

Completed acquisition by Wolseley UK Limited of Fusion Provida Holdco Limited

The CMA's decision on reference under section 22(1) given on 20 August 2014. Full text of the decision published on 08 September 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. Wolseley UK Limited (WUK) has acquired Fusion Provida Holdco Limited (Provida) (the parties) (the merger). The Competition and Markets Authority (CMA) considers that the parties have ceased to be distinct, that the share of supply test is met, and that accordingly it has jurisdiction because a relevant merger situation has been created.
2. The parties overlapped in the provision of specialist distribution services relating to certain categories of materials, namely polyethylene (PE) pipes, metering products, electrofusion (EF) fittings and valves used in the installation, maintenance and repair of gas utility networks and connections (Gas Utility Products) and the same categories of products used in the installation, maintenance and repair of water utility networks and connections (Water Utility Products) (collectively Gas and Water Utility Products). The parties source these Gas and Water Utility Products from upstream manufacturers and supply them primarily to contractors, but also directly to utility companies and other asset owners.
3. The parties also overlap in the hire, sale and repair of equipment used by contractors for the installation, maintenance and repair of utility networks and connections.
4. With regard to the provision of specialist distribution services, taking account of the evidence available to it, the CMA considers that the parties will continue to be subject to a variety of constraints in respect of both Gas Utility Products and Water Utility Products supplied to contractors, asset owners and customers seeking 'last-mile' services. The parties will face constraints from several sources, including alternative specialist distributors, direct sales from

manufacturers (which in many circumstances are capable of competing with the larger specialist distributors both within and outside of framework agreements), general builders' merchants (GBMs) and third party logistics providers. In addition, the parties are constrained by price setting framework agreements between (i) the asset owner and the manufacturer and/or (ii) the asset owner and the distributor or contractor, both of which are subject to open tenders within the market.

5. In respect of the parties' overlap in hire, sale and repair services, the available evidence suggests that, while the parties compete to provide these services, sufficient alternative suppliers remain in the market. The large majority of customers did not raise concerns. Further, there is little evidence to suggest a large number of customers have a strong preference to source hire, sales and repair services from the same supplier as specialist distribution services. In any event, the absence of competition concerns in specialist distribution means no concerns will arise in the supply of hire, sale and repair services together combined with distribution.
6. The CMA considers that the constraints in relation to each of the parties' overlapping activities, taken together, are sufficient to ensure that there is no realistic prospect of a substantial lessening of competition as a result of the merger.
7. This merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

Assessment

Parties

8. WUK, is a UK distributor of heating and plumbing products, including Gas and Water Utility Products, serving professionals in the construction industry through a number of trading brands, namely, Plumb Center, Parts Center, Drain Center, Pipe Center, Climate Center, Burdens, BCG, William Wilson and Integrated Services. Burdens¹ is its specialist below-ground drainage brand. In this decision references to WUK include Burdens and the other WUK businesses.
9. Fusion Group (FGL) is a privately owned company, active in the manufacture and supply of a range of pipes, cables, fittings and ancillary products, and pipe jointing equipment. FGL's products are primarily used to construct, maintain or

¹ Relevant revenues from WUK Drain Centre are also included where appropriate.

replace utility connections and networks. The UK distribution activities of FGL, consisting of the distribution of products and equipment manufactured both by FGL and by third parties, including Gas and Water Utility Products, are carried out by Provida. Provida is made up of three business divisions, operated through two trading companies, Fusion Provida UK Limited (FPUK) and Utility Power Systems (UPS). In the financial year 2013, Provida's UK turnover was £[~~8~~].

Transaction

10. WUK announced that it completed its acquisition of Provida on 1 April 2014. It acquired the entire issued share capital of Provida as well as the lease or assignment of properties currently used by Provida. These include FPUK's National Sales Office, National Distribution Centre, Hire & Repair facility, the UPS facilities in Chesterfield and Derbyshire and FPUK's eight regional depots.
11. Approximately 200 FPUK and UPS employees will also transfer to WUK, including the employees at the regional depots, national operational sales teams and employees at the Chesterfield National Distribution Centre.
12. Following the merger, Provida will have an ongoing trading relationship with FGL governed by supply agreements pursuant to which FGL will supply FPUK with products such as: EF fittings, PE pipes, pipe jointing equipment, tooling and associated spares, and use of FGL's asset management technology.

Jurisdiction

13. As a result of this merger, WUK and Provida have ceased to be distinct. The parties overlap in the provision of specialist distribution services for Gas and Water Utility Products sold to contractors and asset owners in the UK, with an estimated share of supply of all utility products to contractors via specialist distributors of approximately [50 to 60]%. In addition, the parties submitted that the share of supply test is met in relation to the supply of products to civil engineering, utilities and construction professionals by wholesalers in the UK, in relation to which the parties have an estimated [20 to 30]% share of supply. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
14. The initial period for consideration of the merger started on 25 June 2014, and the statutory deadline for a decision is 20 August 2014.

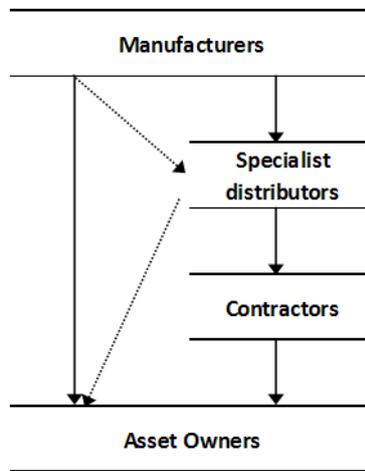
Background

15. The parties are active in the provision of specialist distribution services relating to Gas and Water Utility Products. The products are sourced by specialist distributors from manufacturers and sold to both contractors and asset owners (such as utility companies²). Specialist distributors can add value in the supply chain through, for example, product expertise, the range offered, and the timing or storage of deliveries. These attributes may be particularly valued by some customers or with respect to certain projects, for example contractors working on 'last-mile' utility projects. Contractors manage (and in some cases are involved in the planning and design of) building, repair and maintenance projects and work on behalf of asset owners.
16. A number of alternative methods for obtaining the Gas and Water Utility Products exists, dependent on: the requirements, expertise and complexity of the customer and project; the contractual arrangements in place for the procurement and the building or repair and maintenance activity; and the flexibility given to different agents to source (and, in some instances, to specify) the product.
17. In some instances, asset owners can source directly from (or have a benchmarking framework agreement in place with) manufacturers, sometimes facilitated by logistics providers. In other instances, sales will flow through a more incremental supply chain, which can include sales by manufacturers through distributors to asset owners and sales by manufacturers through distributors and then contractors to asset owners. The more incremental supply chain (including distributors and contractors) may involve additional price mark-ups on the product at each additional layer of the supply chain, but customers may still choose to use these additional services given the value they can add.
18. The consequence of the diversity of projects and customers for which the products are being used is that there is a wide range of alternative sales channels that could potentially be used to obtain the products, either through pricing frameworks or through more ad-hoc sales:
 - a. Asset owners can source directly from manufacturers (possibly through a third party logistics provider), through a distributor, or through a contractor.

² The principle focus in this case, as outlined below, is on sales to utility companies (subject to long-term price controls set by regulators OFWAT and Ofgem) but asset owners may include developers of residential, commercial and industrial properties (known as 'last-mile' utility projects).

- b. Contractors, working on behalf of asset owners, can source directly from manufacturers³ or from distributors.

Figure 1 – Illustration of the supply chain



19. In addition to the supply chain illustrated above, asset owners and/or contractors can source directly from manufacturers through third party logistics providers and, in a more limited set of circumstances, from GBMs.
20. In assessing the merger, the CMA has considered the effects of a loss of competition between the merging parties, two specialist distributors. To the extent that any effect arises, it would likely manifest itself through a diminished competitive offering by specialist distributors of the value added service they offer. As indicated above, there are alternative means of obtaining the Gas and Water Utility Products and, as assessed in detail below, different supply arrangements may represent substitutes for customers. However, the availability of alternative supply arrangements in principle does not preclude the possibility of (i) a sufficient preference or need for specialist distributors and/or (ii) the potential absence of alternative distribution options for certain customers such that the merger may give rise to unilateral effects. This has been the focus of the investigation.

³ The parties submitted that the majority of utilities materials spend in the UK is currently placed with manufacturers by asset owners and their contractors (either directly or through framework agreements between manufacturers and asset owners or contractors). In these situations, the asset owner typically enters into a framework agreement directly with product manufacturers, which determines the price of the relevant materials as delivered at site. Distributors or third party logistics companies then manage the logistics for stock storage and delivery, charging either a management fee to the asset owner or a small margin on materials cost prices.

Product frame of reference

Categories of utility products

21. The parties described Provida as offering a one-stop-shop for contractors covering the full range of utilities, gas, water, electricity and telecoms. WUK, on the other hand, principally provides Gas and Water Utility Products. The parties overlap in the supply of Gas and Water Utility Products and services for gas and water utilities.⁴ The four overlap Gas and Water Utility Products are:
- PE pipes
 - Metering products
 - EF fittings
 - Valves
22. The CMA considered whether it would be appropriate to define relevant frames of reference for individual types of products (for example PE pipes) or alternatively for product categories (for example Water Utility Products). It may be appropriate to aggregate several individual products into a broader frame of reference if there are sufficient customers requiring provision of the range of products as a bundle and those customers have a strong preference to purchase these services from the same supplier.⁵
23. The Parties stated that customers⁶ will often purchase a bundle in a single transaction. Although some third party comments referred to purchases of specific categories of product (eg pipes and fittings) the majority referred more broadly to, for instance, Water Utility Products or Gas Utility Products.
24. Based on the evidence obtained from the parties and third parties, the CMA has concluded that it is not necessary to examine individual products

⁴ The parties submitted that there was [§] overlap in the electrical and telecoms segments. In the former, the Provida business division, UPS, is described as an electricity infrastructure specialist. It primarily supplies cable and accessories for building electricity networks. Its sales of £[§] in [2013] included electrical cables (£[§]) electrical accessories such as joints, earthing, link boxes, terminations (£[§]), and electrical and fibre ducting (£[§]). WUK, by comparison, generated £[§] from sales to electrical utilities or contractors working on electrical utility projects. The [§] of these sales ([§]%) were of [§] which the parties state is used for a wide range of general purposes. As a result, there is [§] overlap between the parties and this was confirmed by third parties. In the latter, the UPS sub division UFS distributes fibre optic cables and ancillary products. It sold £[§] of fibre cables and fibre ducting in [2013] for use in building telecoms networks. WUK has [§] in the telecom sector which is [§]. As a result, there is [§] overlap between the parties and no third party pointed to them being active competitors in the telecoms segment. Neither of these segments are considered further.

⁵ More specifically, if customers would not switch from purchasing the bundle to purchasing separately if the price of the bundle, sold by a hypothetical monopolist, were to increase.

⁶ Customers include contractors, and operators/developers of utility networks on sites.

separately for the purposes of this decision⁷ but has instead focused on the specialist distribution of Water Utility Products and Gas Utility Products.

25. The CMA considered to what extent the two main categories of products (Water Utility Products and Gas Utility Products) would be appropriately assessed separately or together. Some customers are active in the gas sector only or the water sector only and will therefore only require products from one of the categories. While other customers are active across both water and gas, and will source across the range of Gas and Water Utility Products, customer views were mixed, with some referring to Water Utility Products and Gas Utility Products separately and others not distinguishing between them. Some third parties pointed to different competitive conditions – and competitive constraints on the parties – across each of the two categories. As a result, the CMA has considered it appropriate to assess the supply of Gas Utility Products and the supply of Water Utility Products separately.

Distribution and other sourcing channels

26. The CMA also considered the extent to which the market can be delineated by the sales channels through which the Gas and Water Utility Products are sold. Gas and Water Utility Products can also potentially be distributed to, or purchased by, contractors and asset owners by:
- a. general builders merchants (GBMs)
 - b. 3rd party logistics companies
 - c. directly by manufacturers.
27. These different supply channels are discussed below.

⁷ The CMA considers that examining the products separately or together has no material impact on its competitive assessment, as the assessment for each product appears to be the same as that for the range of products for either water or gas utilities. Where products are sold individually, it may be the case that customers can more easily source direct from the manufacturer (as there is no incremental benefit from the range offered by the specialist distributor) However, evidence suggests that, in many of these cases, the customer has chosen to source from, and may have a strong preference for supply from, the specialist distributor due to other factors, for example, the timeliness with which the distributor can deliver (eg if pipes need to be laid in sequence). Accordingly the incremental value added by the specialist distributor extends beyond just offering a range of products. While the different objectives driving the preference for specialist distributors (reflecting the additional value added by them), as opposed to purchase direct from manufacturers, may still result in different propensities to switch, based on the evidence available the CMA does not currently consider that such distinctions materially affect the competitive assessment and so assesses the products together in the category bundles as defined. The constraint from sourcing directly from manufacturers is considered in detail below.

General builder's merchants

28. The parties submitted that GBMs offer a credible alternative to supply by specialist distributors particularly for lower-volume or spot purchases of less specialist products. However, only a limited number of customers who responded to the CMA's inquiries thought that they would switch to a GBM if specialist distributors raised their price by 5%,⁸ those that would not switch describing GBMs as:
- relatively expensive compared to specialists
 - not carrying as extensive a range or levels of stock
 - lacking expertise
29. Based on these third party comments the CMA does not consider that the evidence available points to supply from GBMs being a sufficient constraint on supply from specialist distributors to be included in the relevant frame of reference. However, given that a limited number of third parties said that they would switch to a GBM, this supply channel is considered further in the competitive assessment section below.

Third party logistics providers

30. The parties submitted that third party logistics providers have a significant and growing role in distribution in this sector, and that, in particular, specialist logistics providers such as CEVA⁹ and DHL¹⁰ are effectively able to replicate the parties' service offering for many customers.¹¹ They have [X]. The parties further submitted that supply arrangements through third party logistics

⁸ This small but significant non-transitory increase in price (SSNIP) applies to the total value of the product sold by distributors. However, the value added of a distributor represents only a small proportion of this. The CMA notes that what constitutes a 'small but significant' price increase should correspond to a significant loss of competition caused by the merger and is dependent on the sector and the role of the merger parties in the sector. In this case, the theory of harm as outlined below is of a reduction specifically in the incremental value added by a specialist distributor (for example, a deterioration in the quality of the additional expertise or an increase in the price premium paid for such expertise over sales that do not involve similar advice). As a result, the CMA considers that a more appropriate SSNIP may be lower than 5% such that customer switching that takes place on the basis of a 5% SSNIP may overestimate the switching that would take place to GBMs (and to third party logistics firms and direct sourcing from manufacturers). Such an approach may overestimate the extent of these constraints and thus underestimates the likelihood of unilateral effects arising from the merger. In any case, in the absence of sufficient switching in response to a 5% SSNIP, the constraint from GBMs (and third party logistic suppliers) has no impact on the competitive assessment below.

⁹ CEVA manages logistics and stores (offering an integrated procurement and inventory management service) for large utilities customers. It has operated in this sector globally for 13 years, and in the UK it currently holds contracts with E.ON UK, Anglian Water, United Utilities, EDF Energy, Electricity North West, Wales and West Utilities, and Northern Gas Networks.

¹⁰ DHL has a very significant presence in utilities, in particular through its logistics contract with National Grid, which has an estimated value of £100 million.

¹¹ The parties gave as an example National Grid utilising a third party logistics provider.

providers have become more prevalent in recent years, as utility companies seek more innovative ways to manage their supply chain and increasingly outsource the logistics functions that have traditionally been performed in-house.

31. However, despite the parties' submission, the CMA did not receive sufficient evidence that the services provided by these third party logistics providers were sufficiently substitutable with the overlapping activities of the parties with regard to services to contractors for them to be included in the same frame of reference. Only a limited number of contractors that responded to the CMA's inquiries thought that they might switch to a logistics company if specialist distributors raised their prices.
32. The CMA notes that third party logistic providers may be able to partly replicate the parties' services with regard to asset owners. As such, they may provide a constraint on the actions of specialist distributors with regard to services to asset owners.
33. Further, given that some contractors would switch to a third party logistics provider for some contracts in the face of a price rise by specialist distributors, the CMA considers this supply channel further in the competitive assessment section below.

Direct from the manufacturer

34. The parties submitted that the majority of spend on utilities materials in the UK is currently placed with manufacturers by asset owners and/or their contractors (either directly or through framework agreements between (i) asset owners and manufacturers and (ii) asset owners and distributors or contractors). Further, the parties submitted that even a large proportion of the parties' own sales are delivered directly to the asset owner or contractor by the manufacturer despite the order being placed with the distributor. Direct supply from manufacturers was considered by the parties to be a viable option for all types of customer and for the majority of orders.
35. The parties submitted that direct supply of large volumes can act as a constraint even where a customer's immediate requirement is only for a smaller volume. For instance a customer may be able to purchase a larger volume by virtue of having existing storage and distribution facilities or they could develop the capability in future. Even where the customer does not have storage

facilities, manufacturers would be able to service these smaller orders using a 'milk round' delivery service, according to the parties.¹²

36. Third party views were mixed, several asset owners/contractors confirmed that they would switch to direct supply from manufacturers for certain types of contracts as an alternative to purchases from specialist distributors. Given third party views this supply channel is considered further in the competitive assessment section below.

Hire, sale and repair

37. The parties also provide hire, sale and repair services for a range of machines and accessories related primarily to PE pipe jointing and the installation of utility infrastructure networks. The CMA has not needed to conclude on whether it would be appropriate to define separate frames of reference in relation to hire, sale and repair for the reasons set out below.
38. The CMA notes that both distribution services and hire, sale and repair services may be, and commonly are, purchased by the same customers. The purchase of these services is typically dependent on the preceding purchase of the pipes, fittings, valves and meters (for the installation of which the machines are necessary) and so the hire, sale and repair of machines may be secondary to the distribution service. The CMA therefore considered whether it would be appropriate to define a frame of reference that encompasses both.
39. The parties submitted that customers tend to purchase these services separately. Nevertheless, third party comments indicated that some customers may have a preference to purchase both services from the same supplier, or to treat hire sale and repair services as secondary to distribution services.

Conclusion

40. With regard to distribution, the CMA considers that the relevant frame of reference is the provision of specialist distribution services relating to the Gas and Water Utility Products to contractors and assets owners. The CMA considered that it may be appropriate to consider Gas Utility Products and Water Utility Products separately. The CMA leaves open whether direct supply from manufacturers either separately or in combination with a third party logistics provider should form part of the same frame of reference. These constraints are considered as part of the competitive assessment.

¹² This is supported by [GPS' website](#).

41. With regard to hire, sale and repair, the CMA considers that it may be appropriate to define a market encompassing distribution and hire, sale and repair services together. As a result, the CMA has considered hire, sale and repair service both separately and together alongside distribution. However, the CMA has concluded that if no competition concerns arise in the distribution of Gas and Water Utility Products, no competition concerns arise in the distribution and hire, sale and repair service together because the evidence from some third parties suggests that there are a greater number of suppliers of hire, sale and repair services than there are of distribution services.

Geographic frame of reference

Distribution

42. The parties submitted that, although there are regional suppliers, due to the existing constraints from national competitors, local variations in competition were not significant. Therefore, in the parties' view, the merger should be assessed on a national frame of reference.
43. A number of customers told the CMA that they collected (at least some) purchases from the parties' depots and several customers told the CMA that location was a factor in their choice of supplier. However, all customers that responded to the CMA rely to some, and often a large, extent, on Gas and Water Utility Products being delivered by the parties rather than being collected from their depots.
44. The parties and third parties indicated that national coverage can be provided through a limited number of depots in the supply of Gas and Water Utility Products. For example, Provida offers a national services from just six depots, each of which have wide 80% catchment areas of between [X] miles for delivered sales. There are examples of other specialist distributors that provide national coverage from a relatively small number of depots and regional distributors that serve a wide region from just one depot.
45. The CMA has taken a cautious approach and assessed the merger on a national basis, taking account only of national players (that is, focussing on those suppliers that can supply across Great Britain) given that in any local area, these national players will be a potential supplier. The CMA notes that there may be additional local or regional players. However, if no concerns arise nationally, it is not plausible that concerns would arise locally, as the additional players present locally or regionally would result in greater constraints on the parties in those areas. Accordingly the CMA assesses the impact of the merger at a national (GB) level.

Hire, sale & repair

46. The CMA has assessed the supply of hire, sale and repair for a range of products on a national frame of reference, as it has not been necessary to conclude whether it may be appropriate to define local or regional markets for the reasons set out above.

Counterfactual

47. The CMA assesses the merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a different counterfactual.¹³ In this case, there is no evidence supporting a different counterfactual, and the parties have not put forward arguments in this respect. Therefore, the CMA considers the pre-merger conditions of competition to be the relevant counterfactual.

Competitive assessment

Horizontal unilateral effects

Distribution

48. The parties are active in the provision of specialist distribution services to contractors and assets owners for Gas and Water Utility Products. Their proposition is to add value in the supply chain – through, for example, their expertise, range of products, timely delivery – over supply that is direct from manufacturers or from a third party logistics provider. The CMA has therefore considered the extent to which the loss of competition between the parties may give rise to a deterioration in this incremental value adding service, relative to that which would have prevailed absent the merger (this may be through an increased price or reduced service such that the actual value added is lessened). In its assessment, the CMA has examined competition between specialist distributors and has also examined the ability of contractors (and asset owners) to move away altogether from the value added proposition of

¹³ See [Mergers Assessment Guidelines](#), paragraph 4.3.5 *et seq.*

distributors (and, for asset owners, the value added proposition of distributors and contractors together) to obtain the products and services by other means.

Share of supply

49. The parties estimated they had a combined share of supply of all products sold to contractors servicing utility projects of [15 to 25] %. This includes supply by manufacturers, specialist distributors, third party logistics providers and GBMs. The parties estimated that the total value sales is £[~~£~~] annually.
50. The CMA considered whether it would be appropriate to assess the specialist distributor sales channel separately. In this sales channel the CMA estimates that the parties would account for around [50 to 60] % of all sales made by specialist distributors to contractors.
51. The parties submitted that in respect of the key overlap Gas and Water Utility Products, they had no reason to believe that their share of supply to contractors would be any higher than [15 to 25]%. Provida earned £ [~~£~~] and WUK earned £[~~£~~] from sales of these products.¹⁴
52. Third party comments are consistent with WUK and Provida accounting for a high share of supply of Gas and Water Utility Products to contractors by distributors. Some third party comments also indicated that the parties have a higher share of supply with respect to Gas Utility Products. The CMA considers that these comments, together with the estimated shares of supply for the specialist distribution channel, point to *prima facie* concerns that the merger may give rise to unilateral effects in the supply of both water and Gas Utility Products.
53. Given these *prima facie* concerns, the CMA has considered evidence on the extent of competition that would be lost between Provida and WUK, and the strength of remaining constraints on the parties' behaviour, including from rival distributors, direct sales from manufacturers, third party logistics providers, GBMs and price setting framework agreements between (i) the asset owner and the manufacturer and/or (ii) the asset owner and the distributor or contractor.

¹⁴ Provida's sales of the overlap Gas and Water Utility Products are estimated to be [~~£~~] between those for the water segment and those to the gas segment. WUK estimated that, of sales of the overlap Gas and Water Utility Products, around £[~~£~~] were to the water segment and £[~~£~~] were to the gas segment.

Closeness of competition

54. The parties submitted that in practice, there was [redacted] between WUK and Provida, as each has a different business model and offers a materially different competitive proposition to its customers. WUK, through its Burdens brand, is primarily a heavy-side logistics expert, while Provida acts primarily a 'one-stop shop' for contractors undertaking projects covering a full range of utilities. This, the parties submitted, is reflected in the scale of Burdens' logistics operations; with its national network of 37 sites, which has been developed into a [redacted].
55. In contrast, the parties submitted that Provida is focused on its offering as a specialist distributor of products across all utilities: water, gas, electricity and telecoms. It does not have the same significant logistics capability or expertise as WUK, distributing nationwide from six sites [redacted]. Therefore, whilst WUK generates approximately £[redacted] of utility-related sales through logistics-based partnerships with asset owners, Provida [redacted], according to the parties, and [redacted].
56. The parties further submitted that the vast majority of their respective sales relate to materially different products. They submitted that WUK sell a wide range of below-ground drainage products, which are deployed in end-uses as diverse as housing developments, roads, rail and utilities, reflecting the wide scope of its customer base's operations. In contrast, they submitted that Provida only sells utility products.¹⁵ In support of their submission that they are not close competitors, the parties pointed out that their respective sales of the overlap Gas and Water Utility Products listed above as well as electric cables and accessories account for a [redacted] proportion of WUK's sales ([redacted]%) than Provida sales ([redacted]%). There is also a limited overlap between the parties' top 100 customers (revenues from these overlapping customers amounting to £[redacted]).
57. The CMA considers that these facts are consistent with each company having a different overall focus.
58. Nevertheless, the majority of customers who responded to the CMA's inquiries said that they were customers of both Provida and WUK (either Burdens or WUK Drain Centre) for the overlap Gas and Water Utility Products. The majority of distributors that responded told the CMA that they considered the

¹⁵ The parties submitted that while some utility products may be used in related applications, such as irrigation or civil engineering, this is not the focus of Strachan's business, unlike WUK's Burden division.

parties to be close competitors in the supply of these products, for both gas and water.

59. The CMA's market investigation showed that around half of the contractors that responded did not consider that their negotiating position would be significantly affected (or they were unsure of the impact of the merger). Several of these listed a range of alternative distributors from which they could obtain utility products.¹⁶ For example, one contractor specifically stated that although the parties are a 'major' part of the PE pipe and fittings sector there was still 'significant competition through other suppliers and manufacturers'. Another contractor referred to the fact that several other distributors are nominated on most frameworks, and two referred to the possibility that other distributors could grow in response to the merger. One contractor referred to the volume of other products they purchase from WUK as giving them negotiating strength. Comments generally applied to both Gas and Water Utility Products.
60. Around half of the contractors that responded said that the merger would reduce their negotiating strength. Nevertheless, most of these contractors named other distributors that could supply utility products. Some indicated that they had used alternative specialist distributors recently. Conversely, some contractors noted that, in their view, there were either no other distributors that they could use or that the alternatives were not as good in terms of, for instance, stock range, lead time and prices. However, some of those concerned about their negotiating power referred to the possibility of obtaining the overlap Gas and Water Utility Products direct from manufacturers (see below).
61. Taking all of the evidence into account, the CMA considers that the parties are competitors in the provision of specialist distribution services relating to the overlap Gas and Water Utility Products to contractors and assets owners. The parties may be closer competitors for those customers (or individual projects) where the incremental value added by a specialist distributor is greatest. This added value may relate to the relatively wide range of specialist stock they may have available at short notice, their technical knowledge of the water and gas sector, and/or willingness to deliver small volumes within narrow delivery windows.
62. The CMA therefore assessed the strength of remaining constraints that would continue to act on the parties, including from other specialist distributors, manufacturers supplying to customers directly, third party logistics providers, GBMs and price setting framework agreements between (i) the asset owner

¹⁶ Some also said that they would purchase these products through other sales channels if prices charged by specialist distributors rose by 5%, including via direct supply. This is considered further below.

and the manufacturer and/or (ii) the asset owner and the distributor or contractor.

Constraints on the merging parties

63. The parties submitted that the overlapping Gas and Water Utility Products are delivered to either the contractor or the asset owner via several alternative channels, for example via other specialist distributors, manufacturers directly and third party logistic providers and that such multi-sourcing acted as an effective constraint on the parties.

Constraints from other distributors

64. The CMA assessed the constraint the parties face from alternative specialist distributors. The CMA has assessed a number of sources of evidence to consider this constraint, including the parties' internal documents, quote and tender data, and the responses from third parties.

65. The parties submitted that there were at least seven specialist distributor brands which were owned by four groups,¹⁷ as well as five larger independent specialist distributors¹⁸ and at least 16 other small independent specialists.¹⁹ The CMA contacted the competitors identified by the parties. From those identified as national competitors by the parties, three that responded to the CMA's inquiries had sales of at least £4 million, [REDACTED] for the overlap Gas and Water Utility Products, which indicates that they are credible alternatives for customers.²⁰ From the 16 regional competitors identified by the parties two [REDACTED] of those that responded had sales of around £2 million for the overlap Gas and Water Utility Products, while one of these [REDACTED] anticipated picking up new customers as a result of the merger. This distributor said that with or without the merger they anticipated that the value of their sales for the overlap Gas and Water Utility Products would increase from around £2 million currently to around £4 million within the next year or so.

66. The parties supplied WUK's [REDACTED] data and highlighted [REDACTED] instances where a competitor was named.²¹ However, the CMA notes that the number of these

¹⁷ Travis Perkins (Keyline and BSS brands), Grafton (PDM, and Civils and Lintels brands), Saint Gobain (Ashworths and Frazer brands), and JDPipes (part of the Tessengerlo Group).

¹⁸ Plaspipes, Continental, R2M, MPS and Westwood Pipelines.

¹⁹ Civils & Drainage Supplies Ltd, FPP Scotland, Total Pipeline Solutions, Phoenix Pipeline Solutions, Smith Brothers Stores, Preston Industrial Plastics, Collister and Glover, Forward Builders' Supplies, Construction Site Solutions, IPS Flow Systems, Coopers, FWP, Rouden Pipetek Ltd, Rudridge, Essex Groundwork, and SDE.

²⁰ Although [REDACTED] did not consider that they would be used by multi-utility contractors.

²¹ These competitors were: [REDACTED].

competitor mentions is small compared to the large number of entries within the [X] and [X] overall.²² Some competitors considered as ‘key’ by WUK were only mentioned [X] overall in WUK’s [X]. Given the potential number of customers²³ and likely number of enquiries/purchases that they make (some third parties indicated that they make enquiries with distributors on a regular basis) the CMA considers that the small number of references to rivals in these sources may not capture fully or even to a large extent the constraints facing WUK in the supply of Gas and Water Utility Products to contractors.

67. The parties also submitted [X] data from Provida but, the parties acknowledge, [X]. It has therefore been difficult to place weight on either parties’ [X] or [X] to gauge relative closeness of competition between Provida and WUK or relative to other rivals.
68. Over half of the third parties that responded to the CMA’s market testing indicated that there were at least three alternative suppliers,²⁴ in both Gas and Water Utility Products, and some of these were mentioned by several third parties: for instance seven contractors said that Frazers would be an alternative supplier of the overlap Gas and Water Utility Products and six said that JD Pipes would be an alternative. Likewise, PDM was identified by customers as an alternate supplier. Despite these numerous mentions of other distributors by some customers, not all agreed. Some customers said that they may have a weaker preference for these alternatives, citing reasons such as: the alternative firms do not supply gas mains, fittings or meters; the smaller companies tend to have longer lead times and higher prices; some do not have the same geographic coverage or do not offer buying terms as good as those offered by Provida or WUK; or that other firms only offer a partial solution in terms of product range and/or geography.
69. Although some third parties considered that alternative distributors may not supply the full range, others suggested that they could multi-source the overlap Gas and Water Utility Products across a range of distributors. The internal documents supplied by Provida also showed examples of customers seeking quotes from a range of competitors for specific products or projects.
70. Nevertheless, the parties’ [X] illustrate the competitive interaction that occurs with [X] and other competing distributors. [X].

²² For instance WUK provided details of around [X] for utility projects and over [X].

²³ Provida reportedly serves around [X] contractors and WUK potentially a similar number.

²⁴ Several customers listed manufacturers as well as regional distributors. The CMA does not consider that excluding manufacturers would significantly change this overall result. Further, references to manufacturers is, in any case, consistent with the CMA conclusions set out at paragraph 100 on the combined constraint that the parties will continue to face.

71. The parties provided two reports that had been prepared for WUK following WUK's acquisition of Burdens in 2012, namely a [redacted] and [redacted] report, which [redacted]. However, since these documents were prepared, the Burden's and Drain Centre arms of WUK have been re-organised so that Burden's is now active in the supply of below-ground drainage products, civil engineering and building materials to utilities, civils and construction professionals. Given the timing of these reports, it is not clear to what extent these reports describe the competitive dynamics relating specifically to the specialist distribution of the overlap Gas and Water Utility Products to contractors. Therefore the CMA is not able to place much weight on the absence of references to Provida (which the CMA notes has been widely considered by third parties as WUK's closest competitor) or to references to closeness of competition with other distributors such as [redacted].
72. The parties also provided internal [redacted] documents. These contained multiple references to the parties quoting against and in some cases losing to a wide range of distributors for example, [redacted].²⁵ The CMA notes that the quotes in these documents may relate to a wider range of products or projects than just those concerning the overlap Gas and Water Utility Products listed above. The CMA understands that the parties will receive a potentially wide range of customer demands which will vary project by project. The evidence from the [redacted] documents tends to support the fact that a range of distributors appear able to respond to the requirements of a wide range customers.
73. The CMA also assessed whether smaller contractors or smaller projects which related to 'last-mile' utility connections may have fewer alternative providers post-merger. This is because some third parties indicated that the added value²⁶ provided by a specialist distributor may be relatively more important to contractors working on 'last-mile' utility projects.
74. The parties identified instances where Provida provided quotes to supply the overlap Gas and Water Utility Products, specifically for projects that related to 'last-mile' utility projects. These examples included Provida quoting against and in some cases losing such work to distributors, including [redacted]. The range of projects that these quotes related to was also very wide. It included projects for: [redacted].

²⁵ Although the CMA notes that [redacted].

²⁶ The relatively wide range of specialist stock they may have available at short notice, their technical knowledge of the water and gas sector, willingness to deliver small volumes within narrow delivery windows and iteratively (eg if pipes need to be laid in sequence).

75. WUK and Provida also separately provided additional examples, although, in the time available, the CMA has not been able to fully verify these. Nevertheless, WUK identified examples in 2014 where it has competed to supply the overlap Gas and Water Utility Products with respect to 'last-mile' utility projects such as those relating to a [REDACTED]. These orders were lost to [REDACTED].
76. Provida also identified further examples in 2013 and 2014 where it faced competition for orders supplying the overlap Gas and Water Utility Products relating to contractors that provide services including those relating to 'last-mile' utility projects. They state that for such clients they faced competition from [REDACTED].
77. The parties also put forward Keyline as a significant competitor. However, [REDACTED] customers generally did not identify Keyline as a credible alternative to the parties. The CMA, therefore, has not been able to place weight on Keyline as a significant competitor.
78. In summary, the evidence available suggests that there are a number of other specialist distributors that compete with the parties and will continue to provide a competitive constraint on them post-merger for example [REDACTED].

Constraints from sales direct from the manufacturer

79. The parties submitted that manufacturers supply the majority of both Gas and Water Utility Products directly to utility assets owners or their contractors, delivering either direct to site or into the storage facilities of the contractor or asset owner. In addition, a large proportion of sales placed with distributors are also delivered direct by manufacturers.
80. The parties highlighted, in the Provida [REDACTED], examples that show competition with manufacturers [REDACTED] for 'last-mile' utility projects in particular. These internal documents described an instance in May 2013 where Provida [REDACTED]. They ultimately [REDACTED].
81. Although the CMA was unable to verify these instances in the time available, Provida also provided a further recent example where it faced competition from manufacturer [REDACTED].
82. The parties submitted that the key manufacturers in this sector include GPS, Radius, Westwood, Viking Johnson, AVK, GF Piping Systems, Saint Gobain, and Jindal Sigma, as well as the retained manufacturing activities of the Fusion Group. In addition to their manufacturing capabilities, some manufacturers are also active in distribution, for example:

- Saint Gobain, a vertically integrated manufacturer and distributor.
 - Radius, which both manufactures pipes and supplies pipeline installation and maintenance services, and also holds stock in five regional depots allowing it to supply either larger or smaller quantities to its customers.
 - Westwood Pipelines, which manufactures PE pipes and fittings, distributes its own products and acts as the exclusive UK distributor for Egeplast products imported from Germany, as well as distributing Georg Ficsher products.
83. The parties submitted that direct supply from manufacturers poses a direct constraint on the merged entity as both parties will compete with manufacturers for the majority of orders. The parties stated that they consider that direct supply from manufacturers was a viable option for all types of customer and for the majority of orders; indicating that direct supply of large volumes would act as a constraint even where a customer only requires a smaller volume, if in those instances the customer has existing storage and distribution facilities or could develop the capability in future.
84. The parties also submitted that, for smaller orders or where the customer did not have storage facilities, manufacturers can service these orders using a ‘milk round’ delivery service. For example, the GPS web site²⁷ states that it will *‘generally offer free delivery to our account customers via our “milk round” delivery service.’*
85. Therefore, the parties submitted, direct supply is viable for the bulk of their sales, and they submitted for the majority of their customers, and it would not be possible to identify those orders where direct supply was not viable in order to increase prices to these captive customers, since it would be impossible to predict which orders these would be and that identifying a particular order would be unrealistic given the wide number of different ways that a contractor may buy from a distributor.
86. In addition the parties submitted that if WUK and Provida sought to exploit any perceived market power on any one order they may be penalised on other orders or future orders from the same contractor. This is because there are a limited number of contractors able to install utility networks (fewer than 300) and these will typically work on both ‘last-mile’ utility projects and projects for the ultimate asset owner. Therefore, the parties argued, competition for the

²⁷ See [GPS website](#)

supply of materials to contractors for 'last-mile' projects cannot be isolated from the supply of materials for other types of projects.

87. The sample of internal [redacted] documents provided by the parties shows that WUK often competes against direct supply from manufacturers. For example, WUK's [redacted] shows that it [redacted]; and its [redacted] references to direct competition from manufacturers. For the reasons discussed in paragraph 52 the CMA does not place weight on these documents. [redacted] documents from Provida refer to [redacted] different manufacturers as competition in [redacted] instances, and [redacted] instances of Provida winning from, or losing business to manufacturers. For the reasons discussed in paragraph 66 the CMA did not place significant weight on these documents.
88. The parties also gave examples of customers switching away to direct supply from manufacturers. These examples date from the time when Burdens experienced financial difficulties prior to its acquisition by WUK. Although unable to identify where the majority of customers switched to during that period, the switching that WUK is aware of [redacted] direct supply by manufacturers. For example, [redacted].
89. Although some customers said manufacturers will not sell direct, the majority of customers – across gas and water (or both) – indicated that if specialist distributors raised their prices by 5%²⁸ then they may be able to purchase direct from a manufacturer. Third party comments did, however, suggest that it may not be possible (or desirable) to source from a manufacturer in every instance. Some cited that manufacturers are unwilling to supply low value or low volume orders direct. Suppliers that the CMA spoke with confirmed that they were prepared to supply direct, and while some had minimum order values, one, for example was as low as £250. The parties also provided examples of WUK [redacted] to manufactures and [redacted] examples of Provida competing against a manufacturer for relatively low value quotes.
90. Third parties commented that the industry is very close and relies on relationships, with price increases generally well known through the supply chain, and usually manufacturer led as a result of raw material price increases ie polymer or copper. If the price increases were not manufacturer led the industry would know and the manufacturers would therefore be approached.

²⁸ As outlined in footnote 8 above, the relevant SSNIP may apply to the incremental value added of specialist distributors and so may be less than 5% of the total product sold by the distributor. Nevertheless, this was not determinative in assessing the extent of the constraint from direct sales from manufacturers as a large number of those customers that responded to the CMA clearly indicated an ability and willingness to switch to direct sale to manufacturers (for example, in response to a deterioration in the value added expertise or range offered by specialist distributors).

Other third party customers said that they have direct accounts with key suppliers and considered it easier to negotiate a trade discount (from manufacturers). Or that manufacturers were already used, in some cases, as they can be more competitive or at least offer a better service. Since it is an easy relationship to manage, more direct. Finally, third party customers said that [it is a] very competitive market. Increases from distributors would impact significantly, enough to warrant a move to alternative sourcing.

Other constraints

Third party logistics providers

91. The parties submitted that third party logistics providers have a significant and growing role in distribution in this sector, and that, in particular, specialist logistics providers such as CEVA²⁹ and DHL³⁰ are effectively able to replicate the parties' service offering for many customers.³¹ Third party logistics providers can facilitate direct sales from the manufacturer and have [✂]. The parties further submitted that supply arrangements through third party logistics providers have become more prevalent in recent years, as utility companies seek more innovative ways to manage their supply chain and increasingly outsource the logistics functions that have traditionally been performed in-house.
92. The CMA sought evidence from customers on whether they would switch to the services of a third party logistics provider if specialist distributors raised their price by 5%.³² While only a limited number of contractors that responded to the CMA's inquiries thought that they might switch to a third party logistics provider if specialist distributors were to raise their prices, some did state that they used or would consider using them, suggesting they are an alternative in some circumstances.
93. The CMA notes that third party logistics providers cannot fully replicate the services of the parties for all customers on all projects, but evidence suggests they do represent an alternative in some circumstances and so can provide a constraint on the actions of specialist distributors.

²⁹ The parties submitted that CEVA manages logistics and stores (offering an integrated procurement and inventory management service) for large utilities customers. It has operated in this sector globally for 13 years, and in the UK, it currently holds contracts with E.ON UK, Anglian Water, United Utilities, EDF Energy, Electricity North West, Wales and West Utilities, and Northern Gas Networks.

³⁰ The parties submitted that DHL has a very significant presence in utilities in particular through its logistics contract with National Grid, which has an estimated value of £100 million.

³¹ The parties gave as an example National Grid utilising a third party logistics provider.

³² See footnote 10.

Multi sourcing

94. In support of the constraint from sales direct from manufacturers, potentially facilitated by third party logistics providers, the parties submitted that a key feature of the market was the extent to which customers routinely multi-sourced product, including between these different supply channels.³³
95. The parties pointed to [X] as an example of multi sourcing or multi-channel sourcing in practice. It procures materials through a wide range of supply channels, including other specialist distributors, under frameworks which operate on a third party logistics model, and direct from manufacturers. The parties also referred to other contractors that had accounts with a number of distributors, enabling those contractors to obtain the equivalent of the parties' offerings by multi-sourcing from a number of distributors despite the fact that those distributors, individually, were unable to supply the full range of products.
96. The CMA notes these examples of multi-sourcing and multi-channel sourcing, however considers that it is likely that the customers in these cases would be sourcing more than just the overlapping Gas and Water Utility Products, and that therefore multi-sourcing in this case would not necessarily provide a constraint to the parties' activities in the supply of the overlap Gas and Water Utility Products.

General builders merchants

97. The parties submitted that GBMs offer a credible alternative to supply by specialist distributors particularly for lower-volume or spot purchases of less specialist products.
98. Only a limited number of customers who responded to the CMA's inquiries thought that they would consider GBMs as an alternative supply route to specialist distributors and so the CMA considers that GBMs cannot provide a competitive constraint to the parties for all customers across all projects. Nevertheless, evidence suggests that they may be able to provide a constraint in a limited set of circumstances.

³³ The parties also pointed to multi-sourcing across distributors referring to the evidence collected by the OFT in the recent Wolseley/Burdens merger enquiry, where the majority of customers that responded used three or more suppliers. The internal documents supplied by Provida also showed examples of customers seeking quotes from a range of competitors for specific products or projects. This is discussed above in relation to the constraint from other distributors.

Framework agreements

99. The CMA assessed the extent to which framework agreements play a role in the sector and how their operation may restrict the ability of the merged entity to increase prices or reduce the value added component of their offering.
100. The parties submitted that the water and gas utility asset owners increasingly use framework agreements with manufacturers, distributors and/or logistics providers to secure materials. These framework agreements are typically subject to formal tenders under EU public procurement rules, and as a result, the ultimate 'end users' of these products and services, the asset owners, make the decisions that determine the structure of their upstream supply chains. This control is exercised by purchasing materials used in their networks either directly; or through negotiating the framework price at which their contractors will procure materials. The asset owner is able to specify whether their contractors will be permitted to procure their own materials, rather than the asset owner procuring them directly; and specify which products and channels their contractors may use to source materials for their networks.
101. The parties submitted that their customers' purchasing behaviour was complex and a sale may result from a number of routes, for example:
- a. [REDACTED];
 - b. [REDACTED];
 - c. [REDACTED];
 - d. [REDACTED];
 - e. [REDACTED]; or
 - f. [REDACTED].

The parties submitted that in examples a. and b. above the contractor would have no role in determining the price, and in examples a. and c. WUK would have no role in setting the materials price, since [REDACTED]. As a result the parties' ability to increase price or reduce the level of service would be limited.

102. The parties provided examples of framework agreements, including:
- [REDACTED];

- [✂]; and
- [✂].

103. The CMA accepts that the use of framework agreements may, in some circumstances, constrain the behaviour of the parties to some extent with respect to sales to contractors, as the pricing and service set in the framework agreement provides a benchmark for the mark-ups that can be charged by distributors (and contractors), given the value they are adding. However, the majority of contractors who responded to the CMA had at least some purchases that did not appear to be connected with a framework agreement (either between an asset owner and distributor or asset owner and manufacturer).

104. In summary, the CMA considers the evidence suggesting that customers can and do use alternative sales channels to source the overlap Gas and Water Utility Products, in particular sourcing directly from manufacturers, which a large number of customers have pointed to as a feasible substitute, and, to a more limited extent, sourcing from third party logistics providers and GBMs. Framework agreements may also, in a limited set of circumstances, provide a constraint on the pricing of alternative supply chain routes. The CMA recognises that none of these additional constraints appears to represent a substitute, and constrain the parties, for all customers across all projects. However, evidence suggests that each does, to varying degrees, represent a feasible alternative to specialist distributors across a number of customers and/or projects and so collectively they do provide a competitive constraint on the parties.

Hire, sale and repair

105. WUK³⁴ and Provida³⁵ both provide hire, sale and repair services for a range of machines³⁶ and accessories related primarily to PE pipe jointing and the installation of utility infrastructure networks.³⁷

³⁴ Trading through its MCA brand.

³⁵ Trading through its FP Hire and Repair brand.

³⁶ These include: butt fusion machines, electrofusion control boxes and related tooling, generators, winches, coil trailers and other ancillary plant, tooling and equipment for installation of utility infrastructure networks.

³⁷ MCA Hire is also active in the provision of industrial equipment and tooling but, as there is no overlap with FP Hire and Repair, these activities are not considered further.

106. The parties provide these services nationwide from a network of depots, [redacted] to contractors. A [redacted] of their sales are also made to asset owners and to intermediaries such as general hire firms.

Extent of competition between the parties

107. The parties estimated that the size of the market for plant and equipment sales and hire is approximately £[redacted]³⁸ and submit that their combined share of supply on this basis would be [0 to 10]%. The parties estimated their share of supply for the hire, repair and sales of pipe-jointing equipment and tooling, to be [20 to 30]% with an increment [0 to 10]%.³⁹

108. The parties submitted that there are significant differences in the fleets operated by MCA and Provida. [redacted]. These tools and equipment are generally not substitutable from a demand-side perspective, according to the parties, since customers will only hire products that meet their specific needs, which will be defined primarily by the size ranges of the pipes they are working with.

109. The parties submitted [redacted]. The parties state that this evidence shows that they [redacted]. Of the [redacted] instances recorded, Provida lost business to MCA on [redacted] occasions, and [redacted] business from MCA. It is not clear to the CMA that these examples are representative of all work that Provida has won and lost to rivals. Therefore the CMA has only placed limited weight on this evidence in its assessment of closeness of competition.

110. The parties also submitted Provida [redacted], which showed that, of around [redacted] references to hire and repair competitors in these document, [redacted] were made to WUK. The CMA considers that [redacted], while not conclusive in themselves, tends to support the fact that a range of competitors are active in this market.

111. Third party views on the extent of competition between the parties were mixed. Around half of the customers that responded to CMA inquiries considered the parties to be close competitors. Specifically, some customers commented that the parties hire/sell/repair the same (or similar) products and product ranges. Some third parties described the parties as two of the significant providers.

112. In light of third party comments and limited countervailing evidence the CMA considers that the parties may not be close competitors in the hire, repair and

³⁸ Management estimates based on industry knowledge.

³⁹ The parties submitted that these shares are likely to overstate their competitive strengths as [redacted]. [redacted]. The parties state that the above shares will therefore present an inflated picture of the parties' shares since those shares attribute more sales than is realistic to the parties and artificially depresses the value of sales made by general tooling/equipment hire firms.

sales of pipe-jointing equipment and tooling. The CMA therefore goes on to consider the strength of constraints that will continue to constrain the parties post-merger.

Other competitive constraints

113. The parties have identified a number of national and regional competitors as well as other distribution companies with their own hire business, for example the Grafton Group, Travis Perkins (BSS) or Saint Gobain.
114. The parties [redacted] referred to above showed that, of the [redacted] instances recorded, Provida competed with PSS on [redacted] occasions and with Hy-Ram on [redacted] occasions. They also point to both PSS and Hy-ram as being [redacted] to Provida's proposition than WUK's proposition was to Provida's proposition.⁴⁰ This evidence shows the presence of strong competitors, although, as outlined above, the CMA has attributed limited weight to this in its assessment.
115. Some third parties described PSS (A-Plant) as being the remaining significant provider. A range of other suppliers were mentioned including: Hyram, Phoenix Hire, Speedy, Gap, PSS Hire, A Plant, Plant Site Services and Electro Services.
116. Customer views on the amount of choice remaining in the market were mixed. Two customers specifically stated that there were lots of other suppliers offering these services. A further two customers indicated that there was greater competition in the 'hire' market than there was with respect to the specialist distribution of the overlap Gas and Water Utility Products.
117. Overall, the large majority of customers did not raise material concerns about the merger with respect to hire, sale and repair services. For the reasons set out above the CMA considers that the merger does not raise the realistic prospect of a substantial lessening of competition with respect to the hire, sale and repair services for machines and accessories related primarily to PE pipe jointing and the installation of utility infrastructure networks.

Distribution and hire/sale/repair

118. The CMA has not separately assessed a combined market for distribution and hire and repair. However, as no concerns arise with respect to distribution or hire/sale/repair separately, the CMA considers that concerns are unlikely to

⁴⁰ The parties submitted that WUK has [redacted] while Provida has [redacted], and estimates that PSS and Hy-ram own [redacted] and [redacted] such machines respectively.

arise in the supply of distribution and hire/sale/repair together (whether they were sold as a bundle or where hire/sale/repair might be considered a secondary purchase following the purchase of distribution services). No third party raised concerns of this nature and a number of customers indicated that they are able to source both distribution and hire/sale/repair services separately.

Conclusion on horizontal unilateral effects

Distribution

119. The CMA considers that, in respect of overlap Gas and Water Utility Products, for those customers requiring the valued added services of the specialist distributor,⁴¹ the parties will continue to face sufficient competitive constraints to prevent a substantial lessening of competition arising post-merger for the full range of customers because there are:

- A number of credible alternative specialist distributors that have confirmed they are currently competing with the parties and that many customers have highlighted as feasible alternatives.
- Manufacturers, through direct sales, that are capable of competing with the larger specialist distributors both within and outside of the framework agreements for a relatively large proportion of their sales to contractors.

120. To a lesser extent the parties will also face constraint from the presence of third party logistics providers, GBMs and price setting framework agreements between the asset owner and the manufacturer, or between the asset owner and the distributor or contractor, which are subject to open tenders within the market.

121. Accordingly, the CMA finds that the merger does not give rise to a realistic prospect of a substantial lessening of competition in relation to specialist distribution of the overlap Gas and Water Utility Products used in the installation, maintenance and repair of utility networks and connections.

Hire, sales and repair

122. The CMA has taken account of the available evidence in respect of the parties' overlap in hire, sale and repair services. This suggests that while the parties compete to provide these services, sufficient alternative suppliers remain in the

⁴¹ Asset owners, and contractors providing services to asset owners and 'last-mile' contracts.

market. The large majority of customers did not raise material concerns. The CMA, therefore has concluded that the merger does not give rise to a realistic prospect of a substantial lessening of competition with respect to the hire, sale and repair services for machines and accessories related primarily to PE pipe jointing and the installation of utility infrastructure networks.

123. As noted above, as no concerns arise with respect to distribution or hire/sale/repair separately, the CMA considers that concerns are unlikely to arise in the supply of distribution and hire/sale/repair together (whether they were sold as a bundle or where hire/sale/repair might be considered a secondary purchase following the purchase of distribution services).

Barriers to entry and expansion

124. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient. In terms of timeliness, the CMA's guidelines indicates that the CMA will look for entry to occur within two years.⁴²
125. Through its market testing the CMA is aware that there are smaller specialist distributors that either see the merger as an opportunity for expansion, or that had pre-existing expansion plans, see paragraph 65 above. This was corroborated by a number of customers who pointed to the likelihood of competing distributors expanding, and benefiting from the merger. In addition, the parties pointed to [X] as an example of recent entry and likely expansion. However, the CMA has not had to conclude on the timeliness or sufficiency of entry or expansion as no competition concerns arise on any basis.

Third party views

126. The CMA contacted a large number of customers, competitors, and suppliers. A comparatively small number of responses were received. Of the 25 customers of distribution services that responded to the CMA's market testing 15 respondents raised some level of concern about the merger. However, the majority of respondents were able to identify alternatives to the parties.

⁴² [Merger Assessment Guidelines](#), para. 5.8.1 ff.

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

Decision

128. 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 a substantial lessening of competition within a market or markets in the United Kingdom.

129. This merger will therefore **not be referred** under section 22(1) of the Act.

Sheldon Mills
Senior Director of Mergers
Competition and Markets Authority
20 August 2014