

Supply of service, maintenance and repair platforms

Decision to accept commitments offered by
epyx Limited and FleetCor Technologies, Inc.

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1. Introduction

- 1.1 In this decision, the Competition and Markets Authority (CMA) accepts¹ the final commitments offered by epyx Limited (Epyx) and FleetCor Technologies, Inc. (FleetCor) (hereafter together referred to as ‘the parties’) as set out in Annex A.
- 1.2 As a result of accepting the final commitments, the CMA has closed its investigation with no decision made on whether or not Chapter II of the Competition Act 1998 (the Act) or Article 102 of the Treaty on the Functioning of the European Union (TFEU) has been infringed in relation to the supply of vehicle service, maintenance and repair (SMR) platforms in the UK.
- 1.3 Moreover, acceptance of the final commitments does not prevent the CMA from continuing its investigation, making an infringement decision, or giving a direction in circumstances where the CMA has reasonable grounds for:
- believing that there has been a material change of circumstances since the final commitments were accepted
 - suspecting that a person has failed to adhere to one or more of the terms of the final commitments, or
 - suspecting that information which led the CMA to accept the final commitments was incomplete, false or misleading in a material particular²
- 1.4 The remainder of this document is structured as follows:
- Chapter 2 sets out relevant background, including details of the Office of Fair Trading’s (OFT’s) and CMA’s investigation,³ the parties to the investigation, and the services to which the investigation relates.
 - Chapter 3 sets out the CMA’s competition concerns in relation to Epyx’s conduct.
 - Chapter 4 summarises the outcome of the consultations regarding the initial and modified commitments; describes the final commitments offered by the parties; and sets out why the CMA considers that the final commitments address its competition concerns.

¹ Section 31A(2) of the Competition Act 1998.

² Section 31B(4) of the Competition Act 1998.

³ Responsibility for the investigation passed to the CMA on 1 April 2014. From that date, the functions of the Competition Commission and the competition and certain consumer functions of the OFT were transferred to the CMA. The CMA was established under the Enterprise and Regulatory Reform Act 2013.

- Chapter 5 concludes with the CMA's decision to accept the final commitments.

2. Background

The OFT and CMA investigation

- 2.1 In April 2011, the OFT received a complaint alleging that Epyx had abused a dominant position in relation to the provision of its 1link Service Network platform (the SN platform) in the UK, by imposing anticompetitive provisions in its contracts with customers.
- 2.2 The abuse of a dominant position is prohibited by Chapter II of the Act and Article 102 of the TFEU. On 17 June 2011, the OFT commenced a formal investigation pursuant to section 25 of the Act, on the basis that there were reasonable grounds for suspecting that Epyx had infringed Chapter II of the Act and Article 102 of the TFEU.
- 2.3 In October 2013, Epyx was acquired by FleetCor. Following this acquisition, the parties approached the OFT to discuss the possibility of offering commitments to address the OFT's competition concerns.⁴
- 2.4 The parties offered initial commitments in relation to which the OFT issued, on 10 March 2014, a notice setting out its provisional intention to accept the initial commitments (the March notice)⁵ and invited interested third parties to make representations (the first consultation). The first consultation closed on 4 April 2014.
- 2.5 The OFT closed on 31 March 2014, after which responsibility for the investigation passed to the CMA.
- 2.6 Following the first consultation, and in light of the consultation responses, the parties proposed modified commitments that amended certain aspects of the initial commitments. On 5 June 2014, the CMA issued a notice setting out its provisional intention to accept the modified commitments (the June notice)⁶ and invited interested third parties to make representations (the second consultation). The second consultation closed on 18 June 2014.
- 2.7 Following the second consultation, and in light of the consultation responses, the parties proposed final commitments that included non-material

⁴ See, for example, paragraph 4.18 of *Enforcement* (OFT407), December 2004, and paragraph 10.19 of *A guide to the OFT's investigation procedures in competition cases* (OFT1263rev), October 2012, for information regarding the process by which commitments may be offered in a UK competition case.

⁵ *Notice of intention to accept binding commitments in relation to the supply of service, maintenance and repair platforms by epyx Limited* (OFT1528), 10 March 2014.

⁶ *Supply of Service, Maintenance and Repair Platforms: Notice of intention to accept modified commitments offered by epyx Limited and FleetCor Technologies, Inc. and invitation to comment*, 5 June 2014.

amendments to the modified commitments which clarified certain operational aspects.

- 2.8 Having taken account of all the material in its possession in the round, including the representations made during the first consultation and the second consultation, the CMA considers that the final commitments as set out in Annex A to this decision address its competition concerns and it has therefore decided to accept them. Accordingly, the CMA has closed its investigation with no decision made on whether the conduct which was the subject of the investigation constitutes an infringement of the Act or the TFEU.

The parties

Epyx Limited

- 2.9 Epyx is a private limited company incorporated in England and Wales in October 2000. Its reported revenue for the year ended 31 December 2012 was £20.8 million.
- 2.10 Epyx provides technology solutions to the UK automotive sector through a portfolio of online business-to-business trading platforms marketed under the 1link brand. These platforms are marketed by Epyx as connecting everyone in the supply chain – the fleet, the driver and the supplier – and are designed to cover the main elements of a motor vehicle’s life cycle, from initial acquisition through to SMR work, daily rental, relicensing and vehicle disposal. Customers can subscribe to each platform in the 1link portfolio individually or in combination with other 1link platforms.
- 2.11 The investigation has concerned only the supply of Epyx’s SMR platform – the SN platform – as the complaint related to this platform only, which is also Epyx’s main platform in terms of revenues and market position.

FleetCor Technologies, Inc.

- 2.12 Since October 2013, Epyx has been indirectly wholly owned by FleetCor.⁷ FleetCor is a global provider of fleet, fuelling and specialised payment solutions for businesses, and is publicly quoted on the New York Stock Exchange. FleetCor operates in 43 countries in North America, Europe, Africa and Asia, with reported revenue for the year ending 31 December 2013 of US\$895 million.

⁷ FleetCor acquired 100% of the shareholding of Quadrum Investments Group Limited, of which Epyx is a wholly-owned subsidiary, from the private equity firm HgCapital LLP and Epyx management in October 2013. See FleetCor’s [press release](#) dated 30 October 2013.

The supply of SMR platforms within the UK

2.13 This section sets out the CMA's preliminary views on the key characteristics of Epyx's SN platform and the sector in which it operates, based on the information obtained during the investigation.⁸

The SN platform

2.14 Epyx's SN platform has achieved rapid industry acceptance processing 2.5 million vehicles and connecting one of the UK's largest networks of repairers. It is used by the UK's leading fleet companies.⁹

2.15 An SMR platform is a commercially available online platform enabling companies requiring the service, maintenance and repair of corporate vehicle fleets to electronically procure such services from suppliers. It is a two-sided service, designed to facilitate the interaction of one side of the service (buyers, also referred to as demand-side customers) with the other side (suppliers, also referred to as supply-side customers). The service offers a one-stop shop for a wide range of functionality covering a wide range of transaction types.

2.16 Epyx launched the SN platform in 2003 and licenses its use on a national basis, contracting separately with demand-side and supply-side customers. In the UK:

- Epyx's contracts with demand-side customers tend to be bespoke and cannot be varied by Epyx without the counterparty's consent.
- Epyx's contracts with supply-side customers tend to be of a standard form. The standard terms and conditions are published on Epyx's website and may be varied by Epyx from time to time.

⁸ These preliminary views were based on extensive information received throughout the OFT's investigation prior to the first consultation. Information was received from Epyx and a wide range of third parties, including trade associations, potential entrants, businesses providing services to the automotive sector and potential and actual SMR platform customers of varying sizes who represented more than 80% of Epyx's demand-side customer revenues in total and a cross-section of the supply side. The majority of this information was collected under formal powers requiring accurate and complete responses to a detailed set of questions.

⁹ See information on the SN platform published on Epyx's [website](#) as of 1 September 2014.

The customer base

- 2.17 Buyers of SMR platform services are companies that manage, on their own or others' behalf, the procurement of SMR work for corporate vehicle fleets (hereafter referred to as 'fleet companies').¹⁰
- 2.18 Fleet companies procure SMR work from a diverse network of suppliers.¹¹ Prominent among these suppliers are dealers who distribute vehicles but also provide associated services including SMR work. Other suppliers of SMR work include service centres, fast-fit outlets, repair shops and garages. Some of these suppliers operate as national or regional chains; some are owned by or are affiliated (through franchises) with manufacturers; others function independently. The range of services offered will also differ across suppliers.
- 2.19 The buyers and suppliers of SMR work make use of a range of methods to transact with one another, including:
- **SMR platforms** – as previously described, these platforms offer the benefit of ready access by demand-side customers to a network of SMR suppliers, and vice versa. This is in addition to the cost efficiencies, convenience and improved, centralised control of SMR activities an electronic platform provides.
 - **Manual processing** – methods of processing SMR transactions that involve communication between a buyer and a supplier but do not offer any additional automated functionality. Manual processing includes the processing of SMR work via telephone calls, letters, emails and/or faxes between a buyer and supplier.
 - **In-house systems** – IT systems or software owned or developed by a buyer or supplier, which might be used as an alternative to an SMR platform for processing SMR transactions, but are only used for that company's business purposes. Such systems are therefore bespoke to the specific characteristics and needs of the commissioning company and are not commercially available on demand.
- 2.20 Fleet companies who are not subscribed to the SN platform typically appear to have simpler SMR needs which generally require a more limited degree of

¹⁰ Information provided by Epyx shows that fleet companies include leasing companies, rental companies, companies which operate corporate vehicle fleets (fleet operators), companies which provide fleet management services to these fleet operators, and companies which offer corporate vehicle warranty and service plans. Among these, leasing companies are the largest segment.

¹¹ There are many thousands of SMR suppliers in the UK (approximately 4,900 franchised dealers alone – see the [website](#) of the National Franchised Dealers Association as of 9 September 2014 – and many more independent garages).

liaison with suppliers. For example, they may work with in-house garages which are part of the same corporate group, only use a limited number of marques (ie vehicle brands), or only require a limited volume of SMR work.

Demand-side led choice

- 2.21 Fleet companies control the allocation of SMR work. Information received from suppliers during the investigation indicates that suppliers have strong incentives to accommodate fleet companies' operational preferences in order to secure their business. According to suppliers, the fleet companies therefore tend to drive the choice of processing method, with leasing companies – particularly the very large leasing companies – being especially influential given the volume of SMR business they conduct.
- 2.22 In considering the likely competitive dynamic in this market,¹² the CMA has therefore focused primarily on the preferences of the demand side when using SMR platforms.

SMR platform use: single-homing vs multi-homing

- 2.23 Information obtained during the investigation indicated that the majority of demand-side customers would prefer to single-home (ie use one SMR platform only at a given time) when processing SMR transactions, as multi-homing (ie using more than one platform at a given time) brings increased complexity and operational costs of running multiple systems in parallel. The minority of demand-side customers who would wish to multi-home¹³ expected the principal advantages of this to be the introduction of competition in the market, cost reductions, mitigation of continuity risk, and improvements in product development.
- 2.24 A minority of demand-side customers also identified a limited number of areas where there is some need for multi-homing with alternative systems (not necessarily SMR platforms) in relation to:
- specialist transactions such as tyre, glass and HGV work
 - intra-group transactions
 - manual processing where a supply-side customer does not use the SN platform

¹² See paragraphs 3.2–3.4 of this commitments decision for a discussion of the relevant market.

¹³ The CMA acknowledges that a range of views was expressed during the consultations on the commitments in relation to demand-side interest in multi-homing. This is addressed later, in Chapter 4 of this decision.

- customers who manage fleets on behalf of third party demand-side companies (fleet managers)

2.25 Given the CMA's preliminary view that SMR processing choices are demand led and since demand-side customers benefit from operational efficiencies when single-homing on one platform, the CMA considers that, if credible platform choices were available, most demand-side customers would prefer to choose one preferred platform and supply-side customers would facilitate this choice by providing services across multiple platforms; with a small proportion of demand-side customers also multi-homing.

Switching to alternative systems

- 2.26 Customers have stated that the use of an SMR platform (such as the SN platform) is commercially beneficial to them and is an important tool in their day-to-day operations. In light of this operational significance, the CMA's preliminary view is that demand-side customers are very likely to take a carefully considered approach when determining whether to switch between SMR platforms.
- 2.27 Demand-side customers have indicated that any process of switching is likely to involve engagement in a range of activities with an alternative provider in order to properly evaluate available alternatives and, if applicable, efficiently switch to the selected alternative system.
- 2.28 Demand-side customers have indicated that the necessary activities will generally include:
- **Exploratory discussions:** this may include demonstrations of the alternative system, customer requests and feedback, informing the provider when the customer's contract with Epyx expires, and so on. Such discussions offer the provider the opportunity to market to and build relationships with target customers, obtain feedback to guide its product development, and plan future testing stages.
 - **Testing:** this may include dummy or live testing. Live testing involves demand-side customers processing live transactions with suppliers.¹⁴ Dummy testing relates to testing that does not involve the processing of live transactions.

¹⁴ In the context of testing, live transactions refer to transactions that are fulfilled (ie lead to actual SMR work) and result in taxable payments for such work.

- **Transitional multi-homing** in the lead-up to switching to the alternative system. Demand-side customers have generally indicated that they would expect, when switching, to transfer their SMR transactions to the alternative system gradually over a transitional period. They would therefore have a temporary need to use both the SN platform and the platform they were switching to in parallel during this transitional period.¹⁵ This is viewed by demand-side customers as a way to manage the risk associated with changing a business-critical provider, in particular when adopting the services of a new entrant, or managing the logistics of migrating a large supplier base to an alternative system.

Barriers to entry

2.29 The CMA understands from information received during the investigation that entry will require investment in:

- (a) The development of a capable product. The information received indicated that the scale of development costs a potential new entrant will need to incur prior to launching a product, and the time required for development, are not insignificant.
- (b) The establishment of a network on both sides of the platform. In a two-sided platform such as the SN platform, the size of the network is important and network effects¹⁶ can raise barriers to entry for potential entrants. For example, demand-side customers will not see much value in an alternative system unless a sufficient number of its suppliers are subscribed to it. Similarly, supply-side customers will only be inclined to use an alternative system which offers them access to demand-side customers with SMR work.

2.30 As such, it is the CMA's preliminary view that the barriers to entry for competitors to the SN platform will include costs¹⁷ and lead times relating to the need to develop the service as well as the need to build a network on both sides of the platform.

¹⁵ Only a small minority of customers have suggested that they may be able to effect an immediate migration by switching one system 'off' and the new system 'on'.

¹⁶ See paragraphs 5.21 and 5.22 of [Assessment of market power](#) (OFT415), December 2004. This guidance was originally published by the OFT and has been adopted by the CMA. The guidance provides that network effects occur where users' valuations of the network increase as more users join the network. For example, as new customers enter a telephone network, this might add value to existing customers because they would be connected to more people on the same network. The guidance also provides that network effects, just like economies of scale, may make new entry harder where the minimum viable scale (eg in terms of users of the network) is large in relation to the size of the market.

¹⁷ In the CMA's preliminary view, at least some of these costs will be sunk costs, that is, costs incurred on entering a market that are not recoverable on exiting that market.

Other considerations for entry

2.31 Throughout the course of the investigation, customers, potential new entrants and companies working in the automotive sector have identified certain factors resulting from the switching dynamics and two-sided nature of SMR platforms set out above that are likely to influence the ability of a competitor to enter the market:

- The cooperation and feedback of customers in designing a service fit for purpose and in preparing for a switch, including any testing and transition activities necessary.
- The ability to market widely and quickly secure a viable network on both the demand and supply side, requiring timely access to a sufficient number of demand-side customers, particularly larger customers who may be able to sponsor entry. The promotion of an alternative system by customers to other customers on both the demand and supply side will also be valuable to network growth.
- The cooperation of Epyx in preparing for and ultimately effecting a switch during any transitional period.

3. The CMA's competition concerns

3.1 This chapter sets out the CMA's competition concerns regarding certain provisions (the relevant provisions) in Epyx's contracts with its demand-side and supply-side customers for the use of the SN platform.

The relevant market

3.2 The CMA's preliminary view is that the supply of SMR platforms within the UK constitutes a separate relevant market.¹⁸

3.3 Regarding the product market, the CMA's preliminary view is that while alternative processing methods (such as manual processing) exist, these are not deemed readily substitutable for SMR platforms by the demand-side customers who drive the demand for SMR services in the UK. In the CMA's preliminary view:

- customers of SMR platforms, who benefit from the unique and specific functionality they provide to process and manage high volume, geographically dispersed and complex SMR transactions more efficiently, consider alternative processing methods to be inferior alternatives that complement, rather than substitute for, SMR platforms
- any alternative methods of processing SMR transactions would need to offer similar benefits to demand-side customers in terms of generating efficiency savings, and minimising complexity and duplication

3.4 As regards the geographic market, the CMA notes that the SN platform is licensed for use by Epyx nationally and many of Epyx's demand- and supply-side customers operate on a national basis. Accordingly, the CMA's preliminary view is that the geographic market for SMR platforms is national, ie the UK.

Epyx's market position

3.5 When considering whether an undertaking holds a dominant position, the CMA will examine whether that undertaking has substantial market power.¹⁹ The assessment of market power is a matter of degree which will depend on the circumstances of each case. The CMA will consider factors such as

¹⁸ For information on the CMA's approach to market definition, see [Market definition](#) (OFT403), December 2004. This guidance was originally published by the OFT and has been adopted by the CMA.

¹⁹ See [OFT415](#), paragraph 2.9.

market share and the extent to which an undertaking faces competitive constraints (for example, the presence and relative strength of actual or potential competitors and buyer power from an undertaking's customers) in its assessment of market power.²⁰

- 3.6 In relation to actual competitors, the CMA notes that information from customers indicated that there are no alternative platforms which offer the same functionality, or access to such an extensive network of customers, as the SN platform. In relation to buyer power, the CMA's preliminary view is that customers have limited buyer power in these circumstances unless they are in a position to 'sponsor' entry by potential competitors relatively quickly and without incurring substantial sunk costs,²¹ which they are not, due to Epyx's conduct as later described.
- 3.7 In relation to potential competition, as discussed in paragraphs 2.29 to 2.30, new entrants will have to invest both in developing a functional service and in establishing a network of sufficient scale on both sides of the platform in circumstances in which (as explained in the following section) competition on the relevant market is potentially foreclosed by Epyx's conduct. The CMA's preliminary view is therefore that barriers to entry exist, such that Epyx currently faces a limited degree of potential competition.
- 3.8 In light of the foregoing, in the CMA's preliminary view, Epyx does not face significant actual or potential competition, or countervailing buyer power, and as a consequence holds a dominant position in relation to the supply of SMR platforms in the UK.

Conduct raising concerns

- 3.9 In the CMA's preliminary view, for the reasons set out below, the use by Epyx of the relevant provisions constitutes an abuse of a dominant position. The CMA's preliminary view is that Epyx's demand-side customer contracts and supply-side customer contracts have previously included, or still contain, exclusivity and related provisions that prevent customers evaluating (live testing), developing, sponsoring and/or using alternatives to the SN platform. The CMA's preliminary view is that, taking into account the market context and all of the prevailing circumstances, the relevant provisions tend to restrict competition, or in other words are capable of having that effect, by foreclosing access to demand- and supply-side customers by competitors.

²⁰ See [OFT415](#), paragraphs 2.10 and 3.3.

²¹ See [OFT415](#), paragraph 6.2.

The relevant provisions

Demand-side contracts

- 3.10 The relevant provisions cover demand-side customers which account for more than 70% of Epyx's demand-side revenues.
- 3.11 The demand-side contracts in question typically contain a requirement for demand-side customers 'to process all service and maintenance transactions through [the SN platform]'²² and to pay a minimum annual fee even if the fees attributable to the volume of transactions processed through the SN platform in that year would be lower.
- 3.12 Many of the demand-side contracts in question also require demand-side customers not to 'develop, use, market or support the sale' of any alternative systems. The CMA understands from Epyx that demand-side customers who entered into new contracts with Epyx from May 2011 onwards are typically bound by a revised provision which contains a reference to 'use' only (that is, omitting the reference to 'develop, market or support the sale').
- 3.13 The provisions relating to the use of the SN platform set out in paragraph 3.11 and the provisions relating to the use of alternatives to the SN platform set out in paragraph 3.12 effectively require the exclusive use of the SN platform (ie single-homing) and prevent demand-side customers from:²³
- using an alternative system alongside the SN platform during their contract term, either for transitional purposes when switching to a new platform (transitional multi-homing), or on a permanent basis alongside the SN platform (multi-homing)
 - evaluating alternative systems through the execution and observation of live transactions (live testing)
- 3.14 The provisions relating to development, marketing and support set out in paragraph 3.12 prevent demand-side customers from:
- developing or marketing their own alternative systems, either for in-house use or as a competitor to the SN platform
 - developing or sponsoring third parties' alternative systems

²² This wording being a common form of the requirement.

²³ The minimum annual fee described in paragraph 3.11 may also restrict the use and/or evaluation (by live testing) of alternative systems.

- 3.15 The demand-side contracts in question vary in duration based on the combination of minimum period and notice provisions. The demand-side contracts contain:
- specified minimum periods which are typically three to five years²⁴
 - effective notice periods²⁵ which typically range between 3 and 24 months
- 3.16 This means that the duration of a demand-side contract could, once notice requirements are added, be up to 24 months beyond the minimum period.

Supply-side contracts

- 3.17 Virtually all of Epyx's supply-side customers are contractually required to process all of their SMR transactions with Epyx's demand-side customers through the SN platform.²⁶ In effect, that means that those supply-side customers cannot use a new entrant's system when transacting with Epyx's demand-side customers, either for actual SMR work or for live testing purposes, unless the demand-side customers switch to the new entrant's system.

Impact on competition of the relevant provisions

- 3.18 The CMA's preliminary view is that the relevant provisions make it difficult for alternative providers to build up a viable customer base given the scope of the relevant provisions, the significant duration of the contracts in question and the high proportion of demand-side revenues tied by those contracts.
- 3.19 In this case, the relevant market is a two-sided market where:
- the choice of SMR platform is driven by the demand side
 - the service is sufficiently important to demand-side customers in operational terms that they are very likely to require in-depth testing and controlled transition before switching to another provider

²⁴ In some cases, the specified minimum period is significantly longer, namely up to seven years.

²⁵ Effective notice period means the period of notice required, in practice, in order to bring the relevant contract to an end.

²⁶ Supply-side customers were also previously subject to provisions which restricted them from developing, marketing or supporting the sale of alternative systems, including a restriction on 'development' for five years following the termination of their subscription to the SN platform (the supply-side development restrictions). Epyx had informed the OFT that these restrictions were removed in a series of unilateral changes to its supply-side contracts in April 2012 and November 2011 respectively.

- in common with other two-sided markets, the scale of entry is important as a competitor will need to build up a viable customer base to be credible
- 3.20 The CMA's preliminary view is that the relevant provisions raise the following concerns in terms of barriers to entry:
- potential new entrants are unable to gain access to a sufficient proportion of the market, in particular the demand-side customers who are key to entry and tied by Epyx's contracts
 - demand-side customers face barriers to switching as they are prevented from using alternative systems, even for live testing and transitional purposes
 - demand-side customers are also prevented from independently sponsoring and developing alternative systems
 - supply-side customers have low incentives to sponsor or develop alternative systems if demand-side customers do not engage in similar activities
- 3.21 Epyx's contracts containing the relevant provisions tie a high proportion of the revenues from demand-side customers who drive SMR processing choices, for durations typically ranging from three years up to significantly longer periods.
- 3.22 Epyx's contracts containing the relevant provisions tie virtually all supply-side customers.
- 3.23 Therefore in the CMA's preliminary view, taking into account the market context and all of the prevailing circumstances, the relevant provisions tend to restrict competition, or in other words are capable of having that effect, and thereby constitute an abuse of a dominant position by Epyx.²⁷

Effect on trade

- 3.24 In the CMA's preliminary view, where a dominant company's behaviour makes it more difficult to enter the UK market, trade between EU member states may be affected.

²⁷ Case T-155/06 *Tomra Systems ASA v Commission* [2010] ECR II-4361, paragraph 289.

4. The commitments

Introduction

- 4.1 In order to address the CMA's competition concerns, the parties have offered the final commitments set out in Annex A to this decision, which are described in more detail later in this chapter.
- 4.2 The CMA has concluded that it is appropriate to accept the final commitments as they address the CMA's competition concerns in this case. The CMA's reasons are set out in this chapter.

The CMA's assessment of the appropriateness of this case for commitments

The CMA guidance

- 4.3 The CMA is likely to consider it appropriate to accept commitments only in cases where (a) the competition concerns are readily identifiable; (b) the competition concerns are addressed by the commitments offered; and (c) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.²⁸
- 4.4 Further, the CMA will not accept commitments where compliance with such commitments and their effectiveness would be difficult to discern, and/or where the CMA considers that not to complete its investigation and make a decision would undermine deterrence.²⁹

Assessment of the appropriateness of this case for commitments

- 4.5 The CMA considers that this is an appropriate case for commitments for the following reasons:
- (a) **The competition concerns are readily identifiable:** The CMA's competition concerns are in relation to foreclosure stemming from the relevant provisions. The CMA's preliminary view is that, taking into account the market context and all of the prevailing circumstances, the relevant provisions tend to restrict competition, or in other words are

²⁸ See, for example, OFT407, paragraph 4.3, and [Guidance on the CMA's investigation procedures in Competition Act 1998 cases](#) (CMA8), March 2014, paragraph 10.16.

²⁹ See OFT407, paragraph 4.5.

capable of having that effect, and thereby constitute an abuse of a dominant position by Epyx.

- (b) **The CMA considers that the commitments offered by the parties address the CMA's competition concerns:** The final commitments offered by the parties address the CMA's competition concerns in respect of foreclosure by creating a real possibility for customers to obtain SMR platform services from parties other than Epyx and for credible competitors³⁰ to enter the market.
- (c) **The commitments offered are capable of being implemented effectively and, if necessary, within a short period of time:** The parties have undertaken to act in accordance with the final commitments as of the date the CMA publishes a decision accepting the final commitments. Epyx will comply with these final commitments with its existing customers by amending³¹ its contracts within 14 days of the date on which the CMA publishes a decision accepting the final commitments.

- 4.6 The CMA considers that compliance with the final commitments and their effectiveness would not be difficult to discern. The commitments deal with contractual matters, and new contracts and contract variations are clearly discernible and binding once in effect. Furthermore, the final commitments contain reporting requirements that will enable the CMA to monitor the compliance with and effectiveness of the commitments.
- 4.7 Finally, the CMA considers that accepting commitments in this case instead of completing its investigation would not undermine deterrence. The final commitments will provide a real possibility for competition in the relevant market and the CMA's acceptance of these commitments demonstrates that competition law applies and has an important role to play, even in small markets.
- 4.8 Accordingly, the CMA considers that this is an appropriate case in which to accept commitments from the parties.

³⁰ The focus is on credible competitors (that is, competitors who pose a credible threat of entry) as they are the competitors who would present sufficiently strong competitive pressure and thereby constrain the ability of a dominant firm to behave independently of its competitors and customers (*Abuse of a dominant position* (OFT402), paragraphs 4.10, 4.12 and 4.14 – this guidance was originally published by the OFT and has been adopted by the CMA).

³¹ For demand-side contracts, such amendment is subject to agreement by each counterparty. If a demand-side customer does not formally accept the proposed amendments, Epyx has committed to conduct its business with that customer in compliance with the final commitments to the maximum extent compatible with that customer's contract. See footnote 1 of the final commitments in Annex A.

The CMA's assessment of whether the final commitments address its competition concerns

- 4.9 For the purposes of addressing the competition concerns it has identified, the CMA may accept from such persons concerned as it considers appropriate commitments to take such action (or refrain from taking such action) as it considers appropriate.³²
- 4.10 Following public consultation on the intention to accept commitments in this case,³³ the CMA considers that the final commitments address its identified competition concerns. In coming to this conclusion, the CMA has conscientiously considered the representations made³⁴ during the consultation process together with other material in its possession in the round. The CMA sets out its reasons below, following a summary of the consultation process and examination of the issue of residual exclusivity (as later described) that arose from this.
- 4.11 Other themes arising from points made in the responses received to both consultations are summarised in Annex B, together with the CMA's responses.

The consultation process

The first consultation

- 4.12 The parties offered initial commitments in relation to which the OFT issued the March notice³⁵ and invited interested third parties to make representations. The first consultation ran for 20 working days and closed on 4 April 2014. Twenty-five responses were received.
- 4.13 A significant number of the respondents to the consultation – particularly supply-side respondents – were broadly supportive of the proposal to accept the initial commitments, welcoming the increased contractual flexibility around customer development, evaluation and switching to and/or use of alternative systems. Some respondents stated that the increased customer freedom would reduce barriers to entry in the market.
- 4.14 Some respondents – primarily on the demand side – raised a number of concerns, including in relation to the 'residual exclusivity' in the contracts: ie

³² Section 31A(2) of the Competition Act 1998.

³³ In accordance with section 31A(5) of the Competition Act 1998.

³⁴ The CMA has conscientiously considered each of the representations made, although some representations have not ultimately been accepted by the CMA.

³⁵ See OFT1528.

under the commitments, Epyx will modify demand-side contracts containing the relevant provisions so that demand-side customers remain required to transact their SMR work through the SN platform in circumstances not covered by the specific exclusions and live testing allowances contained in the commitments. Therefore some limited restrictions on use could continue under the commitments.

- 4.15 The CMA discussed with the parties those concerns raised by respondents which were relevant to its competition concerns. Following these discussions, modified commitments were offered by the parties on 1 May 2014 that further reduced the residual exclusivity by adding a further exclusion, as well as increasing the level of the live testing cap and the length of the transitional period; and incorporated relevant clarifications. The CMA considered that these improvements addressed its competition concerns further to the first consultation responses.

The second consultation

- 4.16 On 5 June 2014, the CMA issued the June notice³⁶ and invited interested third parties to make representations on its proposal to accept the modified commitments. The second consultation ran for ten working days and closed on 18 June 2014. Six responses³⁷ were received.
- 4.17 The few responses received during this second consultation suggested broad satisfaction with the modified commitments except in regard to the retention of limited residual exclusivity for demand-side customers.
- 4.18 None of the responses raised any concerns in relation to the modifications to the initial commitments specifically relating to live testing, the transitional period or clarifications other than the clarification set out in the following paragraph. Indeed, some of the respondents were supportive and welcomed the improvements with regard to live testing and the transitional period (albeit in some cases subject to the caveat whether residual exclusivity was required at all).
- 4.19 The second consultation raised a concern regarding the clarification in the modified commitments that demand-side customers would be required to notify Epyx in advance of using certain permitted exclusions to exclusivity.³⁸

³⁶ See [Supply of Service, Maintenance and Repair Platforms: Notice of intention to accept modified commitments offered by epyx Limited and FleetCor Technologies, Inc. and invitation to comment](#), 5 June 2014.

³⁷ Each of the respondents had previously responded to the first consultation.

³⁸ That is, exclusions relating to: transactions where the demand-side customer and supply-side customer are part of the same corporate group; transactions in respect of particular vehicle marque(s) identified to Epyx; and any other types of transactions agreed with Epyx

The CMA discussed this matter with the parties, who subsequently removed this requirement from the final commitments.

- 4.20 The second consultation also raised a query regarding the operation of the offered exclusions. It was queried whether an exclusion could be applied on a partial basis, ie whether customers could transfer to an alternative system only some but not all of the transactions within the scope of each exclusion. The CMA discussed this matter with the parties, who subsequently offered some further text to be inserted in the final commitments clarifying that this is possible if the customer wishes.³⁹

The final commitments

- 4.21 The final commitments are summarised below. The CMA's assessment of the final commitments in light of the concerns raised in the consultations in respect of the retention of limited residual exclusivity is then summarised in paragraphs 4.33 to 4.55.

Duration of the final commitments

- 4.22 The final commitments apply for a period of five years from the date of this decision. The provisions described below apply during this period.

Provisions for all customers

- 4.23 The final commitments ensure that all Epyx's SN platform customers – irrespective of whether they are demand- or supply-side customers, and including manufacturers – are permitted to:
- engage freely with any party regarding switching options, including evaluation and sponsorship activities and the disclosure of when they may terminate their contracts with Epyx
 - develop and/or market alternative systems, including by collaborating with any third party (for example, new entrants or other Epyx customers)

³⁹ The CMA considers that the additional text offered by the parties in relation to the modified commitments merely clarified their operation and did not change the substance of the commitments. Consequently, the CMA considers that the clarifications were not material in any respect within the meaning of paragraph 6(b) of Schedule 6A to the Competition Act 1998.

Additional provisions for demand-side customers

4.24 The final commitments:

- Reduce the duration of demand-side contracts. Existing customers⁴⁰ will have the opportunity to switch at the end of their current minimum period and annually thereafter. Future customers⁴¹ will have the opportunity to switch after 18 months and annually thereafter.
- Permit demand-side customers to use alternative systems alongside the SN platform prior to expiration of the customer's contract with Epyx for:
(a) unlimited dummy testing; (b) a capped volume of live testing; and
(c) certain types of transactions (referred to as exclusions).
- Permit demand-side customers to use alternative systems on an unlimited basis alongside the SN platform following expiration of the customer's contract with Epyx for a transitional period of up to 12 months during which the customer will complete its migration to an alternative system.
- Ensure that minimum annual fees in demand-side contracts will not be set at a level that inhibits live testing, nor be applicable within a transitional period. Minimum annual fees will remain in place during existing contracts. Customers may seek to renegotiate prices to take their intended use of exclusions into account at the next opportunity to do so (typically annually on contract renewal – see the first bullet above).

4.25 The operation of the final commitments for demand-side customers is illustrated in Annex C.

Additional provisions for supply-side customers

4.26 Further to paragraph 4.24 above, Epyx has committed to permit supply-side customers to use alternative systems where a demand-side customer either expressly makes such request or initiates a transaction using an alternative system.

4.27 This additional freedom will enable supply-side customers to cater for their demand-side clients' wishes to process transactions through an alternative system for the purposes of live testing and migrating systems in the

⁴⁰ This means a party which is a demand-side customer at the date on which the CMA publishes this decision.

⁴¹ This means a party which is not a demand-side customer at the date on which the CMA publishes this decision.

transitional period, or where the demand-side customer is processing a transaction under an exclusion from the exclusivity in its contract.⁴²

- 4.28 In these circumstances, the supply-side customer is not required to check that their demand-side client is acting in compliance with its contract with Epyx.
- 4.29 Supply-side customers will continue to be able to use alternative systems to process any transactions with any third party which is not a demand-side customer (ie is not a subscriber to the SN platform).

Implementation

- 4.30 The final commitments require Epyx to amend its current contracts with its demand- and supply-side customers by writing to its customers within 14 days of the date of publication of this decision. Epyx is also required to ensure that all new contracts and supply-side contracts are entered into on terms that are compliant with the final commitments.
- 4.31 The CMA recognises that not all of the existing contracts with Epyx's demand-side customers include the relevant provisions which are the subject of the CMA's competition concerns. Accordingly, demand-side customers are not under any obligation to accept the contractual variations offered as a result of the final commitments. If demand-side customers whose contracts include the relevant provisions do not formally accept such variations, Epyx is still obliged to conduct its business with those customers as though they had accepted the variation and in accordance with the principles of the final commitments, to the maximum extent compatible with each customer's existing contract. For the avoidance of doubt, demand-side customers who are not currently subject to exclusivity provisions will **not** have such provisions imposed on them in their existing contracts by virtue of the implementation of the final commitments.
- 4.32 Changes to the standard terms and conditions for suppliers will be notified to suppliers to take effect on 14 days' notice. Once in effect, the amended standard terms and conditions for suppliers will also be published on Epyx's website.

⁴² As this is a two-sided platform, in order to ensure that the final commitments are not deprived of their full effect, the supply side must be free to transact with the demand side consistent with changes that are made for demand-side customers as a result of the final commitments. The final commitments contain a provision to allow for this (see paragraph 15 of the final commitments in Annex A).

How the final commitments address the CMA's competition concerns

4.33 The CMA considers that the final commitments create a real possibility for customers to obtain SMR platform services from parties other than Epyx and for credible competitors to enter the market. The final commitments do so through a combination of the following:

- **Reducing barriers to switching** by removing or significantly relaxing the relevant provisions in relation to activities required to support demand-side customers in switching all or part of their demand to alternative systems. For example, demand-side customers will be able to engage with providers of alternative systems, thoroughly evaluate their services and transition in an effective manner. Demand-side customers who wish to switch only part of their SMR demand to alternative systems will also have opportunities to do so through specified contractual exclusions. Supply-side customers will be able to transact with their demand-side clients for these purposes.
- **Removing barriers to product development** by permitting demand-side customers to develop alternative systems, whether with a new entrant (to help ensure that its offering is fit for purpose), with another company on the demand or supply side, or by themselves.
- **Removing barriers to network building and scale** by significantly shortening the duration provisions in demand-side contracts in order to increase the frequency of future opportunities for customers to switch and for new entrants to compete for their business; and by removing restrictions on sponsorship (ie as to the marketing and support of alternative systems). The shortened durations would allow new entrants the opportunity to access approximately 80% of the SMR transaction volumes that are currently processed on the SN platform, within one year of the final commitments taking effect.⁴³

4.34 These features of the commitments are summarised in Table 4.1.

⁴³ This is based on updated information provided by Epyx to the CMA in August 2014, which notes that to the extent that Epyx has entered into new contracts with its existing customers since the March notice, such contracts have used one-year minimum periods and one-year rollovers for consistency with the anticipated commitments. Furthermore, the updated data shows that all of Epyx's existing demand-side customers would have at least one opportunity to switch to an alternative system by November 2016 (and would have further opportunities to switch every year after their first opportunity to do so).

TABLE 4.1 **How the final commitments address the CMA's competition concerns**

<i>Competition concern</i>		<i>Demand side</i>	<i>Supply side</i>
Relevant provisions impacting:	Development and sponsorship	General principles confirming that engagement, evaluation, development and sponsorship activities are permissible (paragraphs 1 to 3 of the final commitments in Annex A)	
	Access to customer network	<ul style="list-style-type: none"> • General principles as above • Duration of contracts reduced (paragraphs 6–8 of the final commitments in Annex A) 	Switching by demand-side customers will encourage supply-side customers to adopt new systems. Hence improvements to demand-side access (see left) will improve supply-side access (which in turn will improve demand-side access).
	Evaluation	<ul style="list-style-type: none"> • General principles as above • Unlimited dummy testing (paragraph 2.f. of the final commitments in Annex A) • Annual live testing allowance (paragraph 4 of the final commitments in Annex A) • Minimum annual fees will not be set or enforced in a way that inhibits live testing (paragraph 5 of the final commitments in Annex A) 	Supply-side customers can transact outside the SN platform where required by their demand-side clients who use the SN platform (they continue to be free to use any processing method with their demand-side clients who do not use the SN platform) (paragraph 15 of the final commitments in Annex A)
	Other barriers to switching to an alternative system on a single-homing basis (ie exclusivity preventing transitional multi-homing for phased migration purposes, when a customer is switching all of its demand)	Transitional period during which: <ul style="list-style-type: none"> • multi-homing can freely occur (in any form and to any extent) • minimum annual fees will be waived • reasonable transitional support will be provided for the first three months (paragraphs 13 and 14 of the final commitments in Annex A)	
	Other barriers to multi-homing (ie exclusivity preventing permanent multi-homing, that is the switching of only part of a customer's demand)	Exclusions to exclusivity: <ul style="list-style-type: none"> • tyre and/or glass transactions • intra-group transactions • marque-by-marque transactions • any other exclusions agreed with Epyx (paragraphs 9–12 of the final commitments in Annex A)	

The CMA's consideration of the consultation responses

4.35 The final commitments include provisions that create opportunities for demand-side customers bound by the relevant provisions to switch to or use alternative platforms while under contract with Epyx, namely: allowances for live testing, allowances for certain exclusions to exclusivity, periods of non-

exclusive use when transitioning to an alternative system and shorter demand-side contract durations.

4.36 However, some respondents expressed the following concerns relating to the limited residual exclusivity that is not prohibited⁴⁴ in Epyx's contracts:

- There is both a desire and a necessity for unrestricted multi-homing, ie for exclusivity to be removed in its entirety.
- The categories of multi-homing offered were not extensive enough or, in some cases, were not likely to be attractive to customers.

4.37 The following section considers these points. A summary of other themes arising from points raised by respondents to the consultations and the CMA's responses to these is also provided at Annex B.

Representations in favour of unrestricted multi-homing

4.38 Some responses to the consultations, including the majority of demand-side responses, expressed a desire for unrestricted multi-homing and suggested that this would be required to prevent market foreclosure. In the second consultation, one reason put forward for this by a demand-side respondent was that supply-side customers would not be willing to multi-home.

4.39 Based on information from the investigation,⁴⁵ it was initially considered that given the intrinsic operational benefits of single-homing, single-homing was likely to be preferred where it was feasible. However, the responses to the consultations have suggested a higher level of interest in multi-homing among demand-side customers than expressed during the investigation.

4.40 Although variations in the degrees of interest in multi-homing were expressed, consistent themes emerged across all the material in the CMA's possession as to why multi-homing is attractive: (a) to sponsor competition; (b) to reduce switching risk; and (c) in other circumstances where multi-homing proves more commercially or operationally favourable than single-homing.⁴⁶ Among

⁴⁴ The final commitments only represent a minimum standard of conduct binding Epyx. They do not prevent Epyx and its customers from seeking or agreeing more permissive contracts that further relax or even fully remove any residual exclusivity.

⁴⁵ This view was based on extensive information received throughout the OFT's investigation prior to the first consultation. Information was received from Epyx and a wide range of third parties, including trade associations, potential entrants, businesses providing services to the automotive sector and potential and actual SMR platform customers of varying sizes who represented more than 80% of Epyx's demand-side customer revenues in total and a cross-section of the supply side. The majority of this information was collected under formal powers requiring accurate and complete responses to a detailed set of questions.

⁴⁶ For example, where a corporate group contains both demand- and supply-side customers, it may benefit from the use of an in-house system for intra-group transactions; or where a fleet focuses on a particular brand, it may be interested in solutions tailored to that brand for use alongside another platform for its remaining vehicles.

these factors, (a) and (b) were the most consistently and strongly repeated and (c) tended to arise from business-specific circumstances or envisaged that no single new offering would have sufficient all-round strength to match the SN platform.

- 4.41 This material, in the round, does not suggest to the CMA that customers, even those open to the possibility of multi-homing, would be prevented from switching to credible competitors, notwithstanding the residual exclusivity of the limited nature contained in the final commitments.
- 4.42 The CMA notes the efficiency benefits,⁴⁷ which were not disputed throughout the consultations, of single-homing versus multi-homing. Therefore, if the risk factors and current absence of competition that appear to be driving much of customers' multi-homing interest are allayed, the CMA considers that customers would generally select a single-homing option over a multi-homing option, or would at least consider single-homing a viable switching choice if their preferred multi-homing option were unavailable.
- 4.43 Under the final commitments, the CMA considers that these risk and availability factors would be allayed by the presence of a credible competitor. For example, credible competitors could present an alternative capable of efficiently handling all of a customer's demand, take actions to manage switching risk to an acceptable level,⁴⁸ and are supported by provisions in the final commitments that enable live testing and a transitional period (which are designed precisely to reduce switching risks). As such, the CMA considers that multi-homing would not be necessary for entry by a credible competitor.
- 4.44 Nevertheless, the CMA recognises that, in practice, a new entrant may require some time to establish its credibility. Multi-homing could therefore still play a part in the early days of competition by offering additional opportunities to further mitigate early-adopter switching risk⁴⁹ for the more cautious subset of demand-side customers who might otherwise delay switching. The CMA considers that the final commitments also address this concern by providing exclusions from exclusivity that offer additional options for these customers to switch only part of their demand.

⁴⁷ See paragraph 2.19 and paragraphs 2.23 to 2.25 for this discussion.

⁴⁸ For example, by offering a good-quality, cost-efficient service with robust technical support, running an effective sales campaign to persuade customers of its reliability, and planning effectively for timely and strategic customer acquisition to build a viable customer base.

⁴⁹ For example, for customers who: are unsure how long it will take them to transition to an alternative system; are unsure how long it will take their suppliers to transition to an alternative system; or would prefer to observe an alternative system at levels beyond what is possible under the annual live testing cap over a prolonged period of time before committing to that alternative.

- 4.45 Hence, the CMA is satisfied that switching flexibility is available through a combination of the live testing allowance, the transitional period and the exclusions to exclusivity in the final commitments, that provide opportunities for customers to switch all or part of their demand even at an early stage of market entry so as to enable a credible competitor to build up a viable customer base.⁵⁰ The CMA therefore does not consider it necessary for the final commitments to include further provision for unrestricted multi-homing.
- 4.46 Finally, the CMA notes that most of the subset of respondents on the demand side who represented that unrestricted multi-homing was necessary for competition did not provide supporting reasoning for this beyond the potential usefulness of additional forms of multi-homing. The CMA considers for the reasons set out above that the potential usefulness of multi-homing to demand-side customers (when set against its operational inefficiencies) declines when there is a real possibility for credible competitors to enter the market. Another reason suggested by some respondents was that supply-side customers would not be willing to multi-home. The CMA has considered this, but has placed greater weight on representations made directly by supply-side respondents during the investigation that they would readily multi-home so long as it was commercially viable. This would be the case if there was significant desire to use alternative systems on the demand side as well as the opportunity for them to do so, which is provided under the final commitments.

Representations that multi-homing is not sufficiently catered for

- 4.47 The CMA has also considered concerns expressed by some respondents to the consultations that, where they do wish to multi-home, the offered exclusions are unlikely to cater for this. In particular, some (but not all) respondents to the second consultation were sceptical regarding the value of the additional marque-by-marque exclusion added following the first consultation.
- 4.48 The CMA notes that the exclusions to exclusivity have been offered specifically with a view to covering some of the likely ways in which customers may multi-home – these were exclusions that are supported by observed industry practice and/or raised by multiple customers and hence considered likely by the CMA to be credible multi-homing options.⁵¹ Only a few of the

⁵⁰ The CMA notes that the existing subset of demand-side customers who are not subject to the relevant provisions are also free to approach competitors at any time should they choose to do so.

⁵¹ While there are many different ways in which multi-homing can occur, the CMA notes that the list of exclusions reflects information obtained during both the investigation and the consultation process, regarding actual multi-

types of permanent multi-homing specified by customers as desirable (such as by supplier) are not included in this list.⁵² Furthermore, there is considerable flexibility in how the exclusions operate, as a customer is free to switch either all or part of its demand falling within the scope of a given exclusion to an alternative platform and can apply any criteria of its choosing when selecting which part to switch. This means that the customer will always have an opportunity to multi-home just as it wishes on at least a subset of its transactions (transactions that fall under specified exclusions), which should help address any need to gradually migrate their transactions to an alternative system over a period of time beyond that allowed by the 12-month transitional period.

4.49 The CMA therefore considers that, while the list of exclusions is not exhaustive and not all exclusions will be suitable for all customers, the list represents an appropriate set of options for demand-side customers to multi-home in a way that can further mitigate switching risks and encourage at least partial switching.

4.50 Regarding the specific concerns raised about the value of exclusions by marque, the CMA notes that:

- This was mentioned as a feasible multi-homing option within both the investigation and the first consultation.
- Beyond commercial reasons for a particular form of multi-homing, the primary reason appears to be risk management. The CMA considers that customers looking to manage risk through multi-homing are most likely to be concerned with the ability to divert a significant volume of live transactions to an alternative system for a significant period of time. Given this context, the CMA continues to consider the marque-by-marque exclusion a valuable option as it affords a genuine opportunity to switch a significant proportion of transactions to other providers.⁵³

homing practices in the UK or abroad, or where a particular type of exclusion has been suggested as a feasible multi-homing option by multiple customers.

⁵² The CMA was content that some of these – for example, some of the categories of multi-homing noted in Annex B – were not included on the basis of information from the investigation that they represented a low volume of transactions; consequently, their omission from the list was unlikely materially to affect the foreclosure of credible competitors. In respect of other multi-homing options raised but omitted from the list, as discussed later in this paragraph, the final commitments still offer certain opportunities to multi-home in these ways, ie within specified categories of exclusions.

⁵³ There is no limitation on the number of marques that can be transferred to an alternative system (in whole or in part), so any number may be transferred until it represents a significant proportion of transactions.

4.51 Furthermore, another provision in the final commitments allows demand-side customers to request other exclusions not specified within the final commitments.⁵⁴ While agreement to such requests is at Epyx's discretion, the CMA considers that:

- the provision offers an opportunity to make such requests
- Epyx may well have incentives to accede to requests of a reasonable nature if it otherwise risks losing the customer's business given the improved opportunities for credible competition afforded by the final commitments

4.52 Finally, while there may be those who cannot multi-home in the way they wish to, the CMA observes that under the final commitments such customers still have the option of switching all of their demand on a single-homing basis and thus would not be foreclosed to a credible competitor.

Conclusion

4.53 In light of the foregoing, the CMA has concluded that the final commitments:

- (a) ensure that all market participants (including manufacturers, demand-side and supply-side customers) have opportunities to freely engage with and sponsor new entrants and develop competing systems, thus establishing conditions suitable for market entry;
- (b) ensure that opportunities for demand-side customers to switch are sufficiently frequent – on an annual basis once the minimum contract period has expired, which will be the case for around 80% of demand-side contracts by volume within a year of the final commitments taking effect. The minimum period of new contracts has also been truncated, to a maximum of 12 months for existing customers and a maximum of 18 months for future customers;
- (c) facilitate demand-side switching, by offering material live testing opportunities and transitional periods of up to 12 months with mandated assistance from Epyx to facilitate the switching process;
- (d) provide opportunities for several forms of demand-side multi-homing which could facilitate entry (and which have been identified by some respondents as credible routes to market); and

⁵⁴ See paragraph 11(c) of the final commitments in Annex A.

(e) allow supply-side customers to respond to their demand-side clients so that the full benefits of the final commitments, in allowing live testing, transitional multi-homing and certain other uses of alternative systems by Epyx's demand-side customers, can be realised.

4.54 The CMA therefore considers that the final commitments create a real possibility for customers to obtain SMR platform services from parties other than Epyx and for credible competitors to enter the market and build up a viable customer base as there will be frequent opportunities for **any** customer to switch all of its demand on a single-homing basis, combined with additional opportunities to multi-home that can further mitigate switching risks and encourage at least partial switching. Furthermore, all customers will have opportunities to engage freely with, identify their availability to and support competitors.

4.55 Accordingly, and having conscientiously considered all the material in its possession in the round, the CMA considers that the final commitments address its competition concerns by creating a real possibility for customers to obtain SMR platform services from parties other than Epyx and for credible competitors to enter the market.

5. The commitments decision

- 5.1 In light of the above, the CMA considers that the final commitments as set out in Annex A of this document address its competition concerns in this case and that it is appropriate to accept the final commitments.
- 5.2 Accordingly, the CMA has accepted the final commitments and closed its investigation in this case.