

Case 51427 – Education Software Solutions Limited – the supply of management information systems to schools

Statement regarding the CMA’s decision to close an investigation on the grounds of administrative priority

The Competition and Markets Authority (the ‘**CMA**’) has closed its investigation under the Competition Act 1998 (the ‘**Competition Act**’) in the above matter (the ‘**Investigation**’) on the grounds that it no longer constitutes an administrative priority for the CMA.

For the avoidance of doubt this does not constitute a decision by the CMA as to whether the Chapter II prohibition of the Competition Act (the ‘**Chapter II prohibition**’) has been infringed.

The decision is addressed to Education Software Solutions Limited (‘**ESS**’), ParentPay (Holdings) Limited, and the undertaking of which ESS and PPH form part (the ‘**ParentPay Group**’).

The CMA’s decision to close the case on grounds of administrative priority does not prevent, pre-judge or fetter the CMA’s ability, if appropriate, to open an investigation under the Chapter II prohibition in future, or to take action using its other tools.

Background

In February 2024, the CMA received complaints about ESS’ objections, announced in December 2023, to the use of database back-ups of its management information systems (‘**MIS**’) software (known as ‘**SIMS**’) for the purposes of switching MIS supplier from several third parties including competitors, schools, multi-academy trusts and local authorities.

These objections were first communicated by ESS in guidance documents published on 21 December 2023,¹ followed by two blogs published in February 2024.² ESS stated that it was making these objections on the grounds that SIMS database back-ups contained ESS intellectual property and that their use infringed ESS' intellectual property rights.

On 14 May 2024, the CMA opened the Investigation because it had reasonable grounds for suspecting that:

- (a) ESS was dominant in the supply of MIS software to customers in England, Wales and/or Northern Ireland;
- (b) ESS had abused a dominant position by objecting to the sharing of, or granting access to, a back-up of a SIMS database for the purposes of schools switching MIS supplier; objecting to the use of a program/scripts to extract schools' data from a back-up of a SIMS database for the purposes of schools switching MIS supplier; and/or enforcing its position by instructing support units not to assist schools with (i) migration involving the sharing of a back-up of a SIMS database with a competitor; and (ii) the use of a program/scripts to extract schools' data from a back-up of a SIMS database (together, '**ESS' conduct**'); and
- (c) this conduct departed from competition on the merits and had the likely effect of restricting competition and/or resulted in the imposition of unfair trading conditions.

In the course of the Investigation, the CMA gathered evidence from ESS, competitors, schools, local authorities and other third parties.

Developments in the MIS market

Since opening the Investigation, there have been developments in the MIS sector:

- (a) There has been a considerable amount of switching between MIS suppliers in England, with the vast majority of schools that wanted to switch from ESS to a new supplier being able to do so notwithstanding ESS' conduct. As a result, ESS' share of supply of MIS to state-funded schools in England has fallen to approximately 46% of schools, while the

¹ [Guidance to customers extracting data from SIMS or FMS.](#)

² [MIS migrations – setting the story straight | ESS SIMS \(ess-sims.co.uk\)](#) and [MIS migrations: setting the story straight part 2 | ESS SIMS \(ess-sims.co.uk\).](#)

share of supply of its leading competitor, The Key Group, has increased to approximately 41%, despite ESS' conduct.^{3,4}

- (b) New methods have been developed by competitors and third parties to migrate schools' data using ESS' application programming interfaces ('**APIs**') and the SIMS report generator. These methods are less burdensome on schools and less error-prone than the options that were available to schools when ESS first objected to the use of database back-ups for the purposes of switching MIS supplier. Such methods are likely to be improved further in time to migrate schools that wish to switch to a competitor's MIS by March 2025.
- (c) In Northern Ireland, a wholesale switch from ESS to a different MIS supplier is expected to take place by March 2025.
- (d) In Wales, competition in the market is emerging, and the CMA considers that any barriers to switching in Wales are unlikely, going forward, to prevent schools from being able to switch from ESS to a new supplier.

Prioritisation assessment under the Competition Act

The CMA has reviewed the appropriateness of continuing the Investigation under Chapter II of the Competition Act given recent developments.

The CMA has regard to its published Prioritisation Principles at certain points in the life cycle of a project, when deciding whether it still warrants the continued commitment of resources. The CMA generally prioritises according to the strategic significance and impact of the work balanced against the risks and resources involved, and whether the CMA is best placed to act.

The CMA wants to achieve real-world impact for the people it serves.⁵ This includes ensuring that it is active across areas that are important to people, the education sector being one such important area.

³ CMA estimates based on number of schools, Summer (May) 2024 Department for Education census data.

⁴ Shares of supply calculated on the basis of number of pupils show a similar trend, with ESS' share falling to 51% and The Key Group's share increasing to 34%, Summer (May) 2024 Department for Education census data.

⁵ CMA Prioritisation Principles 30 October 2023 CMA188 ([Prioritisation Principles \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118118/Prioritisation-Principles-30-October-2023.pdf)), paragraph 3.5.

However, having regard to the market developments described above, including the degree of switching that has been observed notwithstanding ESS' conduct and the progress made in developing other means of switching from ESS to rival suppliers, the CMA considers that further investigation could have only a limited market impact.

The CMA has concluded that it is appropriate to close the Investigation on the grounds that it no longer constitutes an administrative priority. Nevertheless, the CMA is keen to ensure that the MIS market is and remains competitive and that schools are not put under any unnecessary burdens when they have chosen to switch supplier in relation to MIS or any other products or services.