

Education Software Solutions Limited breaks against the CMA's intervention: A victory for freedom and flexibility in contracting for MIS services

20 January 2023

Introduction – the Competition and Markets Authority (“CMA”) Investigation

A little under a year into the [Competition and Markets Authority's intervention](#) into the allegedly anti-competitive behaviour of Education Software Solutions Limited (“**ESS**”) — one of the UK's leading providers of Management Information Systems (“**MIS**”) — a line has been drawn and the investigation has come to an end. The Competition and Markets Authority launched its investigation into Education Software Solutions Limited on 26 April 2022, as it had reasonable grounds to suspect that Education Software Solutions Limited had potentially acted in violation of the Competition Act 1998 (**the “Act”**) through the manner in which it was supplying Management Information Systems software to schools in the UK.

The main crux of the Competition and Markets Authority intervention was to review Education Software Solutions Limited's moving of schools into 3-year contracts from initial contracts of 1-year, whilst giving the schools little opportunity to look for Management Information Systems services elsewhere. This involved an 8 month deep-dive analysis into the activities of Education Software Solutions Limited, with the Competition and Markets Authority bolstering its investigation through [information requests](#) from Education Software Solutions Limited, its competitors and its customers. Crucially, it is a legal requirement for the vast majority of state schools across the UK to have an Management Information Systems in place, such as Education Software Solutions Limited's SIMS service. As such, schools were on the backfoot, and essentially tied to 3-year Management Information Systems contracts with Education Software Solutions Limited, with very restricted abilities to move to another provider.

After months of investigation, the Competition and Markets Authority issued, on [17 November 2022](#), a notice of intention to accept commitments offered by Education Software Solutions Limited. Ultimately, the Competition and Markets Authority secured signed [commitments](#) with a new **break clause** from Education Software Solutions Limited on [10 January 2023](#), drawing a close to the Competition and Markets Authority probe.

What does this mean for eligible schools?

Overall, this appears to be a favourable outcome for eligible schools who are looking for greater flexibility in their contracting for Management Information Systems services. The new break clause is only available to eligible schools, which were those schools moved into 3-year contracts with Education Software Solutions Limited, and who truly considered to move to a different provider had they had more time to deliberate other Management Information Systems avenues. Such eligible schools will benefit from a 12-month break clause, beginning from 1 April 2023, and enabling them to break their 3-year Education Software Solutions Limited contracts on 31 March 2024.

Eligible Education Software Solutions Limited customers must file an [application form](#) to an independent adjudicator in order to try and secure benefit from this new break clause ahead of the [5pm deadline on Friday 10 February 2023](#). Applicants will be notified of their

success in securing a break clause on 31 March 2023.

Ann Pope, Senior Director of Antitrust at the Competition and Markets Authority, stated that: *“This break clause will give eligible schools 12 months to decide whether to exit their current contract and, if they do, to switch to a new provider — longer than Education Software Solutions Limited originally offered. The commitments secured from Education Software Solutions Limited will also bolster competition in the Management Information Systems market, giving schools more choice and Education Software Solutions Limited’s rivals a further chance to compete.”*

What should you do?

Browne Jacobson is a leading national law firm with sector-specific industry leaders in the fields of commercial, education and disputes. As a full-service law firm, we are able to assist schools, colleges and trusts alike with any and all legal issues they may encounter, whilst scanning the horizon for their next challenges or opportunities.

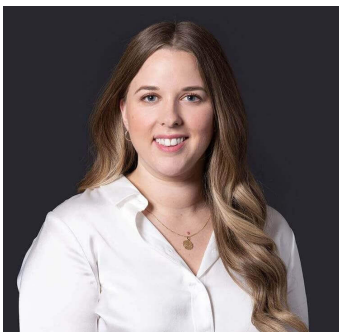
In order to rake in the full benefit from the outcome of the Competition and Markets Authorities investigation before the **10 February 2023** deadline, eligible schools should reach out to our sector-specific experts at Browne Jacobson today.

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