

Completed acquisition by Ballyclare Limited of LHD Group (UK) Limited

ME/6403-14

The CMA's decision on reference under section 22(1) given on 26 August 2014. Full text of the decision published on 14 October 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. Ballyclare Limited (**Ballyclare**) and LHD Group (UK) Limited (**LHD UK**) (together the **Parties**) both supply firefighting personal protective equipment (**PPE**) through fully managed and product supply only contracts in the UK.
2. The Competition and Markets Authority (**CMA**) considers that the Parties have ceased to be distinct as Ballyclare acquired the entire issued share capital of LHD UK (the **Merger**), that the share of supply test is met, and that therefore a relevant merger situation has been created.
3. The CMA has assessed the impact of the Merger on the basis of the following frames of reference: the supply in the UK of:
 - PPE through fully managed contracts
 - PPE through product supply only contracts
4. With respect to the supply of PPE through fully managed contracts in the UK, the shares of supply, bidding data and third party responses suggest that Bristol is the strongest supplier and a close competitor of the Parties. To date, only the Parties and Bristol have won fully managed contracts to supply PPE in the UK, [☒]. One alternative supplier has been shortlisted in the most recent tender. A framework agreement also provides a competitive constraint, albeit more limited to date.
5. The CMA has found that expansion by Hunter Apparel/Texport (**Hunter**) is sufficiently timely, likely and sufficient to constrain the merged entity. In the summer of 2014, Hunter won a fully managed PPE contract to supply the Dublin Fire Brigade, a contract which has very similar characteristics to those

in the UK. This was the most recent contract awarded for fully managed PPE in which [§]. Unlike Ballyclare, Hunter also met the relevant requirements to qualify for a framework agreement for the supply of PPE through fully managed contracts in the UK in 2012. [§]

6. With respect to the supply of PPE through product supply only contracts in the UK, whilst the Parties have a high share of supply, Bristol exerts a strong constraint and a number of suppliers have won bids for product supply only PPE, including Iturri which secured a contract with the Ministry of Defence in 2013; FlamePro which secured a contract with Shropshire & Wrekin Fire Authority in 2012; and Eagle Technical Products (**Eagle**) which secured a contract with Merseyside Fire and Rescue Service to provide hoods in 2012. An increasing number of suppliers have also bid in tenders for product supply only contracts, including Yaffy/Honeywell. The CMA therefore considers that the merged entity will be sufficiently constrained post-Merger.
7. The majority of customers who responded to the CMA's enquiries did not raise any concerns with the Merger.
8. The CMA considers that, taken together, the constraints on the Parties post-Merger are sufficient to ensure that no realistic prospect of a substantial lessening of competition (**SLC**) has arisen or may be expected to arise as a result of the Merger.

Decision

9. This merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

Parties

10. **Ballyclare** is active in the supply and servicing of PPE, including structural PPE that includes trousers, jackets, gloves, boots, hoods, helmets. In 2013 Ballyclare's UK revenue in PPE was approximately £[§] million with an overall turnover of around £11 million.
11. **LHD UK** was formerly Lion Apparel Systems Limited, a wholly owned subsidiary of LHD Group GmbH (headquartered in Germany). LHD UK is also active in the supply and servicing of PPE and has its own in-house laundry services. In the financial year 2013, LHD UK's total UK turnover was approximately £[§] million, which wholly derived from the supply of PPE.

Transaction

12. Ballyclare acquired the entire issued share capital of LHD UK on 2 January 2014 through a Share and Purchase Agreement.

Jurisdiction

13. As a result of the Merger, the enterprises of Ballyclare and LHD UK have ceased to be distinct.
14. The Parties overlap in the supply in the UK of PPE (including fully managed services in the UK). The Parties estimate that they have a combined 30 to 40% share in the supply of PPE through fully managed contracts (increment 0 to 5%) and the CMA believes this estimate is conservative and the combined share of supply is nearer to [45–55]% (see Table 2 below). The CMA therefore considers that the share of supply test in section 23 of the Act is met in this case.
15. The Merger was publicly announced on 2 January 2014 and the statutory four-month period within which the CMA may make a reference following completion of the Merger expires on 5 September 2014.¹
16. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
17. An enquiry letter was sent by the CMA on 13 February 2014. Initial undertakings were accepted by the CMA's predecessor, the Office of Fair Trading (OFT), on 31 March 2014. The initial period for consideration of the Merger started on 1 July 2014, and the statutory deadline for a decision by the CMA under section 34ZA(1) of the Act is 26 August 2014.

Product frame of reference

18. The CMA considers that market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation

¹ The four-month clock was stopped by a letter under section 25(2) of the Act when Ballyclare did not respond to an information request under section 31 of the Act by the deadline of 20 February 2014. The clock resumed when the CMA received the information on 26 June 2014.

within the relevant market, or other ways in which some constraints are more important than others.²

19. The Parties overlap in the manufacture and distribution of firefighting protective clothing including trousers, tunics and hoods and the distribution of other PPE including boots, gloves and helmets. This equipment is used by fire and rescue services, by the Ministry of Defence, and by industrial users such as airports, car manufacturers, or chemical plants.
20. Contracts are generally tendered under EU procurement law³ and are either awarded on the basis of fully managed supply (including laundry and maintenance services) or product supply only (equipment only). In the case of product supply only, the customer may purchase laundry and maintenance services separately or provide them in-house. They may also either purchase different items from different suppliers or tender for one supplier to provide a number of PPE items (for example, boots, helmets, tunics).
21. In addition, customers can also choose to secure supplies through framework agreements with purchasing organisations, namely the Integrated Clothing Project (**ICP**)⁴ and the Yorkshire Purchasing Organisation (**YPO**).⁵ Given that all suppliers can bid to be on the frameworks, these are considered alongside similar contracts within the frame of reference.
22. The CMA's approach to product market definition is generally to consider first if narrow candidate markets can be widened through substitution on the demand side, and then to go on to consider the supply side.⁶ As such, the CMA considers below whether the evidence suggests that the narrowest candidate markets where the Parties overlap can be widened by demand-side substitution in the first instance, or subsequently through supply-side substitution.

² [Merger Assessment Guidelines](#), A joint publication of the Competition Commission and the Office of Fair Trading, OFT1254/CC2, September 2010, paragraph 5.2.2. The *Merger Assessment Guidelines* have been adopted by the CMA (see Annex D to CMA2, [Mergers: Guidance on the CMA's Jurisdiction and Procedure](#), January 2014).

³ In the majority of cases, competitors compete over price and non-price factors such as product quality (including product and technical specification, and user wearer trials), service quality, and corporate policy (including environmental and ethics).

⁴ The ICP is a UK 15-year framework contract to supply PPE on a fully managed or product supply only basis to fire and rescue services, which was awarded to Bristol in 2008. Fire and rescue services can choose to procure PPE through the ICP at any point in the 15-year contract.

⁵ The YPO is the largest UK-wide public sector buying organisation and it is open to all UK fire and rescue services to procure under these framework contracts. Customers can purchase PPE from the YPO on a fully managed or product supply only basis. This is generally done through a mini-competition between the suppliers that qualified to be on the YPO framework.

⁶ See [Merger Assessment Guidelines](#), paragraphs 5.2.6–5.2.19.

Segmentation by fully managed contract and product supply only contract

23. Depending on the specific contract specifications, fully managed contracts cover the supply of the PPE as well as a range of services, including regular laundry, inspection and repair services, a service centre with permanent availability for emergency replacements or laundry/repair services and a tracking system including a database recording all relevant information for all elements of PPE supplied.
24. Fully managed contracts generally provide for a bundle (that is, a number of different products such as helmets, boots, tunics) of PPE and, depending on the customer's requirements, the PPE may also be supplied on the basis of leasing arrangements (which the CMA understands is sometimes, but not always, the case) to the customer. The Parties submitted that they are not aware of any recent tender for product supply only contracts that involved a leasing element.
25. When asked whether they would consider switching to a product supply only contract in response to a 5% price rise (and purchase laundry and maintenance separately) once the contract expired, three customers that currently have a fully managed contract stated that they would not. Some customers stated that separate provision of laundry and maintenance services is not an option for them or that they do not have the resources to operate two contracts. Set against this, one customer stated that it would switch and two other customers stated that they may consider switching.⁷
26. In addition, less than half of the customers who lease PPE indicated that they would not switch to product purchase in response to a 5% price rise; one explained that this was due to high capital requirements.
27. A number of product supply only customers have laundry facilities in-house, which means they are unlikely to switch to fully managed contracts in response to a 5% price rise. One customer indicated that the decision as to whether to choose a fully managed or product supply only contract was highly resource dependent and cost was not the main factor of evaluation. Fully managed and product supply only contracts do not therefore appear to be substitutable for these customers.
28. The CMA considers this evidence suggests that some customers may consider fully managed and product supply only services (with separate contracts for the supply of laundry services) to be substitutable.

⁷ The Parties also gave an example of a customer that intended to switch from a fully managed to a product supply only PPE contract.

29. However, as suppliers compete for contracts through bespoke tenders, the CMA is of the view that suppliers are able to discriminate between customers, such that switching by some customers of fully managed contracts would not be a constraint for those that did not consider product supply only to be a credible alternative for them (and vice versa).
30. On the supply side, the Parties submitted that it is easy to provide fully managed contracts, as the manufacturing can be (and is for the majority of suppliers of fully managed services) outsourced, as can the laundry services. However, several suppliers of protective clothing⁸ do not currently provide fully managed services. One small supplier stated that it found it difficult to offer these services because of the large size of the contracts and the investment required.⁹ In addition, whilst the number of tenders are low, the evidence shows that a larger number of suppliers bid and are shortlisted for product supply only contracts than for fully managed contracts and that some bidders for product supply only contracts have not yet been shortlisted for fully managed contracts.
31. Therefore, on a cautious basis and for the purpose of this assessment, the CMA considered the impact of the Merger on each of fully managed contracts and product supply only contracts separately.

Product supply only contracts: segmentation between individual products and bundles of products

32. Regarding the sale of PPE products, the European Commission considered in previous cases a segmentation by particular items of PPE, including different types of footwear, fall protection, hand protection, hearing protection devices and respiratory protection.¹⁰
33. From a demand-side perspective, half of the customers that said they purchase PPE products individually indicated that they would not start purchasing a bundle if faced with a 5% price increase. They noted that this was due to the risk (delays, closure) of relying on one supplier for all products; it is also easier to deal directly with the manufacturer if there are issues.
34. However, most suppliers of protective clothing are able to supply ‘head-to-toe’ bundles and most suppliers indicated that it was fairly easy for protective clothing suppliers to purchase other PPE items and offer ‘head-to-toe’

⁸ Protective clothing refers to trousers, tunics and hoods for fire-fighting.

⁹ Even if the laundry services are outsourced, there is still some level of investment required (for example, hiring additional staff, software). In addition, one third party manufacturer stated that it was not able to offer leased PPE products due to the high capital expenditure upfront in purchasing the equipment.

¹⁰ 3M/Aearo, COMP/M.5012, 28 April 2008; Honeywell/Sperian, COMP/M.5908, 4 August 2010.

bundles. The conditions of competition for the supply of products that the Parties manufacture and ‘head-to-toe’ PPE bundles therefore appear to be similar. As such, the CMA has not considered it necessary for the purposes of its competitive assessment to consider these segments as separate frames of references.

Conclusion on product frame of reference

35. For the reasons set out above, the CMA, on a cautious basis and for the purpose of this assessment, considers the impact of the Merger on the basis of the following product frames of reference:
 - the supply of PPE through fully managed contracts
 - The supply of PPE through product supply only contracts

Geographic frame of reference

36. In MWUK/Dimensions, the OFT considered a UK-wide market for PPE.¹¹
37. The Parties put forward in their submission various aspects that may indicate a European-wide geographic frame of reference:
 - The regulatory framework for PPE is Europe-wide.¹²
 - A large share of PPE products are manufactured outside the UK.
 - There are bidders from various European countries participating in UK tenders. Similarly, [☒].
38. In addition and more specifically, the Parties stated that the market in the Republic of Ireland has features that make competitive conditions particularly similar to the UK, namely:
 - Ireland and the UK are geographically close to each other

¹¹ OFT, Completed acquisition by MWUK Holding Company Limited of Dimensions Clothing Limited and Completed acquisition by MWUK Holding Company Limited of certain assets of Alexandra plc (in administration), ME/4664/10, 2 November 2010. The European Commission left the market definition open in 3M/Aearo, COMP/M.5012, 28 March 2008 and Honeywell/Sperian, COMP/M.5908, 4 August 2010. It found that there were EEA-wide regulatory standards, low transport costs, considerable trade flows and major suppliers that operated across various European markets. However, the European Commission also found varying price levels across the Member States and customers stressed the importance of local sales teams.

¹² PPE Directive 89/686/EEC is the basis upon which manufacturers of PPE are authorised to affix the CE mark to their products. The CE mark is required for products that are sold within the EEA. Most tenders also follow EU procurement rules.

- the designs for the PPE used in the UK and Republic of Ireland are very similar, whereas there are minor differences in product design across continental Europe
 - several companies operate both in the Republic of Ireland and the UK
39. Third party enquiries indicated that UK customers place high importance on UK sales and service teams as well as warehouses. This is particularly important for fully managed contracts where a high service level is generally required, but was also mentioned in the context of product supply only contracts. In addition, in the case of fully managed contracts, laundry facilities in the proximity of the customer are considered important. Set against this, the Parties noted that turnaround times are generally seven days and provided examples of UK laundry suppliers providing services to customers based in different regions albeit in the UK.
40. The CMA notes that several suppliers of protective clothing PPE operate across the Republic of Ireland and the UK (the Parties, Bristol and Hunter). However, the conditions of competition appear to be substantially different in relation to most customers. Fire and rescue services in the Republic of Ireland are generally of a much smaller size and smaller suppliers of protective clothing appear to be more successful in the Republic of Ireland than in the UK. The exception to this is the Dublin Fire Brigade, which in many ways exhibits characteristics that are more similar to UK customers than to most Irish customers. Whilst the CMA has not included the Dublin Fire Brigade within the geographic frame of reference, it considered its relevance where appropriate in the competitive assessment.
41. Based on the evidence set out above, the CMA, on a cautious basis and for the purposes of this assessment, considered the impact of the Merger on the UK. Any potential constraints from suppliers that are active in either product supply only or fully managed contracts in the Republic of Ireland and (to a lesser extent) the rest of Europe were considered in the competitive assessment.¹³

Conclusion on frame of reference

42. The CMA has assessed the impact of the Merger on the basis of the supply in the UK of:

¹³ For the purposes of this assessment, the CMA has considered a supplier to be a UK supplier where it has a physical presence in the UK even if it manufactures PPE abroad or has a licence to sell products of European manufacturers.

- PPE through fully managed contracts
- PPE through product supply only contracts

Counterfactual

43. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In its phase 1 analysis, 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 at phase 1, there is a realistic prospect of a different counterfactual.¹⁴
44. The Parties submitted that LHD UK was not viable in its current form. The CMA therefore considered whether the exiting firm counterfactual applies in this case. It first considered whether there was compelling evidence for the CMA to believe that it was inevitable that LHD UK would exit the market.¹⁵
45. The Parties provided the CMA with a report drawn up by their consultants which noted that LHD UK's business seemed [§].¹⁶ However, the CMA notes that [§].¹⁷ Further, the CMA did not receive evidence to suggest the parent company would not do so in future or planned to close LHD UK. The CMA is therefore of the view that it did not receive compelling evidence that LHD UK would exit.
46. The CMA also notes that the second limb of the exiting firm scenario (that there was no substantially less anti-competitive purchaser for LHD UK) would not have been met in any event. The Parties submitted that the only viable purchaser was a company that could share LHD UK's infrastructure and reduce costs, namely an acquisition by Ballyclare or Bristol. The Parties further submitted that a merger with Bristol would not have been less anti-competitive than the Merger given that Bristol is the strongest competitor overall. Ballyclare also argued that in 2012, [§]. However, the CMA received no evidence as to how the LHD UK business was marketed and no evidence that there would have been no alternative willing purchaser of the LHD UK business. The CMA therefore does not have compelling evidence that there was no substantially less anti-competitive purchaser for LHD UK.

¹⁴ See *Merger Assessment Guidelines*, paragraph 4.3.5 et seq.

¹⁵ ibid, paragraph 4.3.8.

¹⁶ According to the Parties' consultants the financial statements of LHD UK identify a company which has recorded [§].

¹⁷ [§]

47. Therefore, the CMA considers the pre-merger conditions of competition to be the relevant counterfactual.

Competitive assessment

Horizontal unilateral effects

48. The Parties compete in a bidding market with a relatively small number of infrequent tenders of different sizes. They compete according to certain criteria and so offer a bespoke differentiated offering to each customer. The criteria for the bids include price and non-price factors such as product quality (including product and technical specification, and user wearer trials), service quality (including collection, laundry, inspection and repair service for PPE and an electronic tracking system for each item), and corporate policy (including environmental factors and ethics).¹⁸ One contract also asked suppliers to demonstrate they had experience in the form of three previous contracts. In addition, in order to qualify for the YPO framework,¹⁹ a supplier needs to have two examples of similar contracts. For each bid, the weighting of each category may be different depending on the customer's requirements. Unilateral effects will arise if the Merger substantially reduces the competitive constraint that suppliers exercise on one another in the bidding process.
49. The Parties noted that, given this is a bidding market, anti-competitive effects may only arise if prior to the Merger, one of the Parties tends to be the 'runner-up' when the other won the business. They also submitted that there is no evidence that either of the Parties could have expected to win bids or that the other would tend to be the 'runner-up'. In addition, even if this was the case, the Parties stated that Bristol could not have been presumed to be a distant third to them.
50. While closeness of competition between the Parties is relevant to assess the potential for unilateral effects following the Merger, the CMA does not consider that the Parties need to have an expectation of systematically ranking first and second with Bristol a distant third for there to be the potential for unilateral effects post-Merger. The CMA notes that bids involve a number of criteria rather than just price and considers that bidders in this market are unlikely to have a clear understanding of each other's costs. Consequently, each bidder is likely to face considerable uncertainty over the competitiveness of other bids and the likely success of its own bid.²⁰

¹⁸ All tenders for fully managed services that the CMA has reviewed include the following categories: product quality and aesthetics, service quality and price.

¹⁹ Only Bristol, LHD UK and Hunter are currently on the YPO framework for fully managed PPE contracts.

²⁰ In addition, the Parties arguments are not relevant for the smaller contracts awarded without a bidding process.

51. In this context, the CMA considers that, in general, unilateral effects may arise simply where the Merger significantly increases the perceived probability of either the merged firm or any of its competitors winning the tender process at a given price. This can occur simply where the reduction in the number of credible bidders following the Merger significantly increases the likelihood of bids at a given price being successful. In addition, the CMA notes that unilateral effects are more likely where the merging parties are close competitors.

Fully managed contracts

Shares of supply

52. The Parties submitted a tender log and calculated shares of supply for fully managed contracts based on the estimated value of the bids won by each market player. The resulting shares of supply are displayed in the following:

TABLE 1 Share of supply for the UK and Dublin based on estimated total value of fully managed contracts as submitted by the Parties in the tender log (2007 to 2014)

Competitor	Estimated total value of contracts (£m)	Share of supply (%)
Ballyclare	[☒]	[20–30]
LHD UK	[☒]	[0–5]
Merged entity	[☒]	[30–40]
Bristol	[☒]	[60–70]
Hunter	[☒]	[0–5]
FlamePro	[☒]	[0–5]
Total	[☒]	100

Note: Estimated value of tenders included in the Parties' tender log. This includes contracts awarded within the ICP and YPO framework.

53. The Parties explained that a substantial part of sales are not accounted for in the tender log because some contracts were awarded to the Parties without a tendering process or because the original tender dates back to before the start of the tender log.
54. The CMA therefore calculated shares of supply based on actual sales, which also include sales to customers that are not included in the tender log (see Table 2). The CMA notes that around [30–50]% of LHD UK's sales of fully managed services are generated from contracts that are not included in the tender log.²¹ Therefore, the shares of supply based on actual sales provide a more complete picture of the market than those from the tender log for a

²¹ Approximately [☒] of the sales that are not accounted for in the tender log stem from [☒] contracts that were tendered prior to the start of the Parties' tender log in 2007. The remaining sales mostly resulted from smaller contracts with private companies that were awarded without a tender process.

specific year. However, the CMA notes that annual sales figures might be subject to considerable variations over the lifetime of a contract.

55. The CMA notes that Hunter's contract for the Dublin Fire Brigade which is included in the Parties' figures in Table 1 does not form part of the geographic frame of reference. The CMA has, therefore, excluded this contract from its calculation of shares of supply. In addition, information provided to the CMA suggests that FlamePro only has product supply only sales in the UK with laundry services being supplied by another firm under a separate agreement as opposed to outsourced by FlamePro. Therefore, the CMA has attributed FlamePro's sales to the product supply only frame of reference.²²

TABLE 2 UK share of supply based on actual sales (fully managed contracts) in 2013

Name of competitors	Share of supply (%)
Ballyclare	[30–40]
LHD UK	[15–25]
Merged entity	[45–55]
Bristol	[45–55]
Total	100

Note: Table is based on turnover data submitted by the Parties and third parties.

Closeness of competition

Bidding data

56. Since Ballyclare submitted that a substantial number of contracts are awarded following tenders, the CMA considered that a more detailed analysis of the bidding data (that is, considering how often the Parties and others are shortlisted and win tenders) may be more informative than the shares of supply in assessing competition. The CMA has therefore assessed the Parties' tender log for fully managed contracts.
57. The evidence provided suggests contract terms for fully managed contracts tend to be long, often seven or eight years, with some exceptions, most notably the ICP which lasts for 15 years. The CMA therefore considered that 2007 to 2014 was an appropriate time frame over which to assess the tenders. The Parties submitted, however, that aggregating bidding data over time cannot capture change and that the Parties have [☒]. Over that period, [☒] other contracts were awarded, including those under the ICP.

²² However, the CMA notes that this example may be illustrative of the ability of firms that are currently active in the product supply only segment to also operate in the fully managed segment, even if it is not as part of an outsourcing arrangement (which forms the basis of Ballyclare's business model), but where it is jointly with the laundry service to satisfy the requirements of a customer who is seeking both to purchase the products themselves as well as the additional services under a single contract.

TABLE 3 Analysis of Parties' tender log of fully managed contracts (2007 to 2014)

	Ballyclare	LHD UK	Bristol	Hunter	Images at Work	Sioen
Contracts won within ICP framework	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]
Contracts won within YPO framework	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]
Shortlisted for Contract (excluding ICP/YPO)	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]
Contracts won (excluding ICP/YPO)	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]

Note: The table is based on the Parties' tender log. The CMA has excluded the tender of the Dublin Fire Brigade because this is outside the geographic frame of reference. Additionally the CMA has excluded the tender of the Shropshire & Wrekin Fire Authority because it understands that FlamePro has a product supply only contract (see paragraph 55 above).

58. The CMA notes that the overall number of contracts listed in the Parties' tender log is low. However, based on the responses of third party competitors the CMA considers that the tender log includes all significant tenders for fully managed contracts of PPE in the UK in the period 2007 to 2014.
59. The contracts won between 2007 and 2014 were as follows:
- In 2008, [☒] won a bid for eight years, which was worth £[☒] million, following an open tender.
 - In 2009, [☒] won a bid for five years, which was worth £[☒] million, through the YPO framework.
 - In 2010, [☒] won a bid for eight years, which was worth £[☒] million, and [☒] won two bids through the YPO framework for ten years, which were worth £[☒] million and £[☒] million.
 - In 2011, [☒] won a bid for eight years, which was worth £[☒] million, through the YPO framework.
 - In addition, [☒] won [☒] contracts through the ICP between 2008 and 2011, which were worth between £ [☒] million and £ [☒] million.
60. The Parties argued that LHD UK was struggling to be competitive given its financial difficulties.²³ They noted that in the most recent fully managed tender, for which [☒]. However, the CMA notes that LHD UK was shortlisted for [☒] and won a contract in March 2011 when it was already [☒], as well as one (albeit for product supply only) in October 2013 (Merseyside Fire & Rescue Service), which suggests LHD UK was still exercising a competitive constraint. The CMA therefore considers that the evidence does not support the argument that LHD UK would not be in a position to compete effectively absent the Merger due to its financial difficulties.²⁴

²³ According to the Parties' consultants the financial statements of LHD UK identify a company which has recorded [☒].

²⁴ Further, since LHD UK is [☒].

61. The CMA notes that since 2011, Ballyclare has [X] fully managed contract and LHD UK has [X] fully managed contract. Over this period, [X] contracts have been awarded altogether, [X] under the ICP framework and [X] under the YPO framework. As a general observation, in each instance the customer had the choice between different ways to procure services, for instance by way of tendering (alone or together with other customers) under EU procurement law, or by choosing the ICP or YPO framework.
62. The CMA also notes that the shortlisted bidders in 2010 and previously are different to those in the most recent tenders, suggesting that the competitive landscape may be changing.
63. The bidding data shows that Bristol is a strong competitor and will remain a strong constraint on the merged entity, having been shortlisted for as many contracts as the Parties and won as many contracts (even excluding the ICP) as the Parties combined. In addition, Bristol won the ICP framework (in 2008), which several customers have chosen to procure their requirements under and which is currently subject to a 'refresh' designed to make the PPE products more attractive.²⁵ No supplier other than Bristol and the Parties was successful in winning any fully managed contract in the UK since 2007.
64. Since 2012, Hunter has qualified for the YPO framework (together with LHD UK and Bristol; [X]).²⁶ Since then, there was one tender under the YPO but that tender process was ultimately cancelled. The bidding data shows that the Parties and Bristol have been shortlisted more times than Hunter and won more contracts, although this is to be expected given that Hunter's entry into the market is recent. The CMA considers whether Hunter's expansion will be sufficient to further constrain the merged entity in more detail below (see paragraphs 88 to 102).
65. Two other companies, Images at Work and Sioen, have been shortlisted for contracts and a YPO framework contract respectively. However, this was in the period 2007 to 2010. They have not won any contracts and have not been shortlisted since.²⁷ The CMA therefore considers that these two companies

²⁵ The CMA received evidence to suggest that the ICP framework agreement is currently not considered by some customers as an attractive way of procuring PPE. One reason given was that the products available did not meet the specifications they needed. However, the CMA notes that the refresh 'is intended to allow for the safety, performance and comfort benefits made possible by developments in materials, fabrics and designs in the complete head-to-toe range, since the original technical and user trials, to be incorporated in to the standard specifications at the conclusion of the refresh programme' (*Emergency Services Times*, June 2013).

²⁶ The CMA understands that Ballyclare [X].

²⁷ The Parties submitted that Images at Work acted as managing agent with the manufacturing subcontracted to Waterfords and the laundry and repair to Fenland. The evidence shows that neither of those Parties have been shortlisted for fully managed contracts in the UK since 2010.

are unlikely to exert a material competitive constraint on the Parties post-Merger.

66. The CMA has received results and rankings from a limited number of tender processes from the Parties and customers. The CMA is aware of only one tender for a fully managed contract where one of the Parties won and the other was the runner up. However, there is no evidence that any party is systematically better than any other on any particular criterion. Therefore, based on the limited empirical evidence available to the CMA, it appears likely to be difficult for suppliers to predict who the ultimate winner of a specific contract or who its closest competitor in each contract may be. Overall, Bristol appears to be the strongest and most successful bidder, though not systematically so.
67. The Parties submitted that, given their limited recent success and that [§], the Merger, by increasing the strength of the merged entity, is pro-competitive and rivalry enhancing. The merged entity would be able to compete more fiercely, particularly against Bristol, than each of the Parties individually. They noted that the Merger will result in [§]. However, in phase 1, the CMA will not in general give as much weight to savings in fixed costs, as they often represent private gains to firms and are less important in short-run price formation. In any event, the Parties did not provide compelling evidence that the efficiencies claimed would be sufficiently timely, likely and sufficient to prevent a SLC from arising or that they would be merger-specific.²⁸
68. Based on the bidding data evidence above, the CMA considers that, to date, the most credible bidders for fully managed contracts have been the Parties and Bristol. The CMA considers that Bristol, which has won more contracts than the Parties combined since 2007, is likely to be a stronger player and a closer competitor to either merging party. Hunter's experience and track record with PPE is still limited at this stage and the CMA is not aware of any other competitors (for instance those that bid for product supply only contracts) that are currently bidding for fully managed contracts in the UK so as to further constrain the merged entity. The CMA considers the extent to which Hunter's expansion is likely to constrain the Parties below.

Evidence from third parties

69. The majority of customers and competitors that replied to the CMA's third party enquiries considered PPE and related laundry and maintenance services offered by Ballyclare and LHD UK to be close substitutes. Customers

²⁸ See [Merger Assessment Guidelines](#), paragraph 5.7.4.

and competitors consistently rated the Parties (both 4.4 out of 5 on average for PPE and 4.3 and 4.4 for related laundry and maintenance services) and Bristol (4.6 out of 5 on average) as the strongest suppliers of PPE and related laundry and maintenance services, with Bristol rated slightly stronger than the Parties. A minority of third parties mentioned financial difficulties of LHD UK or Ballyclare.

70. The next best rated supplier is Hunter with an overall rating of 2.3 for the PPE and 1.7 out of 5 for the laundry and maintenance services. All other suppliers are rated between 1.0 and 2.0.²⁹
71. Several third parties stated that post-Merger two main suppliers remain in the market (the Parties and Bristol) and that they expect prices to increase due to the Merger. However, only a minority of third party customers expressed concerns to that effect or about the Merger generally.
72. On balance, third party evidence suggests that the Parties are close competitors, although Bristol is the strongest competitor to each of them. The responses indicate that all other suppliers of PPE and related services are not considered to be as strong as the Parties, although the CMA notes that Hunter's entry is recent and its presence is likely to grow stronger as set out below.

Constraint from the ICP and YPO

73. The Parties submitted that the existing framework agreements like the ICP and YPO might act as a competitive benchmark and/or upper price limit since customers can and do exercise choice to purchase from these framework agreements or procure their requirements through tenders outside these framework agreements.³⁰ In support of this, the Parties submitted a report of May 2013 by Sir Ken Knight who conducted a review of efficiencies and operations in fire and rescue authorities in England confirming that the ICP may be used as a price benchmark.³¹ The ICP contract does not expire until 2022 and is for fully managed or product supply only contracts, albeit the CMA is not aware of any product supply only contracts that have been awarded under the ICP framework.

²⁹ The CMA also received ratings for some other suppliers of PPE that do not supply protective clothing or bundles of PPE. These scores are not reported since these suppliers do not compete directly with the Parties.

³⁰ Customers can chose to procure through the ICP or YPO at any point in time, not just at the start of the frameworks.

³¹ 'The Firebuy Project [former name of the ICP] has left some ongoing value in framework contracts still in use by a number of authorities; others have reported that the framework acts as a sort of "market price" that they can use to negotiate a better deal with another supplier.' Ken Knight, *Facing the Future: Findings from the review of efficiencies and operations in fire and rescue authorities in England*, May 2013, p50.

74. As noted above, the Parties further submitted evidence that the ICP framework foresees a mid-term ‘refresh’ of the PPE items available which allows fire and rescue services access to up-to-date items. The refreshed product ranges are expected to be available in autumn 2015.
75. Four customers told the CMA that they had considered purchasing through the ICP framework but finally did not. This was either because the products available did not meet the specifications they needed, the contractual terms were considered to be too restrictive or the prices were not considered to be competitive. This suggests that the ICP framework agreement is currently not considered by some customers as an attractive way of procuring PPE and may therefore limit its ability to act as a competitive benchmark for all customers. The CMA notes that the attractiveness of the ICP framework may increase once the refreshed product range is available. However, it is not clear whether the refreshed range of products will meet all customers’ needs and specifications.
76. Three customers who responded to the CMA’s market testing procured fully managed services through the YPO framework. One customer who did not explained that this was because the products available did not meet the specifications it needed.
77. As noted above, the YPO is a framework under which there are mini-competitions between suppliers on the framework. It therefore does not provide a benchmark but an alternative to a full tender with a limited number of pre-selected competitors (currently Bristol, LHD UK and Hunter for fully managed PPE and, in addition, Eagle and North Fire for ‘head-to-toe’ product supply only PPE) which saves time and costs on procurement. The CMA considers that there were fewer concerns expressed by third parties as to the attractiveness of the YPO framework. However, the YPO agreement expires at the end of 2016. Therefore, while there is currently no merger effect for tenders under the YPO (given that Ballyclare is not currently on the framework), this is limited to this date and the new framework agreement might be negatively affected by a merger-specific lessening of competition.
78. The CMA notes that the Sir Ken Knight report suggests the ICP may provide some limited constraint when some customers are choosing how to procure services at the outset. There is no Merger effect in relation to tenders under the YPO until 2016. However, overall, the CMA is of the view that the existing framework agreements are not of themselves sufficient to eliminate possible competitive concerns arising from the Merger in fully managed contracts because third party comments indicate that (a) the agreements are not necessarily an attractive alternative for all customers and (b) the agreed terms

are only temporary and will expire (in the case of the YPO agreement within two years).

Conclusion on fully managed services

79. Based on the evidence set out above, the CMA considers that Bristol, which has won more contracts than the Parties combined since 2007, is likely to be a closer competitor to each merger party than the other merger party. Bristol therefore exerts a strong competitive constraint on the Parties. Hunter historically has exerted only a limited constraint on the Parties. No other competitors have won any fully managed contracts since 2007. On balance, the CMA considers that the evidence is not at a level where it can rule out *prima facie* concerns that the merged entity may have the ability to increase price or worsen non-price aspects of the competitive offering (such as quality).
80. The CMA therefore considers below whether there is sufficient prospect of entry or expansion and whether sufficient buyer power exists to constrain the merged entity post-Merger such that this may prevent a realistic prospect of a SLC resulting from the Merger.

Barriers to entry and expansion for fully managed PPE services

81. 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 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. In terms of timeliness, the CMA's guidelines indicate that the CMA will look for entry to occur within two years.³²
82. The majority of responses provided by competitors indicated that there are a number of barriers to entry. They mentioned that customers expect a track record within the UK as there is some customer reluctance to try new products.³³ Competitors noted in addition:
 - non-UK entrants have to adapt their products
 - the small size of the UK market makes entry unattractive
 - foreign suppliers require UK staff, UK warehouses and a UK laundry solution

³² *Merger Assessment Guidelines*, paragraph 5.8.1 ff.

³³ The Parties noted that fire and rescue services are not reluctant to try new products as Ballyclare currently has [§].

- contracts are tendered infrequently and are lengthy
 - Gore licences³⁴ are needed
 - there is a cost of participating in tenders
83. The CMA has considered below whether any of these potential barriers to entry mentioned by competitors apply to individual entrants.
84. With respect to an existing track record, this does not appear to be generally a formal requirement of the tender process. To the extent that it forms part of the criteria for frameworks – as mentioned above, in order to qualify for the YPO framework a supplier needs to have two examples of similar contracts – meeting the criteria does not appear to require winning PPE fully managed contracts tendered within the UK.³⁵ Overall, however, the view that a track record does seem to be an important factor is supported by some customer responses and seems to be consistent with the bidding data provided by the Parties. However, the Parties also noted that some potential entrants have an international track record which would assist them in entering into or expanding in the UK market.
85. The Parties further noted that non-UK entrants can easily adapt their products (those of sufficient size have product development teams and the CE mark can be obtained in [§] weeks at a cost of £[§] excluding product development) and a number of suppliers have a Gore licence. With respect to infrastructure, they noted that IT solutions are not sophisticated or expensive to licence and commercial laundries to whom the laundry element of the contract can be outsourced offer very similar IT solutions; warehouses need only be small; capital investment is limited and, in the case of leased PPE, is recovered over the life of the contract. The Parties also highlighted that staff are not specialised and easy to hire.³⁶ They also noted that long-term contracts can make entry more attractive as new entrants can recuperate costs over the life of the contract.
86. The Parties pointed to four instances of successful new entry, namely Hunter, Iturri, FlamePro and Eagle.³⁷ In addition, there have been new nominated suppliers on the YPO (Hunter for both fully managed and product supply only, and Eagle and North Fire for product supply only).

³⁴ A Gore licence allows the licensee to manufacture and/or repair products with Gore materials on a non-exclusive basis.

³⁵ This is illustrated by the fact that Hunter met these criteria for the YPO framework in 2012, not having won a PPE fully managed contract tendered in the UK.

³⁶ The Parties also noted that there are [§].

³⁷ The CMA notes that the references to Iturri, FlamePro and Eagle are all for product supply only PPE.

87. The CMA has considered above to what extent Hunter (the only one of the four who competes for fully managed contracts) currently imposes a constraint on the Parties above. This section assesses whether Hunter is likely to impose a stronger constraint in the future. The CMA also goes on to consider entry by product supply only suppliers in the UK into the fully managed segment and entry by others active in Europe.

Hunter's expansion

- *Timeliness and likelihood of expansion*
88. Hunter has for many years supplied corporate clothing and workwear to the blue light/medical sector (that is the fire, police, nursing and ambulance services). Hunter's website noted that 'Hunter Apparel Solutions Ltd. are the market leader in both the UK and Ireland for the Fire and Rescue Service uniform sector, as well as being the market leader in both NI and ROI in medical and paramedical uniform.'
89. Hunter has recently entered by successfully qualifying for the YPO framework for the supply of PPE through fully managed contracts and has bid for all fully managed contracts since 2012. Although it has not yet won a contract in the UK, Hunter has recently won a fully managed leasing PPE contract for the Dublin Fire Brigade (submitted in August 2013 and announced in the summer of 2014). The Parties submitted that this contract is analogous to a fully managed contract in the UK, as:
- it is of significant size (£[~~XXX~~] million over eight years)
 - product specifications were in line with requirements across UK fire services
 - it followed the same objective selection criteria
 - the substantive terms and conditions were the same as under fully managed contracts in the UK
90. The Parties also submitted that there were similar participants to other UK fire tenders. The CMA considered that, while a number of suppliers not usually shortlisted in the UK for fully managed PPE contracts had bid and been shortlisted in Dublin, in all other respects, the Dublin contract did appear to be very similar to those of fire and rescue services in the UK.

91. Hunter [§].³⁸
92. The CMA considers, based on the available evidence, that Hunter appears to be capable of supplying fully managed PPE services to UK customers and that it has the capacity to do so.³⁹
93. Hunter is already in the market and has recently been successful in qualifying for the YPO framework in the UK. It has also won a contract in Dublin, the size and type of which is similar to UK tenders, which the CMA considers to be a significant recent development. In addition, [§].⁴⁰ The CMA therefore considers that Hunter's expansion would be timely and likely.
- *Sufficiency of market entry*
94. In this case, the CMA considers that a credible threat of Hunter winning fully managed PPE contracts would be sufficient to act as a constraint on the merged entity. The CMA has therefore assessed the evidence in this respect.
95. As previously discussed, Ballyclare has won [§]. LHD UK has only won [§] since 2008. In comparison, Hunter won the latest fully managed tender in [§], namely the Dublin Fire Brigade contract in the summer of 2014. Hunter also successfully qualified for the YPO framework in 2012. The CMA notes that Hunter [§] for the Dublin Fire Brigade contract.⁴¹
96. The customers to whom the CMA spoke did not appear to be well informed about Hunter, given that it had not competed for their contracts the last time they were tendered. However, some customers considered that the fact that Hunter had won the Dublin contract would be relevant to its credibility, as it demonstrates Hunter's capability in relation to PPE fully managed contracts and builds up a track record or might be an indicator that it will be able to continue winning contracts in the future. Set against this, some customers were uncertain whether it could tender for contracts because, for example, it does not have a UK base (Hunter, however, confirmed to the CMA that it does have a UK base, in Northern Ireland) or a base in Great Britain (see paragraph 97 below). Some customers noted that Hunter would be able to use the Dublin contract to provide a reference for a UK PPE fully managed contract and one noted that it will provide it with experience in putting together

³⁸ [§]

³⁹ Ballyclare noted that in order to win the large Kent contract, [§] and used the laundry and repair services of a commercial laundry on a non-exclusive basis.

⁴⁰ [§] Workwear includes uniforms, wet weather gear, station wear and does not include protection against fire. The CMA considers workwear to be in a different market and the CMA does not have any evidence to suggest Hunter's success in workwear would constrain the Parties post-merger given the majority of customers who responded indicated that this was not relevant to its credibility as a supplier of PPE.

⁴¹ [§]

a successful application, which is where new entrants tend to fall down according to this customer.

97. In addition, Hunter qualified to be on the YPO framework when Ballyclare did not. The YPO operates a two-stage process. To qualify for the framework (to be ‘pre-qualified’), suppliers have to demonstrate that they meet certain selection criteria. The selection criteria to be on the framework for fully managed service contracts in 2012 were (a) acceptability (provider must be eligible to tender for a public contract); (b) economic and financial standing; (c) capacity and capability (provider must have quality and environmental systems in place and a health and safety policy statement); (d) track record (two previous similar contracts); (e) quality (confirmation that the provider meets minimum specifications including test certificates); and (f) delivery and customer service (details of the supplier’s laundry process, repairs and maintenance of the garments, the life and tracking system and contract management procedures).
98. Bristol, LHD and Hunter submitted tenders for this framework and all three suppliers were awarded a place in the framework (Ballyclare [☒], [☒]). To win a contract under the framework, the pre-qualified suppliers are assessed against additional criteria relating to quality, delivery and service performance, and cost, taking into account the specific customer requirements in each mini-competition.
99. Customers and competitors who responded to the CMA did not rank Hunter as highly as the Parties and Bristol. However, the CMA considers that, as contracts are tendered infrequently and Hunter has won the Dublin contract only in the summer of 2014, it is not surprising that some customers are not (yet) aware of Hunter’s entry. As noted above, some customers considered that Hunter’s win of the Dublin contract was relevant to its credibility.
100. The CMA considers that Hunter’s win of the Dublin contract shows that it has the capability to win reasonably-sized contracts tendered under EU procurement rules [☒]. In addition, the Dublin contract suggests that Hunter’s product is competitive, at least in a neighbouring geographic market with similarities to the UK market. Similarly, Hunter’s presence on the YPO framework means that it is likely to compete in the mini-competitions for UK contracts under the YPO as it did for the [☒] fire and rescue services. The fact that it is on the YPO, when Ballyclare is not, confirms that it already meets (at least) minimum requirements, since the YPO framework assures supplier standards by appointing only ‘pre-qualified’ PPE suppliers onto the framework.

101. For the reasons set out above, the CMA is therefore of the view that there is now a credible and increasing threat of Hunter winning fully managed PPE contracts, which acts as a constraint on the merged entity. The CMA considers that given also its conclusion on the timeliness and likelihood of Hunter's expansion set out above, this will be sufficient to prevent a realistic prospect of a SLC in the supply of PPE through fully managed contracts.
 - *Conclusion*
102. The CMA considers that Hunter's expansion is likely to be sufficiently timely, likely and sufficient so as to prevent a realistic prospect of a SLC in the supply of PPE through fully managed contracts.

Possible entrants

103. The Parties also provided the CMA with a list of other competitors which could enter the fully managed PPE market given their presence in product supply only PPE such as FlamePro, Eagle and Iturri.
104. The Parties noted that FlamePro has an existing commercial relationship with Fenland and could therefore easily provide fully managed services (rather than supplying PPE and laundry under two separate contracts). The Parties also stated that FlamePro had bid for the fully managed PPE contract in [§].⁴² [§] FlamePro has a track record in relation to the supply of PPE through product supply only contracts. These contracts also suggest it is supplying PPE capable of meeting the requirements of the UK market.
105. Iturri already has a presence in the UK supplying product supply only PPE. In particular, to the extent that there were any barriers to expansion of a reputational nature, the CMA notes that Iturri secured the product supply only contract with the Ministry of Defence. This strongly suggests that it has PPE meeting the relevant requirements of the UK market. In addition, the CMA understands that it has a relevant Gore licence. The CMA therefore considered what it would require to be able to enter the supply of PPE through fully managed contracts. Iturri supplies fully managed PPE services outside of the UK and has an international track record for fully managed PPE. Should it wish to deliver such services in the UK, there are a number of UK laundry suppliers that Iturri could partner up with who have the relevant experience and infrastructure. In addition, the Parties' submissions and third party

⁴² [§]

responses suggest that there are laundry suppliers that are capable and willing to bid for fully managed contracts together with a supplier of PPE.

106. Similarly, Eagle supplies product supply only PPE. Ballyclare's ex-managing director is now director at Eagle, suggesting that Eagle benefits from his expertise in fully managed PPE contracts. Eagle also has a warehouse in the UK. However, the CMA notes it has yet to win a 'head-to-toe' contract and the CMA is not aware of any evidence that it supplies fully managed PPE outside the UK. This suggests it may be more difficult for Eagle to enter the supply of PPE through fully managed contracts.
107. Yaffy/Honeywell is bidding for a product supply only PPE contract [§]. The evidence submitted by the Parties [§] indicates that it has developed products satisfying requirements to be sold in the European Union [§].
108. Further, the Parties submitted that Vanguard, Waterford⁴³ and JBS (with Bristol) also bid for the fully managed contract in [§]. Finally, they mentioned North Fire,⁴⁴ Sioen, Berendsen, Johnson, Fenland, Viking and PHS as potential entrants. However, Berendsen, Johnson and Fenland are laundry providers and the CMA did not receive evidence that they could purchase the relevant PPE and offer competitive PPE fully managed services. Given that none of these parties has alone won a UK PPE contract, the importance of reputation and track record and the time it took Hunter to enter the supply of fully managed PPE, the CMA considers that their entry may not be sufficiently timely and likely.
109. However, given that the CMA has already found that Hunter's expansion is sufficiently timely, likely and sufficient so as to prevent a realistic prospect of a SLC in the supply of PPE through fully managed contracts, it does not need to conclude with respect to the other possible entrants.

Buyer power

110. The Parties submitted that fire and rescue services collaborate and will likely do so to a greater extent going forward. They gave examples of the ICP contract, eight Scottish fire services having procured PPE jointly, [§]. They also submitted that the bulk of the contracts awarded over the next five years will be awarded by four purchasing consortia (Scotland, North-East, North-West and Greater Manchester). Further they noted that the Department for Communities and Local Government has published, in March 2014, a new

⁴³ [§]

⁴⁴ The CMA notes that North Fire has qualified on the YPO for product supply only but not won a contract under it yet.

proposal to develop a more collaborative approach to procurement, including in PPE, to achieve cost savings.

111. The Parties suggested that the larger contracts are more attractive to bidders. However, the CMA has not seen a correlation between the size of the tenders and number of shortlisted bidders set out in the Parties' tender log.
112. Third party customer responses suggested that those purchasing through a collaborative arrangement (with multiple fire and rescue services) achieve better rates with prices varying depending on the quantity of PPE purchased.
113. Ballyclare also submitted that the [X].
114. However, given that individual negotiations are prevalent, even if one large customer/consortia had buyer power, this would not typically protect other customers from any adverse effects that might arise from the Merger.⁴⁵
115. The Parties also indicated that the ICP will provide a price benchmark. The CMA has assessed the constraint of the ICP above (see paragraphs 73 to 78).
116. The CMA is therefore of the view that it does not have sufficient evidence to conclude that customers have strong bargaining power to the extent that they may be expected to maintain a sufficient competitive constraint on the merged entity post-Merger. In any event, as Hunter's expansion is sufficient to prevent any realistic prospect of an SLC in the supply of PPE through fully managed contracts, there is no need for the CMA to reach a firm conclusion on buyer power.

Product supply only contracts

Shares of supply

117. The Parties also submitted a tender log for product supply only contracts and calculated shares of supply based on the estimated value of the bids won by each market player. The resulting shares of supply are displayed in Table 4. This covers contracts between 2009 and 2014, given the evidence provided suggests contract terms for product supply only contracts tend to be between three to five years, with some exceptions.

⁴⁵ See [Merger Assessment Guidelines](#), paragraph 5.9.6.

TABLE 4 UK share of supply based on estimated total value of product supply only contracts in Parties' tender log (2009 to 2014)

Competitor	<i>Estimated total value of contracts (£m)</i>	<i>Share of supply (%)</i>
Ballyclare	[8]	[10–20]
LHD UK	[8]	[15–25]
Merged entity	[8]	[30–40]
Bristol	[8]	[50–60]
Iturri	[8]	[5–15]
Others	[8]	[0–5]
Total	[8]	100

Note: Estimated value of tenders included in the Parties' tender log. This includes tenders of the YPO framework. No ICP tenders for product supply only took place.

118. The Parties submitted that the total values are best estimates of the total lifetime contract value and that the actual invoiced sales can vary significantly in any one year. In addition, the tender log does not contain a contract that was awarded before the start of the tender log.
119. The CMA calculated shares of supply based on actual sales. These are set out in Table 5. The CMA notes that the frame of reference for product supply only contracts is limited to per-item sales of protective clothing and 'head-to-toe' bundles. However, the sales data provided by the Parties and third parties does not differentiate between bundled sales and per-item sales. Therefore, a small part of the sales displayed in Table 5 may actually relate to per-item sales of non-clothing items which are outside the product frame of reference. The CMA considers that this does not have any material impact on the competitive assessment given it is the CMA's understanding that the vast majority of the product supply only sales of the Parties and other protective clothing suppliers are either per-item sales of protective clothing or 'head-to-toe' bundles.
120. The CMA notes that approximately 30 to 50% of Ballyclare's product supply only sales in 2013 are based on contracts that are not included in the tender log.⁴⁶ Therefore, the shares of supply in Table 5 provide a more complete picture of the market. However, annual sales figures do not reflect possible variations of sales over the lifetime of a contract and the existing backlog.

⁴⁶ Around [~~8~~] of the sales not accounted for in the tender log stem from [~~8~~] that was tendered before the start of the Parties' tender log in 2009. The remaining sales mostly resulted from smaller contracts with private companies that were awarded without a tender process.

TABLE 5 UK share of supply based on actual sales (product supply only contracts) in 2013

Name of competitors	Share of supply (%)
Ballyclare	[20–30]
LHD UK	[10–20]
Merged entity	[35–45]
Bristol	[35–45]
FlamePro	[5–10]
Iturri	[5–10]
Keela	[0–5]
Hunter	[0–5]
Eagle	[0–5]
Vanguard	[0–5]
JBS	[0–5]
Total	100

Note: Table is based on turnover data submitted by the Parties and third parties. Iturri's and Eagle's turnover was estimated by the CMA based on the Parties' tender log.

Closeness of competition

Bidding data

121. Given the Parties submitted that a substantial number of product supply only contracts are awarded following tenders, the CMA considers that a more detailed analysis of the bidding data (that is, considering how often the Parties and others are shortlisted and win tenders) may be more informative than the shares of supply in assessing competition. The CMA has therefore also assessed the Parties' tender log for product supply only contracts.

TABLE 6 Analysis of Parties' tender log of product supply only contracts (2009 to 2014)

	Ballyclare	LHD UK	Bristol	Hunter	Eagle	Sioen	Keela	Iturri	FlamePro	Seyntex
Contracts won within YPO framework	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]
Shortlisted for Contract (excluding YPO)	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]
Contracts won (excluding YPO)	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]	[☒]

Notes: The table is based on the Parties' tender log. The CMA only included suppliers of protective clothing in the table. Additionally, the CMA excluded the tender of the Scottish fire and rescue service as it understands that the tender process is ongoing and that no firms have been shortlisted yet. Furthermore, the CMA included the tender of the Shropshire & Wrekin Fire Authority because it understands that FlamePro has a product supply only contract (there is a separate contract for laundry and maintenance services).

122. The CMA notes that the overall number of contracts listed in the Parties' tender log is low. However, based on the responses of third party competitors the CMA considers that the tender log includes all significant tenders for product supply only contracts for PPE in the UK in the period 2009 to 2014.
123. The Parties submitted that LHD UK [☒].⁴⁷ However, the CMA notes that LHD UK was still able to win a £[☒] million contract for three years in October 2013. The CMA therefore considered that the evidence is not conclusive that

⁴⁷ [☒]

LHD UK would not be in a position to compete effectively absent the Merger due to its financial difficulties. As noted above, since LHD UK was [☒].

124. The Parties submitted that Ballyclare won one material product supply only contract in early 2010 and since then [☒] with a value of £[☒]. The Parties further stated that, over the last four years, LHD UK has won [☒] product supply only contract in October 2013. Moreover, [☒] over the last four years [☒]. The Parties also noted that there were six suppliers shortlisted in the most recent bid for Greater Manchester Fire and Rescue Service in June 2013.
125. Bristol won the most contracts including those under the YPO ([☒] out of [☒]). [☒] won any contracts under the YPO. Of the other contracts, the Parties each won the most and, together with Bristol, are the suppliers that were shortlisted most often. However, in addition, FlamePro, Iturri and Eagle all won contracts and [☒] and [☒] have been shortlisted on multiple occasions for contracts outside of the YPO.⁴⁸ Competitors taken together (FramePro, Iturri, Eagle and Bristol) therefore won the same amount of contracts (excluding the YPO) as the Parties combined.
126. Whilst they have yet to win a contract within the framework, Hunter, Eagle and North Fire qualified for the YPO framework in addition to LHD UK and Bristol. Hunter was also shortlisted for a contract outside the YPO in the past.
127. Based on their limited success in the UK, the CMA considers that Keela, Seyntex, and Sioen are not credible bidders. [☒]
128. The CMA has received results and rankings from a limited number of tender processes from the Parties and customers. The CMA is aware of two tenders for product supply only contracts where one of the Parties won and the other was the runner up. However, there is no evidence that any party is systematically better than any other on any particular criterion. Therefore, based on the empirical evidence available to the CMA it appears to be difficult to predict who the ultimate winner of a contract is likely to be or who its closest competitor in each contract is. Overall, Bristol appears to be the strongest and most successful bidder though not systematically so.
129. The CMA therefore considers that Bristol will provide a strong constraint on the merged entity. In addition, FlamePro, Iturri, Eagle, North Fire and Hunter will also provide a constraint on the merged entity given recent wins and/or their presence on the YPO framework.

⁴⁸ FlamePro and Iturri won contracts to supply 'head-to-toe' PPE. Eagle won a contract to supply hoods.

130. The discussion under the supply of PPE through fully managed contracts in the UK with respect to the constraint exercised by the YPO framework also applies to the supply of PPE through product supply only contracts (see paragraphs 73 to 78).

Third party responses

131. The discussion under the supply of PPE through fully managed contracts with respect to third party responses and views on closeness of competition also applies to the supply of PPE through product supply only contracts in the UK (see paragraphs 69 to 72).
132. In addition, the CMA notes that the majority of product supply only customers did not express any concerns with the Merger.

Conclusion on the supply of PPE through product supply only contracts

133. Based on the evidence set out above, the CMA is of the view that Bristol exerts a strong competitive constraint on the Parties. It has won more contracts than the Parties combined since 2007. In addition, FlamePro, Iturri and Eagle all exercise some constraint on the Parties given they have won a contract each and in the case of [§] and [§] have been shortlisted on multiple occasions. Eagle and Iturri have also successfully qualified for the YPO framework. Hunter exerts some constraint on the Parties given it is on the YPO framework and has been shortlisted in the past. The CMA therefore considers that the Merger will not give the merged entity the ability to increase price or worsen non-price aspects of the competitive offering (such as innovation).
134. Accordingly, the CMA finds that the Merger does not give rise to a realistic prospect of a SLC as a result of horizontal unilateral effects in relation to the supply of PPE in product supply only contracts in the UK.

Barriers to entry and expansion for product supply only contracts

135. The Parties submitted that entry or expansion by a large number of competitors, including Yaffy/Honeywell,⁴⁹ North Fire, Iturri and Eagle will constrain the merged entity (see paragraphs 81 to 109 above).
136. However, the CMA has not considered it necessary to conclude on the timeliness, likelihood or sufficiency of entry or expansion as no realistic

⁴⁹ [§]

prospect of a SLC arises in the supply of PPE products through product supply only contracts.

Buyer power

137. The discussion under the supply of PPE through fully managed contracts with respect to buyer power also applies to the supply of PPE through product supply only contracts in the UK (see paragraphs 110 to 116).

Vertical effects

138. LHD UK is vertically integrated as it has in-house laundry services unlike Ballyclare. As such, the Merger will result in a potential vertical relationship between LHD UK's laundry services and the supply of fully managed contracts by Ballyclare. The CMA considered whether the merged entity would have the ability, incentive and effect to foreclose customers or suppliers.⁵⁰
139. Ballyclare submitted that it [REDACTED]. The CMA therefore considers that the merged entity will not be in a position to foreclose other laundry suppliers. In any event, PPE laundry is but one of a number of offerings of Berensden, one of Ballyclare's current suppliers.
140. The CMA considers that, given that LHD UK did not provide laundry services for other PPE suppliers, there will not be any merger effect on suppliers of PPE on a fully managed basis.

Coordination

141. One third party expressed concern that the Merger would lead to price fixing between two players noting that two brothers are in senior management positions in each of the Parties and Bristol. The Parties have indicated that one of the brothers is a consultant for a number of portfolio companies including Ballyclare while the other, who works for Bristol, is based in the USA. The CMA therefore does not consider that this raises a coordination risk in and of itself.
142. Coordination may take different forms. Firms may coordinate by dividing up the market between them, for example by allocating contracts among themselves in bidding competitions (either by agreeing not to bid for certain contracts or tacitly bidding less strongly for each other's customers). The CMA

⁵⁰ See [Merger Assessment Guidelines](#), paragraph 5.6.6.

considered whether all three of the conditions that must be satisfied for coordination to be possible:

- (a) Firms need to be able to reach and monitor the terms of coordination.
- (b) Coordination needs to be internally sustainable among the coordinating group, ie Firms have to find it in their individual interests to adhere to the coordinated outcome.
- (c) Coordination needs to be externally sustainable, in that there is little likelihood of coordination being undermined by competition from outside the coordinating group.⁵¹

Ability to reach and monitor the terms of coordination

143. The Merger reduces the number of competitors, particularly in fully managed services. In addition, Bristol and the Parties supply similar products and are close competitors (see section on closeness of competition under unilateral horizontal effects). The CMA is of the view that this could make it relatively straightforward for the Parties and Bristol to reach an explicit understanding particularly to allocate contracts and observe deviations from these terms.⁵²
144. However, the CMA notes that it has received third party evidence that switching is fairly easy and several customers have switched suppliers in the past.

Internal sustainability

145. Despite the high shares of the Parties and Bristol, the CMA notes that contracts are irregular and of different sizes and this may increase the incentive for the Parties and Bristol to break the terms of coordination (given some may be high value) and reduce their ability to punish (as they need to wait for the next contract to come up for renewal).

External sustainability

146. Bristol and the Parties together hold 100% of the market for the supply of PPE on a fully managed basis in the UK. The CMA therefore considers that they could exercise a degree of market power. However, as noted above Hunter is

⁵¹ See *Merger Assessment Guidelines*, paragraphs 5.5.1–5.5.19.

⁵² The CMA does not consider that the Parties and Bristol have the ability to reach an understanding with Hunter but does not need to conclude given internal sustainability is unlikely.

likely to expand making coordination between the Parties and Bristol less likely to be sustainable.

147. With respect to the supply of PPE on a product supply only basis in the UK, whilst the Parties and Bristol's combined share is lower (70 to 80%), they still exercise a degree of market power. However, there are a number of other suppliers winning contracts suggesting that coordination between the Parties and Bristol would not be profitable.

Conclusion

148. When considering the factors in the round, the CMA does not believe that there could be a realistic prospect of an SLC through coordinated effects in the supply of PPE (either on a fully managed basis or for product supply only) in the UK given that, whilst it appears possible for the Parties and Bristol to reach and monitor terms of coordination, coordination does not appear internally and externally sustainable.

Third party views

149. The CMA contacted several of the Parties' customers, competitors and suppliers (both fabric and non-fabric suppliers), as well as industry organisations (both trade and procurement organisations).
150. Four out of 16 customers with a fully managed PPE contract, who responded to the CMA, raised concerns, some regarding price increases, one noting the Parties were close competitors and one noting that new entrants could win contracts but service may suffer as a result. In addition, three may be concerned. Of these seven who are or may be concerned, four noted that whilst they have concerns, market conditions may be different in future or the market may be bigger in the next couple of years. Only one customer with a product supply only contract raised some concerns noting that the Parties and Bristol were the only three bidders for the last contract but it was unable to predict future market conditions. The CMA only received one concern in relation to coordinated effects.
151. One large customer of fully managed PPE noted there were 12 credible suppliers.
152. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

153. 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 SLC within a market or markets in the United Kingdom.

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

Nelson Jung
Director of Mergers
Competition and Markets Authority
26 August 2014