

Acquisition by The Key Support Services Limited of Schools Educational Software Limited

Decision on relevant merger situation and substantial lessening of competition

ME/7037/23

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 9 June 2023. Full text of the decision published on 18 July 2023.

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

SUMMARY

1. On 31 May 2023, The Key Support Services Limited (**The Key**) acquired Schools Educational Software Limited (**SES**) from RM Education Limited (**RM**) (the **Merger**). The Key and SES¹ are together referred to as the **Parties**, and for statements referring to the future, the **Merged Entity**.
2. The Key through its brands Arbor Education (**Arbor**) and ScholarPack supplies management information system (**MIS**) software to schools in England, as does SES through its own MIS software, RM Integris. SES also supplies a finance management system (**FMS**) software to schools in the UK, RM Finance.
3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of The Key and SES is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

¹ Previously registered as RM Educational Services Limited.

4. The CMA has considered the impact of the Merger against the pre-merger conditions of competition. This was notwithstanding that the CMA concluded that there is a realistic prospect that RM would have sold the RM Integris and RM Finance businesses to another purchaser absent a sale to The Key. However, the CMA did not find any evidence to indicate that a sale to the alternative purchaser RM had discussions with prior to entering into the Merger would have resulted in the Parties exerting a stronger competitive constraint on each other than was the case in the pre-merger conditions of competition. As such, in line with its guidelines, the CMA did not consider it necessary to further pursue this alternative counterfactual as doing so would not make a material difference to its competitive assessment.
5. The Parties overlap in the supply of MIS software to schools in England. The CMA previously considered whether this market could be further segmented by customer group, and specifically whether the frame of reference could be restricted to state-funded schools only. In this case, the CMA received evidence that there are differences in terms of demand-side substitutability, supply-side substitutability and competitive landscape between state-funded schools and independent schools. On a cautious basis, the CMA therefore excluded independent schools from the frame of reference.
6. The evidence available to the CMA indicates that the appropriate geographic frame of reference is England.
7. The CMA has therefore assessed the impact of the Merger in the following frames of reference:
 - (a) Supply of MIS software to state-funded schools in England; and
 - (b) Supply of FMS software to state-funded schools in England.
8. The CMA has assessed two principal theories of harm:
 - (a) Horizontal unilateral effects in the supply of MIS software; and
 - (b) Foreclosure of competing MIS software providers.

Horizontal unilateral effects in the supply of MIS software

9. The CMA found that the supply of MIS software to state-funded schools in England is a concentrated industry, with three providers serving just over 85% of these schools as at October 2022. The Key is the second largest MIS software provider with a share of supply approaching [20-30]% by number of schools, behind ESS

SIMS (**ESS**) who is the incumbent MIS software provider for over half of all state-funded schools in England. As at October 2022, SES was the third largest MIS software provider by number of schools, with a (much smaller) share of supply of [5-10]%. As set out in the CMA's Merger Assessment Guidelines, horizontal unilateral effects in differentiated markets are more likely where the merger firms are close competitors and where one merger firm has a strong position in the market.²

10. Notwithstanding these shares and the existence of some degree of market concentration, the CMA's investigation found a number of market features that suggested that the likely competitive impact of the Merger would be limited. First, the CMA found evidence that the market was highly competitive prior to the Merger as evidenced by the very large number of schools switching MIS software provider between October 2021 and October 2022. Secondly, consistent with the more limited probative value of shares of supply in differentiated markets,³ the investigation also showed that, prior to the Merger, SES was presenting a weaker constraint on The Key than is implied by its share of supply and that certain other MIS software providers (ESS and Bromcom) were imposing a more important constraint on The Key. Internal documents provided by SES also showed that it was not likely to become a greater constraint on The Key in the foreseeable future.
11. Although the CMA found evidence that there was a material competitive interaction between the Parties, other evidence suggested it was an asymmetric one, consistent with The Key having a more sophisticated MIS software offering than SES. Notably, the switching and tender data provided by the Parties indicates that in the three years preceding October 2022 SES had limited success in winning new customers, only won a handful of schools switching from The Key, and the Parties competed in only a relatively small number of tenders. The likely absence of a material competitive impact from the Merger was further corroborated by third party evidence, with the majority of third parties that engaged with the CMA's investigation not raising concerns regarding the Merger.
12. The CMA therefore has ultimately concluded that, notwithstanding the Parties being close competitors, the Merged Entity will continue to face strong competition from two close rivals in particular (ESS and Bromcom). In addition, the Merged Entity will also be constrained by smaller providers, including Juniper Education (**Juniper**), IRIS and Compass Education (**Compass**), albeit to a more limited extent.

² [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 4.10-4.12.

³ [CMA129](#), March 2021, paragraphs 4.14-4.15.

13. The CMA notes that given the Parties' relatively high market shares, evidence of customer stickiness and the degree of concentration, there will continue to be a risk of horizontal unilateral effects, including price increases, in the event of any further consolidation in the industry. The CMA will therefore continue to review carefully any potential future relevant merger situations in the industry.

Foreclosure of competing MIS software providers

14. Further to concerns raised by a limited number of third parties, the CMA also investigated whether the Merged Entity could foreclose competing MIS software providers by using SES' market position in the supply of FMS software to state-funded schools in England.
15. Based on the available evidence, the CMA found that while the acquisition of the RM Finance business may confer a competitive advantage to The Key among customers that prefer to purchase MIS and FMS software from a single provider, a number of factors would preclude The Key from engaging in a foreclosure strategy. Namely, the CMA found that SES does not have a significant degree of market power in the supply of FMS software to state-funded schools in England, with a share as at October 2022 of [5-10]% only. Further, the CMA found that any loss of potential sales for competing MIS software providers would not be so significant that it could result in them becoming less effective competitors.
16. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of MIS software to state-funded schools in England, or in the supply of FMS software to state-funded schools in England.
17. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

PARTIES

18. The Key Group⁴ is a UK-based privately held company which provides content, resources and tools to support the management of schools in the UK. The Key Group supplies MIS software to schools in the UK through Arbor and ScholarPack. The Key generated total turnover of approximately £30.5 million in the financial year that ended on 31 August 2022, which was achieved in its entirety in the UK.⁵
19. SES is a newly incorporated wholly owned subsidiary of RM, which itself is ultimately owned by RM plc (together with its subsidiaries, the **RM Group**).⁶ The RM Group is a leading provider of technology and resources to the international education sector. In the UK, SES is active in MIS and FMS primarily through its products RM Integris and RM Finance, respectively. The target businesses acquired by The Key generated total turnover of approximately £[<] in the financial year that ended in November 2022, approximately £[<] of which was achieved in the UK.⁷

TRANSACTION

20. On 28 November 2022, The Key agreed to acquire the entire issued share capital of SES for a total consideration of up to £16 million (subject to the satisfaction of certain conditions).⁸ The Merger completed on 31 May 2023.⁹

⁴ For the purposes of this decision, The Key and its subsidiaries (including its wholly owned subsidiary, The Key) will be referred to as 'The Key Group'.

⁵ FMN, paragraph 6.1; [The Key Annual Report and Financial Statements for the year ended 31 August 2022](#), page 3.

⁶ Annex 015.

⁷ FMN, paragraph 6.2; Annex 11.1(d), page 42.

⁸ FMN, paragraph 2.4; Annex 008.1; [RM – Class 1 Sale of RM Integris and RM Finance Businesses – 310323](#).

⁹ Email from Simmons & Simmons LLP to the CMA dated 31 May 2023, 11:37.

21. On 19 April 2023,¹⁰ RM transferred the following businesses it carried on before the Merger to SES, along with related assets:¹¹
- (a) RM proprietary software: the RM Integris and RM Finance software (being the licensing of the RM Integris and RM Finance software);
 - (b) Third party and reseller arrangements: the RM Accounts educational accounts software resold by RM including customisation and associated services; and acting as a reseller for the Access Education Budgeting, HelloData, Parents Evening Booking, and Timetabler software.¹²

Rationale for the Merger

22. The Parties submitted that the Merger will enable Arbor and ScholarPack to [REDACTED]. Further, the Merger will allow the Parties to benefit from economies of scale to further invest in R&D. The Parties submitted that this in turn will allow The Key to [REDACTED].¹³ In addition, The Key submitted that the Merger will enable it to [REDACTED].¹⁴
23. The CMA found that The Key's internal documents are broadly consistent with its stated rationale for the Merger.¹⁵

PROCEDURE

24. The CMA's mergers intelligence function identified this transaction as warranting an investigation.¹⁶

¹⁰ RM (as provider) and SES (as recipient) will also enter into a transitional services agreement, the purpose of which is to give the ability to The Key to request the delivery of specific services (eg finance services, use of RM's systems, use by SES of the IT development services of RM's India team and parent portal maintenance) from RM for up to a year after completion of the Merger (FMN, paragraph 2.5; Annexes 008.3 and 006.3).

¹¹ This includes contracts, software platforms, 41 employees in the UK and India, business records and names, goodwill (FMN, paragraph 2.15; Schedule 1 to the non-executed agreement for the sale and purchase of part of the business and assets of RM between RM and SES, submitted as Annex 008.2; Email from Simmons & Simmons LLP to the CMA dated 5 June 2023, 14:47; [RM – Class 1 Sale of RM Integris and RM Finance Businesses – 310323](#)).

¹² This expressly excludes a certain number of software which will be retained by RM, including [REDACTED].

¹³ FMN, paragraphs 2.18-2.23.

¹⁴ FMN, paragraphs 2.24-2.26.

¹⁵ For example, Annexes 014(a), 014(c) and 014(g).

¹⁶ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2021, paragraphs 6.4-6.6.

JURISDICTION

25. Each of The Key and SES is an enterprise within the meaning of section 129 of the Act. As a result of the Merger, these enterprises have ceased to be distinct.
26. The Parties overlap in the supply of MIS software to state-funded schools in England, where they have a combined share of supply of [30-40]% (by number of schools), with an increment of [5-10]% brought about by the Merger.¹⁷ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
27. The Merger completed on 31 May 2023. The four-month deadline for a decision under section 24 of the Act is 30 September 2023.
28. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
29. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 April 2023 and the statutory 40 working day deadline for a decision is therefore 16 June 2023.

COUNTERFACTUAL

30. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger.
31. The CMA will generally conclude on the counterfactual conditions of competition broadly – that is, prevailing or pre-merger conditions of competition, conditions of stronger competition or conditions of weaker competition. In determining the appropriate counterfactual, the CMA seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger, and it will generally focus only on potential changes to the pre-merger conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹⁸

¹⁷ See Table 1.

¹⁸ [CMA129](#), March 2021, paragraphs 3.9 and 3.11.

32. The Parties submitted that the pre-existing competitive situation is the most appropriate counterfactual.¹⁹ However, third parties have put forward representations relating to the counterfactual, in particular that there was at least one alternative bidder for the target business.²⁰

CMA's assessment

33. The CMA has considered whether, absent the Merger, RM would have pursued an alternative strategy to the sale of its RM Integris and RM Finance businesses.
34. Internal documents provided to the CMA in the course of its investigation²¹ are broadly consistent with the Parties' submissions that a sale of the RM Integris and RM Finance businesses was viewed commercially by RM as the most suitable course of action.²² Specifically, internal documents indicate that SES has faced a number of commercial and strategic challenges in recent years primarily due to:
- (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED].²³
35. Third parties have echoed these challenges, describing RM Integris as 'dormant', 'not being invested in or gaining new customers',²⁴ and 'an older software that [...] is lagging behind in terms of functionalities'.²⁵
36. The Parties confirmed to the CMA that RM held conversations with other potential buyers in the 24 months prior to the Merger but that only one of those, [REDACTED], submitted an offer, which was received at a point at which the negotiations with The Key were already advanced. The Parties submitted that the offer was [REDACTED].²⁶ This is supported by SES' internal documents.²⁷ Further, the CMA notes that [REDACTED].²⁸ An

¹⁹ FMN, paragraph 11.1.

²⁰ Competitor questionnaire responses ([REDACTED] and [REDACTED]).

²¹ The CMA notes that some of these internal documents were provided by RM plc in response to a formal information request under section 109 of the Act.

²² FMN, paragraph 4.45.

²³ For example, Annexes 011.2(e), 011.2(i), 012.2(a), 012.2(b), 012.2(c), 012.2(f), 012.2(h), 11.2(e), 11.2(i), 073.1, 163.1, 182.1, 184.1, 203.1, 214.1.

²⁴ Note of call with competitor (Juniper dated 15 March 2023).

²⁵ Note of call with customer ([REDACTED]).

²⁶ FMN, paragraphs 4.22-4.30.

²⁷ For example, Annexes 011.2(k) and 214.1.

²⁸ Annex 11.2(k), page 9. In its response to the CMA's competitor questionnaire [REDACTED] stated: [REDACTED].

internal document provided by SES to the CMA observes that [X].²⁹ [X]. The CMA considers that this supports a finding that RM Integris' competitive strength under the ownership of [X] would not have been materially different from the pre-Merger scenario.

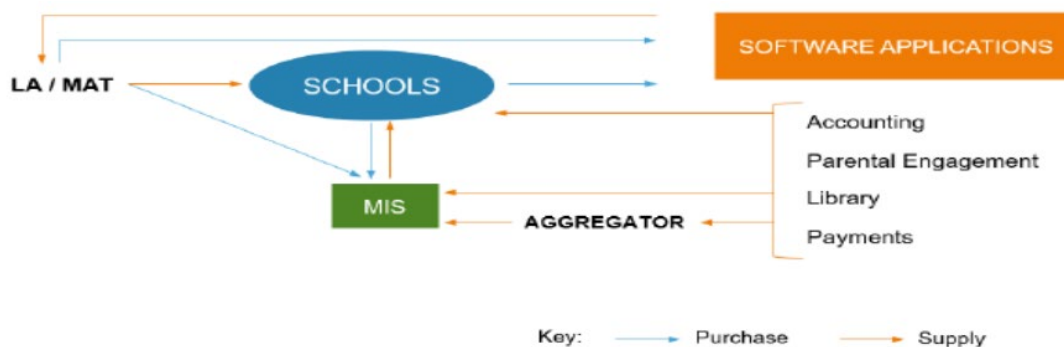
37. For the reasons set out above, the CMA believes that there is a realistic prospect that RM would have sold the RM Integris and RM Finance businesses to [X] absent the Merger. However, the CMA did not find any evidence to indicate that a sale to [X] would have resulted in the Parties exerting a stronger competitive constraint on each other than is the case in the pre-merger conditions of competition. As such, in line with its guidelines, the CMA did not consider it necessary to further pursue this alternative counterfactual as doing so would not make a material difference to its competitive assessment. Therefore, the CMA has considered the impact of the Merger against the pre-merger conditions of competition.

BACKGROUND

The education software sector

38. The Parties supply education software solutions in the UK. Education software solutions are used to support a range of day-to-day operational and management activities undertaken by schools. An overview of the UK education software sector is provided in Figure 1 below.

Figure 1: Overview of the education software sector



Source: [CMA's decision on 12 July 2021 in Montagu/ParentPay \(Montagu/ParentPay\)](#), Figure 2.

²⁹ Annex 11.2(k), page 9.

39. State-funded schools can be local authority (**LA**)³⁰ schools (**LA-maintained**) or academy trusts. LAs may provide support for setting up, training staff, and running the software used by LA-maintained schools. Academy trusts have autonomy and are run independently of an LA. Individual academies can also group together into multi-academy trusts (**MATs**). MATs typically choose a preferred provider for their education software solutions centrally.

The Parties' products

40. The Parties overlap specifically in the supply of MIS software. Schools use MIS software to collect and maintain a database of student information (eg attendance records or assessment results) and staff information for two main functions.
- (a) MIS software makes the running and administration of a school more efficient, for instance by supporting registration and the management of pupil attendance, assessments, admissions, special educational needs, timetabling, parental messaging.
 - (b) MIS software supports school data collection and transfer. All state-funded schools in England and Wales are required to provide information, periodic school censuses and attendance data to their LA and/or Department for Education (**DfE**) of the Welsh Government (as appropriate). The data required and the form in which it is to be provided frequently change.³¹
41. The Key is active in the supply of MIS software to schools in the UK through Arbor and ScholarPack. Both these products are cloud-based MIS software (as opposed to MIS software that run on schools' own servers) and ScholarPack is a simpler MIS software compared to Arbor. Features that Arbor has that ScholarPack does not have include parent payments, exams and timetabling.³² SES is active in the supply of school MIS software through RM Integris, a cloud-based MIS software that caters to the needs of schools in England. Similarly to ScholarPack, RM Integris is designed to be a simple, highly affordable, flexible and easy to use MIS software.³³

³⁰ LAs are public entities that are responsible for all the public services and facilities in a particular area within the UK.

³¹ [CMA's decision dated 10 January 2023 to accept binding commitments under the Competition Act 1998 from Education Software Solutions Ltd in relation to the supply of MIS software to schools](#) (**ESS commitments decision**), paragraph 2.11.

³² FMN, paragraph 3.2.

³³ FMN, paragraph 3.5.

42. SES also offers a complementary software product, RM Finance, that is relevant to the CMA's assessment of the Merger. RM Finance is a single-entry FMS software used by schools to manage their day-to-day financial operations and report to governors and LAs. RM Finance is used by approximately [X] schools. The Key does not have an equivalent product.³⁴
43. RM Integris accounted for the large majority (almost [X]%) of SES' 2020 and 2021 revenues while RM Finance accounted for less than [X]%. In the 12 months to March 2022, LA-maintained primary schools represented approximately [X]% of SES' revenues.³⁵

FRAME OF REFERENCE

44. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment.³⁶ It involves identifying the most significant competitive alternatives available to customers of the merging firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.³⁷
45. The CMA will typically start its assessment of relevant markets with the relevant products of the merging firms and pay particular regard to demand-side factors.³⁸ The CMA may also consider supply-side factors.³⁹
46. The Parties overlap in the supply of MIS software to schools (all types and phases) in England, including both state-funded and independent schools. In addition, SES is also active in the supply of FMS software to state-funded schools in England.

Product scope

47. The Parties submitted that the appropriate frame of reference is the supply of MIS software to schools, with no further segmentation by a school's type, phase (eg primary, secondary) or type of software deployment (cloud-based or on premise). In addition, the Parties submitted that on the demand-side, MIS software are similar in

³⁴ FMN, paragraph 3.5

³⁵ Annex 14(c), pages 10 and 30.

³⁶ [CMA129](#), March 2021, paragraphs 9.1 and 9.4.

³⁷ [CMA129](#), March 2021, paragraph 9.2.

³⁸ [CMA129](#), March 2021, paragraphs 9.1-9.5.

³⁹ [CMA129](#), March 2021, paragraph 9.6.

terms of functionality for all type of primary schools, while on the supply-side, MIS software providers supply all types of such schools.⁴⁰

48. In line with previous decisions and consistent with evidence received from the Parties and third parties in the course of its investigation, the CMA considers that it is appropriate to segment education software on the basis of functionality and has assessed the impact on the Merger in separate frames of reference for each of MIS and FMS software.⁴¹
49. The evidence gathered by the CMA also indicates that it may be appropriate, on a cautious basis, to exclude from the frame of reference independent schools.⁴² This is because:
- (a) From a demand-side perspective, third parties indicated that there are some differences in the functionality required by state-funded and independent schools. For example, only state-funded schools require from a MIS software the provision of statutory returns.⁴³
 - (b) From a supply-side perspective, MIS software providers serving independent schools indicated that switching into supplying MIS software to state-funded schools would take several months and require significant investment to meet the statutory requirements.⁴⁴ Further, in a document provided to the CMA, The Key acknowledges that it can [redacted] supply MIS software to independent schools insofar as [redacted], which is noted in the document to only apply to a [redacted] of independent schools.⁴⁵
 - (c) The conditions of competition in the supply of MIS software to independent schools appear to be different. Share of supply estimates provided by the Parties indicate that the main providers of MIS software to independent schools in 2022 were (in order) IRIS (through its iSAMS product), ESS and WCBS, whereas the Parties had a negligible combined share of supply to

⁴⁰ FMN, paragraph 13.6.

⁴¹ [Montagu/ParentiPay](#), paragraph 68.

⁴² The CMA notes that this is in line with the position adopted by the CMA in the [ESS commitments decision](#), paragraphs 3.5-3.6.

⁴³ Note of call with competitor ([redacted]); Competitor questionnaire responses ([redacted] and [redacted]).

⁴⁴ Competitor questionnaire responses ([redacted] and [redacted]).

⁴⁵ Annex 012.1(c), page 11.

independent schools of only [0-5]% in 2022.⁴⁶ Further, the CMA's investigation confirmed that iSAMS and WCBS are only suitable for independent schools.⁴⁷

50. In relation to the supply of FMS software, the CMA notes that SES only supplies RM Finance to state-funded schools and it has not needed to consider whether to include independent schools in the frame of reference as doing so would not impact its competitive assessment.
51. The CMA received some evidence of differences across customer groups within both the supply of MIS and FMS software (eg between primary and secondary schools, and between LA-maintained schools and academy trusts) in terms of the strength of competitors varying between customer groups.⁴⁸ The CMA had regard to these differences in its competitive assessment where relevant.

Conclusion on product scope

52. For the reasons set out above, on a cautious basis the CMA has considered the impact of the Merger in the following product frames of reference:
- (a) The supply of MIS software to state-funded schools; and
 - (b) The supply of FMS software to state-funded schools.

Geographic scope

53. The Parties submitted that they do not consider that a regional segmentation of the MIS market is appropriate as (i) all geographies in the UK have very similar functional product requirements, and (ii) the main change any provider would have to make to enter a new geography is the ability to submit statutory returns to regional or national governing bodies. The Parties further submitted that such a change would not be a barrier to being able to switch to providing services in any given region in the UK.⁴⁹
54. Notwithstanding this, the Parties acknowledged in their submissions that in its *ESS investigation* the CMA found that 'different arrangements for purchasing MIS software operate in each of the UK nations, leading to different demand and supply conditions in each of the UK nations' and the CMA notes that this differentiation was

⁴⁶ Annex 022.

⁴⁷ Competitor questionnaire responses ([redacted] and [redacted]).

⁴⁸ Notes of call with competitors ([redacted], [redacted], [redacted]) and with customers ([redacted], [redacted]).

⁴⁹ FMN, paragraph 13.3.

also previously considered in *Montagu/ParentPay*.⁵⁰ Accordingly, the Parties provided shares of supply for both the UK and England.⁵¹

55. In line with previous decisions and consistent with evidence received from the Parties and third parties in the course of its investigation, the CMA considers that it is appropriate to assess the impact of the Merger on competition in a frame of reference limited to England (for both MIS and FMS software) on a cautious basis. This is because:

- (a) RM Integris and RM Finance are only sold to schools in England.⁵²
- (b) Consistent with its findings in *Montagu/ParentPay*, the CMA received evidence that there are differences in the requirements of schools in different nations within the UK and regarding the main competitors in these nations. In particular:
 - (i) Language or reporting requirements (as a result of devolution) can be different. For instance, RM Integris does not support the mandatory Welsh census⁵³ and competitors have estimated that adapting an MIS software to the Welsh market would cost in the range of £150,000 to £250,000 and would take approximately six months.⁵⁴
 - (ii) In Scotland, LAs have sponsored their own MIS software provider (SEEMiS) which does not compete for new business or to supply schools in England.⁵⁵
 - (iii) In Wales, ESS and Teacher Centre are the only two MIS software providers currently active.⁵⁶ Teacher Centre is not active in other UK countries and appears to be LA-funded, similarly to SEEMiS. There is no evidence to suggest that Teacher Centre competes for new business and IRIS, Bromcom, Compass, and Juniper do not supply MIS software to schools in Wales.

⁵⁰ [ESS commitments decision](#), paragraphs 3.4 and 3.6; [Montagu/ParentPay](#), paragraph 72.

⁵¹ FMN, paragraph 13.4.

⁵² FMN, paragraph 13.4 and footnote 89.

⁵³ FMN, paragraph 14.26.

⁵⁴ Competitor questionnaire responses ([redacted] and [redacted]).

⁵⁵ FMN, paragraph 14.6; Annex 012.1(c), page 26; Note of call with competitor ([redacted]); Competitor questionnaire response ([redacted]).

⁵⁶ <https://gov.wales/sites/default/files/statistics-and-research/2020-07/software-suppliers-by-school-2020.ods>

- (iv) In Northern Ireland, the curriculum and statutory reporting requirements led to some customisation of ESS' MIS software which has been used by schools for over 30 years. The Northern Ireland contract is currently being re-tendered. The Parties submitted that the process requires bidding MIS software providers to have a 'strategic partner' who can help to implement and support the solution. [redacted]. Further, the Parties noted that the tender requires [redacted].⁵⁷

56. In any event, the precise boundaries of the geographic frame of reference do not affect the findings of the CMA's competitive assessment.

Conclusion on frame of reference

57. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) The supply of MIS software to state-funded schools in England; and
 - (b) The supply of FMS software to state-funded schools in England.

COMPETITIVE ASSESSMENT

58. In assessing the impact of the Merger on competition, the CMA has considered the following theories of harm, which are discussed in turn below:
- (a) Horizontal unilateral effects in the supply of MIS software to state-funded schools in England; and
 - (b) Foreclosure of competing MIS software providers using RM's finance software.

Horizontal unilateral effects in the supply of MIS software

59. 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.⁵⁸ Horizontal unilateral effects are more likely when the market is concentrated, and the merging parties are close competitors and there are material barriers to entry and expansion.

⁵⁷ FMN, paragraph 15.11 and footnote 142; Annex 025.

⁵⁸ [CMA129](#), March 2021, paragraph 4.1.

60. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of MIS software to state-funded schools in England, the CMA has considered (and discusses in turn below) the following factors:

- (a) Shares of supply;
- (b) Closeness of competition between the Parties; and
- (c) Competitive constraints.

Shares of supply

61. Table 1 presents share of supply data estimated using census data collected by the DfE. The estimates show that ESS (SIMS) is the largest provider of MIS software to state-funded schools in England with a share in excess of 50% (either measured by schools or pupils), followed by The Key.⁵⁹ By comparison, SES (RM Integris) and Bromcom have materially lower shares and there are a number of smaller providers including IRIS (Ed:gen) and Juniper (Juniper Horizons and Pupil Asset).

Table 1: Shares of supply in MIS software to state-funded schools in England, by number of schools and pupils (2022)

Provider	Share by schools in 2022 (%)	Share by pupils in 2022 (%)
The Key	[20-30]	[20-30]
Arbor	[10-20]	[10-20]
ScholarPack	[5-10]	[0-5]
SES	[5-10]	[5-10]
Merged Entity	[30-40]	[20-30]
ESS	[50-60]	[60-70]
Bromcom	[5-10]	[10-20]
Juniper	[0-5]	[0-5]
IRIS	[0-5]	[0-5]
Other	[0-5]	[0-5]
Total	100	100

Source: Parties' estimates based on data published by DfE.

Notes: Shares of supply as at October 2022. 'Other' includes, but is not limited to, Advanced Learning and SchoolPod.

62. These estimates show that the Merged Entity will be the second largest provider of MIS software to state-funded schools in England (either measured by number of schools or number of pupils). The supply of MIS software to state-funded schools in

⁵⁹ FMN, Tables 1-6; Annexes 241 and 242. These estimates are based on census data collected by the DfE and cover 22,004 state-funded schools including 16,800 primary schools.

England is relatively concentrated, with three providers holding more than 85% of the share of supply.

63. ESS' share of schools declined by [10-20] percentage points in the three years to October 2022, with its MIS software (SIMS) losing customers to cloud-based alternatives. Over the same period, The Key and Bromcom have grown rapidly but SES' share has slightly declined.⁶⁰ Evidence from the Parties and third parties indicates that ESS' market share is likely to continue declining over at least the next three years, albeit at a slower rate as compared to the past three years.⁶¹
64. The CMA considers that in this case shares of supply give only a partial indication of a provider's competitive strength. Firstly, there is a degree of differentiation between products and providers within the frame of reference, with the strength of some competitors varying between different customer groups.⁶² Secondly, shares of supply in this case may not capture current differences in the functionality of the MIS software between different providers which may have changed over time. This is particularly the case as schools switch MIS software provider infrequently due to the presence of actual or perceived barriers to switching.
65. As such, the CMA has placed more weight on evidence of closeness of competition between the Parties and of the competitive constraints from remaining alternative providers.

Closeness of competition

Parties' submissions

66. The Parties submitted that they are not close competitors for the following reasons:
 - (a) There are important technical functional differences between the Parties' MIS software. RM Integris only offers a sub-set of the suite of functionalities of the Arbor/ScholarPack products and lacks some features (eg [X]).⁶³
 - (b) The functionality differences are reflected in the fact that the Parties are not competing in all the same tender processes. The Parties submitted that tender

⁶⁰ FMN, Tables 3-6.

⁶¹ See from paragraph 88.

⁶² [CMA129](#), March 2021, paragraph 4.15.

⁶³ FMN, paragraphs 15.5-15.9.

data shows that the Parties are not being invited to the same processes and further, even when they are, [REDACTED].⁶⁴

- (c) The Parties have a different mix of customers.⁶⁵
- (d) The switching data shows that where schools have switched provider in the past three years, the vast majority of switching has been a move to either ESS, Arbor/ScholarPack or Bromcom. Further, the Parties submitted that [REDACTED].⁶⁶
- (e) [REDACTED].⁶⁷

CMA's assessment

67. The CMA assessed the closeness of competition between the Parties and considered within its assessment the factors discussed in turn below:

- (a) The Parties' respective product and service propositions;
- (b) The extent of competition between the Parties; and
- (c) SES' market position in England.

- *Parties' respective product and service propositions*

68. In line with the Parties' submissions, the CMA has seen evidence that there are material functionality differences between The Key's MIS software and RM Integris, particularly with respect to the requirements of secondary schools and MATs.

69. SES supplies MIS software to only a small number of secondary schools which account for [REDACTED] of its revenues.⁶⁸ Evidence from SES' internal documents and third parties indicates that RM Integris is generally not suitable for secondary schools as some additional functionalities are required (eg timetabling) which are not offered in

⁶⁴ FMN, paragraph 15.11.

⁶⁵ FMN, paragraph 15.13.

⁶⁶ FMN, paragraphs 15.14-15.17.

⁶⁷ FMN, paragraphs 15.18-15.19.

⁶⁸ In particular, SES supplied RM Integris to [REDACTED] secondary schools in 2022 which amounts to less than [REDACTED]% of secondary schools in England (Parties' response to the CMA's fourth request for information dated 20 April 2023 (**RFI4 Response**)).

RM Integris.⁶⁹ By comparison, secondary schools account for a material share of The Key's MIS software revenues (approximately [redacted]%).⁷⁰

70. In relation to primary schools, evidence from SES, including internal documents, indicates that [redacted].⁷¹ Nevertheless, some third parties also indicated that while RM Integris is a cheaper, less sophisticated software compared to The Key's products, it remains an alternative for state-funded primary schools (particularly LA-maintained primary schools), as it offers similar functionalities.⁷²

71. Therefore, the CMA believes that the more limited functionality offered by SES' MIS software means that it has a weaker proposition compared to The Key. In particular, the CMA believes that SES imposes a limited constraint on The Key in the supply of MIS software to state-funded secondary schools. However, SES offers similar functionalities to The Key for many state-funded primary schools.

- *The extent of competition between the Parties*

72. In assessing whether the Parties exercised a material constraint on one another pre-Merger, the CMA has considered customer switching between the Parties and third parties, the Parties' tender data, the Parties' internal documents and the views of third parties.

73. Schools census data collected by the DfE provides information relating to schools switching provider. This data shows that while SES accounts for a small proportion of schools switching to and from The Key, the majority of schools switching from SES switched to The Key. The switching data shows that:

- (a) In the three years preceding October 2022, the vast majority ([redacted]%) of The Key's school wins were from ESS, while only a small portion ([redacted]%) were from SES. Of the relatively small number of schools that switched from The Key over the same period ([redacted]), nearly half switched to ESS and nearly half

⁶⁹ Reflecting this, SES' internal documents list RM Integris' addressable customer base as [redacted] (Annexes 229.1 (page 7) and 031 (page 22)). Also, for example, notes of call with third parties ([redacted] and [redacted]).

⁷⁰ RFI4 Response, question 4.

⁷¹ Annexes 012.2(f), page 5; 012.2(b), page 21; 031, page 10; 012.2(h), page 18. Consistent with this, MATs account for [redacted], while the average revenue per primary school generated by RM Integris for the supply of MIS software [redacted] than that of Arbor and ScholarPack (which generate £[redacted] and £[redacted] per primary school respectively) (FMN, Table 8 and footnote 118). Further, the CMA notes that a category of MATs, those with both primary and secondary schools, are less likely to see RM Integris as an option due to its lack of features suitable for secondary schools (Annex 031, page 10).

⁷² Notes of call with third parties ([redacted], [redacted] and [redacted]).

switched to Bromcom (with an equal split between the two of [redacted] each), and only a very small number of schools switched to SES ([redacted]).

- (b) In contrast, of all the schools lost by SES in the three years preceding October 2022, around half ([redacted]%) were lost to The Key, followed by Bromcom and ESS which each captured a material proportion of the schools lost by SES ([redacted]%) respectively). Juniper also captured some of the schools lost by SES albeit in more modest proportions ([redacted]%).⁷³

74. The CMA has also considered the extent to which SES may present a material constraint on The Key in formal competitive processes. Tender data submitted by the Parties indicates that The Key competed against SES in only a small proportion ([redacted]%) of its recent tenders.⁷⁴ By comparison, The Key was present in a larger, but still relatively small proportion ([redacted]%) of tenders participated in by SES. In contrast, The Key frequently competed against Bromcom in tenders, with Bromcom winning a material proportion ([redacted]%) of tenders participated in by The Key.⁷⁵
75. Overall, the switching and tender data point to the constraint exerted by the Parties on each other being asymmetric, with The Key representing a strong competitive constraint on SES, whilst SES imposes a weak constraint on The Key, and in particular, weaker than that imposed by other MIS software providers, namely Bromcom and ESS.
76. The Parties' internal documents support the presence of an asymmetric constraint between the Parties. Notwithstanding that SES' internal documents contain limited monitoring of competitors, the CMA found references to Arbor and ScholarPack as competitors in a range of documents including strategy and tender documents. For example, [redacted].⁷⁶ Additionally, SES' internal documents include benchmarking exercises which compare the functionality of its MIS software to that of The Key, [redacted].⁷⁷ By comparison, The Key's internal documents do not regularly monitor SES

⁷³ RFI4 Response, paragraph 3.1.

⁷⁴ These include framework tenders, school- or MAT-led tenders, and framework mini competitions and relate to the supply of MIS software to all phases of schools. The Key submitted that [redacted]. The Parties submitted that [redacted].

⁷⁵ The CMA notes that the Parties do not systematically track which providers they compete with in tenders, therefore the CMA has been unable to assess the frequency with which other third party providers compete for and win in tender processes against the Parties (FMN, paragraph 15.10 and footnote 127).

⁷⁶ For example, Annexes 088.1 (page 55) and 215.1 (page 5). In addition, The Key is mentioned in a number of SES' documents relating to tender submissions (for example, Annexes 019(q), 019(r), 019(u), 019(aa), 019(bb), 019(dd)).

⁷⁷ The CMA notes that some benchmarking documents include [redacted] and [redacted] ([redacted]) however the assessment of these suppliers is limited and incomplete (for example, Annex 017(c)).

and focus more heavily on the constraint from [redacted], [redacted] and other providers.⁷⁸ Additionally, some of The Key's internal documents that discuss the Merger describe SES as [redacted],⁷⁹ and refer to [redacted].⁸⁰ The CMA has placed more limited weight on this as these documents were produced whilst the Merger was in contemplation.

77. Evidence seen by the CMA indicates that schools may have a limited understanding of the competitive and procurement landscape surrounding their choice of MIS software provider.⁸¹ As a result, the CMA has placed more limited weight on the views of customers as compared to other evidence on closeness of competition. Of those respondents to the CMA's customer questionnaire that purchase either Arbor or ScholarPack, a few indicated that RM Integris was a very good alternative for their primary schools, although some indicated that that it was an average alternative. Compared to this, ScholarPack and Arbor were recognised most frequently as an alternative provider of MIS software among respondents to the CMA's customer questionnaire that purchase RM Integris, with many respondents listing ScholarPack or Arbor as a good or very good alternative.⁸²

78. Therefore, the CMA believes that The Key presents a strong competitive constraint on SES, but that SES presents a weaker constraint on The Key (including both Arbor and ScholarPack).

- *SES' market position in England*

79. In assessing the competitive constraint SES imposes on The Key in the supply of MIS software to state-funded schools in England, the CMA has also considered SES' growth over time, its ability to win new customers, and its development and customer acquisition plans.

⁷⁸ For example, Annexes 011.1(c) (page 25); 012.1(b) (page 47); 014(a) (page 2); 033.10; 033.12; 033.15.

⁷⁹ For example, Annex 011.1(c), page 25.

⁸⁰ For example, Annexes 014(a); 014(e); 011.1(b).

⁸¹ The CMA notes that a number of respondents to the CMA's customer questionnaire did not or could not comment on the competitive alternatives to the Parties. Additionally, while state-funded schools are subject to public procurement rules, the CMA has seen evidence indicating that even sophisticated customers such as large MATs may not have full awareness of the procurement rules applicable to them (see, for example: [Bromcom Computers plc v United Learning Trust \[2022\] EWHC 3262 \(TCC\)](#)), while others may purchase through frameworks which facilitate their choice of MIS software provider (FMN, Table 9).

⁸² Customer questionnaire responses ([redacted], [redacted], [redacted]).

80. Despite high levels of switching in recent years,⁸³ with a large number of schools switching from ESS to cloud-based alternatives, SES' share of supply (by schools and pupils) has declined, with the total number of state-funded schools using RM Integris falling by [X]% in the three years preceding October 2022.⁸⁴
81. In line with this, the switching data (see paragraph 73) shows that SES won a very small proportion ([X]%) of state-funded schools switching MIS software provider in the three years preceding October 2022. By comparison, The Key won the majority ([X]%) of switching schools in the period (primarily through its Arbor product offering), followed by Bromcom which won approximately a quarter ([X]%). Aside from ESS, only two other providers, namely IRIS and Juniper, won more than [X]% of switching schools, each of which have a significantly smaller share of supply than SES.⁸⁵
82. The CMA has also assessed in detail SES' development and customer acquisition plans for RM Integris prior to the Merger's contemplation.⁸⁶ While there is evidence in its internal documents that SES was [X], the CMA did not find any evidence indicating that SES' [X]. Specifically, SES' internal documents show that [X]. [X]. For example, [X]. However, SES [X].⁸⁷
83. Therefore, the CMA believes that SES' share of supply overstates its competitive strength in the supply of MIS software to state-funded schools in England and that SES was not likely to become a strong competitor in the foreseeable future.

⁸³ In *Montagu/ParentPay*, the CMA reported that it had received evidence that switching between MIS software providers has traditionally been limited (approximately 4% of all schools per annum) due to the presence of high barriers to switching (*Montagu/ParentPay*, paragraphs 61 and 141). However, during the course of its investigation, the CMA received evidence that in the last two years there has been significant customer churn and for the most part affecting ESS. From [0-5]% in 2019, ESS' customer churn increased to [10-20]% in 2022, which resulted in its share of English state-funded schools declining from [70-80]% to [50-60]% in the same period (see: [Bring more data article 'MIS market moves winter 2022, what did the SIMS spreadsheet say?'](#), 21 December 2022). The evidence obtained in the course of the investigation indicates that this wave of switching has been predominantly driven by academies and MATs, who have greater autonomy regarding their choice of supplier (Annex 033.11, page 15).

⁸⁴ It is noted that in the three years to October 2022 approximately 5,089 schools in England switched MIS software provider, equating to 21% of state-funded schools in England. Of these, 77% were primary schools while 86% of all school switches were away from ESS to another supplier (FMN, paragraph 15.15; RFI4 Response).

⁸⁵ In addition, the CMA notes that IRIS only began supplying state-funded schools in 2021, already halfway through this 3-year period.

⁸⁶ The CMA notes that some of the internal documents reviewed by the CMA in relation to SES' development and customer acquisition plans were provided by RM plc in response to a formal information request under section 109 of the Act.

⁸⁷ Annexes 031 (pages 16 and 22); 224.1 (page 3 and 5); 088.1 (page 55) ; 019(r); 019 (aa); 019 (bb); and 90.1 (page 10).

Conclusion on closeness of competition

84. Based on the available evidence, the CMA believes that, prior to the Merger, SES offered similar functionality to The Key in relation to state-funded primary schools. However, the evidence indicates that SES was presenting a weak constraint on The Key (including both Arbor and ScholarPack). The CMA also believes that SES was not likely to become a greater constraint in the foreseeable future. Notwithstanding this, the CMA found evidence that there was material competitive interaction between the Parties pre-Merger with The Key presenting a strong constraint on SES.

Competitive constraints

Parties' submissions

85. The Parties submitted that the Merged Entity will continue to face effective competition from a number of MIS software providers, who will impose a strong competitive constraint. In particular:
- (a) ESS which competes closely with SES and The Key (Arbor) and will remain the 'dominant' MIS software provider;
 - (b) Bromcom, which has grown rapidly in the last three years and has become one of Arbor's closest competitors; and
 - (c) A tail of smaller providers and new MIS software providers who have entered the market in the past three years.⁸⁸

CMA's assessment

86. Unilateral effects are more likely where customers have limited choice of alternative providers. The CMA has considered in turn below the strength of alternative MIS software providers that would provide a competitive constraint on the Merged Entity.
87. The CMA has assessed the constraint from these alternatives by taking into account the Parties' submissions and tender data, shares of supply, switching data, product and service proposition, evidence from internal documents, and third party views.

⁸⁸ FMN, paragraphs 15.24-15.37.

- *ESS*

88. ESS provides a range of software and services to schools including its MIS software SIMS 7, which is used by the majority of schools in England and Wales. In the year that ended on 30 November 2021, the ParentPay Group (the owner of ESS) achieved total turnover of £61.8 million up from £30.6 million in financial year 2020, reflecting the contribution made by ESS following its acquisition.⁸⁹
89. As at October 2022, ESS was the largest provider of MIS software to state-funded schools in England, with a share of approximately [50-60]% by schools and [60-70]% by pupils.⁹⁰ For at least the past 17 years, the majority of schools in England have used SIMS,⁹¹ but ESS' share has steadily declined since 2015 and more significantly since October 2021, with schools (in particular primary schools), switching to cloud-based alternatives following the COVID-19 pandemic.⁹²
90. The switching data provided by the Parties (discussed at paragraph 73) shows that ESS only won [x%] of schools switching provider in the three years preceding October 2022, and was the previous provider for the vast majority of schools that switched to the Parties. This switching data also indicates that ESS has had some success in winning customers from the Parties. As noted at paragraph 73(a), nearly half of schools switching from The Key switched to ESS, and a material proportion of schools switching from SES switched to ESS.⁹³

⁸⁹ [ParentPay Group's annual report and financial statements for the year ended 30 November 2021](#), page 7.

⁹⁰ See Table 1.

⁹¹ For example, a [2014 OFT market study](#) stated that ESS' share of supply had been over 80% since 2005 (Annex B, paragraph B41).

⁹² The CMA understands that the sharp decrease in ESS' share from [60-70]% in October 2021 to [50-60]% in October 2022 ([Bring more data: MIS MARKET MOVES WINTER 2022: What Did The SIMS Spreadsheet Say?](#)) was, at least partly, prompted by the ParentPay Group's decision in late November 2021 to cease offering one year rolling terms for contracts that provide ESS' SIMS and FMS customers with software updates and third line support services, and instead extend the minimum term of these contract to three years ([ESS commitments decision](#), paragraphs 3.11-3.15 and [ParentPay Group's annual report and financial statements for the year ended 30 November 2021](#), page 5).

⁹³ RFI4 Response, paragraph 3.1. The CMA understands that a proportion of these may be due to MATs consolidating the MIS software provider of their schools such that they have a sole provider of MIS software, rather than instances of individual schools switching from Arbor to ESS' SIMS. In comparison, the Parties' internal documents indicate that [x%] (Annex 014(e), page 1).

91. The Key's internal modelling indicates that [REDACTED].⁹⁴ Further, the CMA also found in The Key's internal documents indications that it [REDACTED].⁹⁵ Additionally, a benchmarking exercise undertaken by SES includes ESS and [REDACTED].⁹⁶
92. Feedback from third parties on the competitive strength of ESS was mixed.⁹⁷ Of the Parties' primary school customers that responded to the CMA's questionnaire, some schools listed ESS as a good or very good alternative to the Parties for primary schools, although a greater number listed it as an average alternative, and even more listed it as a poor or very poor alternative. Additionally, while several respondents to the CMA's competitor questionnaire listed ESS as a strong competitor, a few described it as a moderate constraint.⁹⁸ One competitor noted that ESS had a strong customer base and comprehensive product suite but also submitted that its product offering is poor with low school satisfaction.⁹⁹
93. Given the recent decline in ESS' share of supply, the CMA has considered in detail the market position of ESS going forward. Overall, the evidence available to the CMA does not indicate that ESS will become a materially weaker competitor in future, instead, it indicates that ESS is investing in its MIS software and is actively competing to retain its customers. For example:
- (a) ESS has been developing its own cloud-based product for a number of years,¹⁰⁰ and in October 2021 ESS launched its program 'SIMS Next Generation' (**SNG**), the purpose of which is to deploy new MIS components as a set of cloud-based applications that will sit alongside existing SIMS features. Further, ESS publicly stated that SNG will see it invest up to £40 million in SIMS and FMS over the next three years, and that the program is intended to

⁹⁴ Annex 021.15 (page 61). [REDACTED]. In any event, the CMA notes that even with losses in line with these forecasts, ESS would continue to supply MIS software to a significant proportion of state-funded schools in England.

⁹⁵ Annexes 021.12 (page 3); 033.11 (pages 8 and 19); 021.13 (page 48).

⁹⁶ Annex 017(c).

⁹⁷ As noted at paragraph 77, the CMA has placed more limited weight on the views of customers as compared to other evidence on closeness of competition.

⁹⁸ Competitor questionnaire responses ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]).

⁹⁹ Competitor questionnaire response ([REDACTED]).

¹⁰⁰ The CMA understands that ESS' current MIS software (SIMS 7) runs on a school's own computer system although it can be provided as a cloud-hosted product. By comparison, cloud-based software (of the type offered by the Parties) can be accessed over a range of connectivity solutions (FMN, paragraphs 3.2, 3.5 and 12.10; [Montagu/ParentPay](#), paragraph 53). The CMA notes that ESS had previously sought to develop a cloud-based MIS software referred to as SIMS 8 but this product was ultimately withdrawn (FMN, footnote 25).

allow SIMS users to gradually adopt the new features without disruption or data loss.¹⁰¹

(b) [redacted].¹⁰²

(c) [redacted].¹⁰³ [redacted].¹⁰⁴

94. Taking the evidence in the round, the CMA believes that ESS will be a strong constraint on the Merged Entity in the supply of MIS software. While there is naturally a degree of uncertainty associated with the launch of SNG and how it might be expected to affect the constraint that ESS would place on the Merged Entity in future, the CMA believes that ESS' strong incumbent position as an MIS software provider and its efforts to retain customers, in conjunction with its significant and sustained investment into SNG, means that it will remain a strong constraint on the Merged Entity.

- *Bromcom*

95. Bromcom, a UK-based privately owned company, launched its cloud-based MIS software in 2011 and currently supplies MIS software to all types and phases of school in England. Like Arbor, Bromcom features on the following DfE-approved MIS frameworks: Everything ICT, G-Cloud 12 and KCS (Y20024) Education Management Systems.¹⁰⁵ In the year that ended on 31 December 2021 Bromcom achieved total turnover of approximately £9.8 million.¹⁰⁶

96. As at October 2022, Bromcom had a share of supply in MIS software to state-funded schools in England of approximately [5-10]% by schools and [10-20]% by pupils.¹⁰⁷ Since 2020, Bromcom's share of supply has more than doubled (including in the supply of MIS software to state-funded primary schools), with Bromcom winning approximately a quarter of schools switching provider in the three years preceding October 2022.¹⁰⁸ As noted at paragraph 73, there is a material degree of

¹⁰¹ [SIMS Next Gen to empower schools with direct ownership of MIS; ParentPay Group's annual report and financial statements for the year ended 30 November 2021](#), page 5. [redacted].

¹⁰² [redacted].

¹⁰³ ParentPay Group's response to competitor questionnaire.

¹⁰⁴ Internal documents '[redacted]' and '[redacted]' provided by the ParentPay Group in response to a formal information request under section 109 of the Act.

¹⁰⁵ DfE's MIS comparison table available at: <https://www.gov.uk/government/publications/choosing-a-school-management-information-system-mis>.

¹⁰⁶ [Bromcom Computers Plc's strategic report, report of the directors and financial statements for the year ended 31 December 2021](#), page 12.

¹⁰⁷ See Table 1.

¹⁰⁸ See paragraph 81; Annexes 241 and 242.

switching between Bromcom and the Parties. Additionally, as discussed at paragraph 74, Bromcom frequently competes and wins against The Key in formal tenders.

97. Reflecting this, [REDACTED].¹⁰⁹ For example, [REDACTED]. [REDACTED].¹¹⁰ [REDACTED].¹¹¹ As noted at paragraph 76, SES' internal documents also monitor and benchmark against Bromcom as a competitor.
98. Feedback from third parties on the competitive strength of Bromcom is mixed. Of The Key's primary school customers that responded to the CMA's questionnaire, half listed Bromcom as a very good or good alternative to either ScholarPack or Arbor, while the other half listed Bromcom as an average alternative. For RM Integris' customers, only a few respondents listed Bromcom as a good or very good alternative, one listed Bromcom as an average alternative, while the remainder were not aware of Bromcom's MIS offering.¹¹² Additionally, some respondents to the CMA's competitor questionnaire listed Bromcom as a strong competitor to their MIS business, and a few others ranked the strength of Bromcom as a moderate constraint, with one noting that Bromcom lacks the financial backing to compete with Arbor.¹¹³
99. Evidence seen by the CMA indicates that Bromcom is actively expanding its customer base and investing in its MIS software.¹¹⁴ In particular, [REDACTED] told the CMA that it is planning further investment into its products and is anticipating continued growth in the number of schools to which it supplies its MIS software.¹¹⁵
100. Taking this evidence in the round, the CMA believes that Bromcom will be a strong constraint on the Merged Entity, including in the supply of MIS software to state-funded primary schools in England.
- *Juniper, IRIS and Compass*
 - Juniper

¹⁰⁹ Annexes 033.12 (pages 3, 5 and 8); 033.15 (page 8); 033.2 (page 4); 033.3 (page 3); 033.11 (page 17); 033.12 (pages 5 and 8).

¹¹⁰ Annex 021.12 (pages 3) and 22 to 23.

¹¹¹ Annex 021.3, pages 1-3. [REDACTED] (Annex 033.3, page 3).

¹¹² Customer questionnaire responses ([REDACTED] and [REDACTED]).

¹¹³ Competitor questionnaire responses ([REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]).

¹¹⁴ For example, notes of call with third parties ([REDACTED]; [REDACTED]; [REDACTED]).

¹¹⁵ Competitor questionnaire response ([REDACTED]).

101. Juniper, which was created and is backed by private equity investor Horizon Capital, supplies a range of education software to schools in the UK and Ireland, including MIS, under its brand Juniper Horizons.¹¹⁶ In June 2020, Juniper acquired the MIS software provider Pupil Asset.¹¹⁷ Evidence seen by the CMA indicates that [redacted].¹¹⁸ Juniper also features on the following DfE-approved MIS frameworks: Everything ICT and G-Cloud 12.¹¹⁹
102. As at October 2022, Juniper had a share of supply in MIS software to state-funded schools in England of [0-5]% by schools and [0-5]% by pupils.¹²⁰ Since 2020, Juniper's share of schools has remained stable, with Juniper winning [redacted]% of schools switching provider and [redacted]% of schools switching from SES in the three years preceding October 2022.¹²¹ In particular, it is noted that Juniper won more schools than SES between 2021 and 2022.¹²²
103. [redacted]. [redacted].¹²³ [redacted].¹²⁴ SES' internal documents show that the Parties competed with Juniper to supply a trust of 29 primary schools in 2021, [redacted].¹²⁵
104. Generally, respondents to the CMA's customer questionnaire had a limited awareness of Juniper's MIS software offering. Nevertheless, of the customers that commented on Juniper, all said it was a good or very good alternative to the Parties for their primary schools.¹²⁶ One respondent to the CMA's competitor questionnaire indicated that Juniper was a moderate competitor to their business, one mentioned it as a weak competitor, while one did not mention Juniper as one of their main competitors.¹²⁷ Another competitor told the CMA that it competes against Juniper in tenders although noted that, in its experience, Juniper did not get through to the final

¹¹⁶ Horizon Capital's [website](#) and Juniper's [website](#).

¹¹⁷ [Juniper Education boosts its school management software offering with acquisition of Pupil Asset](#), 1 June 2020.

¹¹⁸ FMN, Tables 1-6; FMN, Annex 242; Juniper's response to competitor questionnaire. The CMA notes that as at the date of this decision Juniper does not advertise on its [website](#) a MIS software to secondary schools.

¹¹⁹ DfE's MIS comparison table available at: <https://www.gov.uk/government/publications/choosing-a-school-management-information-system-mis>.

¹²⁰ See Table 1.

¹²¹ Over the same period, Juniper accounted for a negligible number of schools switching to The Key, while only [redacted] school switched from The Key to Juniper (RFI4 Response, paragraph 3.1).

¹²² Annex 021.10, page 26.

¹²³ [redacted] (Annex 021.11, pages 9-15).

¹²⁴ For example, Annexes 021.12 (page 23), 033.11 (page 19), 124.1 (page 5).

¹²⁵ Annex 126.1, page 4.

¹²⁶ Customer questionnaire responses ([redacted], [redacted], [redacted]).

¹²⁷ Competitor questionnaire responses ([redacted], [redacted] and [redacted]).

stages.¹²⁸ Going forward, Juniper indicated to the CMA that it is making efforts to win new customers and retain its existing customers.¹²⁹

– IRIS

105. IRIS supplies a range of education software to schools in England. It is the largest provider of MIS software to independent schools in the UK through its iSAMS product, and in May 2021 IRIS launched a cloud-based MIS software for state-funded schools called Ed:gen.¹³⁰ IRIS Ed:gen features on the G-Cloud 12 national framework approved by the DfE.¹³¹
106. As at October 2022, IRIS had a share of supply of MIS software to state-funded schools in England of less than [0-5]% by schools and by pupils.¹³² In the three years preceding October 2022, IRIS won [x%] of schools switching provider and more schools than RM Integriss between 2021 and 2022. According to the switching data, no state-funded schools have switched between the Parties and IRIS, while the CMA is not aware of any tenders where the Parties competed against IRIS to supply MIS software to state funded schools. However, the CMA notes that IRIS only recently entered the supply of MIS software to state-funded schools and one competitor told the CMA that it competes against IRIS in tenders although noted that, in its experience, IRIS did not get through to the final stages.¹³³
107. [x].¹³⁴
108. As with Juniper, respondents to the CMA’s customer questionnaire generally had a limited awareness of IRIS’s MIS software offering for state-funded schools. Nevertheless, of the customers that commented on the IRIS Ed:gen product, a few said it was a good alternative for their primary schools while one said that it was a poor alternative.¹³⁵ A couple of respondents to the CMA’s competitor questionnaire indicated that IRIS was a weak competitor in the supply of MIS software to state-

¹²⁸ Note of call with competitor (Bromcom dated 14 March 2023).

¹²⁹ Juniper’s response to competitor questionnaire.

¹³⁰ FMN, Table 11.

¹³¹ DfE’s MIS comparison table available at : <https://www.gov.uk/government/publications/choosing-a-school-management-information-system-mis>.

¹³² See Table 1.

¹³³ Note of call with competitor (Bromcom of 14 March 2023).

¹³⁴ For example, Annexes 021.12 (page 23), 033.11 (page 19), 124.1 (page 5).

¹³⁵ Customer questionnaire responses ([x], [x], [x]).

funded schools,¹³⁶ while the remainder did not list IRIS as one of their main competitors.

109. Evidence seen by the CMA indicates that IRIS is actively expanding its customer base and investing in its MIS software. [§].¹³⁷

– Compass

110. Compass is an established MIS software provider to schools in Australia which launched its cloud-based MIS software offering in the UK in 2021.¹³⁸ Compass features on the G-Cloud 12 national framework approved by the DfE¹³⁹ and the results of the latest census (in January 2023) show that since winning its first school in late 2022, Compass has won an additional three schools.¹⁴⁰ The evidence available to the CMA indicates that [§] Compass has invested [§] the UK market.¹⁴¹ [§].¹⁴²

111. [§].¹⁴³ [§].¹⁴⁴

112. Only one customer contacted by the CMA was aware of Compass' MIS software offering. This customer told the CMA that Compass offers a similar MIS software to Bromcom, ESS and The Key.¹⁴⁵ Some respondents to the CMA's competitor questionnaire listed Compass as a competitor to their business, although one of them ranked it as a weak competitor as Compass is believed to have found it difficult to gain a presence in the UK market.¹⁴⁶

– Conclusion on Juniper, IRIS, and Compass

113. Taking this evidence in the round, the CMA considers that, in aggregate, Juniper, IRIS, and Compass will be a moderate constraint on the Merged Entity, including in the supply of MIS software to state-funded primary schools.

¹³⁶ Competitor questionnaire responses ([§] and [§]).

¹³⁷ IRIS' response to competitor questionnaire.

¹³⁸ FMN, Table 11; Compass' [website](#).

¹³⁹ DfE's MIS comparison table available at: <https://www.gov.uk/government/publications/choosing-a-school-management-information-system-mis>.

¹⁴⁰ [MIS MARKET MOVES SPRING 2023: The Key are now in a third of English state schools](#), 7 May 2023.

¹⁴¹ Annex 021.12 (page 3); [§].

¹⁴² [§].

¹⁴³ For example, Annexes 014(d) (page 44), 021.10 (page 22), 021.12 (pages 3 and 23), 021.13 (page 48).

¹⁴⁴ Annex 021.12 (page 3).

¹⁴⁵ Note of a call with customer ([§]).

¹⁴⁶ Competitor questionnaire responses ([§] and [§]).

Conclusion on competitive constraints

114. Based on the available evidence, the CMA believes that, in aggregate, there are sufficient alternatives to constrain the Merged Entity in the supply of MIS software to state-funded schools, including for primary schools, in England. In particular, the Merged Entity will continue to face a strong constraint from each of Bromcom and ESS. In addition, the Merged Entity will also be constrained by a number of smaller MIS software providers including Juniper, IRIS, and Compass, albeit to a more limited extent.

Conclusion on horizontal unilateral effects in the supply of MIS software

115. The CMA found that the supply of MIS software to state-funded schools in England is a relatively concentrated market, in which the Merged Entity will be the second largest player.

116. Despite being a viable alternative for state-funded primary schools, the CMA found that SES was presenting a weaker constraint on The Key (i) than implied by its share of supply and (ii) than that imposed by certain other MIS software providers (namely Bromcom and ESS). The CMA found that SES has had limited success in winning new customers in recent years and had not been competing head-to-head with The Key in tenders over the last three years, despite some degree of competitive interaction between the Parties pre-Merger. The CMA also has not seen any evidence indicating that any investments made by SES recently would have led it to become a greater constraint on The Key in the foreseeable future.

117. For the reasons set out above, the CMA also found that there appears to be sufficient alternatives to constrain the Merged Entity. The evidence received by the CMA in the course of its investigation confirmed that rival MIS software providers such as ESS, Bromcom, and (to a lesser extent) Juniper, IRIS, and Compass will continue to exert a sufficient competitive constraint on the Merged Entity.

118. In this case, on the basis of the available evidence, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of MIS software to state-funded schools in England.

119. However, the CMA notes that the outcome of one merger investigation is not an indication of the outcome of potential future merger investigations in the same sector.¹⁴⁷ The CMA will continue to review carefully any potential future relevant

¹⁴⁷ See [Ecolab Inc. v CMA \[2020\] CAT 2](#), paragraph 93.

merger situations in this sector and, depending on the evidence available at the time, will not hesitate to intervene if necessary to prevent an SLC.

Foreclosure of competing MIS software providers

120. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets, but which are nevertheless related in some way. For example, the products may target similar customers, or may be purchased alongside each other. These mergers raise the possibility that competition in one market may be indirectly affected by actions in the other.¹⁴⁸ The concern in these mergers is that the merged firm may foreclose its rivals by preventing them from accessing customers in one market using its strong position in another related market,¹⁴⁹ which could lead to higher prices or lower quality products for customers in the longer term if rivals become less effective competitors.¹⁵⁰
121. In this case and in response to concerns raised by third parties, the CMA has considered whether SES' market position in the supply of FMS software to state-funded schools in England may allow the Merged Entity to foreclose rival MIS software providers post-Merger through a bundling or tying strategy. In particular, third parties raised concerns that the Merged Entity could use what they described as RM Finance's strong position in the supply of FMS software in order to foreclose competitors who supply schools with MIS software.¹⁵¹
122. The CMA's approach to assessing conglomerate theories of harm is to analyse the ability of the Merged Entity to foreclose competitors, its incentive to do so, and the overall effect of the strategy on competition.¹⁵²

Ability

123. To assess whether the Merged Entity would have the ability to foreclose competing MIS software providers the CMA has considered:

¹⁴⁸ [CMA129](#), March 2021, paragraph 7.1(b).

¹⁴⁹ [CMA129](#), March 2021, paragraph 7.30.

¹⁵⁰ [CMA129](#), March 2021, paragraph 7.31.

¹⁵¹ Competitor questionnaire responses ([redacted] and [redacted]). In addition, another competitor submitted that Arbor's roll out of RM Finance to its school base, rather than relying on third party FMS software, will further strengthen what it called its 'dominant' market position in the supply of MIS software ([redacted] response to competitor questionnaire).

¹⁵² [CMA129](#), March 2021, paragraph 7.32.

- (a) Whether SES has market power in the supply of FMS software to state-funded schools in England;
- (b) Whether offering a combined FMS and MIS software product is feasible; and
- (c) Whether any foreclosure strategy would lead to rival MIS software providers being sufficiently deprived of sales such that they would become materially weaker competitors and would have no way to respond.

SES' position in the supply of FMS software

124. The Merged Entity is more likely to have the ability to foreclose competing MIS software providers if it occupies an important position in the supply of FMS software. If it does not, it ensues that any attempt to make customers purchase MIS software alongside FMS software may result in customers buying FMS software from rivals.¹⁵³
125. Table 2 below presents the Parties' share of supply estimates for FMS software to state-funded schools in England by number of schools in 2021/22.

Table 2: Shares of supply in FMS software to state-funded schools in England by number of schools (2021/22)

Provider	FMS share by schools (%)
ESS	[50-60]
IRIS	[10-20]
SES	[5-10]
Access	[5-10]
Bromcom	[0-5]
Civica	[0-5]
Other	[0-5]
Total	100

Source: FMN, Table 12.

Notes: FMS market share is based on Assessment, Recording and Reporting (ARR) reports for Academy schools and consistent financial reporting (CFR) submissions for LA-maintained schools in 2021/22, which is the latest available data.

126. The estimated shares data indicates that ESS is the largest provider of FMS software to state-funded schools in England with a share of [50-60]%. IRIS, SES, and Access have moderate shares and there are a number of smaller providers including Bromcom and Civica.¹⁵⁴

¹⁵³ [CMA129](#), March 2021, paragraph 7.33.

¹⁵⁴ The CMA notes that the Parties' share of supply estimates may understate the market position of third party FMS software providers based on evidence gathered directly from such providers. In particular,

127. The CMA has also considered whether there are narrower segments in which SES may have market power in the supply of FMS software to state-funded schools, in particular the supply of FMS software to LA-maintained schools. The CMA's investigation indicated that ESS, Access and Bromcom are alternatives to SES in this segment and that SES' share of supply in any other segment is unlikely to be materially different (or is potentially lower) than the share of supply described in Table 2.¹⁵⁵
128. Therefore, given the moderate share of supply of SES and the availability of alternative providers, the CMA does not consider that SES has market power in the supply of FMS software to state-funded schools in England. As such, the CMA considers that any attempt to make customers purchase MIS software alongside FMS software may result in customers buying FMS software from rivals.

Feasibility of a combined offering

129. Conglomerate effects are more likely to arise when the two merging parties offer products which are complementary or where customers have a preference to purchase products at the same time or from the same provider.¹⁵⁶
130. As a starting point, the CMA notes that MIS software interacts with a variety of complementary software such as payments, parental engagement and other types of software which may require or benefit from access to the data that is stored in a school's MIS software.¹⁵⁷
131. Evidence gathered during the CMA's investigation indicates that there is a degree of complementarity between MIS and FMS software.¹⁵⁸ Indeed, the CMA understands that there are some benefits to MIS and FMS software being integrated or interoperating, for example to transfer staff salary information. Additionally, the CMA

compared to SES, which supplies FMS software to [redacted] schools: (i) Access supplies FMS software to 2800 schools; (ii) Bromcom supplies FMS software to 400 schools; and (iii) Civica supplies FMS software to [redacted] schools (Access, Bromcom and Civica responses to competitor questionnaire). In addition, the CMA understands that SES' share of supply in FMS software is likely to be overstated as compared to shares of supply based on revenue as RM Finance is a cheaper alternative as compared to IRIS, Access, and Civica (Annex 014(d) (page 25)).

¹⁵⁵ Customer questionnaire responses ([redacted] and [redacted]); Note of call with competitors ([redacted] and [redacted]); Competitor questionnaire responses ([redacted], [redacted] and [redacted]); Annex 014(d) (page 26).

¹⁵⁶ [CMA129](#), March 2021, paragraph 7.33.

¹⁵⁷ [Montagu/ParentPay](#), paragraph 57.

¹⁵⁸ This complementarity is recognised in SES' internal documents, for example: Annexes 031 (page 16); 021.11 (page 9); 224.1 (page 5).

understands that the majority of schools in England purchase both FMS and MIS software.

132. The evidence relating to the extent to which customers of FMS software have a preference to purchase FMS and MIS software together is mixed:
- (a) For some providers, a high proportion of FMS customers also purchase MIS software from the same provider, although this varies across providers. In addition, every provider (for which the CMA was able to gather data) has a high proportion of MIS customers who do not purchase FMS software from the same provider (indicating that these customers have a demand for a standalone MIS software).¹⁵⁹
 - (b) Third party evidence indicates that some customers, namely LA-maintained schools, have a preference to buy MIS and FMS software together, and that this may increase over time.¹⁶⁰ In particular, one FMS software provider told the CMA that LAs are increasingly coming to market to replace ESS SIMS and FMS through a combined procurement process.¹⁶¹ This is also consistent with The Key's internal documents, [redacted].¹⁶²
 - (c) However, the tender data submitted by the Parties (which comprises all tenders the Parties were invited to or participated in) includes only [redacted] instances of customers jointly procuring MIS and FMS software between 2020 and 2022.¹⁶³
 - (d) The CMA also notes that The Key has been able to increase its share of supply in MIS software from [10-20]% to [20-30]% in the three years to October 2022, despite not supplying FMS software.¹⁶⁴ Likewise, absent the Merger, The Key forecasts that it would have continued to increase its share of supply in MIS software without an FMS software offering.¹⁶⁵
133. Taking this evidence in the round, the CMA believes that while some schools may have a preference to buy FMS and MIS software together, current behaviour indicates that a significant proportion of schools (including some LA-maintained

¹⁵⁹ FMN, paragraph 20.12 and footnote 231; competitor questionnaire responses ([redacted] and [redacted]).

¹⁶⁰ Competitor questionnaire responses ([redacted], [redacted], [redacted], [redacted], [redacted]).

¹⁶¹ Competitor questionnaire response (Access).

¹⁶² Annex 014(g).

¹⁶³ Annexes 023.1 and 023.2.

¹⁶⁴ More specifically, over the same period, The Key increased its share of supply in MIS software to LA-maintained primary schools from [5-10]% to [10-20]% (Annexes 241 and 242).

¹⁶⁵ Annex 021.15.

schools) do not. As such, there appears to be a material number of customers who purchase MIS software on a standalone basis and any attempt to make customers purchase MIS software alongside RM Finance may lead a significant proportion of customers switching FMS software provider.

Loss of sales by rivals

134. Finally, the CMA has also considered whether or not the Merged Entity could deprive competing MIS software providers of a substantial volume of sales.¹⁶⁶
135. The CMA notes that a very small proportion (approximately [X]%) of SES' RM Finance customers use Bromcom's MIS software and only one uses Juniper's MIS software.¹⁶⁷ On this basis the CMA considers that the Merged Entity would be unable to deprive Bromcom and Juniper of a substantial volume of their current sales as even if all of these MIS customers switched to the Merged Entity, Bromcom and Juniper would have a material number of other customers.
136. Additionally, the CMA notes that a number of competing providers, such as ESS and Bromcom, already supply a combined (and integrated) MIS and FMS software offering ([X]).¹⁶⁸ For MIS software providers that do not have a FMS software product, the CMA notes that these providers have typically been able to partner to offer a combined offering when required.¹⁶⁹
137. Therefore, the CMA believes that the Parties' competing MIS software providers are unlikely to be deprived of significant sales such that they become materially weaker competitors. In particular, the CMA notes that the Parties' closest competitors are able to offer their own combination of MIS and FMS software to mitigate any potential loss of sales.

Conclusion on ability and conglomerate effects

138. For the reasons set out above, the CMA believes that the Merged Entity would lack the ability to foreclose competing MIS software providers. As such, the CMA has not considered whether the Merged Entity would have the incentive to pursue such a strategy, or the effect of such a strategy. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of

¹⁶⁶ [CMA129](#), March 2021, paragraph 7.33(c).

¹⁶⁷ FMN, footnote 231.

¹⁶⁸ [X] (Annexes 33.10 and 021.11 (page 9)).

¹⁶⁹ Competitor questionnaire response ([X]); FMN, paragraph 18.6.

conglomerate effects in relation to the supply of FMS software to state-funded schools in England on any plausible basis.

BARRIERS TO ENTRY AND EXPANSION

139. 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.¹⁷⁰
140. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

THIRD PARTY VIEWS

141. The CMA contacted customers and competitors of the Parties. Some of the Parties' customers that responded to the CMA's merger investigation raised some concerns regarding the potential for the Merger to reduce the ongoing development of RM Integris or lead to Arbor, ScholarPack and RM Integris being consolidated into one product over time. However, the majority of third party respondents were either not concerned about the Merger or expressed positive views about it.
142. Third party comments have been taken into account where appropriate in the competitive assessment above.

¹⁷⁰ [CMA129](#), March 2021, paragraph 8.4.

DECISION

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

144. The Merger will therefore not be referred under section 22(1) of the Act.

Richard Flanagan
Director
Competition and Markets Authority
9 June 2023