are not set locally, including the quality and overall aesthetic and design of buildings and fit-outs (although this may also sometimes be differentiated locally), the quality of customer

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and Southbank. For the North of Oxford Street area, the CMA additionally segmented it into a 'North-East Quadrant' and a 'North-West Quadrant' to account for distinctive competitive conditions in each. Finally, the CMA additionally considered a small number of 'Alternative Geographic Areas' within London based on 0.5-mile radii from key transport hubs.

[61] *Regus/Avanta*, paragraph 71 and Table 1.

[62] *Regus/Avanta*, paragraph 64.

[63] FMN paragraph 13.9.

[64] For example, one broker explained that customers are becoming less fixated on specific locations and their searches often include adjacent local areas (eg a customer looking at the West End might also consider Mayfair & St James). Likewise, another broker stated that industries are not as wedded to particular locations as they once were, due to the re-location of industry leaders such as Google, and the Coronavirus (COVID-19) pandemic further 'blurring the lines'. Finally, one large flexible workspace operator commented that customers are generally open-minded as to precise location, partly because London is well-connected through extensive transport links.

service, technology (eg booking apps), and the range of services and amenities offered.

59. The Parties submitted that their prices for Co-Working Space are generally set at company-wide level [✂]; however, these prices do vary by location.[65]

60. In relation to Serviced Office Space, the Parties both set prices at a building level, taking into account local conditions of competition and building-specific factors such as historic and current demand, and the underlying value of the real estate. The Parties submitted, however, that the quality of the space and services is one key factor in determining prices.[66] To the extent that quality is a factor influencing price, and the Parties have overarching strategies relating to their (high) quality positioning in the market, this is therefore also an overarching (non-local) element to the Parties' prices for Serviced Office Space.[67]

61. Given the ongoing and rapid expansion of this sector (as described above), one important dimension of competition driven by operators' overall strategies is their investment in new capacity and expansion to new locations. Both the Parties, as well as many of their main competitors, have ambitious plans to expand their presence across London (this is discussed further below). Given this context, the CMA considered that competitive conditions in any given local area could change substantially in the coming years. While the competitive assessment does not seek to make predictions about exactly how competitive conditions might change, it does incorporate this forward-looking element.

62. For these reasons, the CMA considered it appropriate to assess the Merger both at national level, in relation to national parameters of competition, and on the basis of Central London as a whole, where the Parties mostly overlap.[68] However, given the limited presence of the Parties outside Central London (see paragraphs 7 and 9), the CMA found that the Merger will not substantially affect the way that the Parties

[65] FMN paragraphs 15.45 and 15.60.
[66] FMN paragraphs 15.44, 15.46 and 15.57.
[67] For example, Fora submitted that its board delegates pricing strategy to the executive team [✂]. FMN paragraph 15.55. Annex F012 to the DMN, '[✂] 2020' shows Fora's desk rates across its portfolio, which vary by location, and [✂] reflects the fact that Fora's spaces are designed with customer experience in mind.
[68] For the purposes of this particular investigation, and in line with the Parties' submission (FMN paragraph 12.12) and independent third party sources (Cushman & Wakefield map of 'Central London Flexible Office Market' reproduced in Annex F015 to the FMN, '[✂] 15 July 2020' page 27), the CMA has defined '**Central London**' as referring to the area stretching from Hammersmith in the West to Aldgate/Whitechapel and the southern part of Hackney in the East, including also Canary Wharf/Docklands and Stratford (due to their prominence as office hubs). This area includes the following postcodes: W6, W14, W8, SW5, SW1X, SW3, SW7, W2, NW1, W1C, W1U, W1G, W1W, W1T, W1H, W1F, W1D, WC2H, WC2E, W1K, W1J, W1S, W1B, SW1W, SW1V, SW1P, SW1E, SW1H, SW1A, WC2N, SW1Y, WC1E, WC1B, WC1H, WC1A, WC2B, WC2R, WC2A, WC1V, WC1R, WC1X, EC1N, WC1N, E2, EC2A, EC1Y, EC1M, EC1R, EC1V, EC4Y, EC4A, EC1A, EC4M, EC4V, EC2V, EC2Y, EC2R, EC4N, EC4R, EC3V, EC2M, EC2N, EC3R, EC3M, EC3A, EC3N, EC1A, E1, E1W, E14, E15, SE1, N1 9, N1C, E20 and W11.

compete at national level (including their expansion plans), and the effects of the Merger at a national level are not considered further in this decision.

63. As mentioned above, and in line with the findings in *Regus/Avanta*, the CMA considered whether it would be appropriate to additionally assess the effects of the Merger on the basis of narrower local areas. The CMA found evidence of variation in competitive conditions at local level:

(a) On the demand side, the evidence was clear that location within London remains important (albeit customers' geographic preferences are heterogeneous and the scope appears to have widened in recent years). As noted in paragraph 34, location was the feature rated by third parties (on average) as most important in determining customer choice, for both Serviced Office Space and Co-Working Space. This echoes what third parties told the CMA, namely that location was a 'determining' and 'very important' factor, for reasons such as industry hubs and employee commutes.

(b) On the supply side, prices for Serviced Office Space and Co-Working Space differ across local areas within Central London. Operators set prices for specific buildings and spaces locally,[69] and flex these in response to local-level demand and supply conditions such as the underlying cost of each building (taking into account location and value of the real estate), historic achieved prices, recent and anticipated occupancy rates in the building, and prices/conditions in nearby buildings (including those of competitors).[70] The competitor set also differs to some extent, ie there are certain competitors present in only one or a few local areas, whereas others (including the Parties) are present across numerous local areas of Central London (see paragraph 29).

64. The CMA considers there is supply-side substitution, ie there are not generally material obstacles to operators expanding to different areas within London; see paragraphs 110 to 118. However, while competitive conditions in particular local areas may change in future, particularly as operators continue to invest in expanding their capacity, such changes could take several years to come to fruition, and would not necessarily address any issues arising from the Merger over the nearer term.

65. For the above reasons, and on a cautious basis, the CMA considered it appropriate to supplement the Central London-wide assessment with an assessment at a

[69] Although, as noted above, decisions about the quality of space and services provided (which are part of the Parties' overarching business strategies) will also feed through into price to some extent.
[70] The Parties submitted that TOG's pricing for Serviced Office Space is [✂]. Co-Working Space membership pricing is set at a TOG company level. FMN paragraphs 15.43 to 15.45. Similarly, Fora's Finance Committee periodically agrees a rate card which specifies the price being targeted for particular inventory in each building, and a [✂]. FMN paragraphs 15.55 to 15.60.

narrower local level, by reference to the areas set out in *Regus/Avanta,* to confirm that no SLC arises on a narrower geographic basis (even if potentially time-limited).

66. In delineating the boundaries of these local areas, the CMA's starting point was those applied in *Regus/Avanta*, which were also the basis of the narrowest possible geographic market and shares of supply estimates submitted by the Parties.[71] Evidence from third parties and internal documents confirmed that these delineations continue to be recognised by and broadly consistent with those used in the industry.[72]

67. The local areas in which the Parties overlap, and the CMA's delineation of these, are shown in Table 1.

**Table 1: Delineation of local areas in which the Parties overlap**

| Local area | Product overlap | Delineation of area |
|---|---|---|
| Aldgate & Whitechapel | • Serviced Office Space | E1, E1W |
| The City | • Serviced Office Space | EC4Y, EC4A, EC1A, EC4M, EC4V, EC2V, EC2Y, EC2R, EC4N, EC4R, EC3V, EC2M, EC2N, EC3R, EC3M, EC3A, EC3N |
| Clerkenwell & Shoreditch | • Serviced Office Space<br>• Co-Working Space | E2, EC2A, EC1Y, EC1M, EC1R, EC1V |
| Mayfair & St James | • Serviced Office Space | W1K, W1J, W1S, W1B |
| North of Oxford Street | • Serviced Office Space<br>• Co-Working Space | W1C, W1U, W1G, W1W, W1T, W1H |
| North-East Quadrant (part of North of Oxford Street) | • Serviced Office Space<br>• Co-Working Space | Bounded by Euston Road to the north, Portland Place and Regent Street to the west, Oxford Street to the south, and Tottenham Court Road to the east |
| North-West Quadrant (part of North of Oxford Street) | • Serviced Office Space | Bounded by Marylebone Road to the north, Portland Place and Regent Street to the east, Oxford Street to the south, and Edgware Road to the west |
| Southbank | • Serviced Office Space<br>• Co-Working Space | SE1 |
| Victoria | • Serviced Office Space | SW1W, SW1V, SW1P, SW1E, SW1H, SW1A, WC2N, SW1Y |
| West End (Soho & Covent Garden) | • Serviced Office Space<br>• Co-Working Space | W1F, W1D, WC2H, WC2E |

### *Conclusion on geographic scope*

68. For the reasons set out above, the CMA focused its assessment of the impact of the Merger in Central London as a whole (for both Serviced Office Space and Co-

[71] FMN paragraph 13.9.
[72] For example; Annex F012 to the FMN, '[✂] 2020'; Annex F015 to the FMN, '[✂] 15 July'; Annex T012 to the FMN, '[✂] 8 February 2021'; and Annex T036 to the FMN, '[✂] February 2019'.

Working Space) and also cross-checked the impact of the Merger in the following local areas in which the Parties overlap:

(a) Clerkenwell & Shoreditch, North of Oxford Street (including separately its North-East Quadrant), Southbank, and the West End (Soho & Covent Garden) – for both Serviced Office Space and Co-Working Space; and

(b) Aldgate & Whitechapel, City, Mayfair & St James, the North-West Quadrant (of North of Oxford Street), and Victoria – for Serviced Office Space only.

### Conclusion on frame of reference

69. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:[73]

(a) Serviced Office Space in Central London as a whole, with a cross-check of the impact of the Merger in the following local areas on a cautious basis: Aldgate & Whitechapel, Clerkenwell & Shoreditch, City, Mayfair & St James, North of Oxford Street (including separately its North-East and North-West Quadrants), Southbank, Victoria, and the West End (Soho & Covent Garden).

(b) Co-Working Space in Central London as a whole, with a cross-check of the impact of the Merger in the following local areas on a cautious basis: Clerkenwell & Shoreditch, North of Oxford Street (including separately its North-East Quadrant), Southbank, and the West End (Soho & Covent Garden).

## COMPETITIVE ASSESSMENT

70. 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.[74] Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC arising from horizontal unilateral effects in relation to the frames of reference set out in paragraph 69.

71. Below, the CMA first presents the assessment on a Central London-wide basis, before moving to the cross-check of the local areas listed above.

[73] As explained above, the CMA found that the Merger would not result in a realistic prospect of an SLC in the supply of Serviced Office Space and Co-Working Space at national level.
[74] *Merger Assessment Guidelines*, paragraph 4.1.

## Assessment on a Central London-wide basis

72. In this section the CMA assesses in turn – on a Central London-wide basis – shares of supply, closeness of competition between the Parties, and the competitive constraints exerted by rivals to the Parties.

### *Shares of supply*

73. The Parties submitted shares of supply estimates for Central London[75] on the basis of share of total capacity, as measured by the net internal area (**NIA**) in square foot (**sqft**) of their own and competitors' assets, for each of Serviced Office Space and Co-Working Space.

74. The Parties noted that in *Regus/Avanta*, the CMA considered workstation capacity to be the most appropriate measure of share of supply for Serviced Office Space. The Parties acknowledged, however, that the CMA, in the same decision, recognised that, where reliable information concerning competitors' workstation capacity was unavailable, an estimation of capacity based on floor space, measured in sqft, was the most appropriate alternative measure of share of supply.[76]

75. Since the Parties have been unable to source reliable information on competitors' workstation capacity, they accordingly estimated shares of supply on the basis of the floor space measured in sqft. The Parties sourced data from:

    (a) their own internal records (for the Parties' own assets);[77] and

    (b) a flexible workspace dataset compiled by an independent broker, Cushman and Wakefield, as of August 2021 (for competitors' assets), which the Parties updated by (i) removing assets they believed to have been vacated by the workspace operators or which had nil or missing NIA figures; and (ii) adding relevant assets they believed had not been captured.[78]

76. The Cushman and Wakefield dataset specified which assets contained Co-Working Space but did not specify how much each contained (ie the NIA dedicated to Co-Working Space). The Parties therefore assumed that, for any flexible workspace asset of a competitor coded as containing Co-Working Space, 4% of the total NIA is allocated to Co-Working Space. This assumption is based on the average share allocated to Co-Working Space in the Parties' own assets ([✂] for Fora and [✂] for TOG).[79] The CMA considers this assumption to be conservative (ie potentially to

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[75] See definition given at footnote 68.
[76] FMN paragraph 14.3.
[77] The Parties included for their own assets any that are not yet operational but are in the pipeline (ie they know these assets will soon be added to their portfolio). For competitors, the data captures the current status (as of August 2021, with selected updates to June 2022). To the extent competitors may also have new assets in the pipeline, these would not be captured; therefore, potentially over-estimating the Parties' shares.
[78] Annex T148 to the FMN, 'Market Share Calculations Methodology Note'.
[79] Annex T148 to the FMN, 'Market Share Calculations Methodology Note', paragraph 2.13.

under-state competitors' shares) based on the estimated proportion of total flexible workspace allocated to Co-Working Space submitted to the CMA by two major competitors.[80] For their own assets, the Parties could provide actual NIA from their internal records.

77. The CMA considers that measuring shares of supply in terms of NIA (sqft) is appropriate in this case, given the importance of a provider's overall capacity in this rapidly growing industry, and the 'lumpiness' of revenues (across a competitor's portfolio at any given moment in time, and particularly in 2020-21 when occupancy rates were heavily affected by the Coronavirus (COVID-19) pandemic). Neither the Parties nor the CMA is aware of comparable data on workstation capacity; furthermore, square footage is a metric commonly used in the industry (eg by brokers when comparing options).

78. The CMA found the data and methodology used by the Parties to be reasonably robust, and is not aware of any superior dataset. The CMA cross-checked the plausibility of Parties' estimates in two ways: (i) by comparing the total market size submitted by the Parties against that estimated by brokers;[81] and (ii) by qualitatively testing with third parties the Parties' relative position against competitors. As such, the CMA is satisfied that the shares of supply submitted by the Parties are credible.[82]

79. Although products are differentiated, and therefore shares of total capacity (and indeed, shares of supply more generally) do not tell the whole story, the CMA has taken such differentiation into account later in the competitive assessment.

80. The Parties' individual and combined shares of supply are shown in Tables 2 and 3. These indicate that the Merged Entity would have (at least in the near term) a modest share of supply in Central London for both Serviced Office Space ([10-20%]) and Co-Working Space (below [10-20%]).

**Table 2: Shares of supply in Serviced Office Space in Central London, 2021**

| | **Serviced Office Space** |
|---|---:|
| TOG | [10-20%] |
| Fora | [0-5%] |
| **Combined** | **[10-20%]** |
| WeWork | [20-30%] |
| IWG | [10-20%] |
| Workspace | [5-10%] |
| Labs | [0-5%] |

80 One of whom estimated 20% allocated to Co-Working Space and the other estimated 25%.
81 Three brokers provided such estimates; their responses varied somewhat but were, on average, reasonably similar to those of the Parties.
82 As presented in Table 2, the CMA has made one change to the estimates for Serviced Office Space submitted by the Parties – the removal of [✂] (which the Parties submitted has a very small share; therefore its removal has no material impact on the Parties' shares). This is because [✂] submitted to the CMA that it does not supply Serviced Office Space and that its product is closest to Managed Office Space.

| | |
|---|---|
| The Argyll Club | [0-5%] |
| Landmark | [0-5%] |
| BE Offices | [0-5%] |
| Other | [20-30%] |

*Source: Parties' estimates, based on Parties' internal data and an independent third party dataset produced by Cushman & Wakefield (as of August 2021), with selected updates made by the Parties (to June 2022)*

**Table 3: Shares of supply in Co-Working Space in Central London, 2021**

| | **Co-Working Space** |
|---|---|
| TOG | [5-10%] |
| Fora | [0-5%] |
| **Combined** | **[5-10%]** |
| WeWork | [30-40%] |
| IWG | [20-30%] |
| The Argyll Club | [5-10%] |
| Landmark | [5-10%] |
| Spacemade | [0-5%] |
| Hana | [0-5%] |
| Mindspace | [0-5%] |
| Work.Life | [0-5%] |
| Other | [10-20%] |

*Source: Parties' estimates, based on Parties' internal data and an independent third party dataset produced by Cushman & Wakefield (as of August 2021), with selected updates made by the Parties (to June 2022)*

81. According to the Parties' estimates, TOG is the second largest provider of Serviced Office Space and the third largest provider of Co-Working Space in Central London; Fora is the eighth largest in Serviced Office Space and the sixth largest in Co-Working Space. Further detail on the Parties' competitors across Central London is provided below.

### *Closeness of competition*

82. The CMA received submissions from the Parties regarding the closeness of competition between them, and gathered evidence from (i) third parties, (ii) the Parties' internal documents, and (iii) pricing data submitted by the Parties. The CMA has also considered how competition and the Parties' offerings are likely to change in future. These are discussed in more detail below.

*Parties' submissions*

83. The Parties submitted that TOG and Fora are not each other's closest competitors.[83] Across their various product types, TOG and Fora position themselves differently in the market and have tailored their offerings to appeal to

[83] The CMA notes that, as explained in its Merger Assessment Guidelines: 'The merger firms need not be each other's closest competitors for unilateral effects to arise. It is sufficient that the merger firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them resulting from the merger.' *Merger Assessment Guidelines*, paragraph 4.8.

different customer preferences.[84] The Parties also stated that some of TOG's internal documents list Fora as a competitor (albeit that some do not), but where Fora is included, they are often listed as competing differently than TOG[85] and that only some of Fora's internal documents feature TOG as a competitor, focusing instead on other competitors, particularly those with stronger brands.[86]

84. The Parties noted that while both Parties' business models are centred around Serviced Office Space, Fora's buildings typically provide a larger area and choice of amenity space for use by customers.[87] The Parties also submitted that Fora has a reasonably strong brand image, which it actively seeks to promote in a uniform manner in all its buildings with a shared service level, set of core amenities and level of quality (even though the design of the individual buildings might vary), emphasising features such as 'large atriums/entrances to create a 'wow factor' on arrival', a relatively low desk density, and a 'sense of well-being'.[88]

85. By contrast, the Parties stated that TOG does not position itself as providing a premium brand, instead targeting a broader spectrum of customers from the middle to premium end of the market.[89] In addition, the Parties submitted that TOG pursues a recessive business brand strategy, meaning that the brand is not front and centre for customers. Instead, TOG's on-site signage is minimal and each building is designed individually and therefore each building has its own characteristics and identity.[90]

*Third parties*

86. The CMA asked brokers and workspace operators to identify the main alternatives, and to rate whether they provide a good alternative, to each of the Parties respectively.[91] For Serviced Office Space, Fora was mentioned by six third parties and rated on average 4.8/5 as an alternative to TOG. TOG was mentioned by five third parties and rated on average 5/5 as an alternative to Fora. For Co-Working Space, Fora was mentioned by six third parties and rated on average 4.8/5 as an alternative to TOG. TOG was mentioned by three third parties and rated on average 4.7/5 as an alternative to Fora. The CMA considers this shows that the Parties are perceived as close alternatives to each other by well-informed market participants.[92]

[84] FMN paragraph 15.3.
[85] FMN paragraph 15.14.2.
[86] FMN paragraph 15.14.4.
[87] FMN paragraph 15.3.2.
[88] FMN paragraphs 15.5 and 15.6.
[89] FMN paragraph 15.6.
[90] FMN paragraph 15.10.
[91] Rating scale was from 1 to 5, where 1 = does not offer a good alternative at all and 5 = offers an extremely good alternative.
[92] A number of other competitors were also identified and rated highly; see more in the section on competitive constraints.

87. This evidence is consistent with more detailed feedback provided by third parties. All third parties with whom the CMA spoke characterised both Parties as offering a premium service, as seen in the high-end and design-led aesthetic of their spaces, strong customer satisfaction, and their good reputation in the industry. Third parties also confirmed (in line with the Parties' submission) that TOG has a greater range of quality than Fora within its portfolio (ie some of TOG's buildings are newer and more premium, and some are older and more 'mid-market', whereas Fora's are consistently premium quality). Nevertheless, the Parties were consistently described as among each other's closest competitors.

*Internal documents*

88. Overall, the Parties' internal documents show that the Parties frequently monitor each other's activities and consider each other's products as positioned close together. For example, various documents of TOG monitor Fora (among a number of other operators), including in relation to desk density, prices, brand positioning, services offered, number of locations, and customer messaging.[93] One TOG document shows Fora appearing as the top result in a Google search for 'TOG'.[94] Similarly, Fora's documents position TOG as one of a number of close competitors, including a market dynamics analysis depicting TOG as the closest competitor to Fora in terms of service ('limited to full service') and quality ('budget to premium').[95] The CMA considers that the Parties' internal documents demonstrate them to be close competitors (alongside a number of other workspace operators).

*Pricing analysis*

89. The Parties submitted data on a sample of their respective prices for Serviced Office Space and Co-Working Space, covering the time period October 2021 to March 2022.[96] The CMA notes that it is difficult to interpret and compare prices, particularly for Serviced Office Space, since these are based on individually negotiated deals (with tailored terms/packages) for differentiated spaces at different points in time, during a period when there has been fairly rapid change in market

[93] For example, Annex T038 to the FMN, '[✂] Q2 2019', Annex T045 to the FMN, '[✂] October 2019', Annex T049 to the FMN, '[✂] December 2019', Annex T050 to the FMN, '[✂] December 2019', Annex T070 to the FMN, '[✂] December 2020', and Annex T073 to the FMN, '[✂] Feb 21', and Annex T079 to the FMN, '[✂] October 2021' pages 1-2.
[94] Annex T031 to the FMN, '[✂] 2019 [✂]' page 4.
[95] For example, Annex F013 to the FMN, '[✂] 15 February 2021' page 34, and Annex F016 to the FMN, '[✂]' pages 35-39.
[96] Annex T206 to TOG's response to the CMA's request for information dated 20 May 2022, 'TOG Question 11 RFI 1 Data - 20 May 2022'; Annex T429 to TOG's response to the CMA's s109 Notice dated 26 April 2022, '[✂] May 2022'; Annex T464 to TOG's response to the CMA's s109 Notice dated 26 April 2022, '[✂] 04 February 2022'; and Annex F141 to Fora's response to the CMA's request for information dated 13 May 2022, 'F061 updated'.

pricing (rebounding from the Coronavirus (COVID-19) pandemic). As such, the CMA has placed limited weight on this evidence.

90. Nevertheless, the CMA calculated and compared the mean, median and range of the Parties' respective prices in a few local areas of London on a monthly desk rate basis and on an annualised per sqft basis (we looked separately at list prices and actual/realised prices).[97]

91. The CMA found that:

(a) For Serviced Office Space, Fora had somewhat higher prices than TOG in all but one of the overlapping local areas analysed. This seems to reflect Fora's more consistent positioning at the premium end of the market, as discussed above, while TOG's more variable prices are consistent with the greater range of quality within its portfolio. However, the Parties' prices are on the whole not hugely different from one another. Their respective price ranges either overlap or are adjacent on most metrics in most local areas.

(b) For Co-Working Space (where prices are more standardised and easier to compare, but with a more limited sample and geographic coverage), the Parties' respective membership prices are similar. For example, the list price for TOG's memberships in the North of Oxford Street, Southbank, and the West End areas were in the range £425-600. For Fora, they were £450, £375-600, and £450-700, respectively.

*Forward-looking assessment*

92. The CMA asked the Parties about their plans, in particular, concerning future activities across Central London. The Parties submitted that:

(a) TOG is considering [✂].[98]

(b) Fora is seeking to [✂].[99] [✂].[100]

93. The CMA considers that these submissions show that both Parties plan to continue expanding substantially (and responsively to demand) across Central London, they both plan to maintain similar products to their current ones (which, as discussed above, position them as close competitors currently), and they both expect to attract a growing proportion of [✂] customers.

[97] The actual/realised price takes into account any discounts negotiated from the list price.
[98] TOG response to question 1 of the CMA's notice under section 109, dated 10 June 2022.
[99] TOG is currently active in all these postcode areas.
[100] Fora response to question 1 of the CMA's notice under section 109, dated 10 June 2022.

*Conclusion on closeness of competition*

94. Based on the above, the CMA's view is that there is strong and consistent evidence that the Parties compete closely in Central London and would continue to do so in the foreseeable future, absent the Merger.

***Competitive constraints***

95. The CMA received submissions from the Parties regarding the competitive constraints exerted on them, and gathered evidence from third parties and the Parties' internal documents. The CMA has also considered how the competitive constraints on the Parties are likely to change in future. These are discussed in more detail below.

*Parties' submissions*

96. The Parties submitted that the market for office workspace has evolved since 2015, most notably with the increase in demand for, and supply of, flexible workspace, and that this has led to strong competition among providers.[101] As discussed from paragraph 73, the Parties submitted that their combined share of supply in Central London is approximately [10-20]% for Serviced Office Space and approximately [10-20]% for Co-Working Space, with the remainder of the market comprising a large number of competitors.

97. Furthermore, the Parties argue that – while they have adopted Serviced Office Space and Co-Working Space as the relevant frames of reference for the purposes of the analysis – Managed Office Space and Conventional Leasehold Office Space still exert a competitive constraint.[102,103]

*Third parties*

98. The CMA asked third parties to identify the main alternatives, and to rate whether they provide a good alternative, to each of the Parties respectively.[104]

99. For Serviced Office Space, third parties identified a cumulative total of 30 alternatives to TOG (besides Fora) rated on average at least 3/5;[105] and 30 alternatives to Fora (besides TOG) rated on average at least 3/5.[106] The lists of alternatives to each of the Parties were quite similar, with the top 10 for both (in

[101] FMN paragraph 12.49.
[102] FMN paragraph 13.4.
[103] See paragraphs 42 to 49 for further discussion of the limited demand-side and supply-side substitutability between the Parties' products and Managed Office Space and Conventional Leasehold Office Space. Where the CMA did find specific evidence of a meaningful constraint from these products, this is taken into account in the competitive assessment.
[104] From 1 to 5, where 1 = does not offer a good alternative at all and 5 = offers an extremely good alternative.
[105] Of which 14 were rated on average 4/5 or above, indicating strong substitutability with TOG.
[106] Of which 15 were rated on average 4/5 or above, indicating strong substitutability with Fora.

terms of number of times mentioned) including: IWG, WeWork, Landmark, Uncommon, The Argyll Club, Work.Life, The Boutique Workplace Company, Labs, and BE Offices. In particular, IWG, WeWork, Landmark, and Uncommon stood out as being mentioned by over half of respondents in relation to both Parties.

100. For Co-Working Space, third parties identified a cumulative total of 23 alternatives to TOG (besides Fora) rated on average at least 3/5;[107] and 24 alternatives to Fora (besides TOG) rated on average at least 3/5.[108] The lists of alternatives to each of the Parties were also quite similar, with the top 10 for both (in terms of number of times mentioned) including: IWG, WeWork, Uncommon, Work.Life, Landmark, Labs, The Boutique Workplace Company, and Mindspace. In particular, IWG, WeWork, Uncommon, and Work.Life stood out as being mentioned by a large number of respondents in relation to both Parties.

101. Overall, the CMA notes that:

(a) Third parties identified a large number of alternatives to both Parties, almost all of which were rated as at least a moderately good alternative (3/5 and above) and many of which were rated as a very good alternative (4/5 and above).

(b) The competitor sets are very similar for both Parties. They comprise almost entirely flexible workspace specialists; traditional landlords were rarely mentioned. There is a diverse range in terms of size – both large and medium-sized operators were mentioned frequently, but many smaller operators were also identified (and rated highly).

(c) The particular competitors identified most frequently are consistent with those mentioned frequently in the CMA's more detailed discussions with third parties and also the Parties' internal documents (see from paragraph 106).

102. The CMA also considered whether the Parties (especially TOG), and other providers whose portfolios comprise a large network of sites across different areas of London, are competitively advantaged by this feature – insofar as customers may prefer to have access to a range of locations from the same provider/within the same contract. All else being equal, this would reduce the constraint from smaller providers that operate just one or a handful of sites. However, third parties rated this feature (scale of network across London) as one of the least important in determining customer choice (rated on average 2.4/5 for Serviced Office Space and 3.4/5 for Co-Working Space). Consistent with this, brokers characterised this as a 'nice to have' feature but not particularly important.

103. The CMA has heard consistently that London's flexible workspace sector is competitive and thriving. Brokers observed that London is one of the most diverse

[107] Of which 10 were rated on average 4/5 or above, indicating strong substitutability with TOG.
[108] Of which 13 were rated on average 4/5 or above, indicating strong substitutability with Fora.

and mature flexible workspace markets in the world, with probably up to a hundred operators. One large flexible workspace operator listed by name 18 of its competitors (including TOG and Fora) and stated that beyond these, there are numerous smaller operators who sometimes sign deals even with large customers (ie the smaller operators are not necessarily disadvantaged competitively by their size).

104. Third parties explained that there is some differentiation between the Parties and these competitors. In particular, WeWork was characterised as not always a good alternative to the Parties, since some customers prefer not to be in such an 'overtly branded' space. One broker mentioned that IWG's brands Regus and Spaces are not as high-quality as the Parties (especially Fora). Two brokers described Regus and Landmark as suitable for corporate customers, having more 'vanilla' brands than those of the Parties. In relation to Boutique Workplace Company (which has small townhouse buildings), one broker commented that large customers would need a whole floor, which would be unlikely to be available. Nevertheless, overall, third parties consistently included these and a good number of others as among the Parties' core competitor set, as well as identifying a range of other alternatives (including small operators) that impose a constraint in particular local areas or for particular types of customers.

105. Most third parties did not mention traditional landlords or Conventional Leasehold Office Space when discussing the Parties' competitor set until prompted to do so, and then usually saw their offerings as distinct. For example, one broker said that a particular traditional landlord – [✂] – was not a close competitor to the Parties due to the nature of its product and delivery. The traditional landlord itself confirmed this, telling the CMA it does not 'play in the same space'; its entry to this market has been minimal (and likely to remain so) as it is not set up to provide the same full-service offering as the Parties, although it noted that some larger landlords may be in a better position to do so. Two brokers stated that traditional landlords are entering flexible workspace – typically focused on Managed Office Space or Serviced Office Space (not Co-Working Space) – and some are doing so successfully (eg Great Portland Estates, The Crown Estate, and British Land with its 'Storey' brand). One of these brokers said that traditional landlords' entry into flexible workspace has generally been of high quality; however, they are not as experienced as some of the more established (specialist) operators, and also tend to focus on larger customers. As noted earlier, one provider of Conventional Leasehold Office Space told the CMA that it 'does not currently offer any Serviced Office Space [or] Co-Working Space' and is 'much more in the Managed Office Space category' since it provides larger spaces, typically on single floors, for which customers have their own front door.

*Internal documents*

106. The Parties' internal documents are consistent with the third-party evidence cited above and show:

(a) The London flexible workspace sector is competitive, with hundreds of providers, of which the Parties are two of the largest and highest-quality.[109]

(b) The Parties frequently monitor a core of around 10 competitors, including WeWork, IWG (particularly its Regus and Spaces brands), Workspace, Landmark, Knotel, The Argyll Club, Labs, and Boutique Workplace Company, among others. In graphical representations of the Parties' market position by dimensions such as price/quality ('budget to premium'), service level ('limited service to full service'), brand ('functional to emotive'), innovation, and size of customer, they place themselves close to providers such as WeWork, Labs, Regus, Knotel, Spaces, Uncommon, and The Argyll Club (as well as to each other).[110]

(c) In addition, internal documents refer more occasionally (or in relation to particular local areas) to a wider set of competitors, including One Avenue Group, SohoWorks, Mindspace, Huckletree, Second Home, Kitt, Work.Life, Halkin, BE Offices, and Myo.[111]

107. Some of the Parties' internal documents also discuss the activities of traditional landlords. TOG's May 2021 board presentation states that traditional landlords (eg Derwent and Shaftesbury) are progressing their flex strategies and 'moving from thinking to talking to doing'.[112] A similar document from March 2020 states that conventional landlords are continuing to explore the sector; however it notes that their focus is largely on developing CAT A+/CAT B suites[113] rather than fully serviced solutions.[114] One of Fora's competitor assessments dated July 2020 indicates that landlords are moving from long-term leases to offering fitted offices on short-term leases which has given rise to a new type of business offering advisory,

[109] For example, Annex T031 to FMN, '[✂] 2019 [✂]'; Annex T053 to FMN, '[✂] January 2020'; Annex F012 to FMN, '[✂] 2020'.
[110] For example, Annex T079 to FMN, '[✂] October 2021'; Annex F012 to FMN, '[✂] 2020'; and Annex F013 to the FMN, '[✂] dated October 2020'.
[111] For example, Annex T053 to FMN, '[✂] January 2020'; Annex T070 to FMN, '[✂] December 2020'; Annex T081 to FMN, '[✂] Q3 2021'; Annex T083 to FMN, '[✂] November 2021'; and Annex T119 to FMN, '[✂] November 2020'.
[112] Annex T078 to FMN, '[✂] Q1 2021' page 6.
[113] 'CAT A' (Category A) refers to the basic finishing of an interior space including the installation of a building's mechanical and electrical services, internal walls (but not partitions), reception areas and lift lobbies. 'CAT B' (Category B) refers to a fit-out which follows on from a CAT A to provide a space that a business can move into and immediately begin work. A CAT B is typically tailored to the individual needs of the business in question by, for example, incorporating the right proportion of workstations, breakout areas and meeting rooms. FMN page 4.
[114] Annex T055 to FMN, '[✂] Q4 2019' page 6.

design and operational services for landlords.[115] It states that there will be more competition from landlords, such as British Land and Great Portland Estate, who are becoming nimbler and starting to embrace more flexibility.

108. In the CMA's view, these documents indicate that the Parties are thinking about entry from traditional landlords and consider it to be a growing trend [✂]. However, they also suggest that it is happening to a thus far limited extent, focused mostly on a handful of landlords (such as Great Portland Estates and British Land), and that there remain important distinctions between these providers and the Parties, especially in terms of the level and range of services offered. The Parties are not, at least as yet, regularly monitoring or benchmarking themselves against these providers in the same way they do to the flexible workspace operators identified in paragraph 106.

109. Finally, internal documents also refer to key features and trends discussed earlier in the industry background section, including predictions of continued strong growth in demand and supply over the coming decade, and a 'flight to quality'.[116]

*Forward-looking assessment*

110. The CMA asked workspace operators about their future plans,[117] and received responses from a large number of workspace operators, of which the vast majority stated that they had plans to expand.

111. Many of the expansion plans of these operators in Central London were significant (eg they anticipated acquiring a large amount of additional floorspace and/or opening numerous new sites). In some cases, the plans were quite specific about the timeframe, amount of floorspace and/or number of additional sites, locations, or approach to expansion (eg combining the acquisition of new freehold space with launching new management agreements for buildings owned by others). Only one operator expressly anticipated difficulties in relation to some of its plans, remarking that it is extremely competitive to acquire space in the North of Oxford Street area.

112. These responses, coupled with wider evidence (eg industry reports) predicting continued growth of London's flexible workspace sector on both the demand and supply sides, demonstrate that the Parties are not alone in their ambitions to expand substantially. Numerous competitors of different sizes (including many of those the CMA deemed to be the Parties' closest competitors based on third party

[115] Annex F015 to FMN, '[✂] April 2021' pages 4, 10-11, and 14-15.
[116] For example, Annex T055 to FMN, '[✂] March 2020'; Annex F012 to the FMN, '[✂] 2020'; and Annex F017 to the FMN, 'Savills Report, UK flex office perspectives 2021'.
[117] In particular, the CMA asked 'Does your company plan to expand into new product areas or new geographic areas (within London, or within the UK) in the operation of flexible workspace? If so, please explain the status of these plans (ie how advanced or certain they are), and their anticipated timeframe. In your answer, please also provide an indication of your target level of expansion (in terms of square footage), if any, in the operation of flexible workspace in Central London over the next three years.'

evidence and internal documents, as discussed in the preceding sections) also have significant – and, in some cases, well-developed – growth plans in Central London. While the CMA's assessment does not seek to make predictions about exactly how competitive conditions might change in future, this forward-looking evidence indicates that the Merged Entity would continue to face strong competitive constraints in Central London in the foreseeable future.

113. As part of the forward-looking assessment, the CMA also considered barriers to expansion,[118] including the availability of office space that could be acquired by flexible workspace operators.

114. The Parties submitted that, looking ahead to the next 1-2 years, in only one of the overlap local areas (Mayfair & St James) would it be difficult for flexible workspace operators to successfully acquire new assets of a material size.[119]

115. Brokers told the CMA that there were no material constraints in terms of availability of office buildings in Central London. For example, one broker noted that although access to real estate can be a challenge – particularly in certain areas such as the West End – and there is some 'post-pandemic nervousness' from landlords in terms of leasing space to flexible workspace operators (such that they will prefer established operators with a strong track record over newer entrants), it is nevertheless 'relatively straightforward' for new providers to enter the market, with plenty of buildings available. This broker also said that real estate availability varies across local areas, but it has observed refurbishments and new buildings appearing at a steady rate across London, including through the conversion of former retail space. Another broker commented that there are relatively few barriers to entry and expansion within the Central London flexible workspace market and that it does not have any concerns about the availability of building space, believing that landlords are generally open-minded when it comes to working with new or smaller operators. Indeed, one traditional landlord that leases buildings to four flexible workspace operators and is currently negotiating a deal for sizeable floor space with a new Serviced Office Space operator told the CMA that there are no significant barriers for smaller flexible office space providers other than covenant strength. Having said this, this particular landlord has committed to leasing a maximum of 10-15% of its total portfolio to flexible workspace providers so as not to be over-exposed to this sector. A competitor to the Parties noted that the availability of building space is more constrained in the North of Oxford Street area.

116. When asking third parties about the main barriers to entry and expansion, three factors were rated on average higher than 2/3 (ie they pose more than a 'moderate'

[118] Note that in this context, the CMA considered barriers to entry/expansion on general basis and this is not the same assessment conducted by the CMA where it has found an SLC (in that circumstance, the CMA considers whether entry would be timely, likely and sufficient).
[119] Parties' response to question 7 of the CMA's request for information, dated 13 May 2022.

barrier):[120] (i) financial constraints (rated on average 2.6/3); (ii) establishing reputation and acquiring customers (rated on average 2.2/3); and (iii) securing leases from landlords (rated on average 2.1/3). The CMA notes that the first and second of these, at least, would appear to be less relevant to the expansion of large, established flexible workspace operators. 'Lack of availability of office space in desired geographic areas' was rated on average 2.0/3, suggesting it poses a moderate, but not significant, barrier.

117. The CMA also asked third parties whether there was a current or expected (in the next three years) shortage of office space that could be made available for flexible workspace within the particular local areas of London in which the Parties overlap. There were three local areas for which the majority of respondents indicated such a shortage: West End, Victoria, and Mayfair & St James, with a large minority also in North of Oxford Street.[121]

118. In light of the comments of brokers discussed in paragraph 115, and the fact that some landlords hold large portfolios of 'convertible' commercial real estate in the areas listed in the paragraph above – including both Conventional Leasehold Office Space and retail space – the CMA is satisfied that there will not be a significant shortage of capacity, or other significant barriers to expansion, that could undermine competition following the Merger.

*Conclusion on competitive constraints in Central London*

119. Based on the above, the CMA's view is that there is strong and consistent evidence that the Merged Entity would face ample competitive constraints from a range of larger and smaller flexible workspace operators in Central London – including (among others) WeWork, IWG (particularly its Regus and Spaces brands), Landmark, Uncommon, The Argyll Club, Work.Life, The Boutique Workplace Company, Labs, BE Offices, Mindspace, Workspace, and Knotel – and would continue to do so in the foreseeable future.

## Assessment of local areas

### *Analytical framework*

120. As explained above from paragraphs 63 to 67, the CMA considered it appropriate to supplement its Central London-wide assessment with a competitive assessment of certain local areas to confirm that no realistic prospect of an SLC would arise on a narrower geographic basis (even if potentially time-limited). In particular, the CMA examined in more detail competitive conditions in overlapping local areas (see

[120] The rating scale was from 1 to 3, where 1 = does not pose a barrier for most companies, 2 = poses a moderate barrier for most companies, and 3 = poses a significant barrier for most companies.
[121] The CMA notes that these areas are all adjacent within the centre of London, and characterised by predominantly historical buildings (and thus greater challenges relating to planning permissions).

Table 1 for a full list of these) in which: (i) the Parties have a combined share of at least 35% and an increment of at least 5%;[122] and/or (ii) there are two or fewer competitors (each with at least a 1% share) besides the Parties.[123]

121. The CMA calculated shares of supply in local areas on the basis of capacity, measured by NIA in sqft:[124]

(a) For workspace operators that provided data to the CMA, the CMA used the data they submitted concerning the NIA of their individual assets in each local area (as of June 2022), treating as zero any cases where the operator confirmed it does not operate a particular asset or any assets in particular local areas.[125,126]

(b) For workspace operators from whom the CMA did not receive data, the CMA used the Parties' estimates of NIA, which were sourced principally from a dataset produced by Cushman and Wakefield (as of August 2021), updated with the Parties' market intelligence (to June 2022).[127]

(c) Any asset that the operator categorised as 'budget/value – below market average price' was excluded from the CMA's share of supply calculations.[128] The rationale for this is that the Parties are both active at the higher end of the market in terms of price and quality (with some assets of TOG being more mid-market); see section on closeness of competition from paragraph 82. The CMA therefore judged that budget offerings would not typically pose a significant constraint on the Merged Entity.

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[122] A starting point of 35% with a 5% increment is broadly consistent with recent CMA merger assessments of local areas, and has been adopted here taking into account the specific facts of this case (as described in the Industry Background and Competitive Constraints sections). It is important to note that this criterion was used as a screening mechanism (to determine which areas the CMA would examine in more detail) rather than as an SLC 'decision rule'.

[123] In practice, no local areas were captured under this second criterion (as they all have a higher number of competitors).

[124] See paragraph 77 for an explanation of why the CMA considered this to be an appropriate metric.

[125] For Co-Working Space, the CMA used the figures provided by operators if these appeared plausible. In a few cases, operators submitted apparently incorrect Co-Working Space NIA figures (which were duplicates of their Serviced Office Space figures for the same asset, ie implying the entire building was allocated to Co-Working Space and Serviced Office Space simultaneously). In these cases, the CMA instead calculated the NIA on the assumption that 4% of their total Serviced Office Space assets were allocated to Co-Working Space. This assumption mirrors that used by the Parties, which the CMA found to be reasonable and conservative; see paragraph 76. This assumption was only applied if the operator confirmed that it did offer Co-Working Space in that local area. If the operator confirmed it did not offer Co-Working Space in that area (or at all), this was treated as zero.

[126] The shares of supply for the Parties include assets that are not yet operational but are in the pipeline (ie they know these assets will soon be added to their portfolio). For competitors, the data captures current and imminent assets (those that are already operational or will become so within three months, as of June 2022). To the extent competitors may have new assets in the pipeline (beyond three months), these would not be captured; therefore, potentially over-estimating the Parties' shares.

[127] See further explanation of the Parties' methodology in paragraphs 75 to 78.

[128] The CMA kept in all assets that were categorised as 'mid-market (around market average price)' or 'premium (above market average price)' and all assets for which this information was left blank.

(d) The CMA also excluded from its shares of supply the assets of any operator that explicitly told the CMA that it does not consider that its assets fall within the frames of reference (ie it offers only Managed Office Space and/or Conventional Leasehold Office Space).[129]

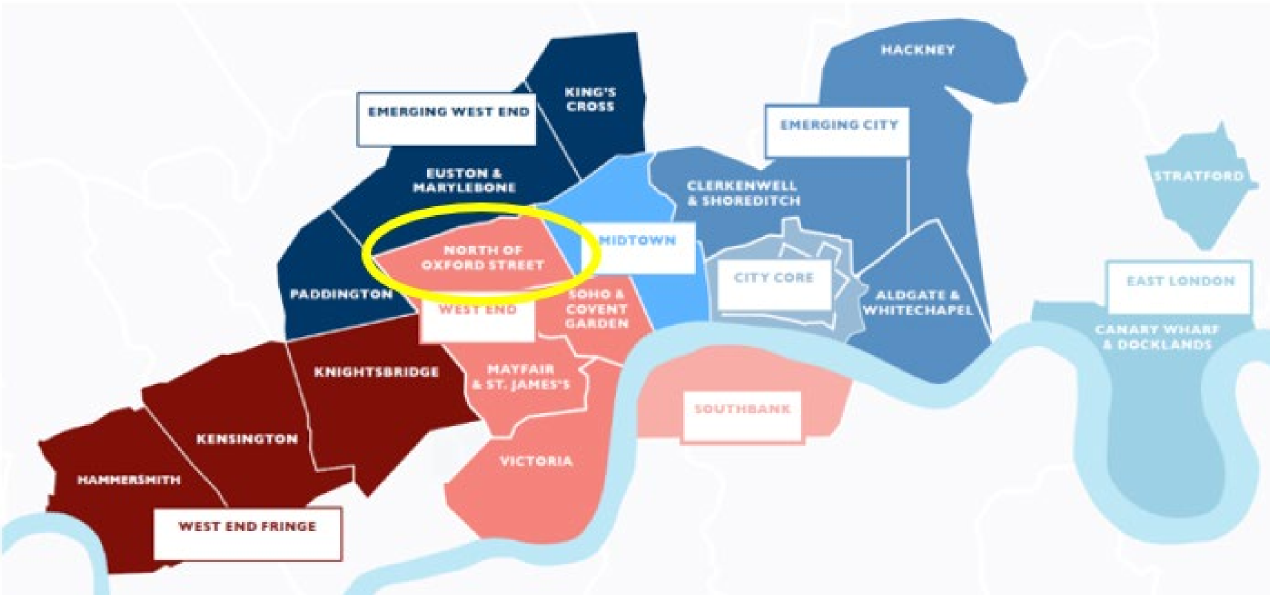
(e) The CMA also excluded the assets of any operator that had received an average rating of below 3/5 (in terms of being a good alternative to the Parties) based on the third party views, since this implies a weak constraint on the Parties. Finally, the CMA excluded any operator for which the CMA found clear evidence from third parties or the website of the operator that it caters solely to a specific customer niche (such as fintech start-ups or guests of a particular hotel). This is because the CMA considered that it would not provide a suitable alternative for a typical marginal customer of the Merged Entity, and therefore imposes a weak constraint.

(f) Finally, for any operators caught by these exclusions, if the CMA found that there was good evidence to the contrary (ie the operator is positioned as a competitor in the Parties' internal documents or by third parties), the CMA included the assets of such operator in its share of supply estimates.[130] The CMA notes that, in practice, this list of exclusions resulted in no changes to the local areas being examined further.[131]

122. On this basis, the CMA identified the following local areas for further examination: (i) North of Oxford Street (for Serviced Office Space only); and (ii) the North-East Quadrant (part of the North of Oxford Street) (for both Serviced Office Space and Co-Working Space). This area is shown in Figure 1.

[129] However, these were taken account of where relevant in the CMA's further examination of local areas.
[130] In practice, this resulted in only one change (the re-inclusion of Techspace).
[131] Ie the list of local areas captured by the initial screening criteria without any exclusions was identical to the list of local areas captured with all exclusions applied.

**Figure 1: Map of local areas of Central London**




*Source: Excerpt from a Cushman and Wakefield report submitted by the Parties in Annex F015; yellow circle has been added by the CMA.*

### *Local areas examined further*

123. In examining these local areas, the CMA considered several key factors, namely: (i) shares of supply, (ii) the size and nature of the competitor set (including the extent of differentiation between competitors and the Parties), (iii) expansion plans of competitors, (iv) potential constraints from adjacent local areas, and (v) potential constraints from providers of Managed Office Space and/or Conventional Leasehold Office Space.

*North of Oxford Street*

124. In Serviced Office Space, the CMA found the Parties to have a combined share of supply of [30-40%], with an increment of [10-20%]. Besides the Parties, the competitors with the highest shares of supply are: IWG [10-20%], Landmark [10-20%], Knotel [5-10%], and Workpad [0-5%]. In addition, there are a further 13 operators each with at share of at least 1%, including several frequently cited by third parties and in the Parties' internal documents to be competitors to the Parties.[132]

[132] One Avenue Group, The Argyll Club, and Boutique Workplace Company.

125. Some of these competitors told the CMA they have significant expansion plans. Furthermore, a key competitor that is not currently active in this area confirmed that it plans to expand into it, depending on available inventory.[133]

126. In addition, the CMA considers there is a plausible additional constraint coming from providers in the surrounding geographic areas. On average, brokers indicated that 60% of customers looking for flexible workspace in this area would consider other areas, including Midtown (Holborn).

127. Finally, the CMA notes that The Langham Estate holds a large portfolio of Conventional Leasehold Office Space in this area, and Great Portland Estates is also active in this area in Managed Office Space, both of which may be a reasonable substitute for Serviced Office Space for some (predominantly larger) customers of the Parties.

*North-East Quadrant (part of North of Oxford Street)*

128. In Serviced Office Space, the CMA found the Parties to have a combined share of supply of [40-50%], with an increment of [10-20%]. Besides the Parties, the competitors with the highest shares of supply are: IWG [10-20%], Knotel [10-20%], Landmark [0-5%], and The Langham Estate [0-5%]. In addition, there are a further nine competitors each with at least a 1% share, including two frequently cited by third parties and in the Parties' internal documents to be competitors to the Parties.[134]

129. In Co-Working Space, the Parties' combined share of supply is [30-40%], with an increment of [5-10%]. Besides the Parties, the competitors with the highest shares of supply are: IWG [30-40%], Landmark [5-10%], and Maslow's [5-10%]. In addition, there are two other competitors each with at least a 1% share.[135]

130. Some of these competitors told the CMA they have significant expansion plans. Furthermore, a key competitor that is not currently active in this area confirmed that it plans to expand into it, depending on available inventory.[136]

131. In addition, the CMA considers there is a plausible additional constraint coming from providers in the surrounding geographic areas. On average, brokers indicated that 60% of customers looking for flexible workspace in this area would consider other areas, including the North-West Quadrant, West End (Soho), and Midtown (Holborn and Bloomsbury).

[133] This competitor tends to offer a high proportion of Co-Working Space in its buildings (it estimates 20% of its total flexible workspace is allocated to Co-Working Space).
[134] Boutique Workplace Company and Work.Life.
[135] Work.Life and The Office
[136] This competitor tends to offer a high proportion of Co-Working Space in its buildings (it estimates 20% of its total flexible workspace is allocated to Co-Working Space).

132. Finally, while the assets of traditional landlords offering Conventional Leasehold Office Space and/or Managed Office Space are not included in the shares of supply, the CMA notes that The Langham Estate holds a large portfolio of Conventional Leasehold Office Space in this area, and Great Portland Estates is also active in this area in Managed Office Space, both of which may be a reasonable substitute for Serviced Office Space for some (predominantly larger) customers of the Parties.

#### *Conclusion on narrower local areas*

133. Based on the above, the CMA has concluded that there is no realistic prospect of competition concerns arising from the Merger, for either Serviced Office Space or Co-Working Space, in any of the local areas in which the Parties overlap.

### Conclusion on horizontal unilateral effects

134. For the reasons set out above, the CMA believes that the Merged Entity would face significant competitive constraints from a number of other providers of Serviced Office Space and/or Co-Working Space in Central London, as well as in narrower areas within Central London, and would continue to do so in the foreseeable future. This is reinforced by the low number of competition concerns raised by third parties in response to the CMA's investigation; see below from paragraph 137. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to Serviced Office Space or Co-Working Space, in Central London or in any narrower local area within Central London.

## BARRIERS TO ENTRY AND EXPANSION

135. 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.[137]

136. Where necessary, the CMA has considered the importance of any barriers to entry and expansion in its competitive assessment above. However, the CMA has not had to conclude on barriers to entry or expansion as there is no realistic prospect of competition concerns arising from the Merger on any basis.

## THIRD PARTY VIEWS

137. The CMA contacted brokers (whom it took also to represent the views of customers; see footnote 30), aggregator platforms, and competitors of the Parties active in

[137] *Merger Assessment Guidelines*, from paragraph 8.40.

Central London (and specifically in each of the local areas in which the Parties overlap), including providers of Serviced Office Space and Co-Working Space, as well as providers of Managed Office Space and Conventional Leasehold Office Space.

138. The CMA received a large number of responses. Overall, a very low number of third parties raised competition concerns. For those four workspace operators who did raise a competition concern, all relating to horizontal unilateral effects in flexible workspace, they tended to focus on particular local areas (specifically, North of Oxford Street, West End, and Mayfair & St James).[138] Two of these operators also pointed to pro-competitive effects arising from the Merger (eg its potential to create fierce competition in pricing). One broker raised a competition concern in flexible workspace, also relating specifically to the North of Oxford Street and West End areas, where it noted that the alternatives to the Merged Entity could be limited. However, this broker also expressly stated that it is not opposed to the Merger, since there are other large and small operators present and 'both areas enjoy quite a buoyant, competitive market'. No other third parties raised concerns about the Merger, and several expressed their support for it.

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

[138] As explained from paragraph 124, the CMA examined in further detail the North of Oxford Street area, and concluded that there is no realistic prospect of competition concerns arising from the Merger in this area. In the West End and Mayfair & St James areas, the CMA was satisfied that the Parties' combined share of supply was sufficiently low and the number of competitors sufficiently high that there is no realistic prospect of competition concerns.

# DECISION

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

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

**Maria Duarte**
**Director, Mergers**
**Competition and Markets Authority**
**3 August 2022**