

# Consultation on allowing schools early exit from software contracts

Education Software Solutions Limited (ESS) is the largest provider of school management information system (MIS) software in England and Wales. In the UK, most state schools are required to have an MIS in place to handle information on staff and students including for handling attendance and safeguarding.

In April 2022, the Competition and Markets Authority (CMA) opened an investigation into whether ESS' conduct was anti-competitive by effectively limiting schools' ability to choose an MIS software provider and excluding its competitors. The CMA was concerned about ESS providing that its customers – schools in England and Wales – must move to three-year contracts, from their previous one-year contracts, without giving them sufficient time to make alternative arrangements with other software providers. The CMA was concerned that these changes reduced schools' choice of MIS software provider and made it difficult for other providers to compete with ESS to win business.

ESS has offered to give legally binding assurances, known as commitments, which would enable certain schools – broadly those schools which had been given insufficient time to switch providers – to apply to an independent adjudicator for a new break clause to allow them to escape their current three-year contract with ESS and choose alternative providers.

If the CMA accepts commitments, that does not itself entail a finding that the business giving the commitments has breached competition law, and in this case the CMA notes that ESS maintains that its behaviour was not anti-competitive.

The CMA considers that the proposed commitments address its competition concerns by giving affected schools the choice to exit their current three-year contract and switch to another MIS supplier, facilitating competition.

It is now inviting comments from schools, and others likely to be affected by the commitments, including on the eligibility criteria to apply for the new break clause and on any matters that may affect the effective implementation of the proposed commitments – for example, on the application form to be used. If accepted by the CMA, the commitments would bring the investigation to an end.

Further details about how to respond to this consultation are set out in the notice of the proposed commitments issued by the CMA today. Comments on the proposed commitments should be received by no later than 5.00pm on 8 December 2022.

Further details about the CMA's investigation can be found on the [case page](#).

## Notes for editors

1. For media enquiries, contact the CMA press office on 020 3738 6460 or [press@cma.gov.uk](mailto:press@cma.gov.uk).
2. All enquiries from the general public should be directed to the CMA's General Enquiries team on [general.enquiries@cma.gov.uk](mailto:general.enquiries@cma.gov.uk) or 020 3738 6000.
3. The CMA is the UK's primary competition and consumer authority.
4. The competition legislation relevant to the CMA's investigation is the Competition Act 1998 (the Act). The Chapter II prohibition in the Act prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market, and which may affect trade within the UK.
5. On 26 April 2022, the CMA launched an investigation into a suspected breach of competition law – a suspected abuse of dominance – in the supply of MIS software in the UK by ESS.
6. Where the CMA has begun an investigation under the Act, it may accept commitments for the purposes of addressing the competition concerns it has identified. If the CMA proposes to accept the commitments, the CMA will consult third parties who might be affected by these commitments and allow them an opportunity to give their views to the CMA. The CMA will consider any such views before deciding finally whether or not to accept the commitments.
7. Formal acceptance of commitments would result in the CMA ending its investigation and not proceeding to any decision on whether ESS has infringed the Act.
8. The CMA has also considered whether or not to grant interim measures, under section 35 of the Act, in relation to this case. Formally accepting commitments, bringing the concern to an end, would make it unnecessary to make any interim measures directions in this case.